



**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 6 December 2018**

held at  
**Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads**  
commencing at 5.30pm

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 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 Secretary 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 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, 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.

(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 4.16 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 4.16 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 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

(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 the Planning Committee:

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA18/0320 for a Residential Flat Building Including Demolition of Existing Structures at Lot 10 Sec 3 DP 758571; No. 178 Marine Parade Kingscliff

**SUBMITTED BY:** Development Assessment and Compliance

mhm



Making decisions with you  
*We're in this together*

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** Provider

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### SUMMARY OF REPORT:

Council is in receipt of a development application for the demolition of an existing dwelling and construction of a four storey residential flat building at 178 Marine Parade, Kingscliff. The residential building will comprise of seven units with basement parking access from Kingscliff Lane to the rear. Two units each are proposed for levels one to three and the fourth level will be a single penthouse apartment that is stepped in from the units below providing greater boundary setbacks for this level.



*Amended facade for four storey 7 unit residential flat building*

The application was notified and six submissions were received in relation to the proposal. Each of the submissions raised concerns regarding the height of the development, inclusion of a fourth floor unit and perceived inconsistency with the character of residential development along Marine Parade. The applicant was requested to consider the issues raised in the submissions and as well as Planning Officers' concerns regarding bulk and scale of the proposal and unacceptable streetscape dominance.

Amended plans were submitted that reduced the overall height of the proposal and the dominance of the fourth level unit by increasing setbacks to the street for the roof top apartment. The façade of the building was redesigned to remove elements that contributed to the mass and dominate streetscape presence.

The amended proposal is compliant with the statutory height limit of 13.6m prescribed by Tweed Local Environment Plan 2014 but exceeds the 12.2m height control for residential flat buildings as prescribed by the Tweed Development Control Plan 2008 (DCP). The residential building is to be a maximum of 12.9m which equates to a 5.7% variation to the control.

The development is generally compliant with the other applicable DCP controls and a comprehensive assessment of the bulk and scale of the amended proposal has determined that the residential flat building is consistent with the current and desired character of residential development along Marine Parade. Accordingly, the minor variation to the DCP height control is supported.

The proposal has been assessed against the Apartment Design Guide (ADG) as prescribed by State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development. The building has been designed to be generally consistent with the Design Criteria prescribed by the Apartment Design Guide with the exception of building separation distances (side setbacks) and the provision of communal open space.

The subject site is a relatively narrow infill site (21.7m wide) within the medium density zone and the side setback controls as prescribed by the ADG are considered to be not appropriate to small infill sites. Strict adherence to the ADG side setback controls renders the site undevelopable. On merit, the proposal has been designed to achieve the privacy and solar access objectives of the building separation controls and in this respect the proposal is

considered to be acceptable. The proposal complies with the setback controls in the DCP and as such is consistent with other small residential flat buildings in the locality with regard to building separation distances.

With regard to the provision of communal open space the applicant has requested a 100% variation to the numerical control and the development does not provide any communal open space. The ADG acknowledges that some developments may not be able to achieve the required area of communal open space, in which case demonstrated proximity to public open space is deemed to be an acceptable outcome. As such, the proposal is relying on the adjacent Kingscliff foreshore area to provide for passive outdoor recreation space for residents of the apartment building. The variation is thus supported whilst also noting that the DCP does not require communal open space for developments with ten units or less.

The design of the building is of a high quality and of an appropriate built form for the urban coastal locality. The proposal is deemed to be an appropriate development for the site as assessed against the relevant legislation and development control plans. As such the proposal is being recommended for approval, subject to conditions of consent.

This application is being reported to Council as the proposal exceeds the DCP height limit and the addition of the fourth level unit may be perceived as not being consistent with the existing character of residential development along Marine Parade.

#### **RECOMMENDATION:**

**That Development Application DA18/0320 for a residential flat building including demolition of existing structures at Lot 10 Sec 3 DP 758571; No. 178 Marine Parade Kingscliff be approved subject to the following conditions:**

#### **GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and the following documents and plans prepared by Michael Witty Architects and dated March 2018, except where varied by the conditions of this consent:**

- **Site plan Issue C Dwg. No. SK01;**
- **Basement plan Issue H Dwg. No. SK04;**
- **Ground floor plan Issue J Dwg. No. SK05;**
- **First and Second floor plans Issue G Dwg. No. SK06;**
- **Roof top plan Issue G Dwg. No. SK07;**
- **Roof plan Issue G Dwg. No. SK08;**
- **North elevation Issue K Dwg. No. SK09;**
- **East elevation Issue K Dwg. No. SK10;**
- **South elevation Issue K Dwg. No. SK11;**
- **West elevation Issue K Dwg. No. SK12;**
- **Section AA Issue H Dwg. No. SK13;**
- **Section BB Issue J Dwg. No. SK. 14;**
- **Garage door detail Issue A Dwg. No. SK17;**

[GEN0005]

**2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]

3. The development is to be carried out in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications.

[GEN0125]

4. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.

[GEN0135]

5. **Bushfire Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack in accordance with the stamped approved Bushfire Threat Assessment Report. To achieve this, the following conditions shall apply:

- (a) Construction shall comply with Australian Standard AS3959-2009 'Construction of buildings in Bush Fire-prone areas' and Planning for Bushfire Protection Policy 2006 with a construction Bushfire attack Level (BAL) of 12.5 for the building.

[GEN0335]

6. Application shall be made to Council under Section 305 of the Water Management Act 2000 for a certificate of compliance for development to be carried out - i.e.: the provision of water and sewerage to the development.

Note:

- (a) Following this, requirements shall be issued by Council under Section 306 of the Water Management Act 2000.
- (b) Following this, any works needing to be undertaken will require a further application to be made to Council under Section 68 of the Local Government Act for the relevant water / sewer works.

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

[GEN0375]

7. The inspection opening for the existing sewer junction for Lot 10 Sec 3 DP 758571 shall be a trafficable lid to be constructed flush with the proposed driveway surface.

[GENNNS01]

8. Erosion and Sediment Control shall be designed, installed and maintained in accordance with Tweed Shire Council Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[GENNS02]

9. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

- (a) Provision of a driveway access in accordance with Council's Development Control Plan - Section A2 "*Site Access and Parking Code*" and Council's standard drawing S.D. 017 - Driveway Access to properties Fronting Roads with Kerb & Gutter.
- (b) Concrete footpath works in accordance with Council's standard drawing S.D. 013 - Footpath & Cycleway Details.

[GENNS03]

10. The proposal is to comply with the Waste Management Plan prepared by Planit Consulting and dated August 2018 unless otherwise approved by Council's General Manager or delegate.

[GENNS04]

11. The developer shall provide 14 car parking spaces and 2 visitor parking spaces in accordance with Tweed Shire Council's Development Control Plan Part A2 - *Site Access and Parking Code*.

The two visitor car parks shall clearly marked as visitor car parking / car wash bay.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a Construction Certificate for Building Works.

[PCC0065]

12. Section 7.11 Contributions

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution 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 7.11 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

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

These charges 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 7.11 Plan current at the time of the payment.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) Tweed Road Contribution Plan:
  - 20.8 Trips @ \$1283 per Trips \$26,686
  - (\$1,137 base rate + \$146 indexation)
  - CP Plan No. 4
  - Sector6\_4

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<p>(b) <b>West Kingscliff - Drainage:</b>  <b>0.0189 HA @ \$73559 per HA</b>                  (\$5,664.10 base rate + \$67,894.90 indexation)                  DCP Section B4                  CP Plan No. 7</p>	<p><b>\$1,390.27</b></p>
<p>(c) <b>West Kingscliff - Open Space:</b>  <b>5.125 ET @ \$3612 per ET</b>                  (\$1,849 base rate + \$1,763 indexation)                  DCP Section B4                  CP Plan No. 7</p>	<p><b>\$18,512</b></p>
<p>(d) <b>Shirewide Library Facilities:</b>  <b>5.125 ET @ \$933 per ET</b>                  (\$792 base rate + \$141 indexation)                  CP Plan No. 11</p>	<p><b>\$4,782</b></p>
<p>(e) <b>Bus Shelters:</b>  <b>5.125 ET @ \$71 per ET</b>                  (\$60 base rate + \$11 indexation)                  CP Plan No. 12</p>	<p><b>\$364</b></p>
<p>(f) <b>Eviron Cemetery:</b>  <b>5.125 ET @ \$135 per ET</b>                  (\$101 base rate + \$34 indexation)                  CP Plan No. 13</p>	<p><b>\$692</b></p>
<p>(g) <b>Community Facilities (Tweed Coast - North)</b>  <b>5.125 ET @ \$1539 per ET</b>                  (\$1,305.60 base rate + \$233.40 indexation)                  CP Plan No. 15</p>	<p><b>\$7,887</b></p>
<p>(h) <b>Extensions to Council Administration Offices                  &amp; Technical Support Facilities</b>  <b>5.125 ET @ \$2187.14 per ET</b>                  (\$1,759.90 base rate + \$427.24 indexation)                  CP Plan No. 18</p>	<p><b>\$11,209.09</b></p>
<p>(i) <b>Cycleways:</b>  <b>5.125 ET @ \$526 per ET</b>                  (\$447 base rate + \$79 indexation)                  CP Plan No. 22</p>	<p><b>\$2,696</b></p>
<p>(j) <b>Regional Open Space (Casual)</b>  <b>5.125 ET @ \$1215 per ET</b>                  (\$1,031 base rate + \$184 indexation)                  CP Plan No. 26</p>	<p><b>\$6,227</b></p>

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- (k) **Regional Open Space (Structured):**  
5.125 ET @ \$4264 per ET \$21,853  
(\$3,619 base rate + \$645 indexation)  
CP Plan No. 26

[PCC0215]

13. 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 all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

**BELOW IS ADVICE ONLY**

The Section 64 Contributions for this development at the date of this approval have been estimated as:

Water: 3.69 ET @ \$13,632 = \$50,302.10

Sewer: 6.0 ET @ \$ 6,549 = \$39,294.00

[PCC0265]

14. A detailed Plan of Landscaping containing no priority weed species and with a minimum 80% of total plant numbers comprised of local native species to the Tweed Shire is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. Local native species are to comprise appropriate species selected from the Tweed Shire Native Species Planting Guide available online at:  
<http://www.tweed.nsw.gov.au/Controls/NativeSpeciesPlanting/Landing.aspx>

The landscape plan is to include fencing detail for all proposed fencing and demonstrate compliance with the fencing controls as specified in the NSW Apartment Design Guide.

[PCC0585]

15. The basement car parking is to be protected against the inflow of water to a level of 500mm above the Design Flood Level in accordance with Tweed Shire Council Development Control Plan Part A3 - Development of Flood Liable Land. This immunity shall be provided at all accesses including external stairs to the basement car park. The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (onsite and adjacent) is protected against pump failure. Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate for Building Works.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 "*National Plumbing and Drainage - Part 3.2: Stormwater Drainage - Acceptable Solutions*"

[PCC0685]



16. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

17. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application for Building Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
- (e) Shake down area shall be installed within the property, immediately prior to any construction vehicles entering or exiting the site prior to any earthworks being undertaken along the haul route immediately before the intersection with the road reserve.
- (f) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's *Development Design Specification D7 - Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
- (g) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

18. A Construction Certificate application for works that involve any of the following:
- connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee. The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.

- b) Where Council is requested to issue a Construction Certificate for subdivision works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

19. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the S68 stormwater application.

[PCC1165]

20. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a Construction Certificate.

[PCC1195]

21. If the development is likely to disturb or impact upon water or sewer infrastructure (e.g. extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

Applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.

[PCC1310]

22. Prior to issue of a Construction Certificate the applicant is to provide to the nominated principal certifying authority the following:

- (a) Plans that clearly detail access to external terraces and balconies from internal living areas of the roof top unit;
- (b) Details of measures to ensure adequate privacy is achieved for windows of Bedroom 1 of Units 2, 4 & 6.

[PCCNS01]

**PRIOR TO COMMENCEMENT OF WORK**

**23. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.**

[PCW0005]

**24. An application is to be made to Council to temporarily “cap off” the existing building sewerage house drainage from Council's sewerage system, prior to any demolition work commencing. A Plumbing and Drainage Works on Private Land application form shall be submitted to Tweed Shire Council and payment of fees in accordance with Councils adopted fees and charges.**

[PCW0045]

**25. 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]

**26. 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]

**27. Residential building work:**

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- \* in the name and licence number of the principal contractor, and
  - \* the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- \* the name of the owner-builder, and
  - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

**28. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:**

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

**29. 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]

30. 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]

31. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:

(a) The person must, at the person's own expense:

- (i) preserve and protect the building / property from damage; and
- (ii) if necessary, underpin and support the building in an approved manner.

(b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

32. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and driveway are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to the nominated PCA prior to commencement of ANY works on the site.

[PCW0775]

33. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

#### **DURING CONSTRUCTION**

34. All proposed works are to be carried out in accordance with the conditions of development consent, any approved Management Plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

35. Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to the Office of Environment and Heritage.

**No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.**

[DUR0025]

- 36. Commencement of work, including the switching on and operation of plant, machinery and 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]

- 37. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:**

- A. Short Term Period - 4 weeks.**

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.**

- B. Long term period - the duration.**

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

- 38. 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]

- 39. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:**

- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.**
- (b) The chute shall be located in a position approved by the Principal Certifying Authority.**
- (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.**

[DUR0385]

- 40. 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]

41. 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 6.6 of the Environmental Planning and Assessment Act 1979.

[DUR0405]

42. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

43. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

44. To ensure that the residential flat building is correctly positioned on the site, a report prepared by a registered surveyor is to be submitted to the principal certifying authority at footings/formwork stage and at the completion of the structures indicating that such have been correctly positioned on the site in accordance with the approved development consent plans/consent conditions and have been located clear of any easements/sewer main.

[DUR0495]

45. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

46. The use of vibratory compaction equipment (other than hand held devices) within 100m of any existing dwelling house, building or structure is strictly prohibited.

[DUR0815]

47. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

48. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of a Occupation Certificate.

[DUR0995]

**49. 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]

**50. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.**

[DUR1015]

**51. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.**

[DUR1685]

**52. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.**

[DUR1725]

**53. A concrete footpath 1.2 metres wide is to be constructed on a compacted base along the entire frontage (Marine Parade) of the site in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.**

**All disturbed areas in the verge shall be turfed to the satisfaction of Tweed Shire Council.**

**24 hours notice is to be given to Council's Engineering Division before placement of concrete to enable formwork and subgrade to be inspected**

[DUR1735]

**54. 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]

**55. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.**

[DUR2015]

**55. 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]

**57. Appropriate arrangements to the satisfaction of Council's General Manager or his**



delegate shall be provided for the storage and removal of garbage and other waste materials.

- [DUR2205]
58. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.
- [DUR2425]
59. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building.
- [DUR2485]
60. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
  - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.
- [DUR2495]
61. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.
- [DUR2505]
62. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.
- [DUR2525]
63. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
- [DUR2535]
64. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR2545]
65. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50°C in all other classes of buildings.

**A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.**

[DUR2555]

**66. The Applicant shall submit the appropriate 'Application for Water Service Connection' to Council's Water Unit to facilitate a property service water connection for Lot 10 Sec 3 DP 758571, from the existing water main in Marine Parade. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.**

[DUR2800]

**67. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.**

[DUR2835]

**68. The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environmental Protection Authority "Waste Classification Guidelines".**

[DURNS01]

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

**69. Prior to issue of an Occupation Certificate, all works/actions/inspections etc required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.**

[POC0005]

**70. 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 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

**71. 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]

**72. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.**

**The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.**

**On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.**

**For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.**

**The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council**

prior to the carrying out of the work.

[POC0265]

73. 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]

74. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

75. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building.

[POC0475]

76. Upon completion of all works on the site and prior to the issue of an Occupation (including interim) Certificate, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the condition including the structural condition of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and advise if any damages have occurred that could be attributed to the work the subject of this development consent. If damages have occurred the PCA is to be provided with evidence that the damages have been satisfactorily repaired prior to the issue of an Occupation Certificate (including interim).

A copy of the dilapidation report is to be provided to the Principle Certifying Authority/Council.

[POC0825]

77. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

78. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.

[POC1055]

#### **USE**

79. 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]

80. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

**81. 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]

**82. All wastes shall be collected, stored, and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.**

[USE0875]

**83. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.**

[USE1510]

**REPORT:**

**Applicant:** 178 Marine Parade Pty Ltd  
Trustees For 178 Marine Unit Trust  
**Owner:** 178 Marine Parade Pty Ltd  
**Location:** Lot 10 Sec 3 DP 758571; No. 178 Marine Parade Kingscliff  
**Zoning:** R3 - Medium Density Residential  
**Cost:** \$2,700,000.00

**Background:**

Council is in receipt of a development application for the demolition of an existing dwelling and the construction of a residential flat building comprising of seven x three bedroom units at 178 Marine Parade, Kingscliff. The proposed building has four habitable storeys plus basement parking with vehicle access from Kingscliff Lane at the rear.

Levels 1 to 3 contain two units each and Level 4 (top level) comprises of a single penthouse apartment. Each unit comprises of three bedrooms, open plan living/dining/kitchen area, TV room, two bathrooms (top unit includes three bathrooms), laundry, a primary balcony adjacent to the primary living area and two additional balconies provided off secondary living areas and a bedroom.

The initial set of plans submitted with the application showed the height of the building to be 13.5m which is compliant with the statutory Tweed Local Environment 2014 (LEP) height limit of 13.6m. However, the proposal exceeds the 12.2m Tweed Development Control Plan 2008 (DCP) height limit for residential flat buildings. The proposal was notified with six submissions being received in relation to the proposal. Many of the submissions raised concerns that the proposal was not reflective of the scale of buildings along Marine Parade, which is characterised by 3 storey residential flat buildings.

With respect to concerns regarding the exceedance of the 12.2m DCP height control and the inclusion of a fourth habitable level that is not consistent with the existing built character of residential development along Marine Parade, the applicant was requested to provide more consideration to the scale and predominate character of the locality and amend the plans to reduce the bulk and scale of the proposal. Dominate architectural elements of the building's façade, large splayed roofed balconies on the fourth level and a prominent lift overrun all exceeded the DCP height control and contributed to a design that was considered to undesirably dominate the streetscape.

Amended plans were submitted that amended the following key features of the building's design that contributed to the bulk and dominate streetscape presence:

- Overall height was reduced from 13.5m to 12.9m;
- The roof form was redesigned to reduce the area of the roof that exceeds the 12.2m DCP height control from approximately 250m<sup>2</sup> to 159m<sup>2</sup>;
- An increase in setback from Marine Parade of the fourth floor unit (including balcony roofs) to 10.6m which is 4.6m behind the building façade. The splayed balcony roofs were also reduced in size and prominence in the front elevation.
- Removal of architectural framing of the lift well which encroached into the front setback;
- Increased front setback of the lift well façade to 6m which is compliant with setback controls;

- The lift overrun is reduced in height to 12.2m which is compliant the DCP height control;
- A reduction of the habitable area of the fourth floor unit from to approximately 175m<sup>2</sup> to 161m<sup>2</sup>;
- Addition of roof top plantings.

Below is a visual representation of the amendments that have been made to the plans with the red line indicating 12.2m above ground level that is the DCP height control.



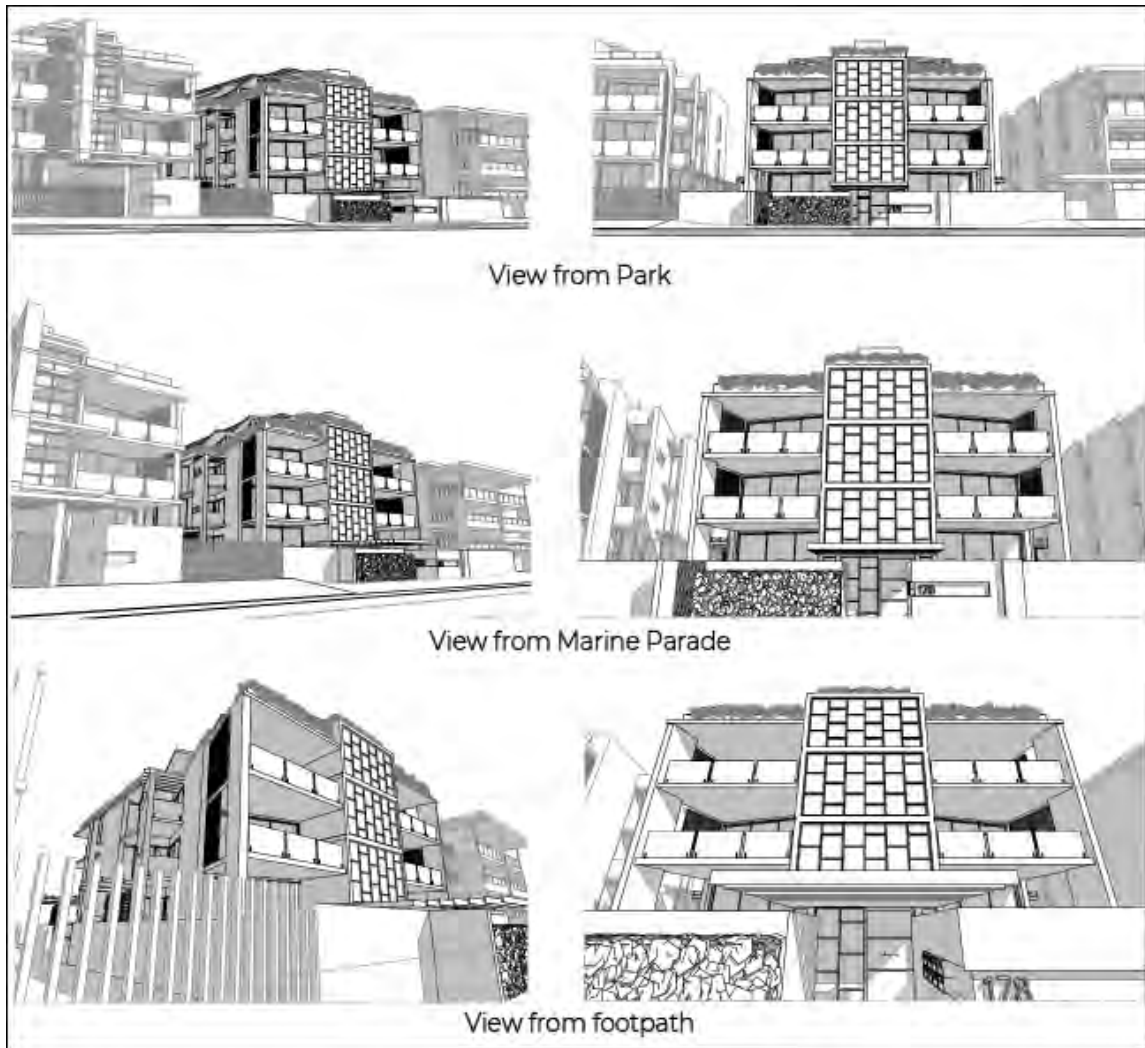
Initial plan showing front facade (left) and amended plans being recommended for approval (right).

With regard to the inclusion the fourth level unit and the noncompliance with the DCP height control, the applicant has provided the following comment:

*While we note the comment that buildings up to 13.6m should be limited to shop top housing, this is not reflective in the LEP controls, nor would it achieve any different outcome in the context of building height and scale. Regardless of this, the updated plans clearly demonstrate that the portion of floor area and/or site cover that is over the 12.2m height control in the DCP and below the 13.6m Tweed LEP height limit is minor and appears as a pop up element to the overall development. This is achieved through adequate setbacks, scale, articulation, and suitable bulk. As viewed from the street and footpath, the building appears to be 12.2m in height with a pop up element as the fourth storey apartment is sufficiently setback from the front building elevation.*

*It is considered that the proposal meets the streetscape design criteria, and as such, a minor variation to the DCP height limit in line with the overarching TLEP 2014 height limit is warranted. As shown, the fourth storey apartment can be provided without adversely affecting the character of Marine Parade.*

The applicant has provided illustrations to further demonstrate that the portion of the building that exceeds the DCP height control is suitably setback from the street and does not significantly contribute to the building's bulk or scale when viewed from the street or the adjacent public open space along the Kingscliff foreshore area.



*Illustration of the proposal as viewed from the street (provided by the applicant).*

The predominant character of Marine Parade is typified by three storey small residential flat buildings and a fourth level unit as proposed may be considered as not being consistent with this character. The applicant has provided a street photomontage in support of the argument that regardless of the fourth level unit, the bulk and scale of the building is consistent with the predominate character of residential development along Marine Parade and included the following statement:

*The building has been redesigned with the bulk and scale of the existing and future character of the area regardless to the fourth storey being used as an apartment or rooftop living area. This is shown in the photo montage included in the updated Architectural Plans.*



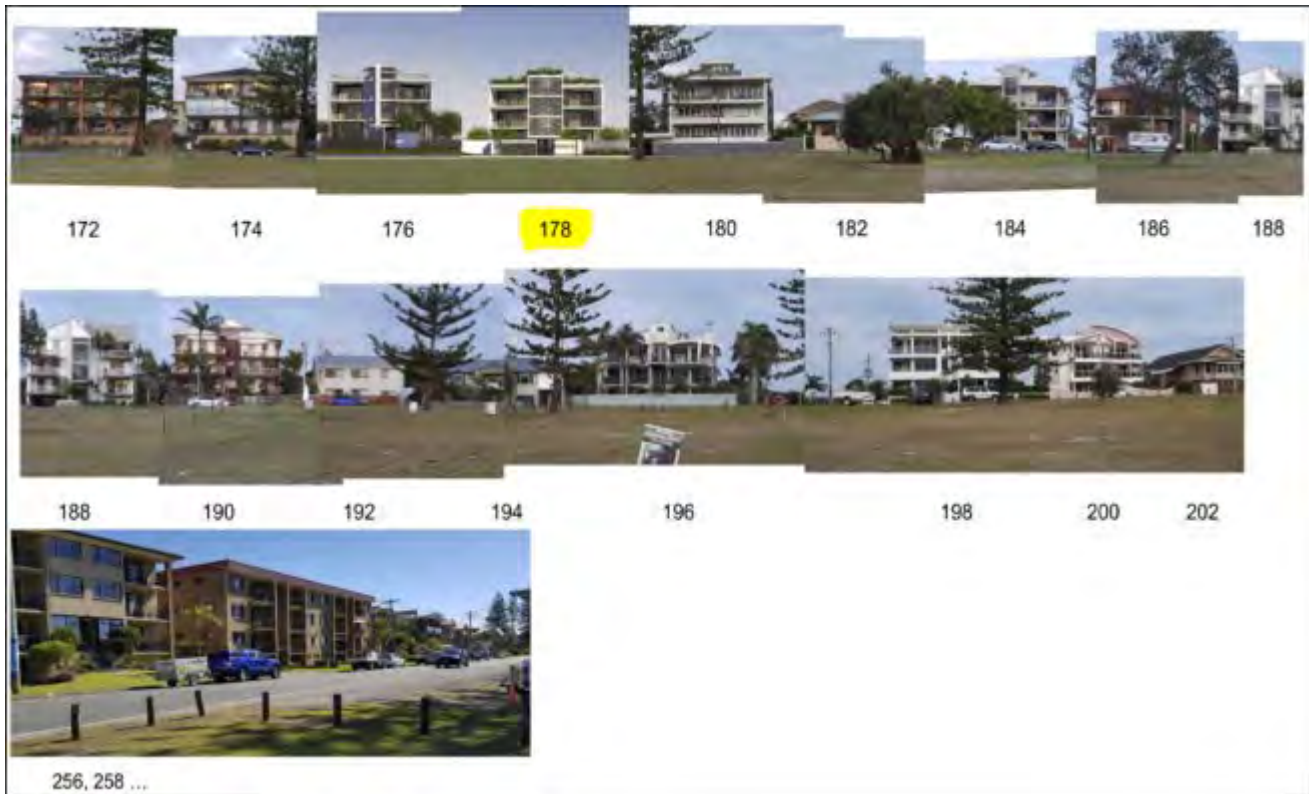


Photo montage of residential development along Marine Parade provided by applicant (subject site at 178 is highlighted)

Whilst it is acknowledged that the predominate character of residential development along Marine Parade is that of three storey residential buildings, the proposed development is generally consistent with the bulk and scale of existing development regardless of the additional fourth level. A number of existing buildings include roof top open space above the third level units. The terraces of the fourth level unit of the subject proposal would be visible from the street scape and their appearance would not be inconsistent with other roof top open spaces. The enclosed area of the unit is suitably setback from the street and side elevations of the building and so do not dominate the streetscape.

The proposed fourth habitable level of the proposal is not inconsistent with Court Approved DA16/0527 for a residential flat building at 204 Marine Parade which comprises of 6 units over four levels with a maximum height of 13.5m. It is noted however that the fourth level of the subject development provides greater boundary setbacks than the building approved by DA16/0527.

A detailed assessment of the development's height, setbacks and streetscape impact is provided in a later section of this report.

The proposal has been assessed against the Apartment Design Guide (ADG) as prescribed by State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development and proposes variations to development controls regarding building separation distances and the provision of communal open space. Regardless of the inconsistencies with the numerical controls the proposal is able to meet the amenity and privacy objectives for the building separation and comply with acceptable solutions for the communal open space criteria. It is noted that there is an inconsistency between the ADG and DCP with respect to these controls and the proposal is able to comply with the relevant controls as specified in the DCP. The variations are thereby supported. A full assessment of these variations is provided in a later section of this report as well as an assessment of other relatively minor variations to impermeable site area and deep soil zone controls in the DCP.



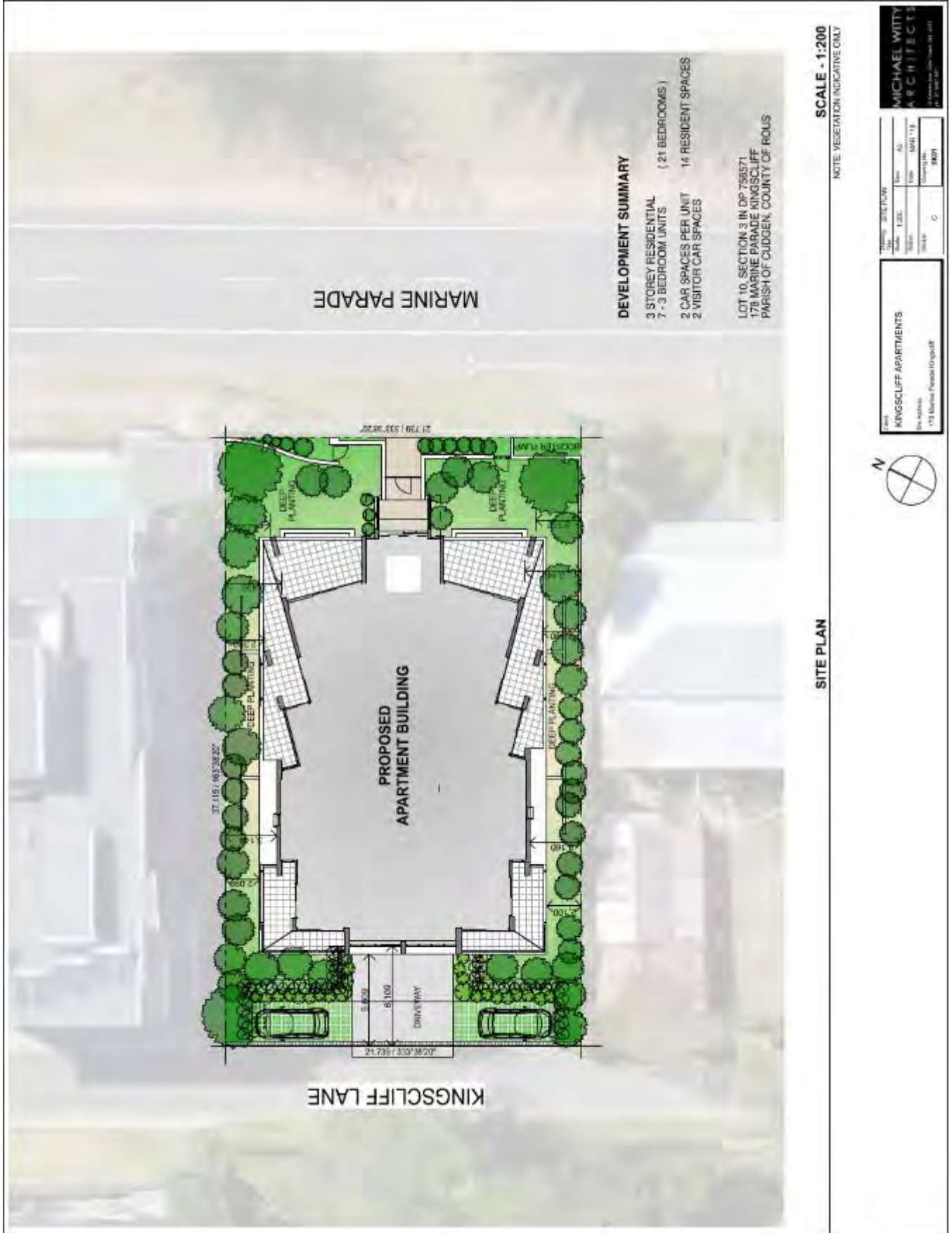






DEVELOPMENT

PLANS



**DEVELOPMENT SUMMARY**  
 3 STOREY RESIDENTIAL  
 7-3 BEDROOM UNITS (21 BEDROOMS)  
 2 CAR SPACES PER UNIT 14 RESIDENT SPACES  
 2 VISITOR CAR SPACES

LOT 10, SECTION 3 IN DP 758571  
 178 MARINE PARADE KINGSCLIFF  
 PARISH OF CUDGEN, COUNTY OF ROUS

**SCALE - 1:200**  
 NOTE: VEGETATION INDICATIVE ONLY

**SITE PLAN**

**MICHAEL WITTY ARCHITECTS**  
 178 Marine Parade Kingscliff NSW 2557  
 Tel: 02 9497 1234

Project	2518/15/200	Date	AS
Site	1:200	Scale	AS
Author	MLW	Drawn	MLW
Checked	MLW	Approved	MLW
Scale	C	Project No.	2518/15/200

**KINGSCLIFF APARTMENTS**  
 Site Address  
 178 Marine Parade Kingscliff





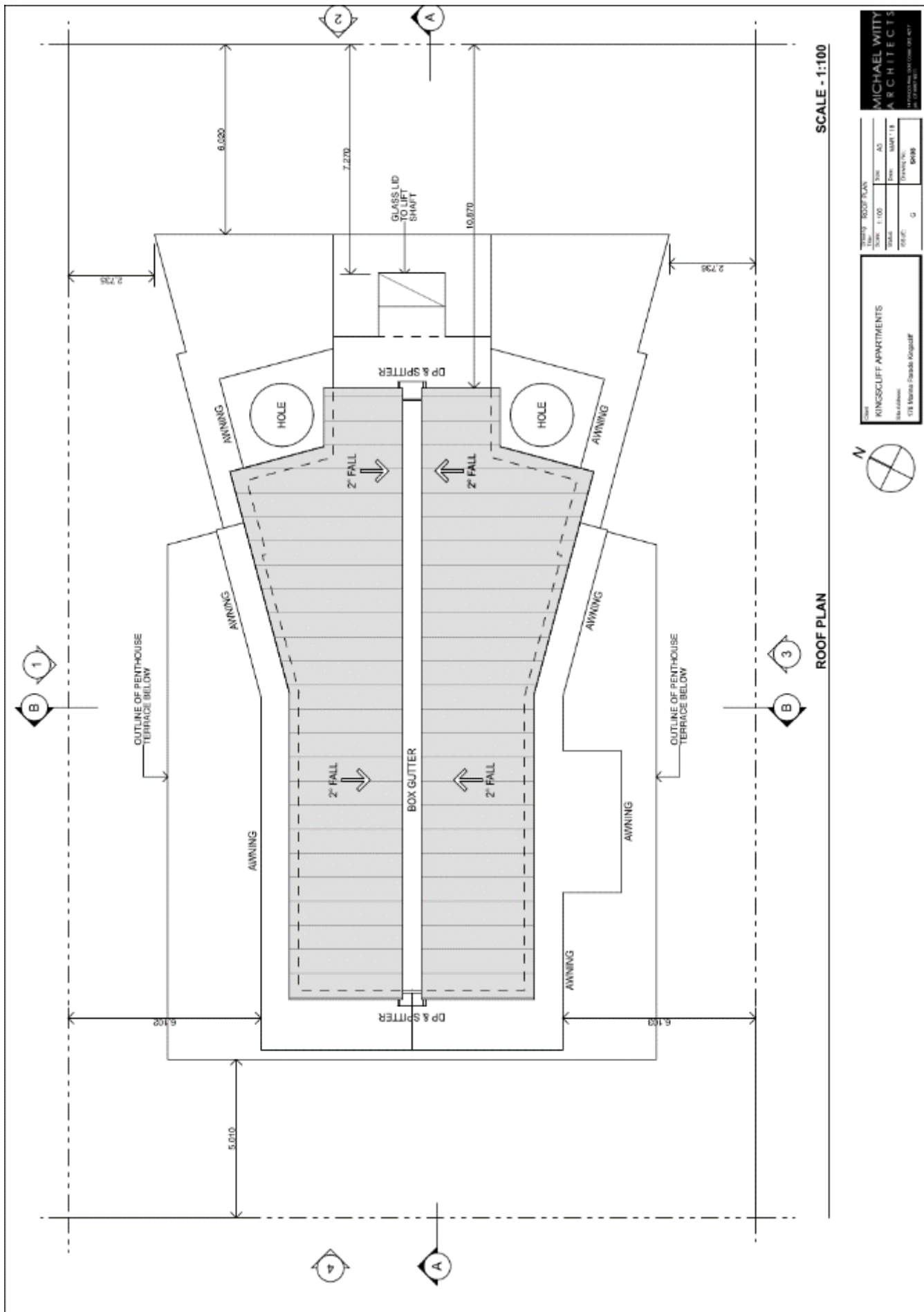












**MICHAEL WITTY ARCHITECTS**  
 111 Victoria Parade KINGSCLIFF  
 Phone: 075521 1111  
 Email: m.witty@mwarchitects.com.au

Project	KINGSCLIFF APARTMENTS
Client	111 Victoria Parade Kingscliff
Scale	1:100
Date	MAR '18
Drawn by	G
Checked by	BMW

Sheet: KINGSCLIFF APARTMENTS  
 Title: ROOF PLAN  
 Date: 03/03/2018  
 Scale: 1:100  
 Drawing No: G











SCALE - 1:100  
NOTE: VEGETATION INDICATIVE ONLY

SOUTH ELEVATION

NOTE:  
2700mm CEILING HEIGHTS TO LIVING & BEDROOM  
AREAS OF UNITS 1 TO 7

3

**KINGSCLIFF APARTMENTS**  
175 Abchurch Lane, Kingscliff NSW 2480  
Phone: 02 6552 1111  
www.kingscliffapartments.com.au

**MICHAEL WITTY ARCHITECTS**  
11 Commercial Street, Kingscliff NSW 2480  
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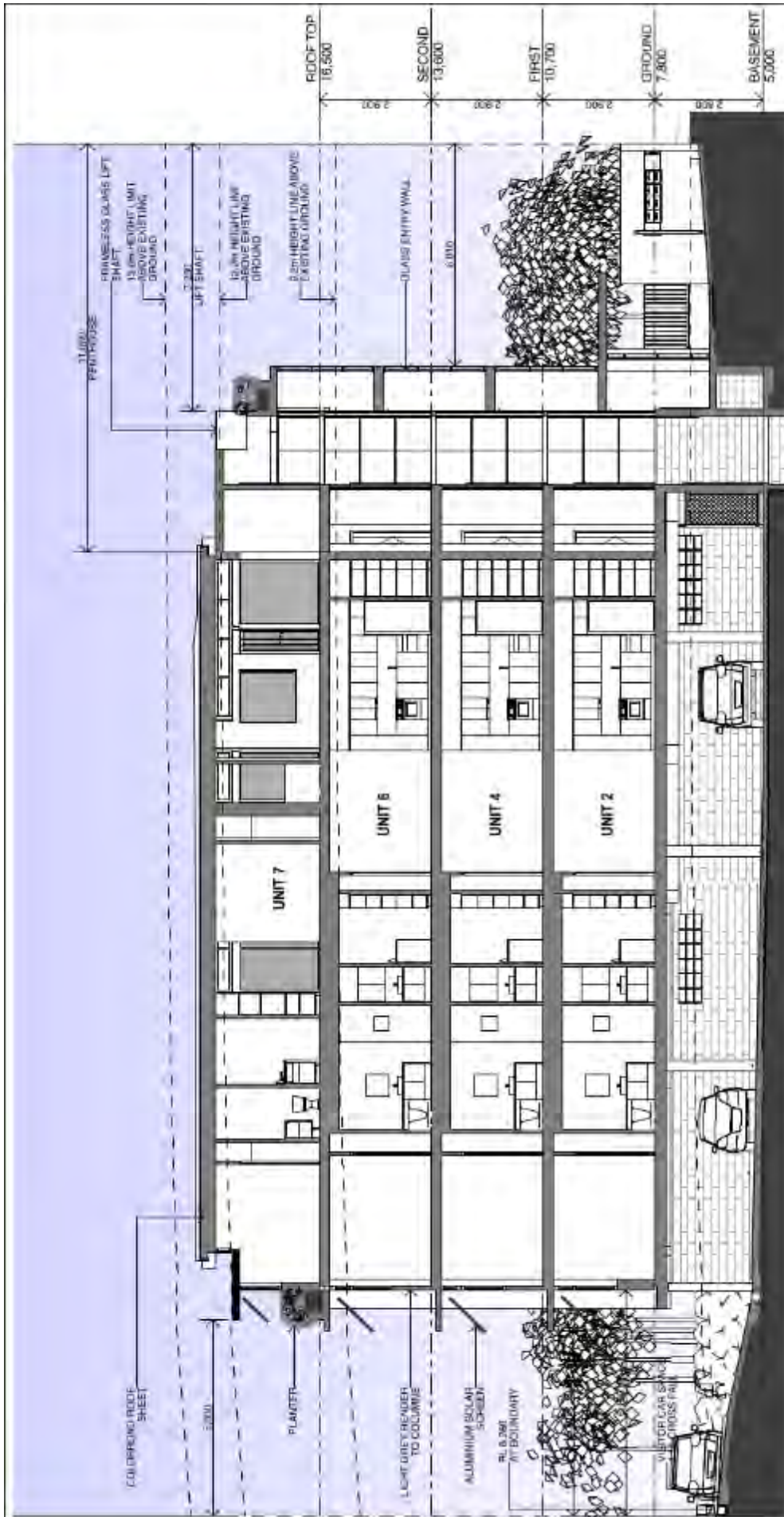


**MICHAEL WILLY ARCHITECTS**  
 171 Sturt Street, Kingscliff NSW 2487  
 Tel: 07 5333 1100 Fax: 07 5333 1111  
 Email: michael@mwarchitects.com.au

**PROJECT: KINGSCLIFF APARTMENTS**  
 Site Address: 1/7 Murray Highway Kingscliff

DATE	NO.	BY	CHKD.
15/11/18	1	MW	AS
15/11/18	1	MW	11
15/11/18	1	MW	11





SCALE - 1:100

NOTE: VEGETATION INDICATIVE ONLY

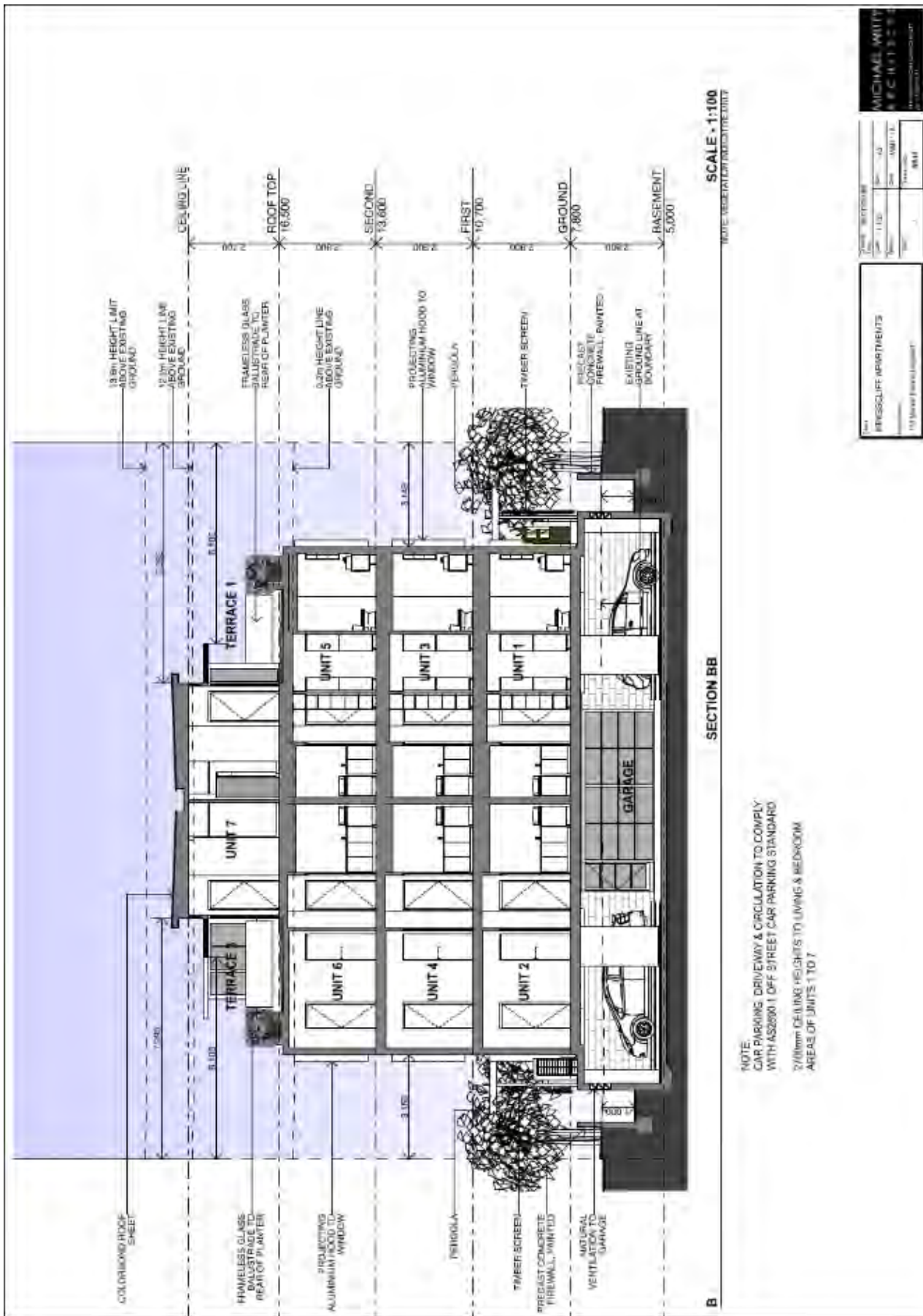
SECTION AA

NOTE:  
 CAR PARKING, DRIVEWAY & CIRCULATION TO COMPLY WITH AS2880.1 OFF STREET CAR PARKING STANDARD  
 2/00mm CEILING HEIGHTS TO LIVING & BEDROOM AREAS OF UNITS 1 TO 7

PROJECT INFORMATION	
Project Name	MIMBERT APARTMENTS
Project No.	18/00000000
Client	18/00000000
Site No.	18/00000000
Scale	1:100
Date	18/00000000
Author	MW
Checked	MW
Drawn	MW
Discussed	MW
Approved	MW
Project Manager	MW

MIMBERT APARTMENTS  
 18/00000000  
 18/00000000

MICHAEL WITTY  
 ARCHITECTS  
 18/00000000



**Considerations under Section 4.15 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

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 proposal is consistent with the aims of the plan in that it is compatible with the principles of sustainable development and contributes to the provision of housing as envisaged by the medium density zoning.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed seven unit residential flat building is consistent the objective of providing medium density housing within the zone and contributes to the variety of housing types. The proposal is acceptable in this regard.

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

Not applicable. No subdivision is proposed.

Clause 4.3 - Height of Buildings

The site is subject to a maximum building height of 13.6m under this clause. The maximum height of the proposal is 12.9m which is compliant with the control.

The objectives of this clause are as follows:

- to define the allowable development density of a site and for particular classes of development,*
- to enable an alignment of building scale with the size of a site,*
- to provide flexibility for high quality and innovative building design,*
- to limit the impact of new development on the existing and planned natural and built environment,*
- to encourage increased building height and site amalgamation at key locations in Tweed.*

The four storey development is considered to be of an appropriate scale with respect to the size of the lot and the existing surrounding residential development. The proposal maximises the residential density for the site consistent with the medium density zoning and is of a high quality building design.

Clause 4.4 – Floor Space Ratio

The site is subject to a Floor Space Ratio of 2:1.

The gross floor area of each unit is:

Ground level –	Unit 1 -	143.5m <sup>2</sup>
	Unit 2 -	143.8m <sup>2</sup>
First level -	Unit 3 -	143.5m <sup>2</sup>
	Unit 4 -	143.7m <sup>2</sup>
Second level -	Unit 5 -	143.5m <sup>2</sup>
	Unit 6 -	143.7m <sup>2</sup>
Roof top -	Unit 7 -	166.3m <sup>2</sup>
Total enclosed area -		1028m <sup>2</sup>

The FSR of the proposal is 1.28:1 which is compliant with the control.



Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable - The proposed development is not listed within this clause.

Clause 5.5 – Development within the Coastal Zone

The objectives of this clause are to ensure the protection of the coastal environment by promoting ecologically sustainable development and to implement the principles of the NSW Coastal Policy.

The principles of the NSW Coastal policy 1997 essentially aim to protect, recognise and preserve the coastal environment, including aboriginal cultural places and places of heritage, archaeological and historical significance and to ensure that the bulk and scale of development is appropriate for the location.

The site is located above the mean high water mark from the coastal foreshore and is unlikely to impact on the areas of natural scenic quality or coastal environment. The development will not impact on existing public access and is consistent with the provisions of the NSW Coastal Policy, the Coastline Management Manual and the North Coast Design Guidelines.

The proposed development is considered compliant with the provisions of this clause.

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.*

This is not identified as a heritage item nor is it located in a mapped heritage conservation area.

The site is not identified as a known or predictive location of Aboriginal Cultural Heritage under the Aboriginal Cultural Heritage Management Plan. An AHIMS search for the site did not indicate any Aboriginal sites or places are recorded or declared within 200m of the subject site.

A standard condition of consent that details appropriate actions to be taken in the event an Aboriginal cultural item is uncovered will be applied to the consent (DUR0025).

Clause 5.11 - Bush fire hazard reduction

The proposal does not impact on measures to reduce the bush fire hazard on the site nor does it contribute to the bush fire hazard.

### Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as Class 5 on Council's Acid Sulphate Soils Planning Constraints Map. Class 5 land requires development consent for works within 500m of adjacent Class 1,2,3 or 4 land that is below 45 metres AHD and by which the water table is likely to be lowered below 1 metre AHD on adjacent Class 1,2 3 or 4 land.

The proposal does not propose works that will impact the water table as so is compliant with the provisions of this clause.

### Clause 7.2 - Earthworks

Earthworks ancillary to the proposal involves the excavation of up to 2m to facilitate the construction of the basement car park. The earthworks (other than minor site regrading works) are limited to the foot print of the building and will not result in a detrimental impact on the environment or the locality. It is considered that standard conditions of consent are adequate to ensure compliance with the provisions of this clause.

### Clause 7.3 – Flood Planning

The site is mapped as being subject to the Probable Maximum Flood (PMF) event. The minimum habitable floor level that applies to the site is RL3.2m AHD and finished floor level of the ground floor apartments is RL7.8m AHD. The development is compliant with the provisions of this clause.

### Clause 7.4 - Floodplain risk management

The objectives of this clause are:

- (a) *in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,*
- (b) *to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*

Subclause (2) states this clause applies to:

- (a) *land between the flood planning level and the level of the probable maximum flood, and*
  - (b) *land at or below the flood planning level,*
- but does not apply to land subject to the discharge of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

The site is mapped as having an elevation of RL6m AHD which is above the flood planning level and so this clause is not applicable.

### Clause 7.5 - Coastal risk planning

The objectives of this Clause are to avoid adverse impact from coastal hazard; ensure the use of land is compatible with the risks presented by coastal hazards; to enable the evacuation of land identified as coaster risk in an emergency and avoid increases to the severity of coastal hazards.

The subject site is not located with the coastal hazard line or land identified under DCP B25 Coastal Hazard 2100 max. As such, the proposed development is compatible for the land having regard to the objectives contained under this clause.

#### Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on adjoining properties, native bush land and receiving waters and applies to land in residential, business and industrial zoned. This clause states:

*Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

A Stormwater Management Plan has been submitted which indicates that runoff from the driveway will be collected in a bio-detention basin prior to release into the stormwater network. On site detention and infiltration pits are proposed to be used to mitigate the impacts of runoff into Council's drainage network.

A detailed assessment of the proposed stormwater drainage for the development has been undertaken and by Councils engineers and appropriate construction and management conditions have been recommended. Subject to compliance with the recommended conditions of consent, Council can be satisfied the proposal can comply with the objectives of this clause.

#### Clause 7.10 - Essential Services

The objective of this Clause is to ensure that essential services are available for the development. Specifically; supply of water, electricity, sewer disposal, stormwater drainage and disposal into Council trunk drainage system and vehicle access.

Councils Water infrastructure engineer and development engineers have considered the development in regard to access, water supply, access, sewer service and stormwater management (including treatment) for the site.

Subject to compliance with conditions of consent, the development is satisfactorily serviced by essential infrastructure and services to support the proposed land use on the site.

#### Other Specific Clauses

There are no other specific clause applicable to this application.

## **North Coast Regional Plan 2036 (NCRP)**

The NCRP 2036 establishes the following vision for the area:

*The best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities*

The NCRP 2036 includes 4 overarching goals to achieve the aforementioned vision:

1. The most stunning environment in NSW
2. A thriving interconnected economy
3. Vibrant and engaged communities
4. Great housing choices and lifestyle options

The site is mapped as an Urban Growth area and within the Coastal Strip identified in this plan.

Consideration of the planning principles, which will guide growth on the North Coast, is required to be undertaken in determining an application.

Principle 1: Direct growth to identified Urban growth areas

*Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.*

Principle 2: Manage the sensitive coastal strip

*The coastal strip comprises land east of the planned Pacific Highway alignment plus the urban areas of Tweed Heads around the Cobaki Broadwater. The coastal strip is ecologically diverse and contains wetlands, lakes, estuaries, aquifers, significant farmland, and has areas of local, State, national and international environmental significance. Much of this land is also subject to natural hazards, including flooding, coastal inundation, erosion and recession.*

*Demand for new urban and rural residential land in this area is high. To safeguard the sensitive coastal environment, rural residential development will be limited in this area, and only minor and contiguous variations to urban growth area boundaries will be considered.*

Principle 3: Provide great places to live and work in a unique environment

*Making cities and centres the focus of housing diversity, jobs and activities makes communities more vibrant and active, reduces pressure on the environment, and makes it easier for residents to travel to work and access services.*

*The Plan guides councils in preparing local growth management strategies and planning proposals to deliver great places to live and work that maximise the advantages of the North Coast's unique environment.*

The application is for the construction of a four storey residential flat building comprising of seven units. The proposal represents infill development within an established residential area and a full assessment of the NCRP 2036 is not warranted. However it is noted that the proposal satisfies Action 23.1 of the Plan which seeks to:

*encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036.*

The proposal is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being *the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.*

### **State Environmental Planning Policies**

#### **SEPP No. 55 - Remediation of Land**

The objective of this policy is to provide a state-wide planning approach to the remediation of contaminated land. In particular the SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Under Clause 7 of the policy, a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and;

- a) *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*
- b) *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 site and surrounding land is currently zoned for residential development, the site contains a two storey single dwelling. Initial assessment of the site indicates the subject site has not been subject to any potentially contaminating activities as listed under Table 1 of the *NSW Contaminated Lands Planning Guidelines*.

Demolition of the existing dwelling is proposed and pre-demolition testing has been undertaken of the soil beneath the existing dwelling slab in accordance with Council's Pre-Demolition Testing Guide. The results were below Health Investigation Levels for residential land use and no concerns were raised regarding potential soil contamination associated with the former use of termite treatment chemicals.

As such, Council can be satisfied development of the subject site will not raise any issues with regard to contamination and therefore further assessment in accordance with SEPP 55 – Remediation of Land is not required and the site is considered appropriate for the proposed development.

SEPP No. 65 - Design Quality of Residential Flat Development

This Policy provides guidelines to improve the design quality of residential apartment development and aims:

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
  - (i) *by providing sustainable housing in social and environmental terms, and*
  - (ii) *by being a long-term asset to its neighbourhood, and*
  - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and*
- (f) *to contribute to the provision of a variety of dwelling types to meet population growth, and*
- (g) *to support housing affordability, and*
- (h) *to facilitate the timely and efficient assessment of applications for development to which this Policy applies.*

This policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) *the development consists of the erection of a new building, and*
- (b) *the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) *the building concerned contains at least 4 or more dwellings.*

The proposed development is a new four storey residential flat building comprising of seven dwellings and as such this policy applies.

Clause 28 of the SEPP requires the consent authority to consider each of the nine *Design Quality Principles* and the publication *Apartment Design Guide* when determining a development application to which this SEPP applies. The applicant has provided a Design Verification statement declaring that the proposal “*achieves & exceeds the design quality principles as required under SEPP 65*”. A full assessment addressing these principles and an assessment against Apartment Design Guide (ADG) is provided below.

### Principle 1: Context and Neighbourhood Character

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including adjacent sites, streetscape and neighbourhood.*

*Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

The context for this development is an established coastal residential area adjacent to public open space located along a foreshore area. The predominant character of the area is typified by older style three storey residential flat buildings with basement or semi-basement parking. Consistent with the coastal location and other residential flat building along Marine Parade, the building includes deep prominent balconies setback from the forward building line to benefit from foreshore and ocean views.

The area is undergoing some change as older single dwellings are replaced by small apartment buildings with contemporary design features such a spacious external living areas to respond to the sub-tropical coastal location. The subject development is a contemporary design that is appropriate for this coastal location and positively contributes to the existing and desired coastal residential character.

### Principle 2: Built form and scale

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

The proposed residential flat building is consistent in height and bulk of other small residential flat buildings along Marine Parade. With a maximum height of 12.9m above natural ground level, the building is similar in height to adjacent development with the approved yet to be constructed RFB to the south being 13.2m high and the existing RFB to the north being 13m high.

The lift shaft is located toward the front of the building with the top of the lift shaft being 12.2m above natural ground level and set back 7.2m from the front boundary. Habitable rooms of the fourth level apartment are set back 11.3m from the front

boundary and as such the appearance of this level is diminished from the street scape.

Building separation distances are consistent with the separation distances for other residential flat buildings along Marine Parade. The applicant has provided a photomontage of the proposed development to illustrate the consistency in bulk and scale between the proposed development and adjacent development.



*Photo montage illustrating bulk and scale of proposal relative to adjoining development (provided by applicant)*

The proposal displays good articulation in the front and side elevations and internal amenity is maximised with 2.7m internal ceiling heights, provision of three balconies to each unit, north eastern aspect of primary living areas and windows on three elevations.

It is considered that the built form and scale consistent with the locality and Principle 2.

### Principle 3: Density

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities are sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

The site is within a R3 Medium Density Residential zone as identified by the Tweed Local Environment Plan 2014. The development provides seven residential units on an 803m<sup>2</sup> lot which is appropriate for the medium density zone.

A high level of amenity is achieved for the residents of each apartment which provides external living areas and habitable rooms on three elevations. Appropriate separation distances are provided from adjoining residential development so that the subject site and adjacent site receive adequate solar access.

The density achieved by the development is appropriate to the context of the locality with regard to access to facilities noting that the site is approx. 750m from the business precinct of Kingscliff.



#### Principle 4: Sustainability

*Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.*

The proposed design displays the elements of energy efficient design principles including natural cross ventilation and solar access. Deep soil zones are provided at the front of the site and the development meets the BASIX Certificate requirements. Therefore the proposal is considered to achieve the intent of Principle 4.

#### Principle 5: Landscape

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.*

*Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, and provides for practical establishment and long term management.*

A detailed landscaping plan was not submitted with the amended plan and the consent will impose a condition requiring a detailed landscaping plan be submitted for approval prior to the issue of any construction certificate. Nevertheless the plans demonstrate indicative landscaping that positively contributes to the amenity of the residents and the landscape character of the streetscape. Proposed roof top landscaping further contributes to a pleasant streetscape appearance.

#### Principle 6: Amenity

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*

*Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.*

Each unit includes generous primary living spaces and a secondary living area is also provided. Three balconies are provided for each unit which contribute to a positive living environment. All bedrooms exceed the required minimum dimensions as specified by the Apartment Design Guide. The plans indicate that the proposal is able to comply with minimal internal storage spaces and additional secure storage is provided for each unit in the basement.

Shadow diagrams were submitted for the application which demonstrates that each unit will received adequate solar access and as each unit has openings on three elevations, the layout facilities good cross ventilation. The proposal affords good amenity for the residents and as such the proposal satisfies Principle 6.

#### Principle 7: Safety and security

*Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.*

Each of the units are oriented to the street and so provides opportunities for passive surveillance of the street. The pedestrian entrance from Marine Parade is clearly visible and transitions from public to private areas are well defined. A pedestrian entrance is provided from the rear of the site adjacent to the visitor parking spaces. The proposal is considered to be consistent Principle 7.

#### Principle 8: Housing diversity and social interaction

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.*

The proposal provides seven three bedroom units and whilst the proposal does not provide a mix of apartment sizes, the number of units represents an appropriate density for the area and the apartments are arranged to maximise amenity on this relatively small infill site. Areas for casual social interaction are limited to access areas and communal circulation areas whilst the development relies on the site's proximity to a large expanse of public open space in lieu of communal open space. As the Apartment Design Guide provides flexibility with regard to the provision of communal open space where the site is adjacent to public open space, the proposal is considered to be acceptable in this regard.

### Principle 9: Aesthetics

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.*

*The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

The built form displays a balanced composition comprising of a mix of horizontal and vertical elements within the street elevations. A mix of materials is used and the predominance use of glass as structural and non-structural elements (e.g. glass fronted lift well and glass balustrades) contributes to a light weight design compatible with the coastal location.

The external appearance is a logical reflection of the internal arrangement of the units and the recessed balconies and glass fronted lift/stair well provide good articulation and interest to the façade. The pedestrian entrance is of an appropriate human scale which is provided by the inclusion of a pergola over the primary access point. The provision of roof top landscaping is consistent with the sub-tropical coastal character of the locality. The proposal complies with Principle 9.

With respect to the above assessment the proposal is considered to be consistent with the design principles as specified in Schedule 1 of SEPP 65.

### NSW Apartment Design Guide

The NSW Apartment Design Guide (ADG) aims to achieve better design and planning for residential apartment development, by providing benchmarks for designing and assessing these developments.

Parts 3 and 4 set out objectives, design criteria and design guidance for the siting, design and amenity of residential apartment development. It is noted that objectives, design criteria and design guidance in Parts 3 and 4 of the Apartment Design Guide that are referred to in SEPP 65 prevail over any inconsistencies with the DCP controls.

The proposed typology of the development pursuant to the NSW ADG is considered to be a *narrow infill apartment* building type. The development has demonstrated general compliance with the objectives and design guidance of the guideline. A full assessment under the ADG has been undertaken and is recorded on file.

The development plans propose variations to the Design Criteria with regard to fencing, communal open space and side boundary setbacks. Below is a merit based discussion of parts of the development which fail to achieve compliance with the Design Criteria and Design Guidance.

## Fencing

<p><b>Objective 3C-1</b> Transition between private and public domain is achieved without compromising safety and security</p>
<p>Front fences and walls along street frontages should use visually permeable materials and treatments. The height of solid fences or walls should be limited to 1m</p>
<p>Length of solid walls should be limited along street frontages</p>

The proposal generally complies with the objectives of 3C-1 in that opportunities are provided for surveillance of the public domain by balconies that are oriented to the street and ground floor apartments have direct entry to the street whilst providing an appropriate transition zone.

The front fence as indicated on the plans appears to be a solid wall with a height of approximately 1.5m which is not compliant with the controls for visual permeability. The consent is to be conditioned requiring landscape plans that include fencing detail that is compliant with the controls.

## Communal open space

<p><b>Objective 3D-1</b> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</p>
<p><b>Design criteria</b></p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)</li> </ol>
<p><b>Design guidance</b></p> <p>Communal open space should be consolidated into a well designed, easily identified and usable area</p> <p>Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions</p> <p>Communal open space should be co-located with deep soil areas</p> <p>Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies</p> <p>Where communal open space cannot be provided at ground level, it should be provided on a podium or roof</p> <p>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> <li>• provide communal spaces elsewhere such as a landscaped roof top terrace or a common room</li> <li>• provide larger balconies or increased private open space for apartments</li> <li>• demonstrate good proximity to public open space and facilities and/or provide contributions to public open space</li> </ul>

The site is 803m<sup>2</sup> in area and so 200m<sup>2</sup> communal open space is required by the control.

The applicant has justified the variation to the control by noting that the proposal provides large balconies and the site is adjacent to the Kingscliff foreshore area in accordance with the Design Criteria. Assessment Officers were not satisfied that proximity to the Kingscliff foreshore area was sufficient justification for a 100% variation to the Design Criteria and the applicant was requested redesign the proposal to provide communal open space either on the roof top (as recommended by Design Criteria) or elsewhere in the development.

Additional information was submitted by the applicant as follows:

*Approximately 22m<sup>2</sup> of Communal Open Space is provided in the front setback and is co-located with deep soil zones. The provision of large balconies throughout the development has resulted in a total of approximately 315.3m<sup>2</sup> of outdoor living space being provided. The Apartment Design Guide would only require that 12m<sup>2</sup> be provided to each 3 bedroom apartment (84m<sup>2</sup> total). This means that overall, 231.3m<sup>2</sup> of external living space has been provided in addition to the open space in the front setback. Whilst Council's concerns regarding a lack of communal open space is understood, Objective 3D-1 of the Apartment Design Guide states "where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they*



Detail of plans showing open space within the front setback

should: provide communal spaces elsewhere such as a landscaped roof top terrace or a common room; provide larger balconies or increased private open space for apartments; demonstrate good proximity to public open space and facilities and/or provide contributions to public open space .”

*The development has provided larger balconies, is directly opposite to a large corridor of open space, being the Kingscliff foreshore area and co-located the provided communal open space areas with deep soil zones. It is submitted that the large outdoor living space provided for each unit and the development’s very close proximity to the Kingscliff foreshore park should satisfy Objective 3D-1. Creating additional communal open space to achieve the numerical guideline would reduce residential amenity onsite, with no public or private benefit.*

The open space indicated on the plans within the front setback cannot be considered as communal open space as there is no direct access to these areas from communal areas within the development. These areas do not satisfy Objective 3F-2 as communal open space must be separated from private open spaces and windows to habitable rooms. These areas are in effect, private open space for the ground floor units (refer to image).

When queried further regarding the practicality of communal open space within the front setback the applicant responded: *“We consider communal open space at the site would reduce residential amenity onsite, with no public or private benefit”.*

The Design Guidance provides for flexibility in the numerical control where proximity to public open space is demonstrated and larger balconies are provided.

It is noted that the proposal includes greater external space in the form of balconies than the requirement and the proposal is located across the road from the Kingscliff foreshore area which provides an extensive area for passive recreational activities. As such the variation is considered acceptable and does not warrant refusal of the application in this regard.



**Building separation**

**Objective 3F-1**  
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

**Design criteria**

1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

	Habitable	Non-
	balconies	rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties

**Design guidance**

Generally one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance

For residential buildings next to commercial buildings, separation distances should be measured as follows:

- for retail, office spaces and commercial balconies use the habitable room distances
- for service and plant areas use the non-habitable room distances

New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:

- site layout and building orientation to minimise privacy impacts (see also section 3B Orientation)
- on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4)

Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)

Direct lines of sight should be avoided for windows and balconies across corners

No separation is required between blank walls

The proposal is four stories with windows of habitable rooms for the top level being approx. 12m above ground level. As such the minimum separation distances to boundaries are 6m for habitable rooms and balconies and 3m for non-habitable rooms.

Variations to the side and rear boundary setback controls are noted as follows:

**Side Setbacks**

Ground floor:

- Habitable room 3.16m (south) 3.149m (north)
- Balcony edge 2.1m (south) 2.099m (north)

Floors 2-3

- Habitable room 3.16m (south) 3.15m (north)
- Balcony edge 2.39m (south & north)

Floor 4 – top level

- Habitable room 5m (to study south) 5.9m (north)
- Balcony edge 4.2m (south) 4m (north)

**Rear Setbacks**

Ground floor:

- Balcony edge 5.6m

Floors 2-3

- Balcony edge 5.6m

The objective of the controls are:

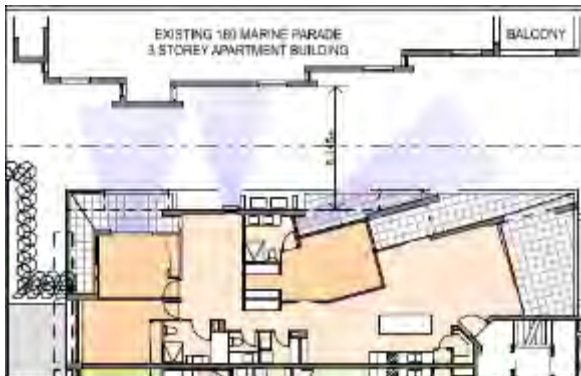
*Adequate building separation distances are shared equitably between neighbouring sites. To achieve reasonable level of external an internal privacy.*

Regardless of the variation to the numerical controls the proposal achieves reasonable levels of privacy via:

- Primary balconies are located at the front of the site overlooking the street and screens are provided where balconies are adjacent to the side boundary;
- Screens are provided on ground floor balconies that are adjacent to a side boundary (refer to image below);
- Secondary balconies to living rooms of above ground units are angled to the



Side elevation of primary and secondary balconies to living areas.



Privacy plan to the north

- street and include a solid wall with a small opening for light and ventilation (refer to image below);
- Balustrades of top floor balconies are set back from the building edge to limit overlooking impacts;
- No primary windows to habitable rooms are located facing side boundaries;
- The proposal displays similar design principles to the existing RFB to the north of the site and the approved (yet to be constructed) RFB to the south of the site in that balconies and primary windows to living areas are not located adjacent to side boundaries and the number and size of windows to habitable rooms in the side elevation are limited and reduced in width.

A privacy plan was provided which demonstrated that windows of the subject site and windows of residential development of adjoining sites are offset to prevent direct views between residential dwellings. The exception is a vertical secondary window to Bedroom 1 of the southern units approximately aligns with a vertical secondary window to a TV room (secondary living area) of the yet to be construction RFB to the south at 176 Marine Parade. The consent is to be conditioned to provide suitable privacy measures (e.g. opaque glass or other window treatments) for this bedroom.

Furthermore the objective states that separation distances are to be shared equally between neighbouring sites. Minimum side setbacks of the RFB to the north are approx. 3.1m to windows of habitable rooms and 1.2m to ground level balconies. The approved RFB to the south (DA17/0240) is a similar design to the subject proposal and approximately mirrors the setbacks of the subject development.

As such a minimum building separation distance of approx. 6m is achieved to the RFB to the north and approx. 6.3m to the building to the south. Articulation of the subject development and adjacent buildings result in separations distances that range from approx. 6m to 8m to the north and 6.3m to 8.4m to the south.

A 6m boundary setback as required by the control would result in an undevelopable

building footprint within this relatively small infill site (21.6m x 37m). The proposed distance between the development and adjoining sites is consistent with the surrounding character of the area, specifically developments of similar form along Marine Avenue.

Whilst the side boundary separation distances are less than the design criteria (6m), it is considered that given the allotment layout and the sensitive design of the development to maximise privacy and amenity, the variation can be supported.

With regard to the above assessment, the proposed variations to the provision of communal open space and building separations distances are supported. The variations will not result in an unacceptable impact for residents of the development or those of adjoining properties. Nor will the variations result in development that is inconsistent with surrounding built form. The proposed development is consistent in bulk and scale of other residential flat buildings in the locality and displays a high level of design quality.

#### SEPP (Building Sustainability Index: BASIX) 2004

The Building Sustainability Index (BASIX) aims to deliver equitable, effective water and greenhouse gas reductions across NSW. It is considered to be a driving policy in the delivery of high quality and sustainable planning and development in the state.

The application has been accompanied by a current BASIX certificate (Certificate number: 912846M\_2) dated 24 October 2018 and therefore is deemed to comply with the provisions of this SEPP.

#### SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area and Coastal Use Area under this plan and as such assessment against Clause 13 and 14 is required. The objectives of these clauses are as follows:

##### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*



- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

**14 Development on land within the coastal use area**

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*
    - (v) *cultural and built environment heritage, and*
  - (b) *is satisfied that:*
    - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The subject site is an established residential lot located adjacent to a foreshore area being separated from the foreshore recreational area by Marine Parade. The proposed development will not impede access to the foreshore and will not cause an adverse impact on the environmental values or natural coastal processes. The proposed building will not result in overshadowing, wind funnelling or the loss of public views.

The site is not mapped as being a place or Aboriginal Cultural Heritage in Council Aboriginal Cultural Heritage Management Plan. A detailed assessment has been undertaken of the built form of the development and the proposal is considered to be generally consistent with the existing bulk, scale and size of residential development within the locality.

The provisions of the SEPP are deemed to be satisfied.

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

There are no draft Environmental Planning Instruments applicable to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code - Part C Residential Flat Buildings

The proposal is generally consistent with the description of Small Residential Flat Buildings as defined with Part C of Section A1 of the Tweed Development Control Plan 2008 being:

*Small residential flat buildings usually contain six dwelling; two per floor, however they may contain a variation to this configuration. Carparking is generally underground and the building circulation spaces are located centrally within the building providing all dwelling with three external sides.*

The proposed development represents a variation to the above in that a seventh penthouse style apartment is included on a fourth level. Nevertheless the built form of the proposal is generally consistent with the above description.

The stated objectives for Small Residential Flat Buildings are:

- *To provide more compact housing types within a small scale building form.*
- *To provide more housing choices.*
- *To create an urban building form and strong built edge along the street.*
- *To more efficiently use land in proximity to services and centres.*
- *To provide a residential flat building type for steep sites.*
- *To provide greater residential densities.*

The proposal is consistent with the objectives in that the built form is generally compact whilst providing a high level of amenity for residents. The setback of the development is consistent with the setback of adjacent developments along Marine Parade thereby contribution to a strong built edge along the street. The proposed seven units provides a higher density outcome appropriate to the medium density zoning and the proximity to the Kingscliff commercial and retail precinct located 750m to the south of the site.

The proposal is generally compliant with the controls for Small Residential Flat Buildings specifically noting that the proposal meets the numerical controls for setbacks and building separation. The layout of the building is such that primary windows of living areas are oriented to the front of the site to benefit from ocean views. Where external living areas are adjacent to the side boundary they are suitably setback and screened to achieve visual privacy. Windows on side elevations are limited to secondary windows of bedrooms that are narrow vertical windows which are offset from windows of adjoining properties. An exception to this for a secondary window to Bedroom 1 of the southern apartments was noted in an earlier section of the report and it is considered that this matter can be remedied by requiring additional window treatments at the Construction Certificate stage.

The controls state that developments comprising of more than 10 dwelling are to provide communal open space. The subject development consists of seven dwelling and as such communal open space is not required in accordance with the controls.

Whilst the proposal generally complies with the control for Small Residential Flat Building, some variations are noted, which are discussed in detail below.

*Building height*

The control states that maximum building height for Residential Flat Buildings is 12.2m. The proposal has a maximum height of 12.9m which is compliant with the LEP control of 13.6m. It is noted that the LEP control takes precedence over the DCP control.

The portion of the building that exceeds the DCP height control is the roof of the fourth floor unit. The roof is setback from the outer edges of the building and is approx. 159m<sup>2</sup> (approx. 36% of building footprint) and exceeds the DCP height limit by a maximum of 700mm or 5.4%.



Street elevation with highlighted area indicating portion of building above 12.2m



South side elevation with highlighted area indicating portion of building above 12.2m

The objectives of the DCP height control are:

- To design new development appropriated to the existing building scale in the street and local area.
- To ensure new development maintains an appropriate residential character.

The proposed building is consistent with other residential development within the street noting that other residential buildings include pop-up elements that exceed the DCP height control to allow for lift overruns and roof top patios. The upper level penthouse is set back a minimum of 10.6m from Marine Parade and side set backs

are increased from those on the lower level. As such, the portion of the building that exceeds the DCP height control does not negatively impact upon the street scape. The applicant has provided illustrations of the proposal as it may be viewed from Marine Parade and the public open space along the Kingscliff foreshore area to illustrate the effect the proposal will have on the street scape.



*Street view from Marine Parade provided by applicant. Highlighted areas show roof portion above 12.2m*



*Street view from foreshore open space provided by applicant. Highlighted areas show roof portion above 12.2m*

The building is consistent with the residential character of the locality and has been sensitively designed to consider the bulk and scale of the existing residential development along Marine Parade as illustrated by the photo montage provided earlier in the report.

The building displays a high level of design quality good articulation at all levels of the development. With consideration to the above assessment and demonstrated compliance with the LEP statutory height limit, the proposal is considered to be acceptable with regard to height.

### *Deep soil zones*

The controls require that two deep soil zone (DSZ) are to be provided, one each for the front and the rear of the property. The proposal does not provide any DSZ to the rear of the site due to the driveway access and visitor parking being provided with access from Kingscliff Lane. The proposal includes a DSZ area within the front setback that is the width of the site (less the pedestrian access path) and measures approx. 5.5m deep from the front boundary. A total of approx. 130m<sup>2</sup> is provided for the DSZ and the dimensions meet the numerical controls. The site layout is similar to other small residential flat buildings along Marine Parade which have vehicle access provided at the rear of the site. As such the variation is supported.

### *Impermeable site area*

The controls state that a maximum of 60% of the site (or 483.6m<sup>2</sup>) are to be impervious. The plans indicate that 62% of the site is impervious. The objectives of the impermeable site area control are:

- *To promote residential development that is sympathetic with the existing topography, water cycle and amenity of the site and neighbourhood.*
- *To retain the lands ability to infiltrate stormwater*

A Stormwater Management Plan has been submitted for the proposal which indicates that on site detention and infiltration pits are proposed to be used to mitigate the impacts of runoff into Council's drainage network. A detailed assessment of the proposed stormwater drainage for the development has been undertaken and by Council's engineers and deemed to be acceptable.

With consideration of acceptable stormwater management and appropriate landscape areas provided to contribute to the amenity of the site the 3.3% variation to the control is considered acceptable. Furthermore it should be noted the roof top landscaping which has an impermeable factor of 0.5 has not been included in the above calculation and therefore reduces the stated impervious area.

### *Fences and walls*

As previously stated earlier in this report, a 1.5m solid front fence is indicated on the plans which does not comply with the controls for visual permeability and streetscape appearance. This is to be addressed via a condition of consent which requires detailed fencing design to be included in landscape plans that are to be submitted to Council for approval prior to the issue of a construction certificate.

### A2-Site Access and Parking Code

Section A2 specify two spaces per 3 bedroom unit plus provision for visitor parking at a rate of one (1) space per four (4) units is to be provided for Residential flat Buildings (see Item A12 in Table 2 of DCP).

Plans for the proposed seven unit development show a total of 14 basement car parking spaces and two at grade visitor parking spaces which complies with Council's numerical requirements for car parking.

A common driveway access to the development is provided via Kingscliff Lane (rear lane) which is the preferred access arrangements for these types of development.

The proposal is considered satisfactory with respect to the provisions of A2.

### A3-Development of Flood Liable Land



The site is mapped as being flood affected by the Probable Maximum Flood (PMF) event. The site is not mapped as being subject to the 1 in 100 year flood event and therefore it is not considered a high flood risk.

Design Flood Levels (DFL) for this area is RL 2.6m AHD and minimum habitable floor levels for development is determined to be RL3.1m AHD as detailed in Section A3.2.4 of DCP (min. DFL RL 2.6m AHD + 500mm freeboard).

The minimum habitable floor level of the proposal is at RL 7.8m AHD and the basement parking area is at RL 5m AHD. As these levels are above the minimum habitable floor levels of RL3.1m AHD the proposal is considered to be consistent with the provisions of the Section A3.

#### A11-Public Notification of Development Proposals

The application was notified to adjacent property owners with a submission period of fourteen (14) days from Wednesday 16 May 2018 to Wednesday 30 May 2018. During this time there were five submissions received in relation to the application. A further submission was received outside the submission period however did not raise any additional issues than those already submitted. A detailed assessment of these submissions is provided in a later section of this report.

#### A15-Waste Minimisation and Management

A Waste Management Plan (WMP) dated August 2018 was submitted in accordance with the provisions of Section A15, which include measures to minimise and manage waste during the demolition and construction phases of the development and also the operation phase of the residential development. Appropriate waste minimising and recycling measures are detailed for the demolition and construction phases of the development and the proposal is acceptable in this regard.

The residential development is to be service via separate bulk bins for recycling and general waste during its operational phases. The size of the waste and recycling bins are consistent with the generation rated for Multi-Unit Dwellings as detailed in Appendix B.

The waste storage room is located in the basement car parking level adjacent to the lift well to provide convenient access for residents and is of an adequate size to accommodate the appropriate sized bins. The WMP states that waste and recycling bins will be transferred to Kingscliff Lane by the building caretaker utilising a bin movement aid (Class C vehicle and trailer). This has been deemed to be an acceptable arrangement by Council's Waste Unit.

As such waste management for the development considered to be consistent with the provisions of A15.

#### A18-Aboriginal Cultural Management Plan

The site is not mapped as being within a known or predictive plans for Aboriginal Cultural Heritage. As a precautionary measure to limit harm a standard condition of consent will be applied which details the appropriate actions to be taken in the event an Aboriginal cultural heritage item is disturbed during construction works.

B4-West Kingscliff

This plan sets the broad strategic objectives for orderly development of the West Kingscliff locality and addresses matters relating primarily to roads and transport, provision of open space and community facilities, and drainage and water quality management.

With regard to residential development the plan references development standards contained within Section A1 for which an assessment is provided in an earlier section of this report. The site is not subject to the sewerage treatment plant buffer area and does not include land which has been identified for dedication as drainage reserve. Appropriate developer contributions will be made for open space. The proposed is deemed to be consistent the provisions of this plan.

B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast.

This proposal does not contravene the intended urban structure, centres hierarchy or design principles of this plan.

**(a) (iia) Any planning agreement or any draft planning agreement under section 7.4**

There are no known planning agreements or draft planning agreements that affect the site.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as detailed elsewhere within this report as it does not propose any significant impact to coastal processes and will not restrict access to any foreshore areas nor result in any overshadowing of beaches or foreshores.

Clause 92(1)(b) Applications for demolition

The proposed development will include demolition of the existing dwelling and associated outbuildings. Appropriate conditions of consent will be imposed to require demolition in accordance with AS2601-1991. This will also include appropriate waste management, disposal and special requirements for asbestos removal/management where and if required.

Clause 93 Fire Safety Considerations

Not applicable. The proposal relates to a new building.



Clause 94 Buildings to be upgraded

Not applicable. The proposal relates to a new building.

- (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 primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. It is considered that the proposal represents an appropriate development on land zoned for residential use and achieves an adequate spatial separation from the coastal foreshore. The proposal is generally consistent with the objectives of the Management Plan.

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

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is located approximately 1.5km from the Cudgen creek. The proposal is considered unlikely to impact on the Cudgen Creek due to the separation distance and existing residential/urban development separating the site from the Cudgen Creek.

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

Not applicable. The site is not located with an area to which this plan applies.

- (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 site is within an established residential area and is located immediately opposite an expansive stretch of public open space that is the Kingscliff foreshore area. The area is relatively flat and the upper levels of the development will benefit from views to the foreshore ocean.

The proposal has been determined to be consistent with the existing built character of the locality. The proposal represents infill residential development on an established residential lot. The impact of the development on the built environment with regard to bulk and scale and the predominant residential character have been

considered as detailed in an earlier section of this report. It is considered that the proposal will not result in an unacceptable impact on the street scape or for users of the foreshore area public open space.

The building design is considered to be of high quality and colours and materials are appropriate to the urban coastal environment. Subject to conditions of consent, is unlikely to result in an unacceptable impact on the natural or built environment.

#### Access, Transport and Traffic

The residential building provides vehicle access from Kingscliff Lane which is the preferred access location. A 6.1m wide driveway crossover is provided to a basement car park. This arrangement is similar to other residential flat buildings in the locality.

The road network is considered to have the capacity to accommodate the proposal without any negative impacts on the road network.

Council's Development Engineers have reviewed the proposal and have considered it appropriate that the existing footpath which terminates at the lot immediately north to the side be continued as part of this development. A condition of consent has been imposed to this effect.

#### Flora and Fauna

The subject site has been used for residential purposes for more than 35 years. The site contains some non-native landscaping trees (conifer and triangle palm) and managed gardens that will be removed to facilitate the proposal. The site is not considered to represent significant habitat for native flora and fauna and the removal of the vegetation is unlikely to result in an unacceptable impact on native flora and fauna populations. The proposal is considered acceptable in this regard.

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

#### Surrounding Landuses/Development

The subject site is located within an established medium density residential area and is located approx. 750m north of the commercial precinct of Marine Parade. Surrounding residential development is a mix of older style single dwelling houses and small residential flat building on lots ranging from 400m<sup>2</sup> to 1200m<sup>2</sup>. The area is undergoing change in which older single dwelling houses are being replaced by small residential flat buildings.

The proposal has been considered with respect to the medium density zoning and existing adjoining residential development and it considered that the proposal will not result in an unacceptable impact on the amenity of adjoining residents. The proposal is considered suitable for the site and is consistent with existing development within the locality.

### Natural Hazards

The site is mapped as being bushfire prone with the eastern portion of the site located in the Vegetation buffer zone. The residential flat building will be located approximately 92m from the bushfire hazard mapped a Vegetation Category 1.



*Bushfire mapping from Council's GIS*

A Bushfire Threat Assessment Report was submitted with the application which provides an accurate assessment of the bushfire risk to the development. The Report correctly identifies the vegetation as being Scrub for the purposes of the assessment and accurately notes the distance and slope of the land to the bush fire threat. Based on these variables as identified in Planning for Bushfire Protection (BPB) 2006, the Construction Standard for Bushfire Attack is BAL 12.5.

The BAL 12.5 construction criteria will form part of conditions of consent and subject to compliance with these conditions it is considered an acceptable level of protection from Bushfire threat in accordance with BPB 2006.

It is noted that the proposed development does not include strata subdivision and therefore did not warrant referral to the NSW Rural Fire Service in accordance with S.100B of the Rural Fires Act 1997.

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

The application was notified to adjacent property owners with a submission period of fourteen (14) days from Wednesday 16 May 2018 to Wednesday 30 May 2018. During this time there were five submissions received in relation to the application. An additional submission was received after the notification period ended however did not raise any additional issues other than those already submitted.

The submissions raised concerns primarily relating to the height of the building, the inclusion of a fourth level unit, lack of consistency with the existing built character of Marine Parade and privacy and amenity impacts for residents of the residential flat building immediately to the north of the site. It is noted that the comments were provided for the original set of submitted plans and the development has since been amended to reduce the height of the proposal and address character concerns as discussed in an earlier section of this report.

A summary and assessment of the issues is provided below along with the applicants' response to each of the primary issues raised.

Issue	Applicants response	Councils response
<b>The addition of a fourth storey and bulk and height not consistent with locality</b>	<p><i>As previously addressed, the height of the proposed building is well below the 13.6m Tweed LEP height control and only a small proportion of the building is over the 12.2m DCP height limit. There are existing four storey developments in Kingscliff, such as the two examples shown below. The lift shaft and front building façade of 178 Marine Parade has been modified to avoid additional bulk at along Marine Parade. It is believed that the proposed development incorporates better articulation and design elements than other existing residential flat development in Kingscliff. As shown previously, the highest part of the proposed building is now setback by over 10.6m from Marine Parade, while the lift overrun is over 7.2m from Marine Parade. The fourth storey apartment will not be a dominant visible element from the street or footpath as shown in the perspective views.</i></p>	<p>The height of the building has been reduced from the initial set of plans submitted. Matters regarding bulk and height have been addressed previously in this report.</p> <p>Elements within the front façade that contributed to the buildings bulk as perceived from the streetscape have been reduced. The lift overrun is compliant with the DCP height control and elements of the upper floor that exceed the height control are set back from the street elevation of the building and well setback from Marine Parade. Photo montages and perspective views provided by the applicant demonstrate that the bulk and scale of the building is not inconsistent with the residential built form along Marine Parade. As previously demonstrated in this report, the proposal does not detract from the street scape of the locality and the built form and use of materials is consistent with the coastal residential location.</p> <p>The proposal is compliant with the statutory height limit of 13.6m set by the LEP.</p>



**The proposal will set a precedent for four storey development along Marine Parade**

*The proposed building will be assessed on merit as required by the Environmental Planning and Assessment Act 1979. The proposed building is compliant with the DCP and Tweed LEP, requiring minor variations, and the fourth storey apartment does not adversely affect the existing and future character of Marine Parade or Kingscliff. Any future building that seeks to include a fourth storey would need to be assessed on merit, just as this proposal.*

The application has undergone a merit assessment against Section 4.15 of the EP&A Act. Assessed on its merits the proposal satisfies the objectives of the LEP and is compliant with development standards. The development proposes minor variations to DCP control which are supported as objectives relating to amenity, privacy, solar access, site coverage and landscaping are met. Any future application will be similarly assessed against the legislation and applicable development controls.

**Insufficient side setbacks**

*Walls of the building containing windows are setback from the side boundaries by over 3m.*

*Minimum separation distances for the development are 9m for habitable rooms and balconies and 4.5m for non-habitable rooms. The proposed development provides for separation distances of 4.5m or greater from angled and fully screened habitable rooms and non-habitable rooms to the adjacent properties. Visual privacy to the adjoining properties has been*

Side setbacks are consistent with Council's DCP controls noting that external living areas at the ground floor level are setbacks are a minimum of 2.1m and a 3m side setback is provided to walls containing habitable windows. The fourth level unit is stepped in and has increased setbacks to terraces and windows of habitable rooms.

	<p><i>achieved through a combination of the required separation distances, angled wall design and screening devices provided.</i></p>	<p>Separation distances from adjoining buildings is minimum of approx. 6m which is characteristic of other residential flat buildings of the locality.</p> <p>The proposal meets the objectives of the setback controls in that privacy and solar access is not compromised for the subject development and adjoining residences. The building layout and inclusion of privacy screens ensure that overlooking and privacy impacts are minimised.</p>
<p><b>Plans do not show 2.7m ceiling heights</b></p>		
	<p><i>As previously mentioned, the living areas of each apartment has minimum 2.7m ceiling heights.</i></p>	<p>The plans have been amended to state that 2.7m ceilings will be provided to habitable rooms.</p>
<p><b>Loss of amenity and privacy</b></p>		
	<p><i>As previously mentioned, walls of the building containing windows are setback from the side boundaries by over 3m, separation distances along and screening devices have been supplied which is consistent with the Apartment Design Guide. Please refer to the updated architectural plans that address privacy.</i></p> <p><i>Restrictions for the hanging of clothes on balconies is unnecessary, screening has been provided and we note it is a common occurrence to hang clothes out on a drying rack on balconies throughout Kingscliff.</i></p>	<p>The building has been designed so that primary windows are angled to the front of the site and balconies are partially enclosed or screened on the side elevations. Windows in the side elevation are minimised in number and size are offset from windows of adjoining residential development.</p> <p>The proposal is considered to afford adequate privacy for residents and adjoining properties.</p>
<p><b>Loss of light</b></p>		
	<p><i>The Tweed DCP controls regarding Sunlight Access state that "For neighbouring properties ensure: - sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21 ". As shown in the shadow diagrams, the proposed building will not cause a reduction to sunlight access which would result in the</i></p>	<p>Shadow diagrams were submitted with the proposal that indicate that the proposal will not result in overshadowing to the property to the north.</p> <p>Overshadowing impacts on the property to the south do not diminish solar access to an unacceptable degree.</p>




	<p><i>development not complying with this control. The proposed setbacks of the building walls of over 3m are submitted to sufficient to prevent adverse loss of light from other parts of the surrounding development.</i></p>	<p>External living areas will receive a minimum of 3 hours of solar access during the morning hours which is considered to be acceptable.</p>
<p><b>Waste management is not adequate</b></p>		
	<p><i>The proposal is to be serviced via a single 1.1m<sup>3</sup> bulk refuse bin (serviced weekly) and two (2) 0.36m<sup>3</sup> recycling bins (serviced fortnightly). The collection point will be on Kingscliff Lane towards the northern boundary of the site. Please refer to the updated Waste Management Plan which contains this information in detail.</i></p>	<p>A waste storage room is provided in basement car park and the room is of sufficient size to accommodate the required bulk bin sizes. Bins will be transferred to Kingscliff Lane with the aid of a mechanical bin movement aid. A Waste Management Plan has been provided for the development which has been reviewed by the Waste Unit and deemed to be acceptable.</p>
<p><b>Poor apartment size and layout</b></p>		
	<p><i>The plans have been updated to show the entry to the apartment will be via an entry lobby that adjoins the living room. Additionally, the dining room area has been increased. A large breakfast counter is also provided in the kitchen as well as large balconies with ample room for outdoor dining if desired.</i></p>	<p>Previous errors on the plans have been corrected and the fourth floor unit now shows appropriate access via a living area. The size and layout of the apartment is acceptable and complies with dimension criteria specified in the ADG.</p>
<p><b>Lack of detail and commitment to landscaping</b></p>		
	<p><i>30% or 244m<sup>2</sup> the site is dedicated to Deep Soil Zones and a detailed Statement of Landscaping Intent has been prepared in accordance with the DCP. At minimum, 80% of plant species are natives, plantings provide for added shade and privacy, and landscaping adds to the amenity and character of the streetscape.</i></p>	<p>The area provided for Deep Soil Zones is compliant with required dimensions in the DCP. A detailed landscaping plans was submitted for the initial design which was acceptable with regard to plant species and layout. The consent will be conditioned to provide a detailed landscape plan for the amended proposal prior to any construction certificate approval. The consent will be conditioned to ensure that all landscaping is completed in accordance with an approved landscape plan prior to occupation.</p>

<b>Vehicle access will negatively impact Kingscliff Lane and ramp is too steep</b>		
	<i>The proposed 6.15m wide ramp accessing the underground car park garage has an underground landing of 5.26RL and an average longitudinal grade of 16.5%. It complies with Clause 2.5.3 of the Australian Standard AS2809.1 and with the requirements for vehicle crossovers stipulated in by TSC Standard Drawing S.D.017. This will ensure that it is safe for vehicles entering and exiting the basement garage onto Kingscliff Lane.</i>	Kingscliff Lane is the preferred vehicle access to the site as indicated in the DCP controls for residential flat buildings. The site access and parking have been reviewed by Council's Development Engineers and deemed to be acceptable. The consent will be imposed with standard conditions relation to minimum standards required for access to comply with Australian Standards and Councils' requirements controls. The road network is considered to be of an acceptable standard to accommodate the proposal.
<b>Noise from air-conditioning units</b>		
	<i>Air conditioning units are provided in enclosed areas, as shown on the plans.</i>	The plans show that the air conditioning units are to be partially screened. The consent will be imposed with a standard condition of consent that all air conditioning units are to be located and acoustically treated if required to minimise noise for adjoining residences.
<b>Servicing of rainwater tank under driveway</b>		
	<i>All services for the proposed rainwater tank under the driveway will be connected prior to the construction of the driveway. A pump out pit will be provided in the basement and it has been confirmed by an engineer to be capable of draining the area.</i>	Any servicing of the rainwater tank (if required) may result in some temporary inconvenience however will not result in any significant impacts for residents.
<b>Lack of car wash bay</b>		
	<i>Objective 3J-3 states "Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces". The updated plans include one dual use visitor carpark as a wash bay.</i>	Plans now show carwash bay as a shared space with a visitor car space
<b>Construction and demolition management matters including dust and noise during construction</b>		

<p><i>The site is suitable for this type of development, as evident through the Medium Density Residential Zoning. Construction will be carried out to meet the relevant standards and conditions of consent. Construction of similar developments in the immediate area have had minimal impact on surrounding residents and existing development. If a dilapidation report was considered necessary, Tweed Shire Council would condition the development consent to require one to be undertaken. It should be noted that the only relevant building in the area that would need such a report completed would be 180 Marine Parade. 176 Marine Parade is proposed to be demolished, while other development is separated from the site by Kingscliff Lane.</i></p>	<p>Whilst there will be some loss of amenity during the construction phase of the development, adverse impacts will be minimised by the imposition of standards relating to construction works. Adjacent residents may have to keep windows and doors shut during some phases of the construction to limit noise and dust impacts.</p> <p>The consent will require that a dilapidation report for adjoining buildings as a means to minimise impacts from construction an adjoining properties.</p> <p>The consent will be conditioned to comply with submitted Demolition Management Plan and WorkCover regulations.</p>
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**Loss of views and land values**

<p><i>The loss of views caused by this proposed development are minimal. As Tenacity Consulting v Waringah [2004] NSWLEC 140 sets out, avoiding the loss of views from the sides of properties is difficult, and it is far more important to avoid the loss of views from the front and rear of property and living areas. The loss of views caused by the proposed development is reasonable because only views from the sides of properties are lost. It will not result in living areas at 180 Marine Parade losing views because they are orientated towards the ocean and Marine Parade, not 178 Marine Parade.</i></p>	<p>Primary views for residential development along Marine Parade are east-northeast to the ocean and foreshore area. The proposed development is suitably setback from street boundary and does not impact views to the ocean or foreshore from adjoining residences.</p>  <p>Impacts on land values are not a matter for assessment</p>
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		under Section 4.15 of the EP&A Act.
<b>Lack of detail in the plans</b>		
	<i>Further details have been provided, including; more detailed plans and a photo montage of development along Marine Parade. It is submitted that the Statement of Landscaping Intent is sufficient and meets the requirements for the purposes of the assessment process.</i>	Amended plans were submitted at the request of Council and the plans are now considered to provide an appropriate level detail to ensure that, among other matters, ceiling heights, solar access, access to units, waste management, and stormwater management are acceptable.

**(e) Public interest**

The proposal has been assessed 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 the objectives of the applicable State Environmental Planning Instruments, the Tweed Local Environment Plan 2014 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 proposed residential flat building is therefore considered to warrant approval.

**OPTIONS:**

1. Approve the application subject to conditions.
2. Refuse the application for reasons specified.

Council officers recommend Option 1.

**CONCLUSION:**

It is considered that the residential flat building is appropriate for the site and the medium density zoning. The design of the proposal displays appropriate consideration to the existing character of the established residential locality, street scape and amenity for residents of the development and adjoining properties. An assessment against the provisions of SEPP 65 - Design Quality of Residential Apartment Development and Councils Development Control Plan 2008 has determined that the proposal is able to meet the objectives of the development controls. Issues raised by the public submissions have been considered as part of the assessment and where appropriate addressed via conditions of consent. As such the proposal is considered to be worthy of approval.

**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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**2 [PR-PC] Development Application DA18/0518 for Alterations and Additions to Upper Level of Existing Imperial Hotel at Lot 2 DP 596914; No. 115 Murwillumbah Street Murwillumbah**

**SUBMITTED BY: Development Assessment and Compliance**

mhm



Making decisions with you  
*We're in this together*

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

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

Consent is sought for alterations and additions to the existing upper level of the Imperial Hotel, Murwillumbah. The proposal will result in a net increase of five (5) Hotel accommodation units. The application seeks consent to undertake the following works:

- The construction of an additional two (2) accommodation rooms with ensuites and two (2) storage rooms within the existing void area at the first floor (this area has been entirely roofed over in accordance with DA17/0128);
- The construction of an additional two (2) accommodation rooms with ensuites within the existing hallway and sitting room;
- The construction of an additional two (2) accommodation rooms with ensuites within the existing private lounge;
- The conversion of an existing Hotel accommodation unit to a storeroom/electrical room; and
- The addition of ensuites (7) within the existing front verandah (to be enclosed in accordance with DA04/0794) to services rooms 11-17.

The addition of windows to the existing front verandah, subsequently enclosing the front verandah does not form part of the subject application. These works have been granted consent previously under DA04/0794. This is discussed further within this report.

The fundamental issues with regard to the subject application are:



- Reliance upon previous development consent (DA04/0794) for external works within a Heritage Conservation Area;
- Ensuring appropriate fire separation and structural adequacy for the first floor of the building;
- Reliance upon site “credits” for onsite parking;
- The works are not in their entirety supported from a Heritage perspective

The site is within the Murwillumbah Main Street Heritage Conservation Area (MMSHCA), the site/building is not listed as a heritage Item.

The application is being reported to Council as the proposed development includes works which are not in their entirety supported by Council’s Heritage Advisor.

The subject development has been assessed on its merits and is recommended for approval.

### **RECOMMENDATION:**

**That:**

- A. Development Application DA18/0518 for alterations and additions to upper level of existing Imperial Hotel at Lot 2 DP 596914; No. 115 Murwillumbah Street Murwillumbah be approved subject to the following conditions:**

#### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 895/18A, sheets 1, 2 and 4 prepared by Trevor White - building design and dated 15 March 2018, as amended in red, 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. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.**  
[GEN0300]
- 4. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011.**  
[GEN0360]
- 5. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).**  
[GEN0365]
- 6. This development consent does not approve the installation of windows**

along the front verandah (first floor) of the Imperial Hotel. Any works with this regard must be undertaken in accordance with development consent DA04/0794.

[GENNS01]

7. Any works which may be required in accordance with an updated *Fire Engineering Report*, will be the subject of a separate Development Application (where statutorily required) and must be accompanied by an updated Statement of Heritage Impact.

[GENNS02]

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

#### **8. Section 7.11 Contributions**

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution 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 7.11 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 Section 7.11 Contribution 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 7.11 Contribution Plan current at the time of the payment.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) Tweed Road Contribution Plan:  
4.5563 Trips @ \$1488 per Trips \$6,780  
((\$1,317 base rate + \$171 indexation)  
CP Plan No. 4  
Sector9\_4
- (b) Open Space (Casual):  
2.7083 ET @ \$624 per ET\$1,690  
((\$502 base rate + \$122 indexation)  
CP Plan No. 5
- (c) Shirewide Library Facilities:  
2.7083 ET @ \$933 per ET\$2,527  
((\$792 base rate + \$141 indexation)  
CP Plan No. 11

(d)	<b>Bus Shelters:</b> 2.7083 ET @ \$71 per ET ((\$60 base rate + \$11 indexation) CP Plan No. 12	\$192
(e)	<b>Community Facilities (Tweed Coast - North)</b> 2.7083 ET @ \$1539 per ET ((\$1,305.60 base rate + \$233.40 indexation) CP Plan No. 15	\$4,168
(f)	<b>Extensions to Council Administration Offices &amp; Technical Support Facilities</b> 2.7083 ET @ \$2187.14 per ET ((\$1,759.90 base rate + \$427.24 indexation) CP Plan No. 18	\$5,923.43
(g)	<b>Cycleways:</b> 2.7083 ET @ \$526 per ET \$1,425 ((\$447 base rate + \$79 indexation) CP Plan No. 22	
(h)	<b>Regional Open Space (Casual)</b> 2.7083 ET @ \$1215 per ET ((\$1,031 base rate + \$184 indexation) CP Plan No. 26	\$3,291

[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 all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.**

**BELOW IS ADVICE ONLY**

**The Section 64 Contributions for this development at the date of this approval have been estimated as:**

**Water: 1.2828 ET @ \$13,926 = \$17,864.30**

**Sewer: 1.7996 ET @ \$6,690 = \$12,039.30**

[PCC0265]

10. **An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water and sewerage drainage works prior to the issue of a Construction Certificate. The sewer application to include work as constructed sanitary drainage plans and AS 3500 certification in respect of the new sanitary facilities/works to the first floor as indicated on**

**Development Consent plans DA17/0128.**

[PCC1195]

11. **The existing two storey building (Imperial Hotel) is the subject of *Fire Engineering Report - 2017-394 dated 19 July 2017 by Dolphin Fire Engineering Consultants P/L* in respect of NCC-BCA upgrading to achieve a satisfactory level of fire safety as required by Development Consent DA17/0128. Prior to release of a construction certificate the aforementioned report is to be amended or an appropriately qualified fire engineer is to review this report in respect of the works the subject of this consent (additional Class 3 SOU's and the like) and submit an amended/new Fire Engineering Report to the nominated PCA for assessment and approval.**

[PCNS01]

**PRIOR TO COMMENCEMENT OF WORK**

12. **The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.**

[PCW0005]

13. **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]

- 14. 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]

- 15. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:

- \* in the name and licence number of the principal contractor, and
- \* the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:

- \* the name of the owner-builder, and
- \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

- 16. 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]

17. 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**

18. All proposed works are to be carried out in accordance with the conditions of development consent, any approved Management Plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

19. Commencement of work, including the switching on and operation of plant, machinery and 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]

20. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

**A. Short Term Period - 4 weeks.**

**L<sub>Aeq, 15 min</sub> noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.**

**B. Long term period - the duration.**

**L<sub>Aeq, 15 min</sub> noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

21. 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]

22. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
  - (b) The chute shall be located in a position approved by the Principal Certifying Authority.
  - (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.
- [DUR0385]
23. 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]
24. 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 6.6 of the Environmental Planning and Assessment Act 1979.
- [DUR0405]
25. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.
- [DUR0415]
26. If the work involved in the erection or demolition of a building:
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - (b) building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.
- Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.
- Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.
- Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.
- [DUR0435]
27. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety

**Regulation 2011.**

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

**28. 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]

**29. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. Your attention is directed to Table D3.1 of the BCA which prescribes the requirements for accessibility for people with a disability to and within class 3 sole occupancy units and common areas.**

[DUR1685]

**30. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.**

[DUR1695]

**31. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.**

[DUR1705]

**32. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.**

[DUR1725]

**33. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.**

[DUR2015]

**34. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:**

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

**35. Plumbing**

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

**36. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.**

[DUR2525]

**37. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

**38. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-**

- \* 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50°C in all other classes of buildings.

**A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.**

[DUR2555]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**39. Prior to issue of an Occupation Certificate, all works/actions/inspections etc required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.**

[POC0005]

**40. 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 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

**41. 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]

42. 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]

43. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

44. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.

[POC1055]

#### **USE**

45. 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]

46. 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]

**B. 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.



**REPORT:**

**Applicant:** Penplay Investments Pty Limited  
**Owner:** Penplay Investments Pty Limited  
**Location:** Lot 2 DP 596914; No. 115 Murwillumbah Street Murwillumbah  
**Zoning:** B3 - Commercial Core  
**Cost:** \$150,000.00

**Background:**

Consent is sought for alterations and additions to the existing upper level of the Imperial Hotel, Murwillumbah. The proposed as part of the subject application will result in a net increase of five (5) Hotel accommodation units. The application seeks consent to undertake the following works:

- The construction of an additional two (2) accommodation rooms with ensuites and two (2) storage rooms within the existing void area at the first floor (this area has been entirely roofed over in accordance with DA17/0128);
- The construction of an additional two (2) accommodation rooms with ensuites within the existing hallway and sitting room;
- The construction of an additional two (2) accommodation rooms with ensuites within the existing private lounge;
- The conversion of an existing Hotel accommodation unit to a storeroom/electrical room; and
- The addition of ensuites (7) within the existing front verandah (to be enclosed in accordance with DA04/0794) to services rooms 11-17.

The addition of windows to the existing front verandah, subsequently enclosing the front verandah does not form part of the subject application. These works have been granted consent previously under DA04/0794. This is discussed further within this report.

Consent History

The subject site has an extensive history. Development consents issued have been summarised into the following table:

Application Number	Description
DA17/0128	alterations and refurbishment of existing Imperial Hotel
DA12/0042	change of use from bottleshop to refreshment room in existing building (Imperial Hotel)
DA08/0124	alterations to existing commercial premises - Imperial Hotel
DA04/0794	hotel alterations & additions
0469/2001DA	additions to an existing hotel
K99/0561	internal alterations to an existing hotel
K99/0486	use of premises (shop q) as a pathology clinic
K98/0566	relocation of male amenities and games room
D92/0095	erection of an advertising structure
D88/0637	establishment of an pawn broker & loans office in an existing shop premises
D87/0121	est. of a pathology collection centre & office

Notwithstanding the above consents (as located on Council's available records), the submitted Statement of Heritage Impacts includes extracts from plans of the site dated the mid 1974 where site was comprised of 37 Hotel accommodation units.



Figure 1: Plan prepare for Tooheys alterations to the Imperial Hotel, dated 10/4/1974 (source: SOHI, prepared by COSMOS, dated September 2018)

Of particular relevance to the subject application are DA04/0794 and DA17/0128.

Development Application DA17/0128 (alterations and refurbishment of existing Imperial Hotel) was granted consent 7 August 2017. DA17/0128 granted consent to the following:

- Alterations to the existing ground floor, including the addition of three (3) new tenancies, resulting in five (5) independent tenancies;
- Refurbishment of the existing bar and hotel;
- Removal of the existing courtyard roof; (ground floor), no change was proposed/approved to the tiled roof over the front of the building;
- Replacement of the first floor U shaped roof, to cover the entire of the building (including the lower level courtyard area); and
- The use of unauthorised modified Hotel Accommodation rooms on the first floor (22 in total).

Of particular relevance to the subject application the following is noted:

Infill of the void area

Development consent DA17/0128 granted approval to the removal the existing box gutter roof which was located over the “courtyard” area, as approved under DA04/0794 (see figure below). At the time of assessment of DA17/0128 the “courtyard” area had been roofed at the lower level for in excess of 12 years.

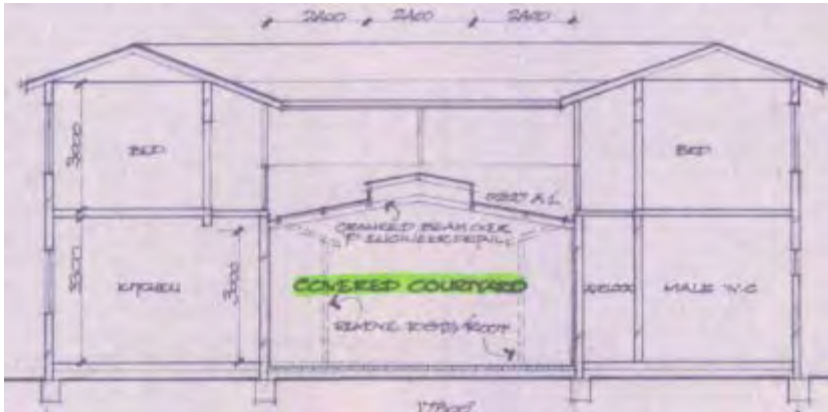


Figure 2: Extract from approved plans for DA04/0794, showing the previously approved roof



Figure 3: Existing void area, with roof above as approved under DA17/0128 and existing dining area below

Development Application DA04/0794 (hotel alterations & additions) was granted consent 21 October 2004. DA04/0794 granted consent to the following:

Lower Level:

- Internal modifications to including the removal of walls within the existing bar area;
- Modifications to the internal stairs;
- The construction of a roof over the existing courtyard;

Upper/first floor:

- The removal of existing walls to create a family accommodation suit;
- The opening of the sitting and lounge areas;
- The removal of windows and replacement of windows with bi-fold doors; and
- The installation of fixed glass to the windows within the front verandah facing the street frontage.

Some of the works nominated above and on the stamped approved plans have been undertaken and a Construction Certificate issued. Accordingly, Council has acknowledged the lawful commencement of DA04/0794.

Of particular relevance to the subject application the following is noted:

Infill of the front verandah

The applicant was advised during the assessment of the subject application that the addition of windows, resulting in the enclosure of the balconies would not be supported as the development would be considered to have a significant visual impact on the MMSHCA.

Following an onsite meeting with the applicant it was then advised to Council that these works were not to form part of the subject application and were reliant upon DA04/0794.

As advised previously development consent DA04/0794 was granted consent 21 October 2004 for hotel alterations & additions. The consent approved the installation of windows along the buildings front elevation, see figures below. Accordingly, should the subject application be refused, the applicant would still be able to install the windows consistent with those approved DA04/0794. It is noted that a Construction Certificate (CC) would be required for the physical building works.

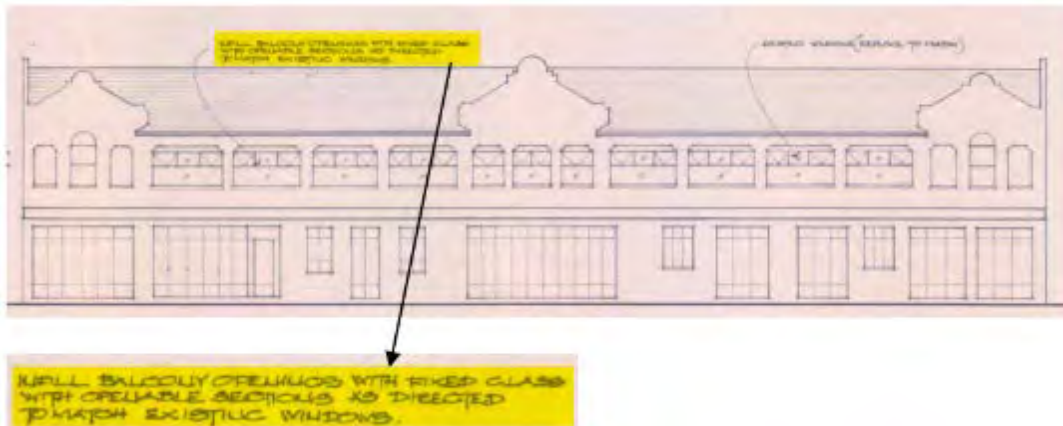


Figure 4: Elevation Plans, extracted from the stamped approved plans of DA04/0794

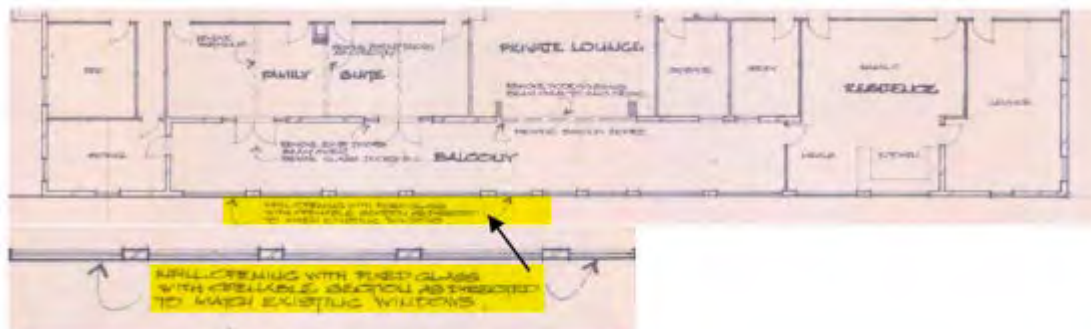
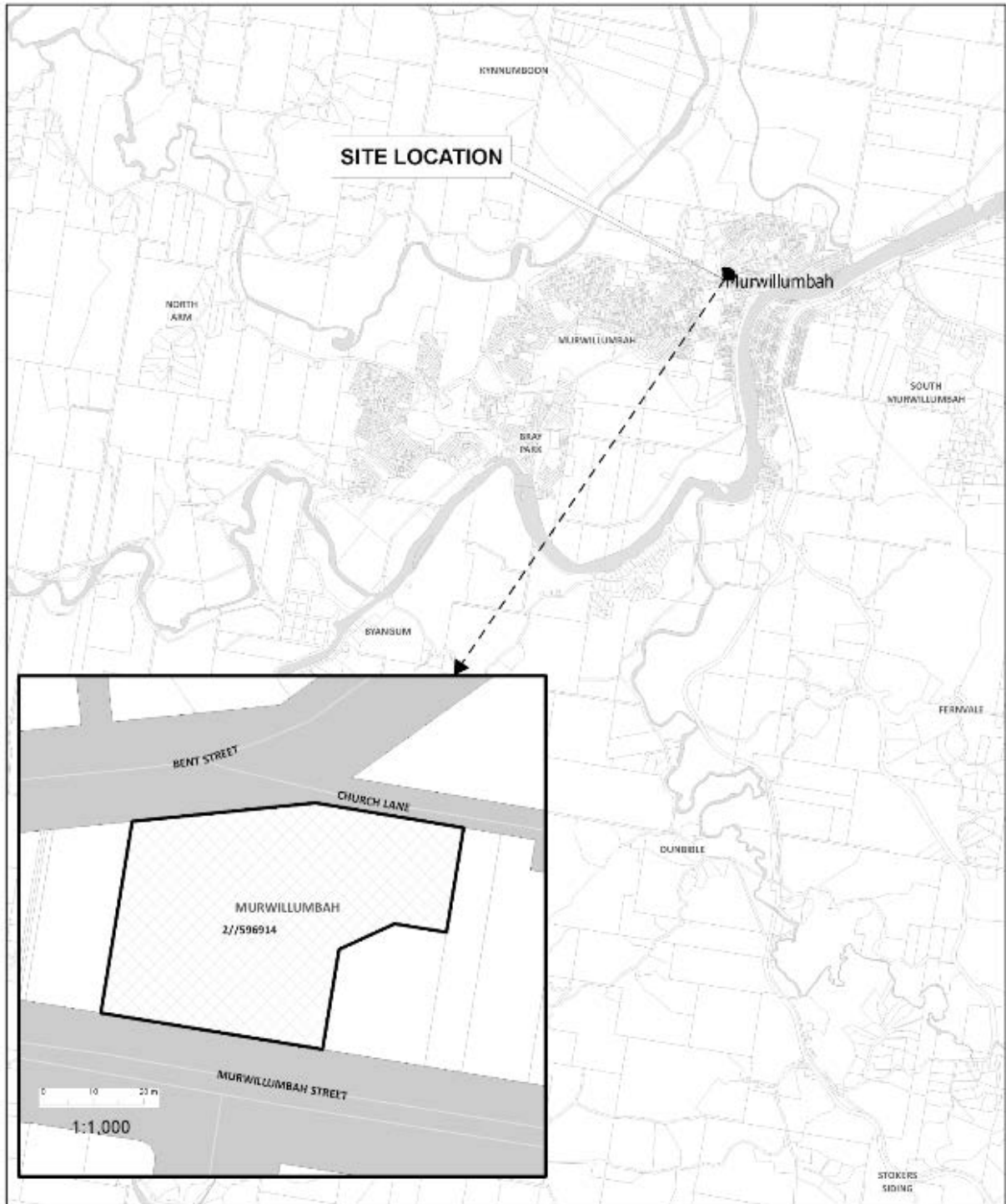


Figure 5: Upper Floor Plan (partial), extracted from the stamped approved plans of DA04/0794

**SITE DIAGRAM:**



**Site Plan**  
 DA18/0518  
 Lot 2 DP 596914  
 115 Murwillumbah Street, Murwillumbah



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**GDA**   
 Cadastre: 18/07/2018  
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 GDA 94  
 MGA Data 26  
 Datum - GDA 94

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 Murwillumbah NSW 2484  
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 W: www.tweed.nsw.gov.au  
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Date Printed: 16 November, 2018



**AERIAL IMAGERY:**



1:200 44 Post-kill  
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2018 JUNE  
CONF 2018-1801 10/18/18 03  
Map provided by: Municipal Council of Murwillumbah  
Professional License: Kaituma (Kaituma) Australia 13958  
0800 130 000 (Australia, Zone 56)

**TWEED**  
986 0000  
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44 Gordon Street, Murwillumbah  
E: [info@tweed.nsw.gov.au](mailto:info@tweed.nsw.gov.au)

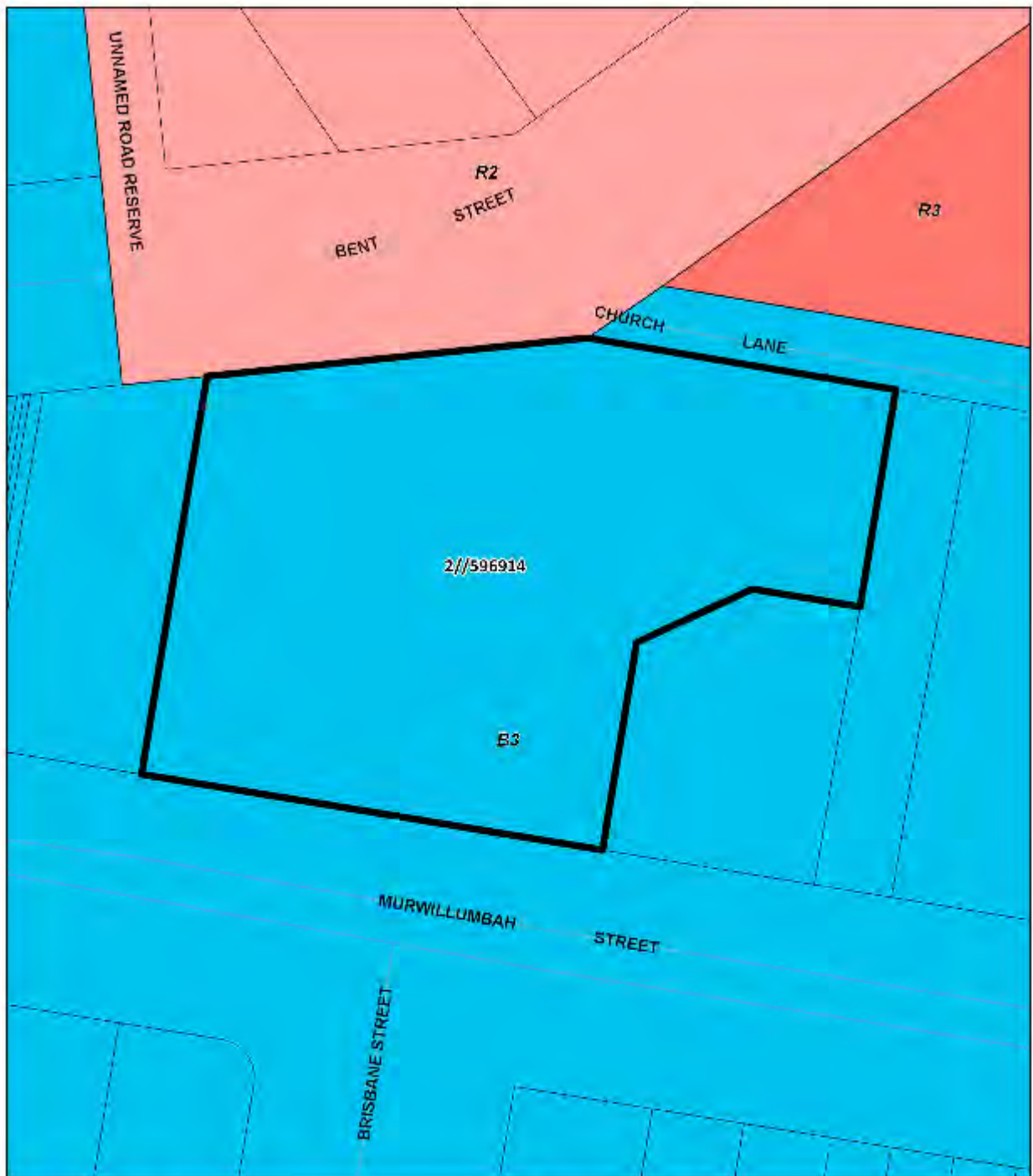
**Aerial Photography April 2018**  
DA18/0518  
Lot 2 DP 596914  
115 Murwillumbah Street, Murwillumbah

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© Cadastre - Tweed Shire Council  
Boundaries shown should be  
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**ZONING MAP:**

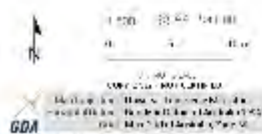


Subject Land

Subject Land

Tweed Local Environmental Plan 2014

- B3 Commercial Core
- R2 Low Density Residential
- R3 Medium Density Residential



**Site Plan - Local Environmental Plan**

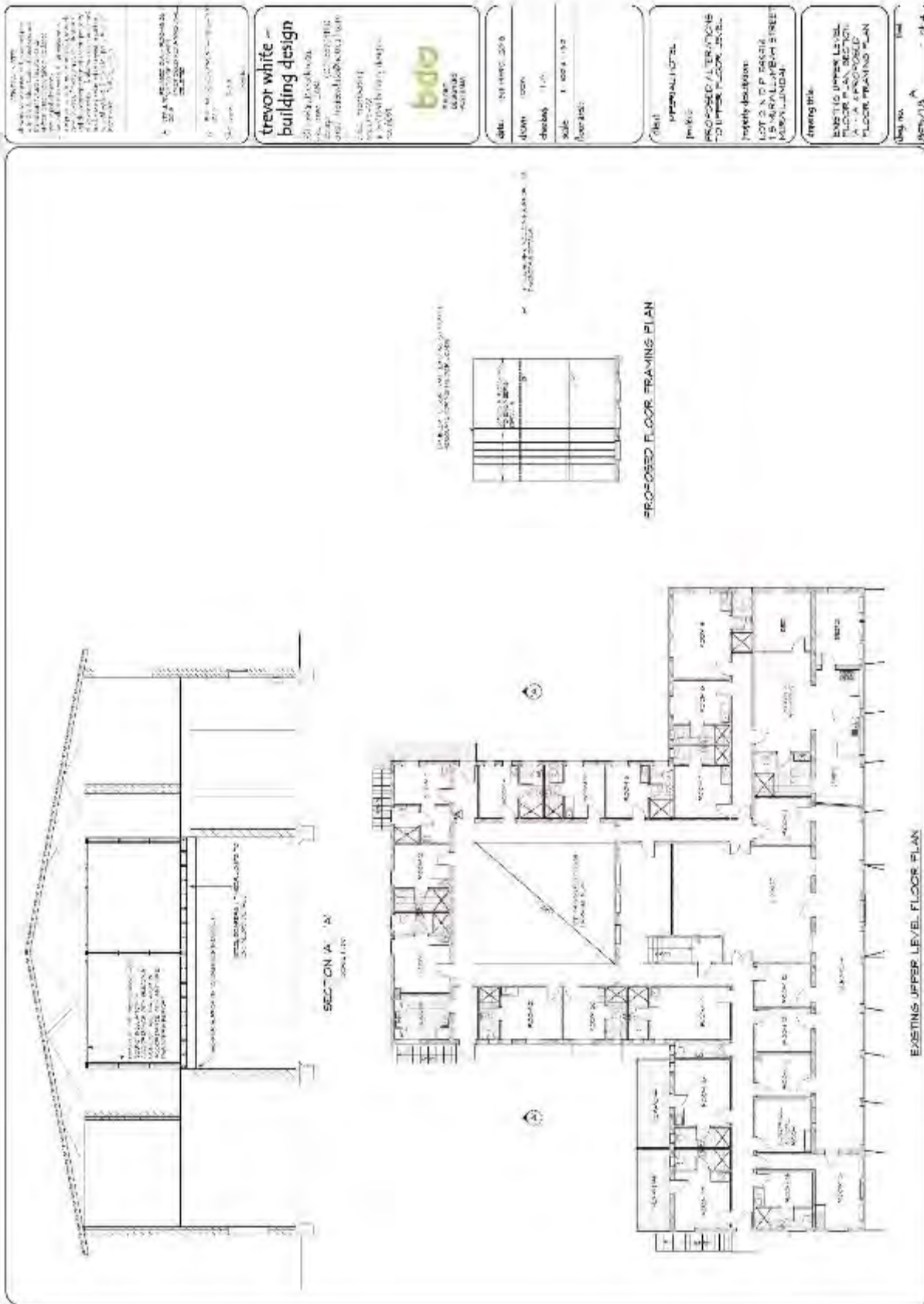
DA18/0518  
 Lot 2 DF 596914  
 115 Murwillumbah Street, Murwillumbah

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This is a map of the subject land for the purpose of the Local Environmental Plan. It is not a cadastral map and should not be used for legal purposes. The map is for information only and does not constitute an offer of any financial product or service. The map is subject to change without notice. The map is not to be used for any other purpose. The map is not to be used for any other purpose. The map is not to be used for any other purpose.

DEVELOPMENT/ELEVATION PLANS:



**SOUTHERN ELEVATION**  
100/102A LINDSEY STREET

**PROPOSED UPPER LEVEL FLOOR PLAN**

**NOTES:**

1. ALL WORK TO BE COMPLETED BY 15/01/2019.
2. ALL WORK TO BE COMPLETED BY 15/01/2019.
3. ALL WORK TO BE COMPLETED BY 15/01/2019.
4. ALL WORK TO BE COMPLETED BY 15/01/2019.
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7. ALL WORK TO BE COMPLETED BY 15/01/2019.
8. ALL WORK TO BE COMPLETED BY 15/01/2019.
9. ALL WORK TO BE COMPLETED BY 15/01/2019.
10. ALL WORK TO BE COMPLETED BY 15/01/2019.

**LEGEND**

- ROOMS TO BE DEMOLISHED
- ROOMS TO BE REFINISHED
- ROOMS TO BE RECONSTRUCTED
- ROOMS TO BE REPAIRED
- ROOMS TO BE MAINTAINED
- ROOMS TO BE PRESERVED
- ROOMS TO BE RESTORED
- ROOMS TO BE REFINISHED
- ROOMS TO BE RECONSTRUCTED
- ROOMS TO BE REPAIRED
- ROOMS TO BE MAINTAINED
- ROOMS TO BE PRESERVED
- ROOMS TO BE RESTORED

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**PROPOSED UPPER LEVEL FLOOR PLAN**

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9. ALL WORK TO BE COMPLETED BY 15/01/2019.
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**PROPOSED UPPER LEVEL FLOOR PLAN**

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8. ALL WORK TO BE COMPLETED BY 15/01/2019.
9. ALL WORK TO BE COMPLETED BY 15/01/2019.
10. ALL WORK TO BE COMPLETED BY 15/01/2019.





**Considerations under Section 4.15 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**

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 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 subject site is zoned B3 Commercial Core. The objectives of the B3 zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To encourage upper floor residential or tourist accommodation that does not compromise the commercial use of the land.*

The proposed development is permitted with consent and is considered to be consistent with the objectives of the B3 zoning, as it contributes to providing better amenity to the existing upper floor Hotel accommodation units.

#### 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.*

The subject site is mapped as having a maximum height limit of 12.2m. All works proposed are internal with no increase to the existing height of approximately 9.0m.

#### Clause 4.4 – Floor Space Ratio

The subject site is mapped as having a FSR of 2:1. The subject application includes filling in an existing courtyard void and the front verandah. These works result in an additional floor area of approximately 121.5sqm and a total GFA of 1718sqm. The development will result in a FSR of 0.77:1. Accordingly, the development complies with this regard.



Clause 4.6 - Exception to development standards

Not applicable – the subject application does not seek any exceptions to development standards.

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 5.10 - Heritage Conservation

The subject site is mapped within a Heritage Conservation Zone.

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.*

This clause goes on to state that the consent authority, must before granting consent in respect of an application within a heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The hotel site is captured within the Retail precinct of the MMSHCA. The building is not listed as a specific Heritage item under the Tweed LEP 2014, however is noted as a building of heritage significance. Accordingly, Council must consider the effect of the proposed development on the heritage significance of the area (being the MMSHCA).

The building is aesthetically significant for its design and form and it contributes importantly to the MMSHCA. The building form and arrangement with a bar and retail shops to the street front and upper level accommodation arranged around the rear courtyard (roofed) were the key elements of the significant building form.

In order to address Clause 5.10 the applicant, at the request of Council submitted a Statement of Heritage Impact (SOHI).

Infill of the void area

Background:

Development consent DA17/0128 granted approval to the removal the existing box gutter roof which was located over the “courtyard” area, as approved under DA04/0794 (see image below). The area had been roofed at the lower level for in excess of 12 years at the time of assessment of DA17/0128.

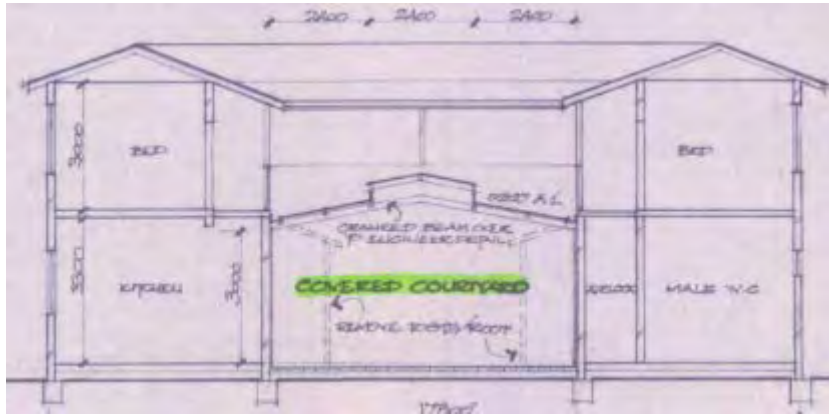


Figure 6: Extract from approved plans for DA04/0794, showing the previously approved roof

Under the assessment of DA17/0128 it was acknowledged that whilst the roofing of this area was not *preferable* from a heritage perspective the development was considered consistent with the aims and objectives of Clause 5.10 *Heritage Conservation* as the area was not visible from outside the site and the subject application did not seek consent to remove the internal courtyard. Additionally it was acknowledged that the “courtyard” had been roofed for functionality for well over 12 years. Accordingly, the development was not considered to have an effect on the MMSHCA.

As discussed previously the subject application seeks consent to fill in the void area and construct two (2) additional hotel rooms (with ensuites) and two (2) storage rooms. The application was lodged without a SOHI as works were “internal”. At the request of Council the applicant submitted a SOHI, which was accompanied by a covering letter from their solicitor (confidential attachment 1) which addresses the proposed works within the void area (see images below).



Figure 7: Existing Void area, with roof above as approved under DA17/0128

The SOHI prepared by Cosmos Archaeology Pty Ltd, titled Statement of Heritage Impact for upper levels, dated September 2018 advises the following with this regard:

*“Although the original layout of the building contributes to the overall heritage values of this historical building, there will be heritage interpretation included in the final design of this building which will display the images and plans of this building, as well as the former Imperial Hotels constructed on this same site. This is a heritage approved method for ensuring heritage values are appreciated and former layouts are identified and commemorated. The current owner has sought the earlier plans and they will be displayed on both*

*lower and upper levels of the building for all to enjoy. The courtyard had been previously removed (roofed over) and therefore any new addition in this space will have an impact on the original design of the c.1930 building. From a heritage perspective, it is noted that the building has been altered since its original design, generally to suit the ongoing uses of a hotel and accommodation. These 2018 changes continue this use”.*

The SOHI concluded that *“the proposed works in this area are not seen as impacts that create an adverse effect on the identified heritage significance of the Imperial Hotel or for its contribution to the MMSHCA”*. See extract from the SOHI in the figure below.

The works as noted in this section are not seen as impacts that create an adverse effect on the identified heritage significance of the Imperial Hotel or for its contribution to the Murwillumbah main street heritage conservation area.

The Imperial Hotel itself is a mixture of 1930s, 1970s, 1990s and 2000s works – all of which have preserved the distinctive façade. The current works allow for the ongoing use of the building as a hotel, with new ensuite bathrooms to be added for the bedrooms, suiting contemporary standards of accommodation.

The previous 2016 assessment noted heritage significance in relation to archaeological potential for earlier Imperial Hotel structures in areas of the site. The research potential of this building and the earlier buildings on this site will not be impacted by the current proposed works. Works involving excavation below ground level are recommended to first be addressed via an archaeological assessment.

There are no works that will have a detrimental effect on the façade of the building. The addition of windows in the verandah are works that can be removed in future and the white painted frames and windows will be a good match for the ground floor openings. The insertion of rooms where the former guest lounge and courtyard void were located are part of the use of the building as a hotel and have a minor impact on the building design. The existing fire management schemes are acceptable for this c.1930s building. The insertion of a lift in this building would result in loss of space, loss of original ceiling and floor materials and is difficult to support from a heritage perspective.

*Figure 8: Extract from SOHI report (Section 6.5 Impacts Summary)*

In summary the submitted SOHI advises that the infill of the existing void area is acceptable under Clause 5.10.

#### Infill of the front verandah

##### Background:

The applicant was advised during the assessment of the subject application (DA18/0518) that the addition of windows, resulting in the enclosure of the balconies would not be supported as the development would be considered to have a significant visual impact on the MMSHCA.

Following an onsite meeting with the applicant it was then advised to Council that these works were not to form part of the subject application and were reliant upon DA04/0794.

Development Consent DA04/0794 was granted consent 21 October 2004 for hotel alterations & additions, the consent which has been lawfully commenced, approved the installation of windows along the buildings front elevation, see figures below. Accordingly, should the subject application be refused, the applicant would still be able to install the windows consistent with those

approved DA04/0794. It is noted that a Construction Certificate (CC) would be required for the physical building works.

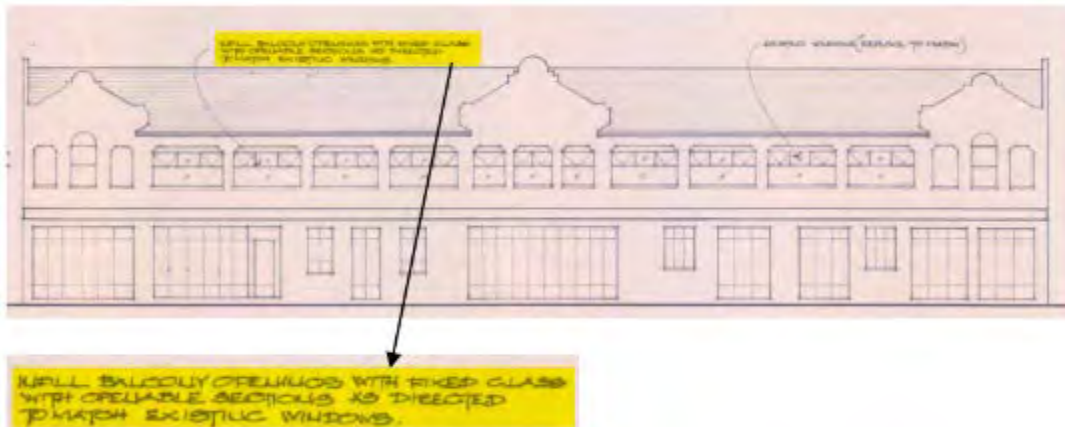


Figure 9: Elevation Plans, extracted from the stamped approved plans of DA04/0794

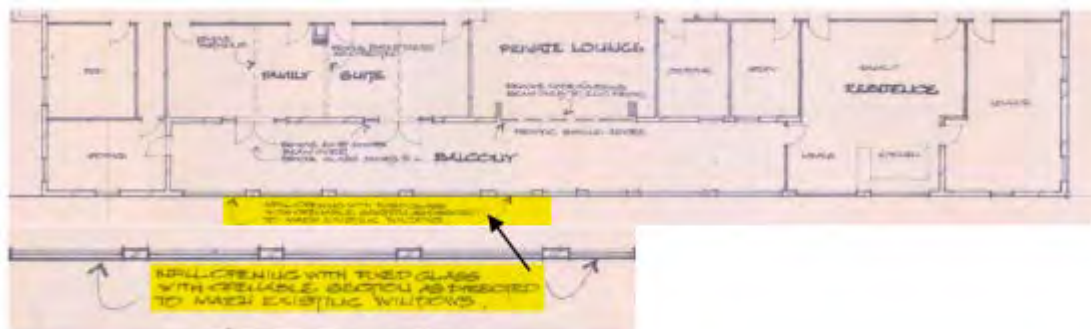


Figure 10: Upper Floor Plan (partial), extracted from the stamped approved plans of DA04/0794

Further to the above, the works proposed under the subject application are *internal* only and include the addition of six (6) ensuites within the existing front verandah. As advised above the application was lodged without a SOHI as the works were internal only. At the request of Council the applicant submitted a SOHI.

The SOHI prepared by Cosmos Archaeology Pty Ltd, titled Statement of Heritage Impact for upper levels, dated September 2018 advises the following with this regard:

*“The enclosure of the existing front verandah needs to be explained as the verandah presents as a solid brick wall with (painted) brick pillars separating window spaces in the upper level, see below:*



*Rather than the verandah being enclosed, the issue is installing opening and closing windows in the window spaces of the verandah. As can be seen above, this installation does not detract from the layout of open spaces across the façade. The regular vertical white framed windows match the ground floor openings visible here.*



*This design goes some way to restoring the original 1930s appearance. Compare the work above with the only clear photograph available from the 1930s below:*



*The new windows in the window openings will be white framed opening and closing windows and they will incorporate the use of 'frosted' glass - as these rooms will be ensuite bathrooms. The frosting will be similar to that already used in original and later windows on the upper level, see below:*



*However, the ensuites will be new rooms accessible to the existing upper level rooms and therefore it is not possible to convert existing rooms as discussed with Council.*

*This is supported as the new bathrooms will be read as new rooms and the existing rooms will not be altered in shape or size from their original layout”.*

The applicant's SOHI advised that the proposed development in the existing front verandah satisfies Clause 5.10

SOHI Conclusion:

*“The Imperial Hotel at 115 Murwillumbah Street is located within the Murwillumbah main street heritage conservation area. It is not currently a local heritage item for Tweed Shire Council. It has previously been recognised by the NSW Chapter of the Australian Institute of Architects as a 'significant 20<sup>th</sup> century building' and listed on that organisation's non-statutory register. The 2016 statement of heritage impact has assessed that the building and the site has local significance, particularly for Murwillumbah and in relation to its historical, associational and aesthetic values.*

*The Imperial Hotel was opened on 1<sup>st</sup> June 1931 and its Art Deco Spanish Mission style façade has been preserved and is a landmark for the main street in*

*Murwillumbah. There have been numbers of alterations undertaken internally, mainly from previous owners in the 1990s and 2000s. The current works will allow the hotel to continue use as a hotel and place of accommodation. The current proposal is for internal alterations to the upper floor area, including new bathrooms and windows located on the verandah and new internal rooms in the area of the former courtyard and guest lounge. The works introduce new windows to the window space of the verandah, however, these are the only works to be visible from the street. The use of white painted timber window frames and rectangular windows will blend well with the appearance of the ground floor openings.*

***The proposed works are acceptable from a heritage perspective and will not adversely affect the identified heritage significance of the building.***

*There will be heritage interpretation included in the final design of this building which will display the images and plans of this c.1930 building, as well as the former Imperial Hotel buildings constructed on this same site. The display of these historical images throughout the building, notably within the publically accessible bar area, ensures that the history of the building is appreciated and former layouts are identified and commemorated.*

***The works will not detract from the identified contributory quality that the subject building has for the mixed historical character of the Murwillumbah Main Street Conservation Area”.***

This has been considered by Councils Strategic Planning Unit from Heritage perspectives who have advised the following:

*“The applicant’s SOHI correctly identifies the building as an important contributory item to the Murwillumbah Main Street Heritage Conservation Area (HCA), and a building of local significance, particularly in relation to Murwillumbah’s historic, associational and aesthetic values. The applicant’s SOHI provides a good historical summary of the construction and use of the building, past alterations and changes to its fabric. It also provides thorough summary of the applicable legislation and policy relating to its heritage conservation.*

*The SOHI provides little in the way of recognition or description of the extent to which the proposed changes would affect the heritage significance, fabric or other. Nor does it identify any notable proposed measures by which conservation management is incorporated into the proposed works, including any measures to reduce the collective impact on the significance of the HCA.*

*It states “From a heritage perspective, it is noted that the building has been altered since its original design, generally to suit the ongoing uses of the hotel and accommodation. These 2018 change continue this use”.*

*This statement does little to address the heritage impact beyond seeking to continue inappropriate alterations on the basis that the damage has already been done. From a heritage perspective, this does not adhere to the objectives or principles of DCP A18 or the Tweed LEP which seek to conserve the heritage significance of heritage items and conservation areas, including associated fabrics, settings and views; and to ensure that development is*



*undertaken in a manner that is sympathetic to, and does not detract from the identified significance of the site.*

*6.4.1 states ‘The installation of new windows in the existing window spaces of the front verandah will not result in destruction of highly visual and significant elements such as verandahs, awnings, fenestration, chimneys, windows, doorways, gables, parapets or other roof forms or architectural detailing. The timber window frames and panes can be removed at some future time with no or negligible impact to the existing verandah window openings. The new partitions on the upper level verandah (for the ensuite bathrooms) will be inserted to join to the painted brick ‘pillars’ visible and these partitions will not be visible from the exterior. Internally, the upper level rooms will retain their doorways, door frames and windows. New rooms will be inserted into existing spaces to reuse the former guest lounge and former courtyard ceiling space.’ – Whilst the windows in essence are a removable addition, it is not considered appropriate to call them such given ensuites are to be constructed in the space being enclosed. The ensuites will require full privacy given they front onto the main street of Murwillumbah and whilst the windows may be able to be removed in the future, this is considered an unlikely outcome given it would necessitate the removal of the ensuites.*

*The SOHI relies mainly on the premise that:*

- 1) the majority of the proposed works are internal (therefore not visible from the street) so will not impact on the building’s current contribution to the HCA; and*
- 2) that the proposed windows are removable and would not damage nor adversely affect the façade of the building, with the original painted brick pillars and distinctive shape of the original window openings being retained outside the proposed timber window frames.*

*Whilst the above two reliance’s are to some extent reasonable, the proposal is still considered to have an overall impact on the streetscape’s aesthetics, the Spanish Mission Art Deco style of the building, and the building’s contribution within the HCA.*

#### Summary:

The subject site is mapped within a Heritage Conservation Zone.

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.*

This clause goes on to state that the consent authority, must before granting consent in respect of an application within a heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The hotel site is captured within the Retail precinct of the MMSHCA. The building is not listed as a specific Heritage item under the Tweed LEP 2014, however is noted as a building of heritage significance. Accordingly, Council must consider the effect of the proposed development on the heritage significance of the area (being the MMSHCA).

The building is aesthetically significant for its design and form and it contributes importantly to the MMSHCA. The building form and arrangement with a bar and retail shops to the street front and upper level accommodation arranged around the rear courtyard (roofed) were the key elements of the significant building form.

The applicant's SOHI concludes that the proposed development meets the aims and objectives of Clause 5.10

Please refer to the DCP A18 Heritage Assessment for further detail.

#### Clause 5.11 - Bush fire hazard reduction

The subject site is not mapped as 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.

Works are located internal to an existing building. No impact on Acid Sulfate Soils is expected.

#### Clause 7.2 - Earthworks

No earthworks are proposed as part of this application.

#### Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

The site is mapped as being affected by a design flood level of 7.0m AHD and PMF level of 11.5m AHD.

The development includes a net increase in GFA of approximately 121.5sqm at the first floor level (approximately 8.8m AHD) and ancillary internal alterations to the building in order to accommodate the proposed tenancies. All works proposed are

within the existing footprint and well above the 7.5m minimum habitable floor area. Accordingly, it is not considered that the development will have any impact on the flood behaviour or environment.

#### Clause 7.4 - Floodplain risk management

The objectives of this clause are as follows:

- (a) *in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,*
- (b) *to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*

This clause goes on to advise that development consent must not be granted for tourist and visitor accommodation unless the consent authority is satisfied that that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land.

The site is mapped as being affected by a design flood level of 7.0m AHD and PMF level of 11.5m AHD.

The development footprint is within an area mapped as 5m - 6m AHD, with a minimum habitable floor level of approximately 8.8m AHD. Accordingly is below the PMF level of 11.5m AHD.

The proposed development does not seek consent to change the existing use, subject to this clause. The application seeks consent for the addition of 5 Hotel accommodation units. Council's Flooding and Stormwater Engineering Unit have no objections to the subject application as the habitable areas are situated above 8.0m AHD. Accordingly, it is not considered to impact the operational capacity of emergency response facilities.

#### Clause 7.6 - Stormwater Management

The development does not propose any net increase in GFA, whilst the subject application seeks an amended roof design, no additional roofed area is proposed. No stormwater impacts are envisaged as a result of the subject application.

#### Clause 7.7 - Drinking Water Catchments

Not applicable – the subject site is not mapped within an area subject to 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.

### **North Coast Regional Plan 2036 (NCRP)**

In March 2017 the NCRP 2036 was introduced. The NCRP 2036 established the following vision for the area:

The best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities

The NCRP 2036 includes 4 overarching goals to achieve the aforementioned vision:

1. The most stunning environment in NSW
2. A thriving interconnected economy
3. Vibrant and engaged communities
4. Great housing choices and lifestyle options

The site is mapped as an Urban Growth area and within the coastal strip.

Consideration of the planning principles, which will guide growth on the North Coast, is required to be undertaken in determining an application.

#### Principle 1: Direct growth to identified Urban growth areas

Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.

#### Assessment:

The proposed development is for the construction of additional Hotel accommodation units. The site is within the Murwillumbah CBD and within a 5 minute walk to public transport.

#### Principle 2: Manage the sensitive coastal strip

The coastal strip comprises land east of the planned Pacific Highway alignment plus the urban areas of Tweed Heads around the Cobaki Broadwater. The coastal strip is ecologically diverse and contains wetlands, lakes, estuaries, aquifers, significant farmland, and has areas of local, State, national and international environmental significance. Much of this land is also subject to natural hazards, including flooding, coastal inundation, erosion and recession.

Demand for new urban and rural residential land in this area is high. To safeguard the sensitive coastal environment, rural residential development will be limited in this area, and only minor and contiguous variations to urban growth area boundaries will be considered.

Assessment:

The development site is not mapped under this plan as being within the sensitive coastal strip.

Principle 3: Provide great places to live and work in a unique environment

Making cities and centres the focus of housing diversity, jobs and activities makes communities more vibrant and active, reduces pressure on the environment, and makes it easier for residents to travel to work and access services.

The Plan guides councils in preparing local growth management strategies and planning proposals to deliver great places to live and work that maximise the advantages of the North Coast's unique environment.

Assessment:

As discussed above the site is located within the Murwillumbah CBD and is within a five minute walk to public transport, recreation facilities and associated services.

The proposed development is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

### **State Environmental Planning Policies**

There is no SEPPs applicable to the subject application.

#### **(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 subject application seeks consent to undertake internal additions and alterations which will result in the addition of five (5) hotel accommodation rooms (4 additional rooms from DA04/0794), resulting in a total of 27 rooms.

Consistent with the assessment of previous applications on the subject site, the development application is relying on site parking credits based on previous uses.

Correspondence provided to the applicant following the assessment of a past development consent (DA12/00042) and prior to the lodgement of DA17/0128 was that the site was benefitted by “onsite” credits in relation to the past/historic uses and could be considered this way under the Section A2 assessment.

The DCP states: Site parking credits are available when there is a proposed change of use or redevelopment of a site. The credit is deemed to be consistent with that approved and provided under the previous approvals for that site.

Alternatively older sites that may not have a development consent history in relation to parking provision are deemed to have parking credits based on the expected parking that would have been provided for that land use under this Code unless deemed to be contrary to the aims and principles of this section.

It is noted that the concession is discretionary and subject to demonstrated consistency with the aims and principles of this Code.

**A2.1.1 Aims and Objectives**

**Aims**

1. Provide safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users.
2. Provide facilities and infrastructure that encourage movement by means other than private vehicle.
3. Encourage car park design and landscaping to enhance visual amenity, provide pedestrian comfort, legibility and minimise impacts from stormwater runoff and pollution.
4. Provide off street parking facilities that satisfy the demand of residents, visitors, staff, customers, servicing, loading and unloading.
5. Provide integrated transport opportunities within business centres to improve their amenity, accessibility and sustainability.

The subject site is considered to generally meet the aims and objectives of Section A2. It is noted in relation to Aim 4, the demand is generally 1 space per room as defined under Section A2. However the following with this regards has been noted:

- The Hotel accommodation rooms will not always be 100% occupied.
- Should the hotel accommodation rooms achieve an average occupancy rate of 70% the site will be able to cater for the demand of guest’s onsite (16 onsite parking spaces).
- The remainder of the uses can be argued to be accessed by customers who are also attending other premises in the Murwillumbah CBD and many customers would be by foot traffic.

Advice from Councils Traffic Engineer was that the credit should be applied as consistent with previous advice from Council and assessment of past applications. Accordingly, the assessment of DA17/0128 concluded that the site had 10 remaining car parking spaces in “credit” (the site also caters for 16 onsite parking spaces, plus loading/unloading facilities).

The proposed development seeks consent for 5 additional hotel accommodation rooms. The current rate under Section A2 is for 1 space per room. In accordance with Section A2, the development requires 5 parking spaces.



Accordingly, the site whilst providing no additional onsite parking is considered to comply with the requirements of section A2 of the DCP based on the sites existing use credits. As such there is no net increase in car parking requirement and therefore no charges are generated in relation to Plan No. 23 (Offsite Parking Contributions).

Notwithstanding the above, any further development on the site which is reliant upon existing site credits for onsite parking will generally not be supported.

### A3-Development of Flood Liable Land

The site is mapped as being affected by a design flood level of 7.0m AHD and PMF level of 11.5m AHD.

The development includes a net increase in GFA of approximately 121.5sqm at the first floor level (approximately 8.8m AHD) and ancillary internal alterations to the building in order to accommodate the proposed tenancies. All works proposed are within the existing footprint and well above the 7.5m minimum habitable floor area.

Council's Flooding and Stormwater Engineering Unit have no objections to the subject application as the habitable areas are situated above 8.0m AHD. Accordingly, it is not considered that the development will have any impact on the flood behaviour or environment.

It is otherwise considered that the proposal is compliant with Section A3 of the DCP.

### A18 - Heritage

#### Part A – Introduction and context

The aim of this Section is to guide the planning and design of development in association with a heritage item, within or adjoining land which comprises a heritage item or within a heritage conservation area to ensure protection and conservation of heritage items and areas and mitigation of any potential negative impacts on their heritage significance.

#### 4. Murwillumbah Main Street Heritage Conservation Area (MMSHCA)

The Imperial Hotel (subject site) falls within the MMSHCA. Under Section 4.2 the DCP advises that the MMSHCA is comprised of four key precincts. The subject site falls within the Murwillumbah Retail Precinct.

The building is not listed as a Heritage Item.



Figure 11: Murwillumbah Retail Precinct

The Murwillumbah Retail Precinct presents a continuous streetscape defined by a number of pre-1939 buildings, with masonry facades featuring distinctive parapets and pedestrian level awnings. It has retained a considerable degree of integrity, within a visually distinct precinct with simple boundaries. The streetscape has well developed townscape qualities with high aesthetic value. There are a number of notable buildings including the Interwar Georgian style BGF House building, the Interwar Free Classical Southern Cross Credit Union, the ANZ building and the Imperial and Murwillumbah Hotels to name only a few.

The DCP Section 4.2.2 lists the following as key features of the MMSHCA:

1. Fine grained shop frontage with a zero front and side setback to the retail uses;
2. Northern side is interspersed with a collection of civic buildings with a landscaped setback;
3. Hard surface urban edge to southern side;
4. Mix of single and two stories;
5. Provision and continuity of awnings and parapets, which ties the retail precinct as a group and provides a rich and varied silhouette;
6. Variety of facades, architectural styles and traditional step in shopfront entries with window displays;
7. A material palette of rendered masonry, bagged brickwork, and face brickwork characterise and contribute to a unified retail precinct streetscape;
8. At the shopfront level of these buildings a richer material palette can be found including ceramic tile, terrazzo, detailed glass and joinery. Art deco buildings are characterised by geometric forms, chevrons, sunburst motifs, aluminium, stainless steel, brick, stained glass, vitrolite glass; and
9. Opportunities for taking advantage of the northern solar access

As previously advised within this report the subject application seeks consent for internal works only (the owner/applicant is relying on DA04/0794 to install windows to the front facade/verandah). Accordingly, the development is not considered to have any impact on the existing streetscape or key features of the MMSHCA.

Part 4.3 lists the Imperial Hotel as a contributory building within the MMSHCA.



Figure 12: MMSHCA (yellow = contributory buildings)

Part 4.4 Objectives (particularly objective 03, objective 06 and objective 08) are therefore applicable:

1. *Promote an understanding of the significance of the heritage conservation area.*
2. *Ensure the heritage items are conserved.*
3. *Ensure the significance of the contributory items are retained and maintained.*
4. *Protect and maintain the prominent scale, form and views of the church buildings and spires within the townscape.*
5. *Protect and maintain the landscaping context which frames the streetscape.*
6. *Conserve the historic fabric and minimise the collective impact on the significance of the heritage conservation area.*
7. *Ensure alterations, additions and infill development are carefully designed to sympathetically integrate with the streetscape and character of the heritage conservation area.*
8. *Encourage sympathetic, contemporary design of infill development that preserves the grain of the prevailing pattern of development, characteristic building form, materiality and style evident in the streetscape character of the heritage conservation area.*
9. *Conserve the architectural features of significant buildings, including, but not limited to: step in shop fronts; pressed metal ceilings; terrazzo, tiled and timber tiled floors; leadlight and original windows and doors; tiled and unpainted brickwork; and period detailing.*
10. *Conserve the established fine grained retail form and subdivision pattern of the heritage conservation area.*

11. *Maintain the established and significant pattern of awnings and parapets to all shop fronts and no awnings to significant civic buildings such as banks.*
12. *Minimise the impacts of signage on the significance of the heritage conservation area.*

The applicant has submitted a SOHI which supports the proposed development. In short advising the following:

*“Although the original layout of the building contributes to the overall heritage values of this historical building, there will be heritage interpretation included in the final design of this building which will display the images and plans of this building, as well as the former Imperial Hotels constructed on this same site. This is a heritage approved method for ensuring heritage values are appreciated and former layouts are identified and commemorated. The current owner has sought the earlier plans and they will be displayed on both lower and upper levels of the building for all to enjoy. The courtyard had been previously removed (roofed over) and therefore any new addition in this space will have an impact on the original design of the c.1930 building. From a heritage perspective, it is noted that the building has been altered since its original design, generally to suit the ongoing uses of a hotel and accommodation. These 2018 changes continue this use”.*

The SOHI concluded that *“the proposed works in this area are not seen as impacts that create an adverse effect on the identified heritage significance of the Imperial Hotel or for its contribution to the MMMSHCA”.* See extract from the SOHI in the figure below.

The works as noted in this section are not seen as impacts that create an adverse effect on the identified heritage significance of the Imperial Hotel or for its contribution to the Murwillumbah main street heritage conservation area.

The Imperial Hotel itself is a mixture of 1930s, 1970s, 1990s and 2000s works – all of which have preserved the distinctive façade. The current works allow for the ongoing use of the building as a hotel, with new ensuite bathrooms to be added for the bedrooms, suiting contemporary standards of accommodation.

The previous 2016 assessment noted heritage significance in relation to archaeological potential for earlier Imperial Hotel structures in areas of the site. The research potential of this building and the earlier buildings on this site will not be impacted by the current proposed works. Works involving excavation below ground level are recommended to first be addressed via an archaeological assessment.

There are no works that will have a detrimental effect on the façade of the building. The addition of windows in the verandah are works that can be removed in future and the white painted frames and windows will be a good match for the ground floor openings. The insertion of rooms where the former guest lounge and courtyard void were located are part of the use of the building as a hotel and have a minor impact on the building design. The existing fire management schemes are acceptable for this c.1930s building. The insertion of a lift in this building would result in loss of space, loss of original ceiling and floor materials and is difficult to support from a heritage perspective.

*Figure 13: Extract from SOHI report (Section 6.5 Impacts Summary)*

Councils Heritage Advisor provided the following advice with this regard:

Building additional rooms in the former courtyard space is not supported as this removes the evidence of the original courtyard, a significant element of the building arrangement. The removal the courtyard and evidence in the building and creates a high detrimental impact on the cultural heritage significance.

The applicant has advised the following:

- The area has not been used as a courtyard since the 2004 approval;
- The use of the area as a courtyard was impractical and not feasible from a business perspective;
- The 2017 approval roofed over the entire area for maintenance purposes;
- There is no potential to use the area as a “courtyard” following the installation of the new roof.
- Considering the above the development is not considered “detrimental”.

**Streetscape character, siting and setbacks**

Controls:

- C1. Any alteration addition or infill development must be consistent with the front setbacks of the neighbouring heritage or contributory items.*

The development additions are located within the existing building.

- C2. Faux historic details should not be replicated or applied as they will not be of any heritage value and can confuse the understanding of ‘new’ and ‘old’.*

The subject application does not seek consent to replicate any materials.

- C3. Zero side lot boundaries are not appropriate for any residential heritage item or conservation area.*

Not applicable to the subject application.

- C4. Maintain existing side driveway access where this is a feature.*

Not applicable to the subject application.

- C5. Outbuildings may be located in the side or rear setbacks where this is consistent with the siting pattern of the heritage conservation area.*

Not applicable to the subject application.

Alterations and additions:

- C6. Alterations and additions should not result in the destruction of highly visual and significant elements such as verandahs, awnings, fenestration, chimneys, windows, doorways, gables, parapets or other roof forms or architectural detailing.*

The applicant’s SOHI advises the following:

*The installation of new windows in the existing window spaces of the front verandah will not result in destruction of highly visual and significant elements such as verandahs, awnings, fenestration, chimneys, windows, doorways, gables, parapets or other roof forms or architectural detailing. The timber window frames and panes can be removed at some future time with no or negligible impact to the existing verandah window openings. The new partitions on the upper level verandah (for the ensuite bathrooms) will be*



*inserted to join to the painted brick 'pillars' visible and these partitions will not be visible from the exterior.*

*Internally, the upper level rooms will retain their doorways, door frames and windows. New rooms will be inserted into existing spaces to reuse the former guest lounge and former courtyard ceiling space.*

Additionally, it is noted that the subject application does not include the installation of the windows. Development consent DA04/0794 is being relied upon for these works. Conditions with this regard have been applied.

- C7. *Alterations and additions should not mimic design features and materials and should be recognisable as new work of a different period.*

The proposed additions are not considered to mimic the existing building and are recognisable as new works.

- C8. *No additions are permitted forward of the established building line. Notwithstanding, new decks or verandahs may be considered to the front of dwellings where they are sympathetic with the character of the heritage item or heritage conservation area and align with the predominant front setback of decks and verandahs in the immediate vicinity.*

No additions are proposed forward of the existing building line.

- C9. *Generally alterations and additions should be located at the rear of the building, lower than the established ridge height and not significantly alter or dominate the street facade, as shown in figure 2.4.*

The proposed additions are located within the existing building footprint.

- C10. *Additions to the side of a building are only appropriate where they do not compromise the ability for driveway access to the rear, where this is part of the established pattern.*

Not applicable to the subject application. The proposed additions are located within the existing building footprint.

Infill development:

- C11. *Infill development within the vicinity of a heritage item or within a conservation area should respect and complement the built form character of those items in terms of scale, siting and setback patterns, dominant height features, external materials, colours and finishes.*

The applicant has advised that the development is considered to compliment the built form and character of the existing building and works are contained within the existing hotel. Additionally they are ensuring the additions appear as new works as required under this DCP whilst being sympathetic to the existing development.

- C12. *Infill development on the site of a heritage item, object or place shall provide a curtilage suitable to the significance of that item, object or place.*



Not applicable – the Imperial Hotel is not listed as a Heritage Item.

Murwillumbah Main Street HCA - Retail Precinct

*C13. The fine grained, narrow fronted, retail streetscape and active shopfront pattern of the retail precinct is to be retained.*

Not applicable to the subject application.

*C14. Walk through pedestrian connections between Murwillumbah Street and Proudfoots Lane are to be retained.*

Not applicable to the subject application.

*C15. Alterations and additions shall respect and be consistent with the appropriate building typology and contributory features.*

The applicant and SOHI advises that this has been complied with.

*C16. Additions to a building above two storeys must be setback behind the parapet line.*

Not applicable

*C.17 Adaptive uses of a building shall suit the size of the building and not require substantive additions, amalgamations or changes. The zero front and side setback pattern which characterises the retail precinct is functional in terms of pedestrian amenity, weather protection, intensity of retail development and commercial viability is vital for active shop frontages and should be retained.*

Not applicable to the subject application.

### **Scale, form and height**

Alterations and additions:

- C1. Shall be of a scale or proportion which does not overwhelm or dominate the existing heritage item or heritage conservation area, substantially change or destroy its identity, or change its contribution and importance in its surrounds.*
- C2. Where alterations or additions are proposed higher than existing built form, new development shall be setback from the street frontage and behind the significant roof ridge line to maintain the streetscape scale and form.*
- C3. Alterations, additions and infill development should integrate with the established height features, including floor level, verandah articulation, parapet levels, window proportions and roof heights.*
- C4. Shall not alter the scale and proportions of windows, doors, materials and other key features.*
- C5. Adaptive uses of a building should be chosen which suit the size of the building and not require substantive additions or changes.*
- C6. Larger additions can be successful when treated as a separate entity to retain the character of the original building in its own right.*
- C7. Any additions within the roof spaces are not visible from the street and must be consistent with the overall massing and roof form.*

All works proposed are internal. There is no impact anticipated with this regard.

Infill development:

- C1. *Design of infill development within a conservation area shall be sympathetic to the scale, form, and rhythm of the established development and not be overwhelming in its built form.*
- C2. *In main street and village conservation areas infill development shall be consistent with key height features, including floor, parapet and verandah levels.*
- C3. *Height and scale of infill development should not obscure or dominate an adjoining or adjacent heritage item.*

Please see comments above for additions and alterations.

Murwillumbah Main Street HCA

- C4. *The height of buildings within the precinct must not obscure the prevailing roof forms and spires of the churches and associated buildings.*

Not applicable to the subject application.

- C5. *Alterations, additions and infill development above the current two storey height will must be setback behind the angle of the topmost part of the parapet when viewed from the other side of the street, as shown in Figures 3.3 and 3.4 to retain the two storey streetscape character.*

All works proposed as internal. There is no impact anticipated with this regard.

- C6. *Maintain the larger scale of ecclesiastic and educational buildings with a landscaped setting to the front and sides of buildings facing Murwillumbah Street, Nullum Street, Mooball Street, Byangum Road and Queensland Road.*

Not applicable to the subject application.

- C7. *Alterations, additional or infill development within the retail precinct must be of a scale or proportion which does not overwhelm or dominate an existing heritage item or contributory item, substantially change or destroy its contribution and importance within the streetscape and should generally occur at the rear of the building having regard to the setback requirements for rear laneways.*

All works proposed are internal. No impact on the MMSHCA is anticipated.

- C8. *Alterations, additions and infill development is behind the roof ridge lines to minimise any impact on the scale, form and height of the roof forms within the retail precinct.*

Complies, works are contained within the existing building.

### **Roofs, chimneys and parapets**

Alterations and additions:

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No clauses applicable to the subject application.

Infill development:

- C1. *Infill buildings within a conservation area should be designed sympathetically with the predominant roof forms and materials of the area.*

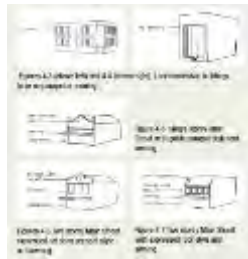
Complies, works are contained within the existing building.

Murwillumbah Main Street HCA

- C2. *Parapets define and offer continuous a built form which contributes to aesthetic significance of the Main Street streetscape. Roof forms to the laneway are expressed (not hidden behind a parapet) and respond to the need for daylight, ventilation and amenity. These roofs often express a sawtooth form.*

Not applicable to the subject site

- C3. *New roofs and parapets are to be respect the building typologies of the HCA and integrate with the appropriate typology as illustrated in Figures 4.3 - 4.7*



Not applicable to the subject application.

- C4. *Retain the expressed roof form pattern to Proudfoots Lane.*

Not applicable to the subject site.

### **Access, garages and carports**

Not applicable to the subject application

### **Verandahs**

General

- C1. *Verandah materials are typically timber. Glass balustrades or metal pool style fencing to front verandahs is not characteristic of the heritage conservation area and will not be supported.*

Not applicable to the subject application.

- C2. *Conserve verandahs and original timber detailing such as posts, brackets and balustrades, where possible.*

The subject application includes the construction of ensuite within the existing verandah. However, as discussed throughout this report the site is

relying upon DA04/0794. Should the windows as approved under DA04/0794 be installed the intent to preserve a verandah is lost. Whilst this is acknowledged Council's Strategic Planning Department have advised the following with this regard.

*"Whilst the windows in essence are a removable addition, it is not considered appropriate to call them such given ensuites are to be constructed in the space being enclosed. The ensuites will require full privacy given they front onto the main street of Murwillumbah and whilst the windows may be able to be removed in the future, this is considered an unlikely outcome given it would necessitate the removal of the ensuites".*

- C3. *Verandah styles should reflect and respect the typical design of the architectural period of the subject heritage item or HCA.*

*The applicant's SOHI advises "there will be a negligible change to the street view appearance of the verandah as a result of the new white painted windows in window openings. The works will not detract from the heritage values of the Murwillumbah Main Street Conservation Area or from the historical appearance of the Imperial Hotel. The white painted windows are chosen to match the white painted door and window frames on the ground level and on all elevations of the building".*

- C4. *Alterations and additions should retain open verandah design, where typical of the HCA, to ensure streetscape character is maintained and suitable solar moderation is achieved*

*The applicant's SOHI advises "as noted previously, the Imperial Hotel has a 'semi-open verandah' rather than a fully open verandah. Installation of windows in the window spaces of the verandah does not detract from the arrangement of window spaces across the façade. The use of vertical white framed windows will not dominate the building or change the Art Deco Spanish Mission style. This will match the ground floor openings and adds aesthetic value to the Imperial Hotel and the heritage conservation area".*

- C5. *Opening up verandahs that have been enclosed and reinstating missing details is encouraged.*

Noted.

- C6. *Prefabricated metal verandahs and awnings are not compatible with heritage items or conservation area streetscapes and are not supported.*

Noted.

- C7. *No replication or new introduction of historic features, such as bullnose verandahs, decorative fretwork of ironwork on infill buildings within a conservation area as this lacks historic context. These features may be reinstated to a historic building, where it can be shown they previously existed.*

Noted.

- C8. *Verandahs in association with infill development are sympathetic with the scale, form, height and materials of the conservation area features.*

Not applicable with this regard

### **Doors, windows and skylights**

Alterations and additions:

- C1. *Repair and reinstate significant fabric and materials rather than replacing.*

No replacement of materials or fabric is proposed.

- C2. *Original face brickwork or stonework should not be rendered, painted or bagged as this detracts from the heritage significance.*

Noted. Not applicable to the subject application.

- C3. *Tiled facades should not be covered, rendered or painted as this detracts from the heritage significance.*

Noted. Not applicable to the subject application

- C4. *Imitation timber cladding is not acceptable for additions to timber heritage items.*

Noted. Not applicable to the subject application

- C5. *Original timber detailing should preferably be repaired and replaced only where necessary.*

Not applicable to the subject application

- C6. *Modern materials, such as glass balustrades, metal pool fencing, insulated metal wall or roof panelling are not characteristic of heritage items or heritage conservation areas and will not be supported.*

Not applicable – none of the abovementioned materials are proposed.

- C6. *Colour details will be required with any development application.*

Not applicable to the subject application, works are internal.

- C7. *Colour schemes suitable to the period of the building should be used. Researching the original colour scheme may involve stripping existing layers of paint in a small sample area.*

Not applicable to the subject application, works are internal.

- C8. *The painting of heritage items in appropriate colours and/or tones is encouraged as this can reinforce their historic character.*

Not applicable to the subject application, works are internal.

Infill development:

- C9. Infill development must not replicate period details of original buildings but rather demonstrate respect for the material suite, design detailing and colours to ensure new development is sympathetic and integrates within the heritage conservation area.*
- C10. The use of typical colour schemes for infill development within a conservation area may be used where appropriate. Where not appropriate colours may be representative of the current period whilst respecting the traditional scheme composition.*
- C11. Colour and tone are effective as a unifying element to interpret characteristic heritage conservation area materials and colour within infill development.*

Not applicable to the subject application, works are internal.

### **Incorporation of new utilities**

Structures, such as solar panels, skylights and satellite dishes, placed on the roof of a heritage item or within a heritage conservation area can be intrusive. Similarly air conditioning units placed in windows or to the facade of a building can impact on the heritage significance.

- C1. Care needs to be taken to ensure that placement of solar panels is well considered to ensure efficiency of the panels whilst respecting the heritage significance.*

Not applicable – the subject application does not include any solar panels.

Notwithstanding the above, the development includes the installation of a operable skylights/roof windows (approximately 60cm x 40cm) to rooms 24, 25, Storerooms 1 and 2 and Rooms 26 and 27 to allow compliance with the Building Code of Australia. The works will be located within the newly constructed roof area as approved under DA17/0128 and will not be visible from the MMSHCA including Church Lane and Bent Street.

### **Fire upgrades**

Older buildings do not always meet contemporary building regulations. This is particularly so with many heritage buildings. It is important that these older buildings are upgraded to ensure the safety of their occupants. Whilst some minor upgrades may constitute exempt or complying development, some will also require development consent.

- C1. Proposed fire upgrades to heritage buildings are to be accompanied by a heritage impact analysis carried out by a suitably qualified person.*
- C2. Fire and other upgrades are to be consistent with the heritage significance applicable to the property. Upgrades and replacement of balconies, stairs, timber windows and other elements are to be sensitive to the significance of the fabric.*
- C3. Fire and other upgrading works need to balance the fire safety and other compliance needs with protecting heritage significance. In order to achieve the most appropriate outcome, applicants may need to utilise alternate solutions to meet BCA compliance issues.*



The subject application was referred to Councils Building Services Unit who advised the following:

*“The subject building is deficient in terms of fire safety and the current building works the subject of DA17/0128 are being upgraded in accordance with the Fire Engineering report as approved by Buildit Certification. The current proposed works relate to additional Class 3 sole occupancy units”*

The following condition has been applied with this regard:

The existing two storey building (Imperial Hotel) is the subject of *Fire Engineering Report - 2017-394 dated 19 July 2017 by Dolphin Fire Engineering Consultants P/L* in respect of NCC-BCA upgrading to achieve a satisfactory level of fire safety as required by Development Consent DA17/0128. Prior to release of a construction certificate the aforementioned report is to be amended or an appropriately qualified fire engineer is to review this report in respect of the works the subject of this consent (additional Class 3 SOU's and the like) and submit an amended/new Fire Engineering Report to the nominated PCA for assessment and approval.

It is not anticipated that any additional works are required with this regard. Notwithstanding this, a condition has been applied to ensure that should any works be required to comply with the requirements for Fire safety, that development approval be sought (unless exempt) and be accompanied by an update SOH.

Conclusion:

Council's Strategic Planning Unit has considered the proposed development from a Heritage perspective and in principle do not support the application, however acknowledge that the applicants reliance on DA04/0794 restricts the works to being "internal" a minimises the subject applications "impacts" on the MMSHCA.

Notwithstanding the above, similarly to DA17/0128 legal correspondence was provided with this regard and has been appended to this report as a confidential attachment (attachment 1)

Based on the above, whilst the proposed development is not *preferable* from a heritage perspective the development (similarly to DA17/0128) was considered consistent with *DCP Section A18* (and Clause 5.10 Heritage Conservation) as the area was not visible from outside and the "courtyard" has not been in typical "courtyard" for a number of years.

B22-Murwillumbah Town Centre

This section of the DCP operates to "support the conservation of the rich mix of significant buildings within Murwillumbah generally". The objectives of the DCP are to protect and enhance items of environmental heritage listed in the TLEP 2000 (now LEP 2014) and contributory items and ensure that developments are designed to be compatible with the heritage significance of listed items.

The guidelines for assessment require that proposals involving heritage items must comply with the heritage provisions of the relevant LEP and specify that the onus is on the proponent to demonstrate that the heritage significance of the item would not be compromised by the proposal. Further, onus is on the applicant to demonstrate that the architectural and streetscape value of the building would be retained or enhanced by the proposal.

In this instance, the building itself is not a heritage item however the site is within the Murwillumbah Main Street Heritage Conservation Area. The applicant has submitted a SOHI which advises the following:

The Imperial Hotel at 115 Murwillumbah Street is located within the Murwillumbah main street heritage conservation area. It is not currently a local heritage item for Tweed Shire Council. It has previously been recognised by the NSW Chapter of the Australian Institute of Architects as a 'significant 20th century building' and listed on that organisation's non-statutory register. This statement of heritage impact has assessed that the building and the site has local significance, particularly for Murwillumbah and in relation to its historical, associational and aesthetic values.

The current proposal is for internal alterations to the first floor area, to increase the existing number of approved Hotel accommodation units by five (5), resulting in a total of 27.

The internal areas have seen substantial alterations during the 1990s and 2000s. The current proposed works are part of the 2016 owner's amendments, maintenance and repair which will include repair and exposure of an original ceiling, colour and size matching and installation of the interior 1930s walls tiles and replacement of an original and later bar (within the bar space). The applicant's SOHI advises that these works are acceptable from a heritage perspective and will not adversely affect the identified heritage significance of the building. Works are taking place in areas which have been refurbished or replaced recently.

It is not considered that the proposed works will detract from the identified contributory quality that the subject building has for the mixed historical character of the Murwillumbah Main Street Conservation Area.

**(a) (iia) Any planning agreement or any draft planning agreement under section 7.4**

There are no planning agreements or draft planning agreements applicable to the subject site or development.

**(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

It is not known exactly what demolition works have occurred at this site, as works have been undertaken without consent.

Clause 94 Buildings to be upgraded

Due to the nature of the subject application (change of use) consideration of Clause 94 Buildings to be upgraded of the *Environmental Planning and Assessment Regulation 2000* must be considered.

Council's Senior Building Inspector advised the following:

*"The subject building is deficient in terms of fire safety and the current building works the subject of DA17/0128 are being upgraded in accordance with the Fire Engineering report as approved by Buildit Certification. The current proposed works relate to additional Class 3 sole occupancy units. A condition will be included requiring an additional alternate solution taking into consideration the previous report to be submitted to and approved by the nominated PCA prior to the issue of a construction certificate."*

In order to satisfy Clause 94 the following Prior to construction certificate conditions has been applied:

**Prior to Issue of Construction Certificate**

- *The existing two storey building (Imperial Hotel) is the subject of Fire Engineering Report - 2017-394 dated 19 July 2017 by Dolphin Fire Engineering Consultants P/L in respect of NCC-BCA upgrading to achieve a satisfactory level of fire safety as required by Development Consent DA17/0128. Prior to release of a construction certificate the aforementioned report is to be amended or an appropriately qualified fire engineer is to review this report in respect of the works the subject of this consent (additional Class 3 SOU's and the like) and submit an amended/new Fire Engineering Report to the nominated PCA for assessment and approval.*

- (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**

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject 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 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 development only includes minor modifications to external of the existing building and will therefore have little impact on the context or setting of the surrounding area. However, the conversion of areas to create additional commercial/retail tenancies has the potential to provide a more active street frontage that will contribute to the character and amenity of this town centre location.

Flora and Fauna

The proposed works are internal – no removal of onsite vegetation is proposed.

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

Surrounding Landuses/Development

The subject site is located within a town centre location, within an established Hotel that occupies a prominent position within the streetscape. The proposed development is considered to be in keeping with surrounding land uses and will provide an additional Hotel accommodation and the provision of amenities to existing rooms within locality. Provided the proposal is operated in accordance with the conditions of the consent, it is considered unlikely to impact on the residential amenity of nearby residents or impact on the character or amenity of the area.

**(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; is 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 alterations and additions to the upper level of the existing hotel resulting in the addition of five (5) Hotel units is therefore considered to warrant approval.

**OPTIONS:**

1. Approves the application.
2. Refuses the application for specified reasons.

Option 1 is recommended.

**CONCLUSION:**

The proposal is now considered acceptable, with appropriate conditions applied to ensure structural adequacy and fire separation is achieved prior to construction works. Accordingly, the revised plans are considered acceptable and consistent with Council's relevant planning provisions. The development will be inspected following completion to ensure compliance with the approved plans.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

**c. Legal:**

The applicant may appeal Council's determination in the Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Covering letter to SOHI (ECM 5658182)

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**3 [PR-PC] Development Application DA16/0660 for a Water Extraction Facility at Lot 3 DP 1125925 Dungay Creek Road, Dungay**

**SUBMITTED BY: Development Assessment and Compliance**

**FILE REFERENCE: DA16/0660**

mhm



Making decisions with you  
*We're in this together*

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

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

Council is in receipt of an application for the use of a rural property at Lot 3 DP 1125925; Dungay Creek Road, Dungay for the purposes of water extraction and transportation of the extracted water off site via water tankers to an unidentified location for further processing (being defined as the use of the site for a water bottling facility as per Tweed LEP 2014 Clause 7.15).

The application was originally lodged in September 2016 and it has had a long and protracted assessment as a result of the applicant submitting the necessary additional information sporadically. The application has also been delayed by more recent legal advice regarding Council's role in assessing Clause 7.15 of Tweed LEP 2014. As a result of this advice the applicant undertook his own hydrogeologist report and reviewed the impact of the proposed water extraction on existing and potential agricultural pursuits for the land. Furthermore throughout the course of the assessment of DA16/0660 the applicant has changed the parameters of the application being sought.

The application now seeks approval for:

- Use of two main bores each with a 19ML per year limit (and one additional monitoring bore) – one of which exists already internal of the site approximately 600m from Dungay Creek Road (38ML limit per year for extraction), the additional bore and any monitoring bore is part of this application;
- Construction of 4 x 30,000L above ground water storage tanks;
- Transferring water from the water storage tanks into water tankers (approximately 19m in length) for commercial purposes off site. The route of travel would be eastward along Dungay Creek Road to Tomewin Road;



- 5 truck loads of water between Monday – Friday only 7am – 8am and 9am – 3pm and 4pm and 7pm (but not exceeding the yearly allocation of 38ML)
- A new driveway access point adjoining Dungay Creek Road;
- Temporary generator power until mains power is connected and then generator backup for emergencies (amended Noise Impact assessment 22 November 2018). Generator use 7am – 6pm seven days a week.

At Council's request the applicant reviewed the suitability of Dungay Creek Road for 19m vehicles and has indicated that if Council imposes a condition of consent requiring him to do roadwork's he will do so at his expense.

The roadwork's necessary to Dungay Creek Road (at the applicant's expense) occur at eight locations to enable safe access for the proposed water tankers (some minor tree removal in these locations). A small section of Dungay Creek Road sits in private land and Council is considering rectifying these anomalies to ensure all public assets are in public land. If this occurs the applicant may then be in a position to lodge Section 138 Application as statutorily required for the necessary road works conditioned as part of the recommendation.

The development application was notified for 14 days on two separate occasions. Initially from 14 September to 28 September 2016. 84 submissions were received during this time consisting of 74 submissions objecting to the proposal and 10 submissions in support of the application. A petition with 87 signatures in support of the proposal was also received. Two late submissions (received after the notification period) objecting to the proposal were received.

The second notification period was between 18 July 2018 and 13 August 2018 where Council issued notification letters to all people who lodged an original submission advising that additional information had been received and could be viewed on Council's DA Tracker. 75 submissions (objections) were received during this time. Some submissions incorporated videos detailing the current condition of the road, one on behalf of the Dungay Action Group included comments from Professor Cook, and some were from qualified town planners on behalf of local residents. All of which are addressed at the end of this report.

The submissions objecting to the proposal are primarily focussed on environmental, traffic and amenity grounds with the principal concerns being:

- The potential impact of the water extraction on existing ground water availability and local creek water supply and the impacts of any shortages on agricultural viability, local biodiversity and sustainability more generally;
- Traffic safety issues having regard to the size of the water tankers and the existing carrying capacity of Dungay Creek Road and the potential conflict with other road users;
- Noise and dust from the trucks affecting the immediately adjoining neighbours; and
- Potential contamination of the site and the impact that this could have on water quality.

These submissions have been summarised and addressed throughout this report.

While water extraction licences have been issued by Water NSW for the extraction of up to 38ML per annum for the purposes of irrigation, Council must consider if it is satisfied that the

development will not have an adverse impact on natural water systems or the potential agricultural use of the land.

Based on the applicant's hydrological assessment report it can be concluded that:

- the water source is not under pressure of over extraction (given the volume of un assigned water under the Water Sharing Plan);
- the proposed extraction has a very low likelihood of impact on surface water flow, surface water quality or groundwater quantity in the local area; and
- the proposed extraction is unlikely to create a material impact to other groundwater users, or the environment.

It is considered that the applicant has demonstrated that the extraction of the water and its removal from the ecosystem will not impact on the potential agricultural use of both the landholding and the surrounding lands.

It is considered that the applicant has demonstrated that safe access to the site can be achieved and that Dungay Creek Road can be appropriately upgraded to service the proposal.

For these reasons the application is recommended for conditional approval which includes conditions of consent to minimise amenity concerns for nearby residents. Such conditions include the need for the applicant to seal the internal driveway to reduce noise and dust, the need for the applicant to plant a vegetative screen on his land to shield the water tanks and limit the site lines to the internal driveway where trucks will be travelling, limiting trucks to 5 loads per day Monday – Friday between 9am and 3pm. These hours are reduced from the applicants request 7am – 8am + 9am - 3pm + 4pm - 7pm) to give the neighbours a reprieve on weekends and to avoid confusion around school bus times.

Please note that Council's resolution from 15 November 2018 which in part states:

*“Council re-instigates a more comprehensive planning proposal to remove clause 7.15 of the Tweed Local Environment Plan to prohibit water extraction for commercial water bottling facilities in light of the precautionary principle in regard to the long term sustainability of this activity, safety and amenity concerns, wear and tear on unsuitable rural roads, and the high level of opposition in the community for this activity.”*

Does not absolve Council from its statutory obligation to assess the subject application on its merits having regard to the current planning legislation. Therefore the following report considers the information currently available to assess DA16/0660.

## **RECOMMENDATION:**

**That Development Application DA16/0660 for a water extraction facility at Lot 3 DP 1125925 Dungay Creek Road, Dungay be approved subject to the following conditions:**

## **GENERAL**

- 1. This development authorises a water bottling facility and its associated infrastructure (bores, pipes, tanks, driveway works and roadwork's) as defined in Clause 7.15 of Tweed LEP 2014, maximum extraction 38ML per year (as per**

Condition 46 which nominates how the year is measured), and shall be completed in accordance with the:

- original Statement of Environmental Effects (August 2016) as amended by:
- Coastline Letter 9 August 2017 and its attachments
- Knobel Consulting Technical Design Brief 31 August 2017 (later amended on 9 April 2018 for Bend A (site access), B, K & L only)
- Kobus Argent Thomas Neame Hydrogeologist Report 4 June 2018
- Craig Hill Acoustics Noise Impact Assessment dated 22 November 2018

The approved plans are as follows

- Drawing Number 2816A2 prepared by Fifeton Pty Ltd P Hurcombe dated 22/07/2016 (with bore 2 annotated by hand 20/11/2018)
- Drawing Number 2816A2 prepared by Fifeton Pty Ltd P Hurcombe dated 22/07/2016 (with amended driveway details through the subject site) - note this plan applies for the internal driveway only as the driveway access was later amended by Knobel consulting Plans for Bend A
- Sheet 1 - Filling Station/Truck Station Plan prepared by L Karlos
- Sheet 2 - Side elevation and height and retaining wall and truck station plan prepared by L Karlos
- Sheet 3 - Water Tank & Pipe Plan prepared by L Karlos
- Knobel Consulting Detailed Assessment Overall Site Layout Sheet 1 of 2 Plan P007 Issue 1
- Knobel Consulting Detailed Assessment Overall Site Layout Sheet 1 of 2 Plan P008 Issue 1
- Knobel Consulting Detailed Assessment Bend A Plan P013 Issue 1
- Knobel Consulting Detailed Assessment Bend A Plan P014 Issue 1
- Knobel Consulting Detailed Assessment Bend C only Plan P09 Issue 1
- Knobel Consulting Detailed Assessment Bend B only Plan P09 Issue 2
- Knobel Consulting Detailed Assessment Bend F & H Plan P10 Issue 1
- Knobel Consulting Detailed Assessment Bend K & L Plan P11 Issue 2
- Knobel Consulting Detailed Assessment Bend S Plan P12 Issue 1

except where varied by the conditions of this consent.

[GEN0005]

2. Site access and Dungay Creek Road shall be upgraded (at the applicants expense) via a valid Section 138 Application in general accordance with Knobel Consulting's "Technical Design Brief", dated 31 August 2017, except where varied by Knobel Consulting letterhead dated 9 April 2018 for Bend A (site access), B, K & L. The Construction Certificate for the site infrastructure (water storage tanks, pipes, and additional bores) is not to be issued until the applicant has received a valid Section 138 Application for site access and road works to Dungay Creek Road as required by this consent (Condition 18).

[GENNS01]

3. The Dungay Creek Road upgrade works associated with this development must at no time disturb or compromise the integrity of the existing dry rock wall along the frontage of Bend C at 282 Dungay Creek Road.

[GENNS02]

4. The developer shall provide a minimum of 2 appropriately sized Passing Bays between the developments access off Dungay Creek Road and the truck water extraction loading area, allowing 19m tankers to safely pass each other within the subject allotment and providing a sealed finished surface from the driveway entrance off Dungay Creek Road to the water extraction facility and turn-around, compliant with Council's "*Driveway Access to Property - Design Specification*" current version.

Full design detail of the proposed passing bays, parking and maneuvering areas shall be submitted to and endorsed by the Proponent's engaged Certifying Engineer, prior to the construction works commencing.

[GENNS03]

5. Tree removal shall be limited to two (2) native trees being one (1) *Toona ciliata* (Red Cedar) and one (1) *Guioa semi-glauca* (Guioa) at Bend C occurring within the proposed pavement upgrade footprint as shown on Dwg. No. P009 Issue 1 Detailed Assessment Bends 'B' and 'C' dated 09 August 2017 prepared by Knobel Consulting. The removal of the trees shall be compensated at a ratio of 1:5 (remove:replace) through the planting of local native trees of minimum 45 litre stock size. Any compensatory planting shall be undertaken to the satisfaction of Council's General Manager or delegate within the Dungay Creek Road Reserve to the south of Bend B (as shown on Dwg. No. P009 Issue 2 Detailed Assessment Bends 'B' and 'C' dated 03 April 2018 prepared by Knobel Consulting) within an existing cleared area no greater than 20 metres from the top of bank of Dungay Creek. Plants shall be installed in accordance with Council's Landscaping Standards - Dwg. S.D.701 Tree and Shrub Planting Details Issue C.

[GENNS04]

6. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

7. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

8. Erosion and Sediment Control shall be designed, installed and maintained in accordance with Tweed Shire Council Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[GENNS05]

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

9. Section 7.11 Contributions

Prior to commencement of any works associated with this consent payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution Plan.

**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 Section 7.11 Contribution 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 7.11 Contribution Plan current at the time of the payment.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- |   |                 |
|---|-----------------|
| <p>(a) Tweed Road Contribution Plan:<br/>         10 Trips @ \$3307 per Trips<br/>         (\$2,928 base rate + \$379 indexation)<br/>         CP Plan No. 4<br/>         Sector12a_4</p>   | <p>\$33,070</p> |
| <p>(b) Extensions to Council Administration Offices<br/>         &amp; Technical Support Facilities<br/>         0.2167 ET @ \$2187.14 per ET<br/>         (\$1,759.90 base rate + \$427.24 indexation)<br/>         CP Plan No. 18</p> | <p>\$473.95</p> |

[PCWNS01]

10. Prior to commencement of work, all actions or prerequisite works required at that stage, as required by other conditions or approved Management Plans or the like, shall be installed / operated in accordance with those conditions or plans.

[PCW0015]

11. The erection of a building (ground slabs and retaining wall) 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.

The Construction Certificate for the site infrastructure (water storage tanks, pipes, and additional bores) is not to be issued until the applicant has received a valid Section 138 Application for site access and road works to Dungay Creek Road as required by this consent (Condition 18 of this consent).

[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. Prior to commencement of work on the site, all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required to the satisfaction of the Principal Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position until approval is given to extract the first volume of water from site within the allocated 19m tankers.

[PCW0985]

15. Prior to commencement of work on the site, the Proponent shall engage a Certifying Engineer to endorse the design of the internal civil works (including but



not limited to the internal driveway including passing bays and truck turn-around area), supervise construction and certify the compliance of the completed works in accordance with the consent and good engineering practice.

The Certifying Engineer shall be a Professional Engineer (Civil) with current National Engineering Register (NER) or a Registered Surveyor.

[PCWNS02]

16. The Applicant must obtain all relevant licences and permits from State Agencies as statutorily required prior to commencement of works.

[PCWNS02]

17. Prior to commencement of work, documentary evidence shall be submitted to Tweed Shire Council demonstrating that a Controlled Activity Approval (CAA) under the Water Management Act 2000 has been obtained for any works within 40m of waterfront land (as defined under the Water Management Act 2000) or any works that involve an aquifer interference activity as defined under the Water Management Act 2000.

[PCWNS03]

18. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works required by this consent to the site access point and Dungay Creek Road. Application shall include (but not limited to) engineering plans and specifications undertaken in accordance with Council's Development Design and Construction Specifications for the following required works:

- (a) Road Upgrades along Dungay Creek Road shall be upgraded (at the applicants expense) in general accordance with Knobel Consulting's "*Technical Design Brief*", dated 31 August 2017, except where varied by the plans submitted under Knobel Consulting letterhead dated 9 April 2018 for Bend A (Site Access), B, K & L.
- (b) Construction of a new access off Dungay Creek Road to provide a rural driveway access in accordance with Council's Development Control Plan - Section A2 "*Site Access and Parking Code*" and Council's "*Driveway Access to Property - Design Specification*" (*current version*), allowing a 19.0m truck to safely entering and exiting the subject site, whilst achieving compliant sight distances to approaching traffic along Dungay Creek Road.
- (c) Decommissioning of the existing property access of Dungay Creek Road.
- (d) Bitumen or concrete sealing the development's access driveway from Dungay Creek Road to the water extraction facility and turn-around. All cattle grids are to be removed from this internal driveway to reduce noise to neighbours. The applicant is to be solely responsible for the maintenance costs of this internal driveway.
- (e) Submission of detailed design plans taking into consideration the required site access and Dungay Creek Road upgrade works as specified in Condition 2. The submission shall also include a detailed stormwater assessment of these upgrades to ensure applicable roadside drainage is provided in accordance with Council's Development Control Plan - Section A5 Subdivision Manual and associated Development Design Specifications.

- (f) Any existing driveways affected by the required upgrade works to Dungay Creek Road shall be appropriately reinstated to Council's satisfaction.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works/furnishings
- Stormwater drainage
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan (as applicable)

Application Fees shall be based on Council's hourly rate, as applicable in Council's adopted Fees and Charges current at the time of the assessment.

[PCWNS04]

19. Prior to commencement of work, application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any drainage works, including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works.

[PCWNS05]

20. Detailed engineering plans shall be submitted and approved by Council's General Manager or delegate prior to issue of construction certificate identifying the location and specifications of tree protection fencing in accordance with Australian Standard AS4970-2009 Protection of trees on development sites where considered necessary by Council in order to protect and manage vegetation during the construction phase.

[PCWNS06]

21. Detailed landscaping plans shall be submitted and approved by Council's General Manager or delegate prior to issue of construction certificate identifying the location and specifications of tree's to shield the internal driveway and storage tanks as much as possible from the adjoining properties to the west. All trees are to be located wholly within the subject property and should be located at least 5m from the property boundary to the west.

[PCWNS07]

22. Prior to commencement of work the applicant is to demonstrate how the development can be serviced by mains power. Mains power needs to be connected to the water pumps within 12 months of the first water truck lawfully leaving the site. In the first instance the proposal can utilise a generator subject to meeting the provisions of the acoustic assessment report prepared by Craig Hill Acoustics (Reference: 221118/1) dated 21 November 2018 in regard to acoustic barriers for the generators.

[PCWNS08]

23. Prior to commencement of work in association with the Construction Certificate the applicant is to engage a hydrogeologist to:

- (a) Undertake a further site visit to establish a suitable location for a monitoring sites and protocols.
- (b) Construct shallow bore(s) into the unconsolidated deposits to recover soil samples for qualitative assessment and to facilitate monitoring of any groundwater in these deposits.
- (c) Undertake a sample of creek water during a period of flow recession for comparison against groundwater quality of the fractured rock aquifer.
- (d) Undertake further pumping tests from the existing bore with contemporaneous monitoring of creek water level and groundwater level in the unconsolidated deposits, if this exists.

The findings of this information is to be submitted to both Tweed Shire Council and Water NSW in the form of a Water Extraction Management Plan for review and approval. The Water Extraction Management Plan should contain details such as:

- Monitoring requirements (location of monitoring bore)
- Any Required Ongoing Test & Reporting Mechanisms For Test Results
- Trigger points to stop water extraction
- Specifying the need for each bore to have a meter device as required by Condition 57
- Details of the log books required by Condition 58
- Bi -Annual reporting regime to Tweed Shire Council as required by Condition 58.
- Any other pertinent information recommended by the applicant's hydrogeologist.

[PCWNS09]

## DURING CONSTRUCTION

24. All proposed works are to be carried out in accordance with the conditions of development consent, approved Management Plans, approved Construction Certificate, drawings and specifications, approved S138 Application. [DUR0005]
25. Construction of a driveway within the subject allotment (with at least 2 passing bays) to service the development in accordance with the provision of Tweed Shire Council's Development Design and Construction Specifications and Council's "*Driveway Access to Property - Design Specification*" (current version). [DUR0055]
26. Construction work preparing the site for water extraction including the entering and leaving of construction 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]

27. All reasonable steps shall be taken to muffle and acoustically baffle all truck, plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.  
L<sub>Aeq, 15 min</sub> noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.  
L<sub>Aeq, 15 min</sub> noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence. [DUR0215]
28. 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]
29. 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 6.6 of the Environmental Planning and Assessment Act 1979. [DUR0405]
30. The use of vibratory compaction equipment (other than hand held devices) within 100m of any existing dwelling house, building or structure is strictly prohibited. [DUR0815]
31. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or his delegate. [DUR0985]
32. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction or service vehicles. Any work carried out by Council to remove material deposited on the roadway by vehicles associated with this development will be at the Developer's expense and any such costs are payable prior to any water being extracted from site under this consent. [DUR0995]
33. 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]

34. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works. [DUR1795]
35. Prior to the commencement of any road construction, pavement design details, including reports from a Registered NATA Consultant shall be submitted to Council for approval. The pavement shall comply with Council's Development Design and Construction Specifications. [DUR1805]
36. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Council's Development Design and Construction Specifications.
  - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement. [DUR1825]
37. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

**Roadworks**

- (a) Excavation of subgrade
- (b) Pavement – sub-base
- (c) Pavement - pre seal
- (d) Final Practical Inspection – On Maintenance
- (e) Off Maintenance inspection

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developer's Supervising Consulting Engineer.

The fee for the abovementioned inspections shall be invoiced upon completion of the road upgrade works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

38. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are maintained until Council is satisfied that the areas disturbed by works associated with this development consent are fully rehabilitated. [DUR2375]

[DUR2375]

39. Where works result in the creation of batters, embankments and/or cuttings greater than 1m high and/or slopes 17° (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan to be endorsed by Council prior to any water being extracted from site under this consent.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[DURNS01]

#### PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

40. 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 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

#### PRIOR TO FIRST WATER TRUCK

41. Prior to any water being extracted from site under this consent, all works / actions / inspections etc required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[USENS01]

42. Prior to any water being extracted from site under this consent, the applicant shall:

- (a) produce a copy of the “satisfactory inspection report” issued by Council for all works required under Section 138 of the Roads Act 1993.
- (b) provide Council with a properly dimensioned plan showing the relative position of existing fences, road formation and boundaries in the vicinity of the Dungay Creek Road upgrades approved under Section 138 of the Roads Act 1993. Any identified, encroaching road boundary fence are to be relocated to the correct alignment, unless agreed otherwise by Council.

[USENS02]

43. Prior to any water being extracted from site under this consent, a certificate of practical completion shall be obtained from Council’s General Manager or his delegate for all works required under Section 68 of the Local Government Act.

[USENS03]



44. Prior to any water being extracted from site under this consent, a certificate signed by the engaged Certifying Engineer shall be submitted to the Principal Certifying Authority to certify compliance with the consent and good engineering practice.

[USENS04]

45. Prior to any water being extracted from site under this consent, Council must undertake a Final Practical Inspection of the works and be satisfied that all conditions of consent have been complied with.

[USENS05]

46. Prior to the first truck attending the site for water extraction as approved by this consent the applicant is to write to Council and demonstrate compliance with all conditions of consent and request a start date for the yearly extraction totals.

[USENS06]

## USE

47. 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]

48. The development shall be carried out in accordance with the provisions of the acoustic assessment report prepared by Craig Hill Acoustics (Reference: 221118/1) dated 22 November 2018 unless varied by a specific condition of consent elsewhere in this determination notice.

[USE0305]

49. All plant and equipment installed or used in or on the premises:

- (a) Must be maintained in a proper and efficient condition, and
- (b) Must be operated in a proper and efficient manner.

In this condition, “plant and equipment” includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

50. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

51. Where required by conditions of this consent the applicant shall have installed and maintained for a minimum period of 12 weeks to the satisfaction of Council’s General Manager or delegate all compensatory planting works prior to commencement of use. Compensatory planting shall achieve 100% survival rate and plants shall be of good health and vigour by the end of the 12 week maintenance period.

[USENS07]

52. A vehicle no larger than a 19m truck in length shall service the site.

[USENS08]

53. Trucks accessing the site are restricted to the following hours at the subject site:

- \* 9am to 3pm - Mondays to Fridays only (to avoid the school bus)
- \* The water pumps can operate 7am – 7pm.

[USE0185]

54. Only one water truck associated with this consent shall be permitted to travel on Dungay Creek Road at any one time.

[USENS09]

55. No more than 5 trucks per day (5 in 5 out) (Monday – Friday) are permitted for water extraction purposes to the maximum annual extraction limit of 38ML. Should the extraction limit be reached in any given year water extraction is to cease immediately and not commence until the new year commences as per Condition 46.

[USENS10]

56. The applicant is to install a monitoring bore as determined suitable by the applicants Water Extraction Management Plan required by Condition 23.

[USENS11]

57. Each bore is to have a meter installed demonstrating extraction volume. The meter is reading is to be reported to Council biannually in a statement for review. The meter is to be made available to Tweed Shire Council upon request at any time.

[USENS12]

58. The site is to install a CCTV system that records truck movements to the filling station 24 hours a day, 7 days a week, 365 days a year, with data to be archived and held for a period of 3 months. The CCTV is to be set to date and time stamp. In addition, the site is to maintain a log book containing data on every truck that enters the site for water extraction purposes. The log book is to contain information including:

- (a) Truck length
- (b) Truck carrying capacity in volume
- (c) Licence Plate
- (d) Drivers Name
- (e) Volume of water taken
- (f) Time of day
- (g) Running tally of water extracted from the site

The log book is to be provided to Council biannually demonstrating compliance with the conditions of this consent. CCTV footage is to be provided upon request to enable Council to audit compliance.

[USENS13]

59. All pumps can utilise a generator for the first 12 months of operation until mains power is required to be connected as required by Condition 22. They must be located so that any noise impact due to its operation is minimised. The generator is to be acoustically treated or shielded as recommended in the acoustic assessment report prepared by Craig Hill Acoustics (Reference: 221118/1) dated 22 November 2018.

[USENS14]

60. The Applicant is to maintain all relevant licences and permits from State Agencies as statutorily required while ever acting on this consent. The State licences are to cover the extraction amount authorised by this consent being 38ML

[USENS01]

**REPORT:**

**Applicant:** R Dawes  
**Owner:** Mrs Cynthia M Dawes  
**Location:** Lot 3 DP 1125925 Dungay Creek Road, Dungay  
**Zoning:** Part RU2 - Rural Landscape and part 7(d) Environmental Protection (Scenic/Escarpment)  
**Cost:** \$30,000 (plus the cost of roadworks as recommended)

**Background:**

Site Details

The subject site is legally described as Lot 3 DP1125925 and is more commonly known as No. 298 or 306 Dungay Creek Road, Dungay. The site is located approximately 3.1km from Dungay Village (Tomewin Road) and 9km from Murwillumbah and the Queensland border by road.

The site has an area of 44.09ha with a frontage of 50.4m to Dungay Creek Road. The site is irregular in shape tapering out slightly from the Dungay Creek Road with a bottleneck approximately 380m long, before opening up to a width of approximately 400m and extending back approximately 1.3km from the public road.

The site has an existing driveway access from Dungay Creek Road, which provides access to the existing dwelling on the site (and now also provides access to the rear of the site where the existing and proposed bores are located). A private driveway from Dungay Creek Road to Lot 4 DP1125925 traverses the site to the rear of the existing dwelling and shed to provide access to an existing dwelling on Lot 2 DP1125925. Originally this application sought approval for use of the adjoining properties driveway for the water trucks via a right of way, however throughout the assessment of this application it was discovered that the subject site did not benefit from the right of way and internal access was arranged instead.

The front portion of the site is relatively flat with a slight incline from east to west and has been extensively cleared with a dwelling and shed located in the bottleneck area off Dungay Creek Road, before opening up to a wider cleared area. The rear portion of the site (approximately 30.6ha) has steeper land which is extensively vegetated.

The site is identified as Acid Sulfate Soils Class 5 and bushfire prone (containing Vegetation Category 1 and 2 and buffer areas). The rear portion of the site is identified on Council's GIS database as a fauna corridor with approximately three quarters of the site identified as a key habitat. The heavily vegetated area is mapped as being of High and Very High Ecological Status. A portion of the vegetation to the east and north of the site is identified on Council's mapping system as Secondary Koala Habitat.

A narrow portion of land extending from Dungay Creek Road along the eastern boundary of the site is identified as Regional Significant Agricultural land. This area of approximately 4,600sqm is the tip of a more extensive area of Regional Significant Agricultural extending up from Murwillumbah and the Tweed River. The site itself is identified in Council's Agricultural Land Capability as being suitable for grazing with occasional cultivation on the cleared section, with lands to the west and south similarly identified.

Due to the battle axe type configurations in this area this site is closely adjoined by:

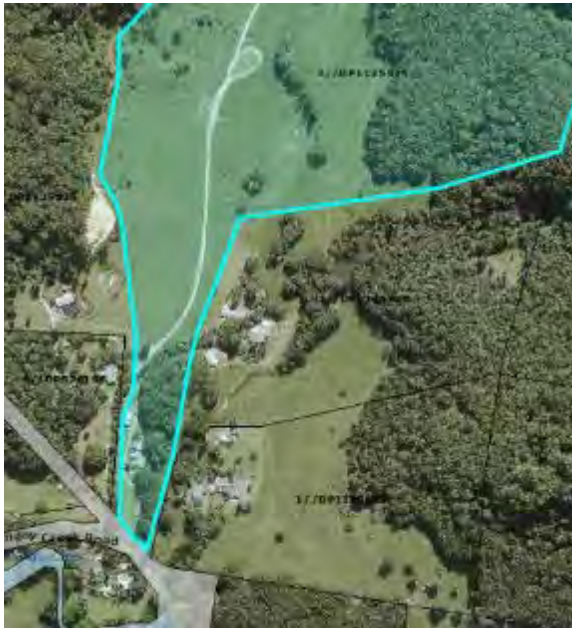
- Lot 6 DP576186 (314 Dungay Creek Road) which has a house within 20m of the driveway which proposes to accommodate the water trucks.



- Lot 4 DP1125925 (312 Dungay Creek Road) to the west, a large rural lot with an older house, existing shed and approval for a new dwelling (DA16/0374) shown below by an exposed pad which if the house is constructed would directly overlook the proposed filling station area for this development.



- The site adjoined by Lot 1 DP1125925 (298 Dungay Creek Road) and Lot 2 DP1125925 (298 Dungay Creek Road) to the southeast, both of which are currently owned by the same person as the subject site. As above, access to Lot 2 is via a private right of carriage which traverses the subject site.



- The site immediately opposite Lot 13 DP727427 (303 Dungay Creek Road) with its vehicular access to the west of the subject site and contains dwelling structures close to Dungay Creek Road.



The site is adjoined on its eastern boundary by Lot 4 DP546882 (699 Tomewin Road), Lot 177 DP755685 (747 Tomewin Road) and Lot 111 DP755685 (775 Tomewin Road), all rural lots. A 20m road reserve runs along the northern boundary of the subject site.

### History of the site

DA05/0093 - A development application for the subdivision of 5 lots into 4 lots was approved by Council in July 2005. The consent approved the following boundary adjustments:

#### **Pre-DA**

Lot 12 DP 727427 – 37.15 hectares  
 Lot 142 DP 755685 – 20.644 hectares  
 Lot 144 DP 755685 – 20.644 hectares  
 Lot 160 DP 755685 – 20.644 hectares  
 Lot 5 DP 820614 – 28.44 hectares

Note:

#### **Approved**

Lot 1 – 6.6 hectares  
 Lot 2 – 8.7 hectares  
 Lot 3 – 49.5 hectares (subject site)  
 Lot 4 – 66.5 hectares

Notes:

**Pre-DA**

Four dwellings were sited on Lot 12 while the remaining properties were generally unencumbered by built improvements and were generally utilised for agricultural purposes

**Approved**

The existing houses contained on Lots 1, 2 and 3 were all acknowledged as having existing use rights.

Lot 1 had two dwellings occurring on this allotment.

Lot 4 would remain vacant until such time as one of the dwellings on Lot 1 was removed or approved as an attached dual occupancy.

A Section 88B instrument was conditioned in the development approval creating restrictions as to user and rights of carriageway or easements.

The development approval was subject to a number of modifications.

DA05/0093.08 sought to amend Concurrence Condition No. 1 (as imposed by the then Department of Infrastructure Planning and Natural Resources) which prohibited any dwelling on Lot 4 until one of the existing dwellings on Lot 1 had been demolished. The condition was amended to allow the two dwellings on Lot 1 to be consolidated into a single residence or for the applicant to obtain approval for an attached dual occupancy.

The consent was further modified in January 2008 (DA05/0093.09) to amend the area of the lots as follows:

Lot	Pre-DA area	Approved area
Lot 1	6.6 hectares	7.887 hectares
Lot 2	8.7 hectares	9.211 hectares
Lot 3	49.5 hectares	44.09 hectares
Lot 4	66.5 hectares	69.55 hectares

The current application relates to Lot 3 above.

OSSM03154 – Approval issued on 1 October 2014 to operate an Onsite Sewage Management System on the subject site.

CDC17/0118 – Complying Development Certificate issued by a private certifier on 7 July 2017 for alterations and additions to an existing shed on the site.

SEP17/0055 – Approval issued on 4 September 2017 to install an onsite sewage management system on the site to serve the farm shed. A statement had been submitted with the application that the farm shed was for storage purposes and would not be used for habitation. A recent site inspection of the farm building (October 2018) showed it was still in a partial construction phase as the approved bathroom was not fitted out, the flooring remains concrete and the structure is generally being used for storage purposes. It is not currently in any form capable of being used as a separate habitable structure and therefore is compliant with its approval at this stage.

**Overview of the current proposal**

Note several amendments have been made since the original SEE.



The application seeks approval for a water extraction facility on the site, or as it is referred to in the Tweed Local Environmental Plan (LEP) 2014, a water bottling facility.

### Water Extraction

The site has one existing water bore and two other extraction licences for the extraction of 38ML per annum (refer to the following section for details of the licences). The applicant has advised that the second bore (to the immediate north east of the existing bore (Hydrogeologist 4 June 2018 letter) will be drilled at a later date. Location shown below:



The water is to be extracted from the approved bores and pumped into four (4) 30,000L capacity water tanks where it is to be stored prior to pumping to either a 16m long 28,500L water tankers or a 19m truck with a carrying capacity of 34,000L for transport from the site.

The applicant has indicated that the current proposed trucking company has 16m trucks with a carrying capacity of 28,500L but as the traffic report has been based on 19m trucks he wants the flexibility to use the 19m trucks if required.

With a total extraction limit of 38ML in any given year this volume would be reached as follows:

- $38,000,000L / 28,500L / 52 \text{ weeks} / 5 \text{ days} = 5.13 \text{ trips}$
- $38,000,000L / 34,000L / 52 \text{ weeks} / 5 \text{ days} = 4.29 \text{ trips}$

The recommended conditions of consent therefore state a maximum trips of 5 daily trips Monday – Friday (but not exceeding 38ML in any given year). The applicant is fully aware

that if he uses 19m trucks and uses 5 trips per day he will exhaust his extraction in 44.7 weeks of the year and would have to stop extracting for the last 8 weeks of the year.

Structures/equipment associated with the proposal will consist of an underground pump, four (4) above ground tanks, a UV light filtration system, an above ground pump and a truck hardstand area.

The applicant's original application (via the Noise Impact Assessment) detailed mains power would be supplied to the operation. An amended Noise Impact Assessment wants to be able to use a generator until mains power is connected or to be used in times of power failure. The report states that such generators would need to be shielded with acoustic treatment. Suitable conditions have been drafted in this way to ensure mains power is connected after 12 months.

From the plans submitted the storage tanks area 2.1m high and have a diameter of 3m to 4m. The tanks and filling area are located close to the existing bore with a setback of approximately 111m from the closest boundary (Lot 4 DP1125925). However Lot 4 is elevated above the subject site and the approved dwelling pad will have a direct line of sight to the filling operations.

While no details of landscaping have been provided, the applicant has indicated that there is adequate space for landscaping if required. Due to the elevation change on the land landscaping on the subject site will not shield the filling station from the new house pad area on Lot 4 however some landscaping will be of general benefit and could partially screen the above ground tanks.

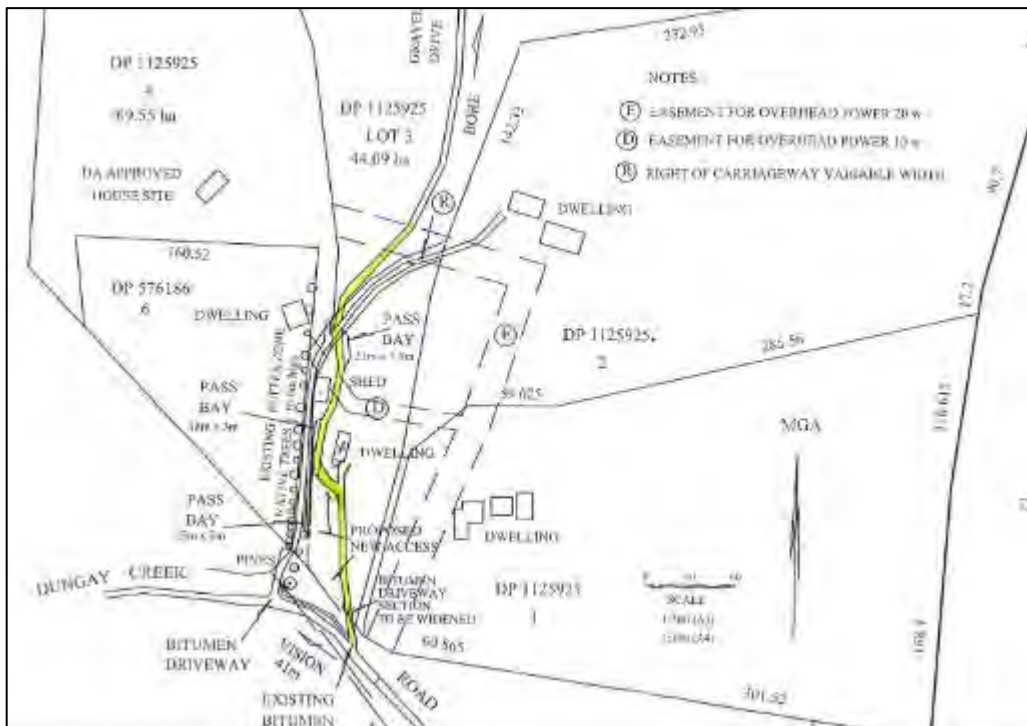


Figure 1: Site Plan – Internal Access (with new proposed driveway shown below in Fig 2)



Figure 2: Site Plan – New proposed Driveway Access

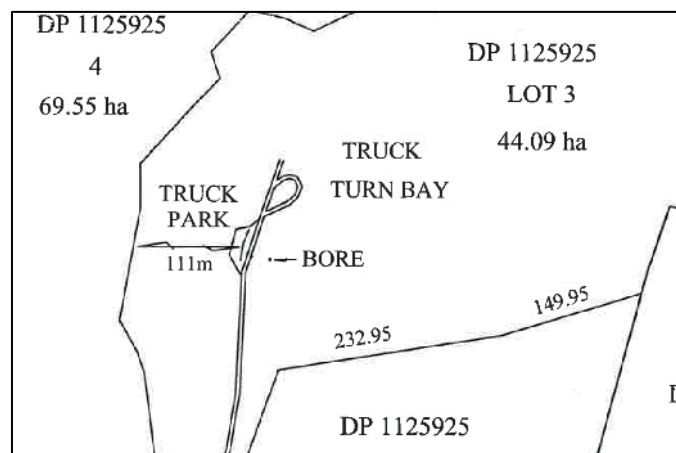


Figure 3: Site Plan – Existing bore and filling area and truck turning area

Transportation of extracted water

The applicant originally proposed to transport the water from the site in a semi-tanker with a tank holding a capacity of approximately 34,000L. The applicant was originally seeking approval for a maximum of 6 to 8 trucks of water to be removed from the site daily (generating 12 to 16 trips to and from the site). It was specified that this is not anticipated to be the regular daily truck movements (which is stated to be typically 3 trucks visits or 6 trips based on operating 365 days a year). However to accommodate possible stoppages due to flooding and/or machinery breakdowns, the applicant was originally seeking flexibility in the number of truck movements to ensure that the maximum extraction of 38ML could be achieved.

Throughout the assessment of the application (and as a result of submissions) the applicant has amended their proposal in regard to the number of trucks and days of the week of operation. The applicant now seeks approval for:

- Maximum 19m trucks holding a maximum 34,000L (possibly only 16m truck holding 28,500L)
- 5 loads a day (5 trips in 5 trips out to total 10 trips a day)
- Monday – Friday (5 days only)

With a total extraction limit of 38ML in any given year this volume would be reached as follows:

- $38,000,000L / 28,500L / 52 \text{ weeks} / 5 \text{ days} = 5.13 \text{ trips}$

- 38,000,000L / 34,000L / 52 weeks/ 5 days = 4.29 trips

The recommended conditions of consent therefore state a maximum trips of 5 daily trips Monday – Friday (but not exceeding 38ML in any given year). The applicant is fully aware that if he uses 19m trucks and uses 5 trips per day he will exhaust his extraction in 44.7 weeks of the year and would have to stop extracting for the last 8 weeks of the year.

The trucks would enter and exit the site via a proposed new driveway location (which improves the available sight lines for entry and exit to the site). The trucks would drive along the internal driveway for approximately 600m, turn around inside the site and arrive at the filling station adjoining the proposed water tanks. Upon filling the truck, the truck would leave by the same internal driveway in a forward direction.

### Operational Details

Extracted water is to be filtered on site and subjected to ultraviolet light treatment. The applicant has advised that the water is to be taken to a factory at an alternative site for further testing, treatment and processing prior to bottling. The location of the factory or the final product (drinking water, soft drink, etc) has not been identified. Further testing and treatment will be undertaken at the factory destination in accordance with the relevant State Health Authority requirements, though it is not specified if this relates to NSW or Queensland Health Authority requirements.

While the hours of operation of the underground pumps is not explicitly stated in the Statement of Environmental Effects, it is noted in the Noise Impact Assessment Report prepared by Craig Hill Acoustics that the underground spear pumps will operate 7am – 6pm seven days a week. These are daylight hours and subject to compliance with the acoustic barrier provisions as per the Noise Impact Assessment suitable conditions have been recommended.

The applicant was originally seeking approval to transport extracted water 7 days a week between 7.00am to 7.00pm daylight saving time and eastern standard time.

However the applicant has since amended this and is now seeking approval to transport water 5 days a week (M – F) between 7am -8am +9am- 3pm + 4pm -7pm. These hours are considered confusing and it is recommended they be brought back to 9am-3pm to avoid the school bus and give the neighbours a reprieve.

Each tank is anticipated to take 20 minutes to fill, during which time the engine will be turned off. The filling is to be undertaken by the truck driver with no other permanent staff employed. Checking and maintenance of the pumps and filters will be undertaken regularly.

### Proposed roadworks and amended driveway entry

While the final destination of the water trucks has not been identified, it is clear that the applicant proposes to use Dungay Creek Road to access Tomewin Road (approximately 3.1km from the site). From here, the applicant will use the Tomewin Road to head north to Queensland or south towards Murwillumbah.

The applicant has proposed a number of road upgrades (at his expense) to accommodate the water tanks on Dungay Creek Road.

The applicant's parameters for the required design is as follows:

*Stopping Sight Distance (SSD) analysis:*

- *SSD assessment is based on the principles of 'Austroads Guide to Road Design', Part 3 (AGRD-03), Section 5.3 & Table 5.6.*
- *70kph Design speed has been adopted for sight distance analysis. The existing road is sign posted at 60kph.*
- *105m SSD generally adopted to suit 70kph design speed. Reaction time of 2.0 seconds adopted in line with AGRD-03 Table 5.2.*

*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 0.6m separation (for sections of road only where adequate SSD is not achievable).*
- *The width of the existing bridge adjacent Bend 'N' is insufficient, such that safe passing of the above vehicles cannot be accommodated. Appropriate signage has been nominated in order to address this issue.*

*Turning templates were performed along Dungay Creek Road in line with the above widening philosophy. These turning paths are shown in plans K3858-P001 to K3858-P006. Where the required width was not available and suitable sight distance was not achievable, road widening was required. Sight distance lines are also shown on the above plans.*

*The required road widening design to facilitate the design truck operating to and from the site are shown in plans K3858-P007 to K3858-P012.*

The applicant is proposing to undertake upgrading works on Dungay Creek Road including road widening at eight (8) locations (Bends A, B, C, F, H, K, L and S). While this upgrading work would be undertaken by the proponent, the relevant construction permits via a Section 138 Road Application (under the Roads Act) and possible Construction Certificate would be required and has been conditioned as part of the recommendation for approval.

An overview of the proposed upgrading works is presented below:





Figure 4: Proposed Road Upgrades Overview – Site to 180 Dungay Creek Road

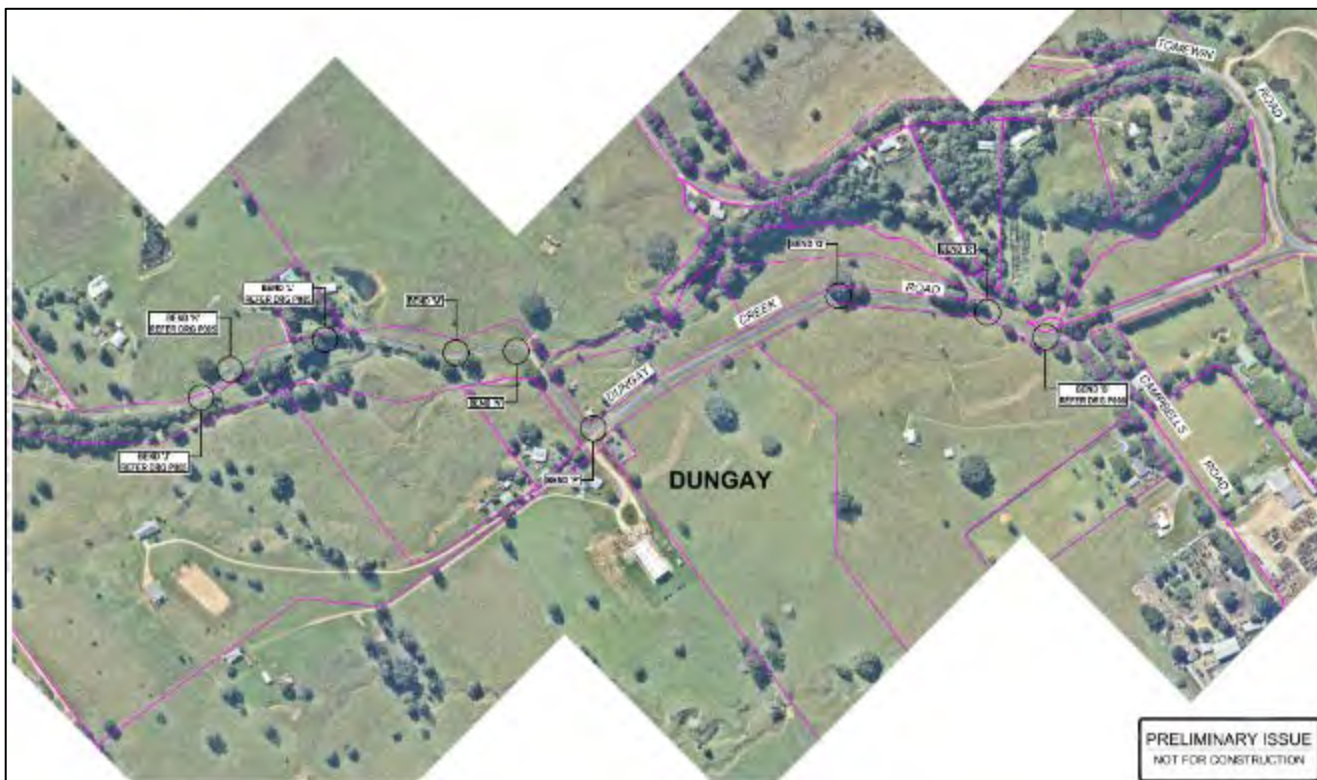


Figure 5: Proposed Road Upgrades Overview – 180 Dungay Creek Road to Tomewin Road

Site Access (Bend A)

The applicant's consultant has stated that it is proposed to alter the proposed entry location to the site to better facilitate suitable site distance. Drawing K3858/P013 and Drawing K3858/P014 shows the possible site distances of 130m and 136m for the new proposed access. The speed environment has been analysed and determined that the radius of the







Figure 7: Proposed road upgrade - Bend A (entering site)



Figure 8: Proposed road upgrade - Bend B





Figure 9: Proposed road upgrade - Bend C (adjacent to 282 Dungay Creek Road) on southern side of road to avoid rock wall

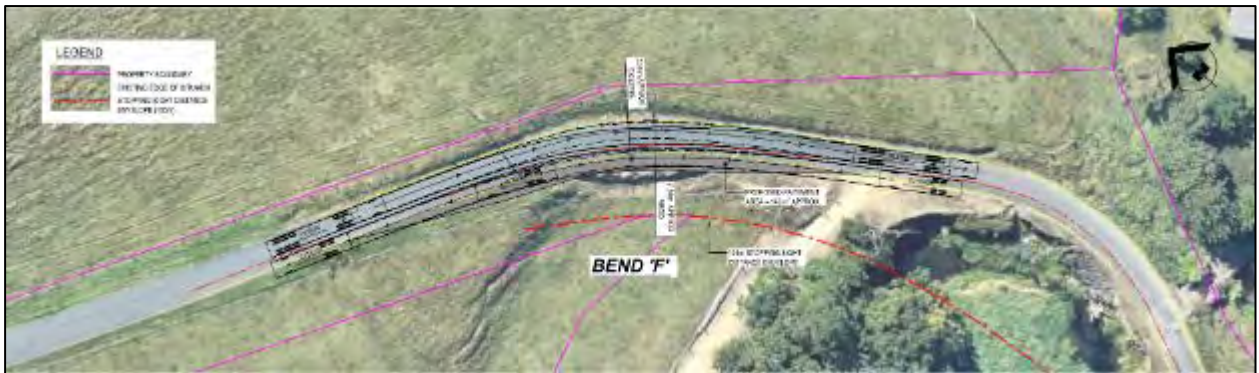


Figure 10: Proposed road upgrade - Bend F (adjacent to 230 Dungay Creek Road)



Figure 11: Proposed road upgrade - Bend H (adjacent to 180 Dungay Creek Road)



Figure 12: Proposed road upgrade - Bend K (adjacent to 95 Dungay Creek Road)

Please note that at this bend the current public road encroaches onto private land as follows:



This anomaly is common in rural areas and will be rectified by Council to ensure all public road assets occur within a nominated public road reserve. Once Council rectifies this anomaly it will be open to the applicant to apply to Council as the asset owner (Road Authority) under the Roads Act to undertake any road widening deemed necessary to accommodate the proposed development.





History of the application DA16/0660

The current application was lodged with Council on 1 September 2016. The application was originally notified from 14 September to 28 September 2016. 84 submissions were received during this time consisting of 74 submissions objecting to the proposal and 10 submissions in support of the application. A petition with 87 signatures in support of the proposal was also received.

The applicant was requested to submit Further Information on 21 October 2016.

A response to the request was not fully responded to until 26 October 2017.

On 21 November 2017, the applicant was requested to submit additional information to address outstanding matters not yet addressed or raised as a result of the further information submitted.

All required information was not fully provided until June 2018 when the amended hydrogeological details were provided.

- 6 December 2017 Amended Noise Impact Assessment
- 3 March 2018 Kobus Argent Principal Hydrogeologist Commentary
- 9 April 2018 - Knobel Consulting response to Information Request From Council;
- 4 June 2018 - Kobus Argent Principal Hydrogeologist Amended Commentary

Any person who made a submission to the original application was notified of the development application and was again given an opportunity to comment on the amended application between 18 July 2018 and 13 August 2018.

Late clarifying information regarding the proposal was received in November 2018 regarding:

- Truck carrying capacity and
- Power source

A more detailed breakdown of the application chronology is set out below:

<b>Date</b>	<b>Action</b>	<b>Details</b>
1.9.2016	Development Application lodged with Council.	The application seeks approval for a water bottling facility.
5.9.2016	Comments received from Council's Building Unit.	Unit had no objection to the proposal subject to the appropriate consents being imposed on any consent issued.
6.9.2017	Council issued notification letters to owners of 18 adjoining properties advising that an application had been received and could be viewed for a period of 14 days from 14/9/2016 to 28/9/2016.	
12.9.2017	Comments received from Council's Environmental Health Services Unit.	Unit recommended that additional information be sought in relation to potential ground contamination as it is unknown if previous surrounding banana plantations have contaminated the groundwater source at the existing and proposed bore locations. It was also recommended that



Date	Action	Details
		information be sought on the proposed use of the water being extracted and its suitability for any such use.
14.9.2016	Application advertised for a period of 14 days from 14/9/2016 to 28/9/2016.	The proposal was advertised in Tweed Link.
14.9.2016	Comments received from Council's Environmental Waste Management Unit.	Unit advised that the proposal does not have any implications on Council's Domestic Waste Collection Service and that the operator will need to enter into a commercial arrangement for their management of waste.
14.9.2016	Council issued notification to Office of Water that the application had been received.	The Office was requested to confirm that two extraction licences had been issued for the site.
14.9.2016	<p>Water NSW confirmed that two licences exist on the site and that an application for a third licence is currently under assessment.</p> <p>No comments were made in relation to the development proposal.</p>	<p>Water NSW advised that Licence 30BL207306 which exists on the site pertains to an existing bore and relates to extraction for stock and irrigation purposes.</p> <p>Licence 30BL207311 is for a proposed bore on site for irrigation purposes. The two licences authorise an extraction of 38LML.</p> <p>The correspondence advised that a licence for a third bore was currently under assessment by Water NSW – The applicant was informed by Water NSW that no additional water would be granted under this application and that it would be included in the yearly allocation of 38ML for irrigation purposes.</p> <p>Water NSW advised that the imminent conversion of the licences under the Water Management Act 2000 would provide exemptions in relation to the use of the water where the use was in accordance with a development consent.</p>
14.9.2016	NSW Rural Fire Service (RFS) issued an acknowledgment of receipt of application.	
21.9.2017	Council sought clarification from Water NSW on advice of 14.9.2016 in relation to the potential licensing of a bore where the purpose would not be categorised under a licence issued under the Water Management Act 2000.	Water NSW was requested to clarify who would be responsible for water quality and quantity in the event of a licence being issued for drinking purposes based on a development consent issued by a consent authority.
21.9.2016	Council were advised by a third party that advertising material for the application had been relocated without Council's permission.	The matter was referred to Council's compliance unit for investigation.
22.9.2016	Water NSW provided clarification on the correlation between the use and the licences and the obligations of Water NSW and the consent authority in relation to water quality.	<p>Water NSW advised that the two existing licences on the site were sought for irrigation purposes (water bottling not being permitted on the site under the Tweed LEP at this time).</p> <p>The two current groundwater licenses would, following the finalisation of the third application, be converted under the Water Management Act 2000 to a water supply works and use approval and a water access license for a share component of 38ML.</p>

Date	Action	Details
		<p>It was further advised that while Water NSW may authorise and regulate the quantity of water taken, they do not regulate the water quality. They recommended that the development consent would set the water quality standard that is acceptable (as per Australian drinking water quality guidelines), including what water quality testing is required and at what intervals.</p> <p>They advised that the consent could also regulate volume through limiting truck capacity and trips.</p>
26.9.2016	Comments received from Council's Traffic Engineering Unit	<p>Unit advised that the relevant issues for consideration included whether the road is suitable for the proposed vehicle and whether the increase in traffic movements would impact on the road's capacity or safety.</p> <p>It was recommended that the applicant provide further information on how a 19m articulated vehicle can safely travel along Dungay Creek Road and enter and leave the site safely. This information would need to consider the geometry of the road, sight distance around curves and the width of the road. It would also need to include a turning template for the proposed driveway.</p> <p>The referral report identified a number of items to be addressed in a Request for Further Information (RFI) to the applicant including details of proposed road upgrades.</p>
28.9.2016	Expiry of public submission period.	80 submissions received during this time consisting of 73 submissions objecting to the proposal and 7 submissions in support of the application. A petition with 87 signatures in support of the proposal was also received.
28.9.2016	Mayor Milne requested the application be called up to Council for determination.	Proposal seconded by Councillor Bagnall.
29.9.2016	Council issued a request to Water NSW to provide any information they may have (based on issue of licences) on the impact of extracting 38ML per annum on the natural water systems and the potential use of the land for agriculture now and in the future.	
30.9.2016	Owner of Lot 4 DP112595 notified Council that consent was not given to lodge the application over their land or to use the land for access.	The application as originally submitted relied on a Right of Way through Lot 4 DP112595 for access from site to Dungay Creek Road.
13.10.2016	Additional comments received from Council's Environmental Health Services Unit.	Following a number of submissions to Council relating to amenity impacts, including noise generated by increased traffic on Dungay Creek Road, dust generation and noise associated with pumps/ generators on site, it was advised that the applicant be requested to provide a noise impact assessment that considers the potential impacts on neighbouring developments and proposed increased traffic. The report to include amelioration measures necessary to control noise impacts from the site.
21.10.2016	Council issued a Request for Further Information to the applicant seeking addition information in relation to:	In summary, the applicant was requested to submit further information in relation to the following:

Date	Action	Details
	<ul style="list-style-type: none"> <li>• Owner consent for use/upgrade of right of way,</li> <li>• Traffic &amp; road safety,</li> <li>• Hydrogeology analysis,</li> <li>• Land contamination investigations,</li> <li>• Proposed use of water,</li> <li>• Noise impact assessment,</li> <li>• Justification for proposed hours of operation, and</li> <li>• Response to submissions to proposal</li> </ul>	<ul style="list-style-type: none"> <li>• Owner's consent from Lot 4 DP112595 to utilise the right of carriageway. Alternatively, the proposed access to be modified to be entirely from and within the subject site demonstrating an arrangement suitable for a 19m truck.</li> <li>• An engineering assessment of Dungay Creek Road from Campbells Road to, and including, the driveway access to the subject site to confirm that the road is suitable for the design water tanker vehicle,</li> <li>• Provision of sightlines of 110m where sealed road width does not permit safe passing,</li> <li>• Confirm compliant passing width on straight road sections and identify areas where shoulder widening is required with details of any proposed road upgrades,</li> <li>• A hydrogeology analysis prepared by a suitably qualified hydrologist to determine if the removal of the water for commercial wholesale purposes will adversely impact on the natural water systems or potential agricultural use of land as outlined in Clause 7.15 of Tweed LEP 2014,</li> <li>• A copy of the water extraction licences and associated conditions and Water Sharing Plan,</li> <li>• A preliminary contaminated land report providing evidence that the groundwater to be extracted has not been contaminated by banana plantation activities,</li> <li>• Detailed information on the proposed use of the extracted water and it's suitability for the proposed use, demonstrating compliance with NSW Health requirements (as relevant),</li> <li>• A noise impact assessment that considers the potential impacts from the proposed site activities upon neighbouring developments and increased traffic,</li> <li>• Demonstrate the necessity for the long operating hours proposed given limits on extraction. Applicant recommended to limit the operating hours to normal business hours,</li> <li>• Comments on issues raised in submissions to Council on the proposal.</li> </ul> <p>The applicant was advised that comments from NSW Department of Primary Industry and Office of Water were outstanding and that on receipt of same, additional information may again need to be requested.</p>
11.11.2016	<p>DPI Water (via NSW Water) advised that Water NSW granted the subject irrigation licences in accordance with policies and assessment procedures endorsed by DPI Water's hydrogeologists. They do not believe that any further comment or input is required by them in regards to this development proposal.</p>	<p>The correspondence advised that Water NSW's assessment involved the granting of licences for irrigation purposes and no other commercial use. The use of water for a water extraction facility is determined under development approval and therefore any decision on the development consent should be reliant on Council sourcing their own information to form a basis for their decision.</p>
2.2.2017	<p>Council requested the applicant to provide a written update on the status of the response to the RFI issued on 21.10.2017.</p>	<p>A response to the RFI of 21.10.2016 was still outstanding after more than 3 months.</p>

Date	Action	Details
17.3.2017	In the absence of any response to correspondence of 2.2.2017, Council again requested the applicant to provide a written status update on RFI.	A response to the RFI was still outstanding after almost 5 months.
21.3.2017	The applicant advised Council that they were in the process of compiling a consolidated response and anticipated that this would be submitted to Council by end of May 2017.	
22.3.2017	Council re-issued a copy of the RFI letter of 21.10.2016 to the applicant and his agent.	
28.3.2017	Council advised the applicant that as per the RFI letter of 21.10.2017, they were of the opinion that Lot 3 does not have a legal right of access over the driveway of Lot 4 DP112595 and advised the applicant to cease using the access unless evidence to the contrary was produced.	The applicant was also issued with driveway construction standards set out in SEPP (Exempt and Complying Development Codes) 2008 for the construction of a driveway or hardstand area as exempt development.
5.5.2017	In the absence of a response to the RFI letter of 21.10.2016, Council advised the applicant that unless the necessary reports could be submitted within 14 days, that the application should be withdrawn and re-lodged when the necessary paperwork was prepared.	A response to the RFI was still outstanding after 6 and a half months.
8.5.2017	The applicant advised that the response to the RFI letter was still being compiled and would be submitted as soon as possible.	The applicant indicated that he was now proposing to relocate the access driveway to within the site. The traffic, hydrology and environmental assessment reports were being finalised. It was requested that the submissions be re-issued.
14.6.2017	Council requested the applicant to confirm when the response to the RFI letter would be submitted.	
26.6.2017	<p>The applicant submitted a partial response to the RFI letter:</p> <ul style="list-style-type: none"> <li>• Revised driveway plan;</li> <li>• Results of soil tests.</li> </ul> <p>The applicant advised that extracted water would be delivered to a factory offsite where it will be processed and bottled for drinking purposes. At the time of bottling, the water will be tested against relevant health standards. The applicant submitted that a noise impact assessment was unwarranted and was not being prepared.</p>	<p>The applicant advised that the traffic assessment and hydrogeology assessment report being completed.</p> <p>The soil investigation report submitted did not relate to the subject site.</p>

Date	Action	Details
25.7.2017	Council advised the applicant that the response in relation to the noise impact assessment was not satisfactory. The applicant was advised to withdraw the application within 7 days of date of correspondence.	
27.7.2017	The applicant advised Council that he would endeavour to submit the outstanding requested information within 14 days.	
27.7.2017	Council advised the applicant that if the RFI was not responded to in full by midday 9.8.2017 that the application would be recommended for refusal.	Correspondence issued 9 months after RFI issued.
9.8.2017	<p>The applicant submitted the following information:</p> <ul style="list-style-type: none"> <li>• Cover letter addressing the items raised in the RFI,</li> <li>• Soil investigations results,</li> <li>• Revised plans for driveway access,</li> <li>• Noise impact assessment report,</li> <li>• Water Extraction Licences (3),</li> <li>• Engineering Traffic Plans,</li> </ul> <p>The traffic report was still outstanding.</p>	<p>The cover letter outlined the following:</p> <ul style="list-style-type: none"> <li>• A site specific hydrogeology analysis was not undertaken and was not deemed by the applicant to be warranted. The applicant stated that it should not be the owner's responsibility to undertake a hydrogeology analysis of the groundwater that is managed by Water NSW.</li> <li>• The soil results were based on two soil samples taken from within 3m of the pump/bore.</li> <li>• The proposed hours of operation were reduced to 7.00am to 7.00pm</li> <li>• A brief response to submissions was included.</li> </ul>
30.8.2017	Council issued correspondence to the applicant advising that the traffic report was still outstanding, that the soil investigations results did not satisfy the requirements for a preliminary contaminated land report as requested and that the noise assessment report was inadequate – lacking detailed analysis of the predicted noise levels against the adopted criteria.	The applicant was requested to withdraw the application. Alternatively Council would initiate the assessment report recommending refusal based on the information submitted.
31.8.2017	<p>In response to the correspondence of 30.8.2017, the applicant advised as follows:</p> <ul style="list-style-type: none"> <li>• the traffic report and amended noise report would be available within 1 day,</li> <li>• contended that Council's request for rigorous soil sampling and investigation was excessive when ground disturbance is minimal and appropriate testing and monitoring of the water will be undertaken at the factory prior to bottling.</li> </ul>	

Date	Action	Details
	The applicant advised that he did not wish to withdraw the application.	
31.8.2017	The applicant submitted the amended noise assessment report.	
1.9.2017	Council again issued the applicant with advice that the soil investigation results submitted were not adequate to allow Council to determine the application.	The applicant was advised that the historic use of the site in growing bananas is identified as a potentially contaminating activity. Potential contaminants of concern for historical banana growing sites include arsenic and organochlorine pesticides that may contaminate groundwater. It was acknowledged that laboratory testing had been undertaken however the works do not meet the minimum standards outlined in the NSW EPA <i>Guidelines for Assessing Banana Plantation Sites</i> .
1.9.2017	The applicant submitted the traffic report to Council.	The report was not a traffic impact assessment but a technical design brief of a proposed road upgrade for Dungay Creek Road. The report recommended upgrading in specific locations along Dungay Creek Road between Campbells Road and the proposed access for the development.
19.9.2017	Council's Development Engineer and Traffic Engineer undertook a site inspection to assess road upgrade proposals.	
22. 9.2017	Comments received from Council's Planning and Regulation Division (Engineering Assessment) Unit	<p>It was recommended that approval could be issued by way of a deferred commencement subject to the imposition of appropriate conditions.</p> <p>It was noted that while the question of a safe and compliant access was to be assessed by Council's Traffic Engineer, concerns were raised that sight distances at Bend A may not be achieved.</p> <p>Concern was also raised in relation to proposed widening at Bends J and K where works are on private property outside of the control of the applicant.</p> <p>The referral report advised that given the proposed road widening at Bend J and K on private land (outside the ownership of the applicant) a deferred commencement would be required if the application were to be supported.</p>
26.10.2017	The applicant submitted a preliminary site contamination report to Council.	The report concluded that it appears that the risk of Contaminants of Potential Concern (COPC) from current or past agrichemical use associated with intensive land use exceeding groundwater investigation levels is minimal and that any CPOC are likely to be bound to the soil particles in the upper soil profile.
16.11.2017	Council advised the applicant that based on legal advice and an assessment of technical report of the road upgrades (submitted 1.9.2017), a letter requesting further information would be forthcoming.	



Date	Action	Details
21.11.2017	<p>The applicant was advised that Council received legal advice that Council has no power to grant development consent for the purposes of a water bottling facility on the land unless Council itself is satisfied that the development will not have an adverse impact on the natural water systems or the potential agricultural use of the land. Council requested the applicant to submit outstanding information and other items raised as a result of the responses submitted to date. The matters related to:</p> <ul style="list-style-type: none"> <li>• A hydrological assessment and agricultural review,</li> <li>• Further detail/modification of proposed road works and ecological impacts, and</li> <li>• Traffic noise.</li> </ul>	<p>The applicant was advised that an additional expert report which includes commentary from a person with hydrogeological expertise as to the likely impact of the water bottling facility on the natural water systems was required.</p> <p>Furthermore, Council required the same evidentiary approach to be applied with regard to the impact of the development on potential agricultural use of the land and clarification as to what the land owner's actual intentions are for future agricultural pursuits.</p> <p>The applicant was also requested to undertake the following investigations in relation to the proposed road works (Refer to Figure 4 and Figure 5 for location of bends):</p> <ul style="list-style-type: none"> <li>• An assessment for Bend A considering a 19m truck entering and existing the site having regard to the approaching traffic along Dungay Creek Road, including an environmental assessment of any tree removal/pruning,</li> <li>• Amended plans for Bend C to avoid native vegetation removal and offset measures to address any residual impacts,</li> <li>• Advised that upgrading Bend H could trigger the need for a controlled activity permit from the NSW office of Water due to proximity to creek – though no additional information sought in this regard at this time,</li> <li>• Amended plans for Bends K and L to avoid tree and native vegetation removals and impacts on Endangered Ecological Communities (EEC) and offset measures to address any residual impact.</li> </ul> <p>The applicant was also requested to update the Noise report to demonstrate that the methodology satisfies NSW Road Noise Policy and to address intrusive nature of traffic noise to residences on Dungay Creek Road.</p> <p>The applicant was advised to submit the additional information within 30 days.</p>
15.11.2017	<p>Additional comments received from Council's Environmental Health Services Unit.</p>	<p>The additional information provided from HMC Environmental Pty Ltd dated 6 September 2017 relating to potential site contamination was reviewed. The information provides an assessment of all available information including aerial photography and lab testing data from soil samples taken in close proximity to the abstraction wells.</p> <p>The information has been assessed by a suitably qualified and experienced consultant and concludes that there is minimal risk of contamination from historical activities.</p> <p>No further contaminated land considerations are required.</p>
6.12.2017	<p>The applicant submitted an amended Noise Impact Assessment to address road traffic noise</p>	
4.3.2018	<p>The applicant submitted a hydrogeologist letter to support the application which was referred to Water NSW for review</p>	

Date	Action	Details
20.03.2018	The applicant submits information regards the site agricultural abilities having regard to Clause 7.15 of the Tweed LEP 2014	<p>I refer to the above application and Council's request to demonstrate what impact the development will have on potential agricultural use of the land and what the land owners actual intentions are for future agricultural pursuits.</p> <p>My family has owned the property since 1970. The property has been farmed for many purposes. It is the intention to keep the farm in our family for the long term.</p> <p>Over the last 25 years the property has been used for grazing by cattle. It is the intention to continue cattle grazing as a source of income.</p> <p>The proposed development has negligible impact on current or future farming pursuits. The property is 44 hectares and the land to be developed/disturbed is minimal and positioned such to have minimal impact on the farm. There is negligible loss of grazing land. No further roads are necessary as an existing farm road will be used. The structures are positioned immediately adjacent to this road. The new structures generally comprise water storage tanks which are consistent with such structures on a farm.</p>
6.04.2018	NSW Water advice on bore status.	<p>Groundwater work GW307778 was originally drilled under a domestic basic landholder right approval that was granted in 2014.</p> <p>The landholder then made application to change the purpose of the bore to irrigation and stock purposes and a Water Act 1912 licence was granted in early 2016 which later converted to a combined approval and water access licence.</p>
9.04.2018	The applicant submitted amended engineering/traffic details pertaining to Bend A, C, K and L to address Council's request for additional/clarifying information	
15.05.2018	DPI Water (via NSW Water) respond to applicants hydrogeologist letter	<p>The technical report prepared by Kobus Argent, dated 4th March 2018, details how their assessment has concluded that the extraction of up to 38ML/y from bore GW307778 is unlikely to create a significant or material impact on other water users or the environment.</p> <p>It is important to note that GW307778 was authorised for irrigation and stock purposes under Water Act 1912 bore licence 30BL207306. The licence was granted with a condition that limited the annual extraction from this bore to a maximum of 19 megalitres. Two other irrigation bore licence were granted for this property for proposed bores.</p> <p>The licensed entitlement between all three licences was 38 megalitres, however, each licence was subject to a condition which limited the maximum annual extraction to 19 megalitres from any individual bore. These three bore licences converted to an approval under the Water Management Act 2000 and while the conditions of the North Coast Fractured and Porous Rock Water Sharing Plan have not yet been finalised, the conditions limiting the maximum extraction from any individual bore will be carried forward.</p> <p>Dol Water have advised that based on the available information, they do not support entitlement consolidation for extraction from an individual bore. Dol water cannot advise with confidence as to the significance of a hydrological connection between the bore GW307778 and the shallow aquifer / surface water systems under the proposed increased extraction. Dol Water recommends that additional assessment work would be required to support the application prior to approval consideration. Further details on the requirements are available at <a href="https://www.water.nsw.gov.au/_data/assets/pdf_file/0009">https://www.water.nsw.gov.au/_data/assets/pdf_file/0009</a></p>

Date	Action	Details
		<a href="#">/547146/avail_ground_coastal_test_pumping_bore_licence_guide.pdf</a>
4.06.2018	The applicant submitted additional information from the hydrogeologist to support the application which was referred to Water NSW for review	
26.06.2018	DPI Water (via NSW Water) respond to applicants hydrogeologist letter	<p>The initial report by Kobus Argent dated 4th March 2018 referred to an extraction of 38ML/year from registered water bore GW307778.</p> <p>While the conditions granted under the Water Act 1912 allowed a property entitlement of 38ML between three bores, the licences were conditioned so that 19ML/year was the maximum that could be extracted from an individual bore. Therefore, DOI Water advised that they would not consider the extraction of 38ML/year from GW307778 without further assessment (pump test) to support the request to change the conditions of extraction.</p> <p>The amended report dated 4th June 2018 advised that the 38ML/year would be taken from two bores, with each bore not exceeding 19ML/year.</p> <p>This amended proposal is in line with the conditions of the licences granted under the Water Act 1912 which have subsequently converted to a works and use approval and an access licence under the Water Management Act 2000. Approval 30CA321463 authorises the existing bore GW307778 and two proposed bore sites on Lot 3 DP1125925 for irrigation purposes. Aquifer access Licence 30AL321462 (38 units/ML) also pertains to the property.</p> <p>Regardless of whether the 19ML/year/bore is extracted for irrigation or industrial purposes, the impact of extraction would remain substantially the same, however, the following comments are provided:-</p> <ul style="list-style-type: none"> <li>• an industrial user has the potential to extract at a more evenly spaced production rate and also pump during wetter climatic conditions as opposed to a reduced short term drawdown impact relative to extracting larger volumes over a shorter timeframe during the seasonal dry months when irrigation is likely to occur,</li> <li>• an industrial user is targeted to meet supply and demand with sales increasing over the hotter summer months, however, peak extraction rates for irrigation and industrial purposes are both likely to occur under similar climatic conditions,</li> <li>• Council may wish to consider aspects of the development application centred on managing the more concentrated months of truck movements, noise &amp; dust etc in order to balance social and community concerns.</li> </ul> <p>The granting of a use approval for industrial purposes is not required as Clause 32 of the Water Management (General) Regulation 2011 states that a person is exempt from the requirement for a water use approval in relation to the use</p>

Date	Action	Details
		<p>of water if the water is used for a purpose for which a development consent is in force under the EPA Act.</p> <p>In conclusion, the subject property already holds a current work approval for the bores and an access licence for the 38 units. Therefore, no General Terms of Approval are required for this proposal as the licences and approvals are already in place. Subject to the granting of development consent, extraction of water for water bottling purposes is permitted and no further approvals or amendments to the existing approval are required from Water NSW.</p>
18.07.2018	Council issued notification letters to all people who lodged an original submission advising that additional information had been received and could be viewed for from 18/07/2018 to 13/08/2018.	
11.07.2018	Council's Natural Resource Management Team provide final assessment comments on the application	The proposed road widening can be accommodated having regard to local ecology subject to the recommended conditions of consent as outlined in the recommendation and as detailed in this report.
13.08.2018	Submission period ends	75 submissions (objections) received during this time. Some incorporated videos detailing the current condition of the road, one on behalf of the Dungay Action Group included comments from a Professor Cook, and some from qualified town planners on behalf of local residents. All of which are addressed at the back of this report.
09.08.2018	Council's Natural resource Management Unit provides final assessment comments on the application	The application is recommended for approval with conditions of consent as outlined in the recommendation and as detailed in this report.
29.08.2018	Council's Development Engineer provides final assessment comments on the application.	The application is recommended for approval with conditions of consent as outlined in the recommendation and as detailed in this report.
9.11.2018	Council's Environmental Health Officer provides final assessment comments on the application.	The application is recommended for approval with conditions of consent as outlined in the recommendation and as detailed in this report.
16.11.2018	Council's Traffic Engineer provides final assessment comments on the application.	The application is recommended for approval with conditions of consent as outlined in the recommendation and as detailed in this report.
21.11.2018	The applicant clarified the intended truck carrying capacity and intention to use a generator until mains power with an amended Noise Impact Assessment.	

## **Overview of key supporting documentation**

### **Existing Water Extraction Licences**

Water NSW has issued three (3) Water Extraction Licences on the site. The licences are attached to this report. The key conditions are summaries below:

Licence Number	Date of Issue/ amendment	Restrictions/Conditions
30BL207306	Issued - 1.3.2016. Amended on 3.11.2016	<ol style="list-style-type: none"> <li>1. The licensee shall allow NSW Office of Water access to the site for inspection or testing of the works and shall undertake work deemed necessary for the protection of the quality and the prevention of pollution or contamination of sub-surface water.</li> <li>2. If work is abandoned, licensee shall notify NSW Office of water and seal off the aquifer.</li> <li>3. The licensee shall not allow any drainage to discharge to adjoining roads, land, river, creek or watercourse, native vegetation or any wetland of environmental significance.</li> <li>4. Works shall not obstruct free passage of floodwaters to or from a river or lake.</li> <li>5. Diameter of any steel/plastic casing lining bore shall not exceed 22mm.</li> <li>6. During the first year of issue of the licence, the volumetric allocation is directly proportional to date of issue.</li> <li>7. NSW Office of Water has the right to vary at any time the volumetric allocation or the rate at which the allocation is taken.</li> <li>8. The licensee shall install to the satisfaction of the NSW Office of Water an appliance to measure the quantity of water extracted with a record of all water extracted from the works kept and supplied to the Department on request. A test certificate of the accuracy of the appliance shall also be supplied on request.</li> <li>9. The allocation specified has been determined for the total area of land at Lot 3 DP 112925.</li> <li>10. In July of every year, the licensee shall provide to NSW Office of Water details of the meter reading of hours pumped, monthly extraction rate, and if an irrigation license, the area of each crop type irrigated and the method of application of the water.</li> <li>11. The licensee shall measure and record the pumping and non-pumping water levels of the bore at least twice a year (January and June/July) and provide same with annual groundwater return.</li> <li>12. Water may be used on Lot 3 DP1125925.</li> <li>13. The volume of ground water extracted from the works authorised by this licence and licences 30BL207311 and 30BL207360 shall not exceed 38ML in any 12 month period commencing 1<sup>st</sup> July.</li> <li>14. The volume of ground water extracted from the works authorised by this licence shall not exceed 19ML in any 12 month period commencing 1<sup>st</sup> July.</li> <li>15. The works must be : <ul style="list-style-type: none"> <li>• 100m from any boundary of the property,</li> </ul> </li> </ol>

Licence Number	Date of Issue/ amendment	Restrictions/Conditions
		<ul style="list-style-type: none"> <li>• 400m from any irrigation bore of any adjoining proper,</li> <li>• 500m from any town water supply bore,</li> <li>• 500m from any Department observation bore,</li> <li>• 40m from the nearest high bank of river, creek or watercourse,</li> <li>• 500m from any artesian bore on an adjoining property</li> <li>• 100m from any wetland or other nature conservation area.</li> </ul>
30BL207311	Issued - 1.3.2016. Amended on 3.11.2016	<ol style="list-style-type: none"> <li>1. The bore shall be constructed is that the first 10m of casing below the ground level shall be grout sealed.</li> <li>2. The licence shall lapse if the work is not completed within 3 years of the date of issue of the licence.</li> <li>3. Within 2 months of the completion of the works/date of issue of the licence if works are existing, the licensee shall provide to NSW Office of Water:                             <ul style="list-style-type: none"> <li>• Details of works as provided by a licensed driller,</li> <li>• Location plan of works</li> <li>• Details of any pumping tests carried out,</li> <li>• Details of any water analysis.</li> </ul> </li> <li>4. If saline or polluted water is encountered above the producing aquifer during the construction works, the water shall be sealed off as specified in the licence.</li> <li>5. The licensee shall notify NSW Office of Water if a flowing supply of water is obtained and the bore subsequently lined and cemented. The licensee shall only distribute water from the borehead by a system of pipes and shall not distribute it in drains, natural or artificial channels or depressions.</li> <li>6. The remainder of the conditions as per conditions of 30BL207306.</li> </ol>
30BL207360	Issued on 2.11.2016	As per conditions of 30BL20731.

A cover letter to Licence 30BL207360 recommended that the licensee have any ground water extracted analysed on a regular basis to ascertain its suitability for the intended purposes. It was advised that Water NSW does not know whether the water from the bore is suitable for the proposed purpose and as such does not warrant that it is safe for consumption by stock or humans. The licensee was also advised that they were responsible for ensuring the works are drilled by a person holding a current driller's licence issued by the DPI Water, to provide the driller with a copy of the licence and conditions and that a written agreement from the driller for the work is obtained.

The applicant has advised that Water NSW has confirmed that bore licence 30BL207306 authorises the existing bore to a depth of 32m with a grout seal to 8.5m and that the water bearing zone is between 16m and 27m. The ground water construction details indicate that the bore yields 1.80L/s.



## Overview of Hydrology Report

The hydrological assessment report prepared by Thomas Neame (Principal Hydrogeologist for Kobus Argent) submitted to Council on 4 March 2018 is summarised as follows:

- The subject water bore was drilled in September 2014 by rotary percussion method in accordance with DPI Water work licence number 30 WA 308 097. The bore was tested by airlift method and a yield of 1.8 litres/second was indicated.
- The subject water bore is located centrally within the site.
- The water bore lies at approximately 60m AHD on a gently sloping valley floor which has historically been cleared for grazing. The land rises sharply, from the cleared central valley floor, as steep forested slopes to the lot boundaries in the East, North and West at approximately 150-290m AHD. The valley is drained by an ephemeral watercourse which meanders southward within a largely informal shallow channel to its confluence with Dungay Creek, south of Dungay Creek Road.
- The Tweed Heads 1:250,000 Geological Map (Brunker et al. 1972) indicates the regional geology at the site consists of greywacke, slate and phyllite quartzite rock of the Palaeozoic Neranleigh – Fernvale Beds.
- The Driller's Log indicates a 32 m deep bore penetrating clay-rich unconsolidated sediments from surface to 13.5 m depth, beyond which is variably weathered or fresh greywacke rock to the base of the bore. Groundwater was encountered from 16 m depth, rising to 8.2 m depth, implying that the greywacke fractured aquifer was partially confined by the overlying unconsolidated sediments.
- The log records that 17 m of slotted PVC casing was installed in the bore from 31 m depth to 14 m depth, with gravel from the base of the annular space to 8.5 m depth. A grout seal was installed between 8.5 m depth and surface to protect the bore from surface pollutants.
- The water sample analysis indicated a high-quality source, low in dissolved minerals to the extent that it could be potentially corrosive to pipework (Langelier Saturation Index - 3.3). There were no exceedances of the Australian Drinking Water Guidelines, although the limits of detection for Antimony, Mercury and Uranium were slightly higher than the guideline values.
- The soil samples confirmed that there were no organo-chlorine or organo-phosphorous pesticides present in the soils beside the bore.
- A pumping test was conducted in December 2017. The subject water bore was pumped continuously at an average rate of approximately 14,000 litres/hour for three hours. From a static rest water level of 8.1 m prior to the start of the test, the water was drawn down approximately 9.0 m, stabilising at a dynamic water level of approximately 17.2 m inside 30 minutes. Within one hour of the cessation of pumping, the water level in the bore had fully recovered to 8.1 m depth again. The rapid stabilisation of dynamic water level at around a metre beneath the top of the water bearing zone (16 m depth) under pumping conditions, coupled with the rapid recovery to the pre-pumping water level confirms the water bore is capable of delivering the required quantities of water. The rapid stabilisation of water level under pumping conditions indicates that the bore is connected hydraulically to a significant network of fractures within the confined greywacke aquifer. The rapid recovery of the bore water level to pre-pumping conditions also suggests that the source is not reliant on recharge from the overlying unconsolidated sediments.
- The subject water bore taps into the New England Fold Belt Coast Groundwater Source and access to water within this source is governed by the Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources. This plan prescribes limits to the availability of water. The water bore on the site has been granted a Water

Access Licence (WAL) no. 41070 reference 30 AL 321 462 under this plan. The Upper Extraction Limit prescribed under the plan is 375,000 ML/y whilst the long-term average annual extraction limit (LTAAEL) is 60,000 ML/y. The volume of unassigned water at the commencement of the plan (July 2016) was 24,532 ML/y.

- When considered in terms of the prescribed LTAAEL or unassigned water, the proposed water extraction at the site comprises only approximately 0.06% and 0.15% respectively. Further, the Available Water Determination Order for the North Coast Fractured and Porous Rock Groundwater Sources 2017 (June 2017) confirms that access licence share components remain at 100%. **This indicates that the water source is not under pressure of over extraction.**
- The presence of clay-rich unconsolidated sediments in the upper zone of the bore, the confined (pressure) head demonstrated by water level monitoring, together with the low total dissolved salts (TDS) content and absence of pesticides implies that there is negligible hydraulic continuity with surface waters or shallow groundwater despite proximity to the drainage line and the good yield of the water bore. Additionally, there are no perennial (type II) springs or mapped High Priority GDEs in the local area. **Together these lines of evidence indicate a very low likelihood of impact on surface water flow, surface water quality or groundwater quantity on potential types II or III GDEs in the local area.**
- The proposal is to extract up to 38 ML/y as a maximum, whilst DPI Water (2016) has reported that the current total water requirements for the New England Fold Belt groundwater source are estimated as greater than 35,000 ML/y against a total available water allocation of 60,000 ML/y. Based on this requirement, a total of greater than 24,500 ML/y unassigned water has been estimated for this water source. **This indicates that the proposed extraction equates to less 0.2% of the unallocated available water allocation.** Furthermore, the upper extraction limit for the New England Fold Belt groundwater source is estimated as 375,000 ML/y and **in this context the proposal equates to approximately 0.01%.**
- The proposed extraction of 38 ML/year from registered water bore number GW307778, NSW Office of Water (now DPI Water) licence number 30 BL 207 360, is unlikely to create a significant or material impact on other water users or the environment.

Dol Water reviewed this material and advised that the technical report prepared by Kobus Argent, dated 4th March 2018, details how their assessment has concluded that the extraction of up to 38ML/y from bore GW307778 is unlikely to create a significant or material impact on other water users or the environment.

It is important to note that GW307778 was authorised for irrigation and stock purposes under Water Act 1912 bore licence 30BL207306. The licence was granted with a condition that limited the annual extraction from this bore to a maximum of 19 megalitres. Two other irrigation bore licence were granted for this property for proposed bores.

The licensed entitlement between all three licences was 38 megalitres, however, each licence was subject to a condition which limited the maximum annual extraction to 19 megalitres from any individual bore. These three bore licences converted to an approval under the Water Management Act 2000 and while the conditions of the North Coast Fractured and Porous Rock Water Sharing Plan have not yet been finalised, the conditions limiting the maximum extraction from any individual bore will be carried forward.

Based on the available information, NSW Water did not support entitlement consolidation for extraction **from an individual bore**. Dol water cannot advise with confidence as to the significance of a hydrological connection between the bore GW307778 and the shallow

aquifer / surface water systems under the proposed increased extraction. DoI Water recommended that additional assessment work could be required to support the application prior to approval consideration. Further details on the requirements are available at [https://www.water.nsw.gov.au/data/assets/pdf\\_file/0009/547146/avail\\_ground\\_coastal\\_test\\_pumping\\_bore\\_licence\\_guide.pdf](https://www.water.nsw.gov.au/data/assets/pdf_file/0009/547146/avail_ground_coastal_test_pumping_bore_licence_guide.pdf)

Accordingly the applicant's hydrologist Thomas Neame (Principal Hydrogeologist for Kobus Argent) prepared a revised statement dated 4 June 2018 which acknowledged the proposed two bores rather than relying on a single bore as follows:

- The proposal includes the extraction of water for bottling purposes up to a total maximum annual entitlement of 38 ML/y (approx. 1.2 litres/second) from **two bores and not exceeding 19 ML/y (approx. 0.6 l/s) from each individual bore**. Currently one water bore has been installed on the site. This water bore was drilled in September 2014 by rotary percussion method in accordance with DPI Water work licence number 30 WA 308 097. The bore was tested by airlift method and an indicative yield of 1.8 l/s was obtained. A second bore will be drilled to the north east of the existing bore in accordance with the existing licence. This second bore will be utilised for the extraction of up to a maximum of 19 ML/y. The combined extraction of water from the two boreholes will not exceed 38 ML/y in accordance with the terms of the licences of each bore.
- Whilst few site-specific data are available, appropriate reasoning supported by external sources of published information have enabled an objective assessment to be completed. The assessment considers that the extraction of up to 19 ML/y from the subject bore (referenced DPI Water work licence no. 30 WA 308 097 on Lot 3 DP1125925) and 19 M L/y from a second bore which is yet to be installed to the north east on the same lot is **unlikely to create a significant or material impact on other water users or the environment**. It should be noted that air-lift test pumping of the existing bore was conducted sustainably at a rate of 14,000 l/s whilst the proposed combined extraction from the two licensed bores is approximately 4,300 l/s, approximately one third of the rate at which test pumping was previously conducted.
- In mitigation of the paucity of groundwater data from other nearby locations, it is recommended that should the extraction be approved, a groundwater monitoring borehole should be drilled and installed in the vicinity of the extraction bore, potentially lying to the west of the extraction bore, to monitor the effects of longer term groundwater extraction. The monitoring bore should also be used in conjunction with test pumping from the existing and yet-to-be installed extraction bores to verify the hydraulic characteristics of the aquifer. Monitoring of existing local registered bores throughout any periods of test pumping may also provide an additional means of verifying the sustainability of the proposed extraction.

#### Overview of Agricultural Impact Report

The applicant has provided the following comments relating to the potential agricultural use of the land:

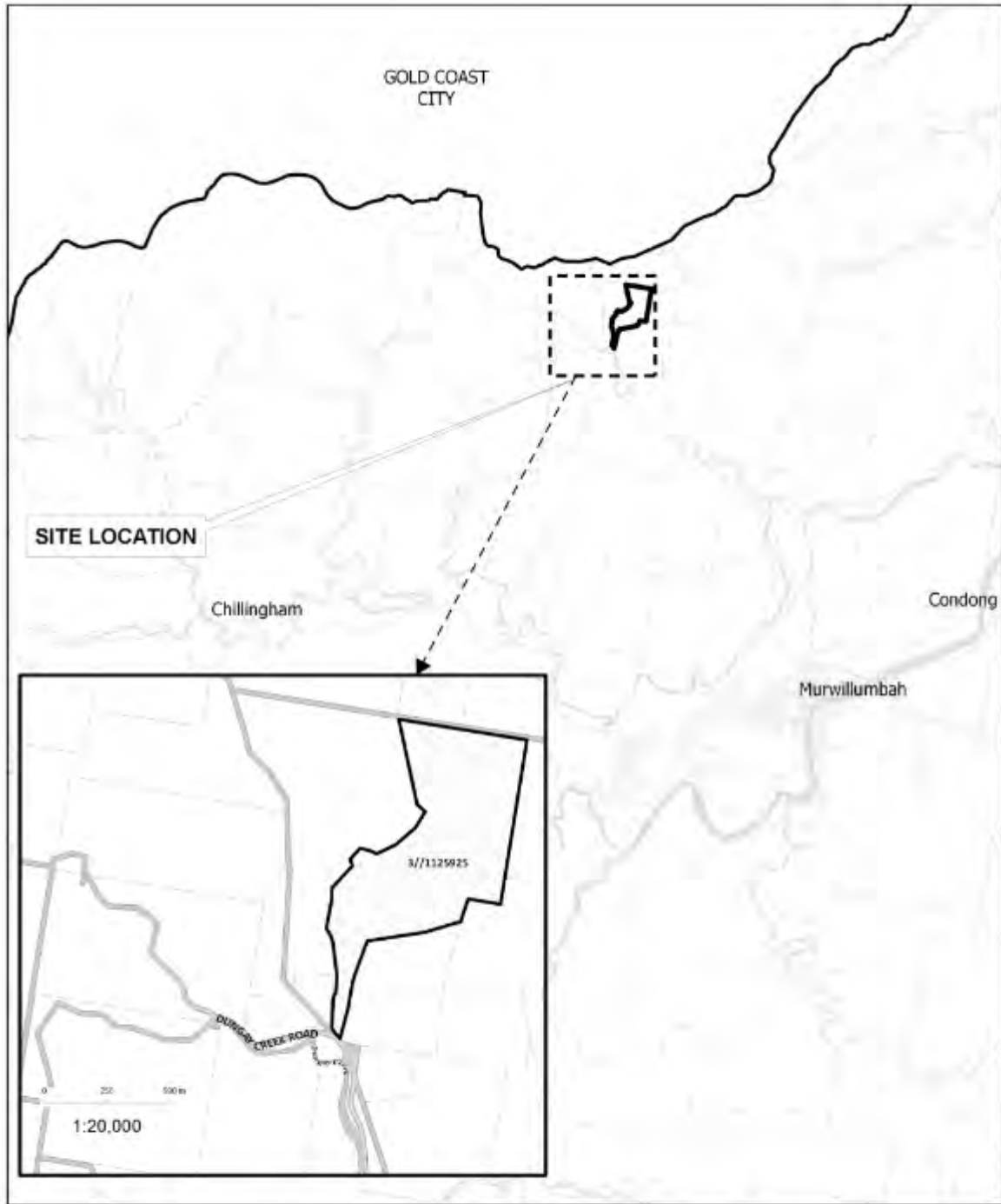
I refer to the above application and Council's request to demonstrate what impact the development will have on potential agricultural use of the land and what the land owners actual intentions are for future agricultural pursuits.

My family has owned the property since 1970. The property has been farmed for many purposes. It is the intention to keep the farm in our family for the long term.

Over the last 25 years the property has been used for grazing by cattle. It is the intention to continue cattle grazing as a source of income.

The proposed development has negligible impact on current or future farming pursuits. The property is 44 hectares and the land to be developed/disturbed is minimal and positioned such to have minimal impact on the farm. There is negligible loss of grazing land. No further roads are necessary as an existing farm road will be used. The structures are positioned immediately adjacent to this road. The new structures generally comprise water storage tanks which are consistent with such structures on a farm.

**SITE DIAGRAM:**



**Site Plan**  
 DA16/0660  
 Lot 3 DP 1125925  
 302 Dungay Creek Road, Dungay

0 1 200m  
 1:100,000

Disclaimer: While every care has been taken to ensure the accuracy of this data, the Gold Coast Council makes no representations or warranties, expressed or implied, in respect of the information. The information is provided for informational purposes only and should not be used for any other purpose. The information is provided for informational purposes only and should not be used for any other purpose. The information is provided for informational purposes only and should not be used for any other purpose.



Geodetic System - GDA Zone 56  
 56S UTM - UTM 56S

Created: 18/10/2018  
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01 (81) 1 411  
 0825 0343 - 3407 0217 018

Guido and Gabriella Centre  
 3 Frankigue Road  
 Murwillumbah NSW 2484  
 PO Box 618  
 Murwillumbah NSW 2484

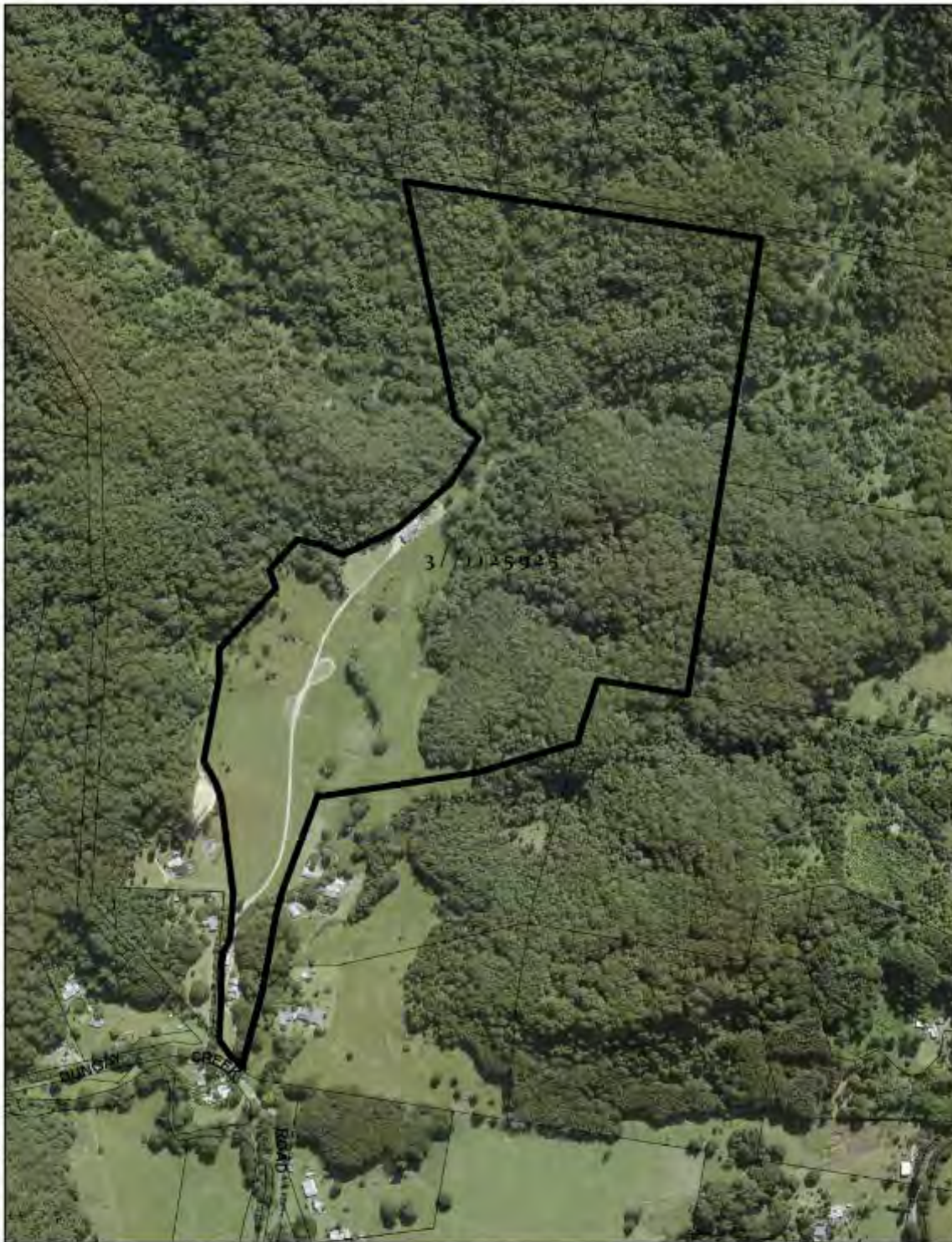
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 W: www.tweedshire.gov.au  
 E: planning@tweedshire.gov.au



Date Printed: 07 November 2018



**AERIAL IMAGE:**



1:7,000 Aerial Imagery  
© 2018 Imagery - Tweed Shire Council  
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Boundaries shown should be considered approximate only.

**Tweed**  
Shire Council  
2 Tambourine Road  
Murwillumbah NSW 2484  
PO Box 918  
Murwillumbah NSW 2484  
Tel: (07) 6621 2477  
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Email: [info@tweedshire.nsw.gov.au](mailto:info@tweedshire.nsw.gov.au)  
[www.tweedshire.nsw.gov.au](http://www.tweedshire.nsw.gov.au)

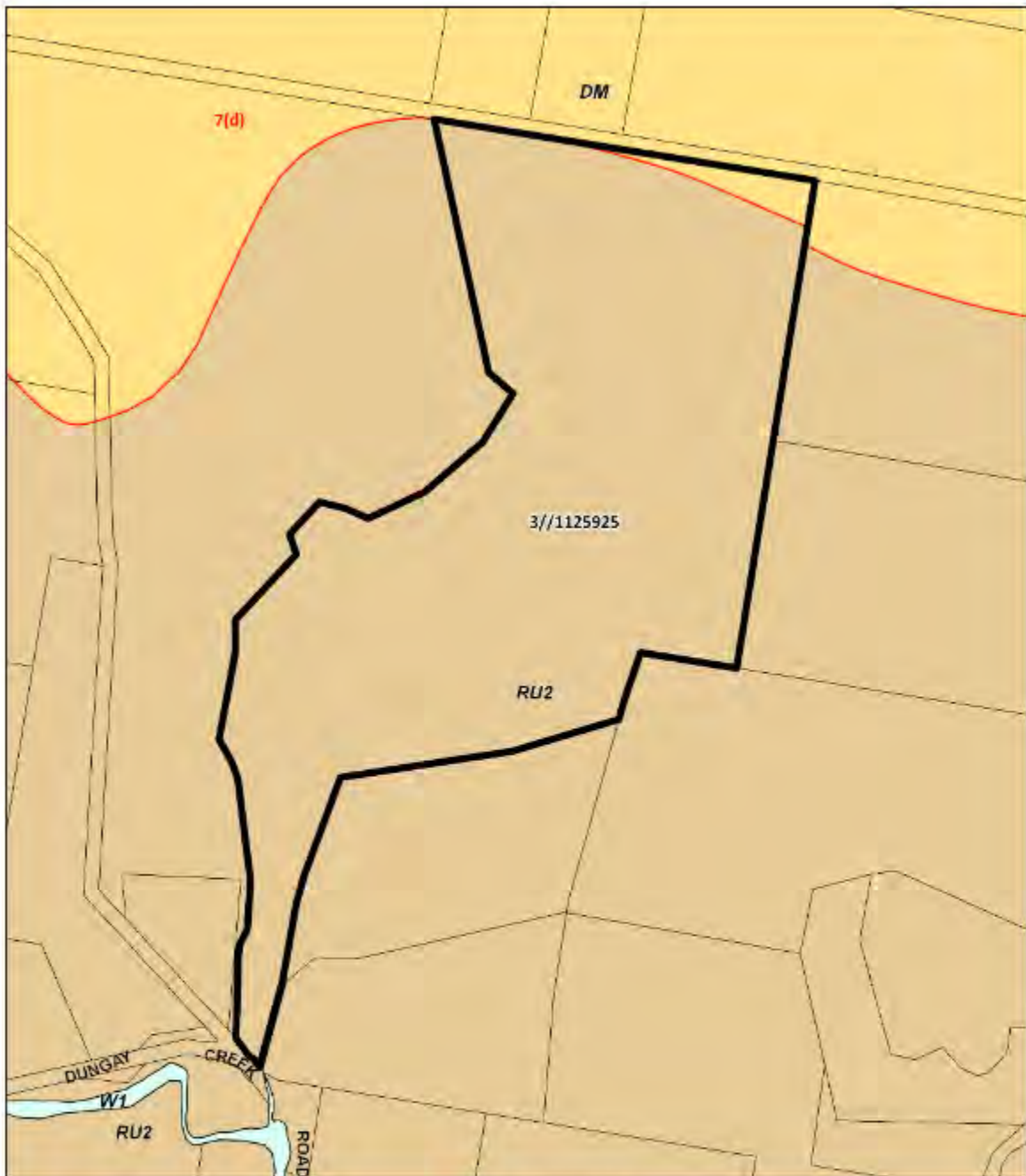
**Aerial Photography April 2018**  
DA160660  
Lot 3 DP 1125925  
302 Dungay Creek Road, Dungay

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**ZONING IMAGE:**



- |                                     |   |
|-------------------------------------|---|
| Subject Land                        | DM, Deferred Matter                                 |
| Subject Land                        |   |
| Tweed Local Environmental Plan 2014 | LEP 2000 (as at 2014)                               |
| RU2 Rural Landscape                 | 7(d) Environmental Protection (Scenic / Escarpment) |
| W1 Natural Waterways                |   |

1:1000 @ A4 Portrait  
 0 50 100m  
 GDA  
 Information: National Triangulation Network  
 1984: Australian National Standard 1140  
 1996: Australian Standard 1141

**Site Plan - Local Environmental Plan**

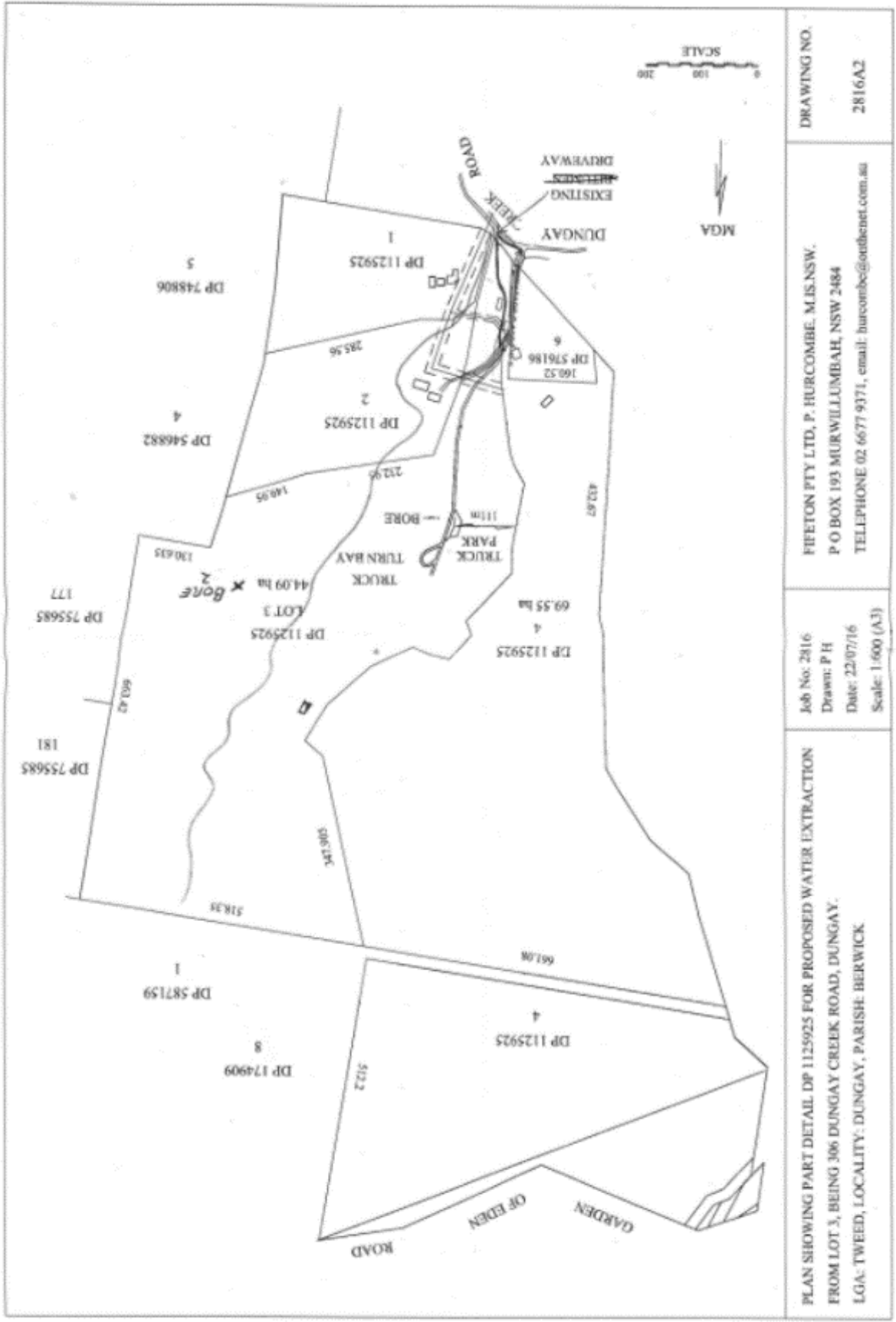
DA16/0680  
 Lot 3 DP 1125925  
 302 Dunga Creek Road, Dunga

Land and Property  
 Information (LPI)  
 and Tweed Shire Council



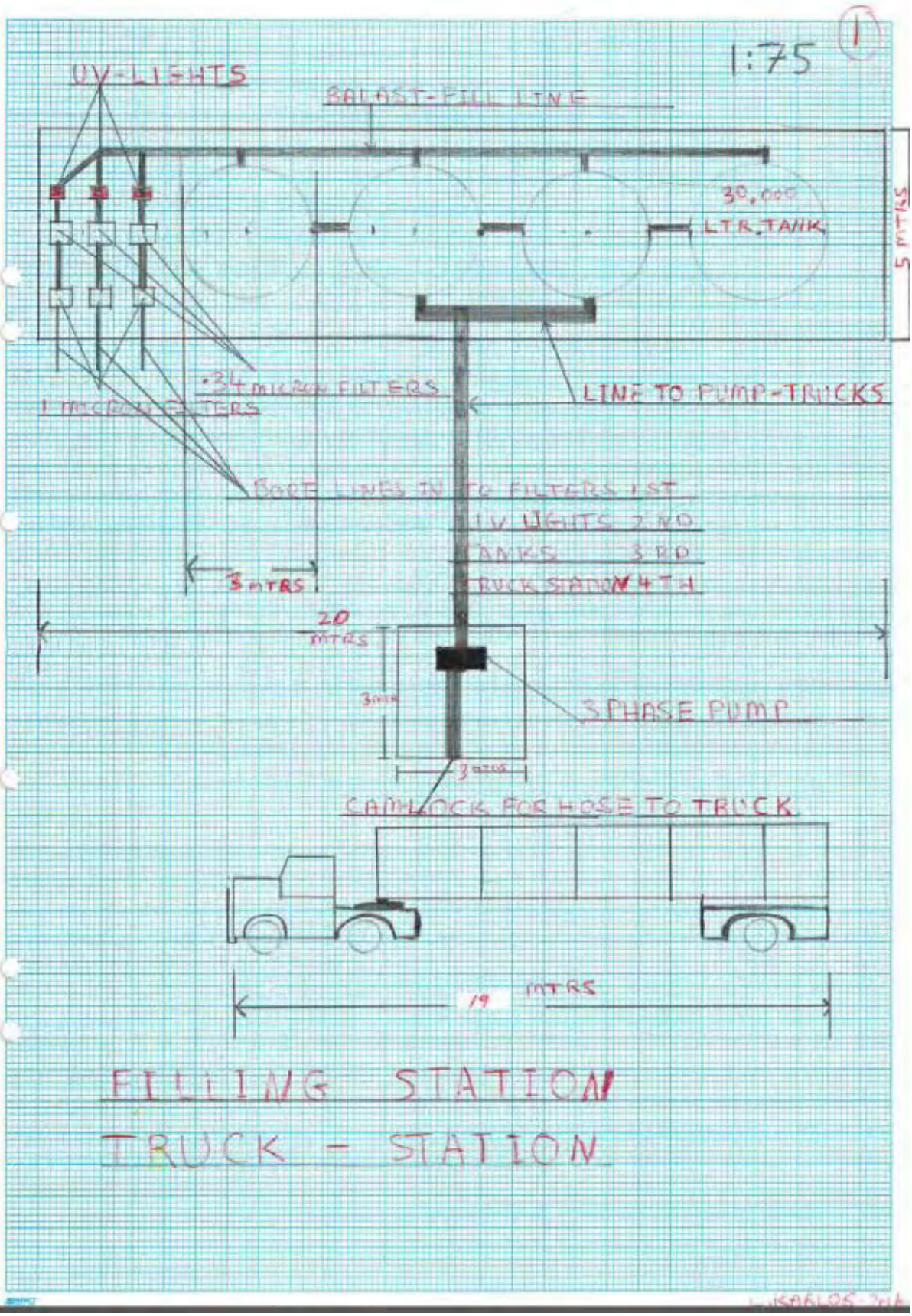
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DEVELOPMENT PLANS:



<p>PLAN SHOWING PART DETAIL DP 1125925 FOR PROPOSED WATER EXTRACTION FROM LOT 3, BEING 306 DUNGAY CREEK ROAD, DUNGAY. LGA: TWEED, LOCALITY: DUNGAY, PARISH: BERWICK.</p>	<p>Job No: 2816 Drawn: P H Date: 22/07/16 Scale: 1:600 (A3)</p>	<p>FIFETON PTY LTD, P. HURCOMBE, M.I.S.NSW. P O BOX 193 MURWILLUMBAH, NSW 2484 TELEPHONE 02 6677 9371, email: hurcombe@otdenet.com.au</p>
		<p>DRAWING NO. 2816A2</p>

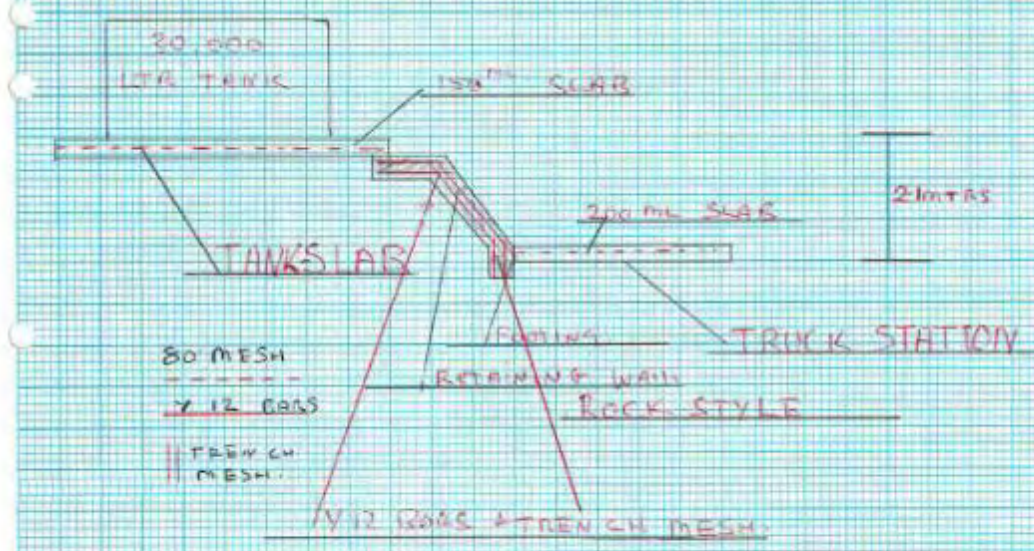






2

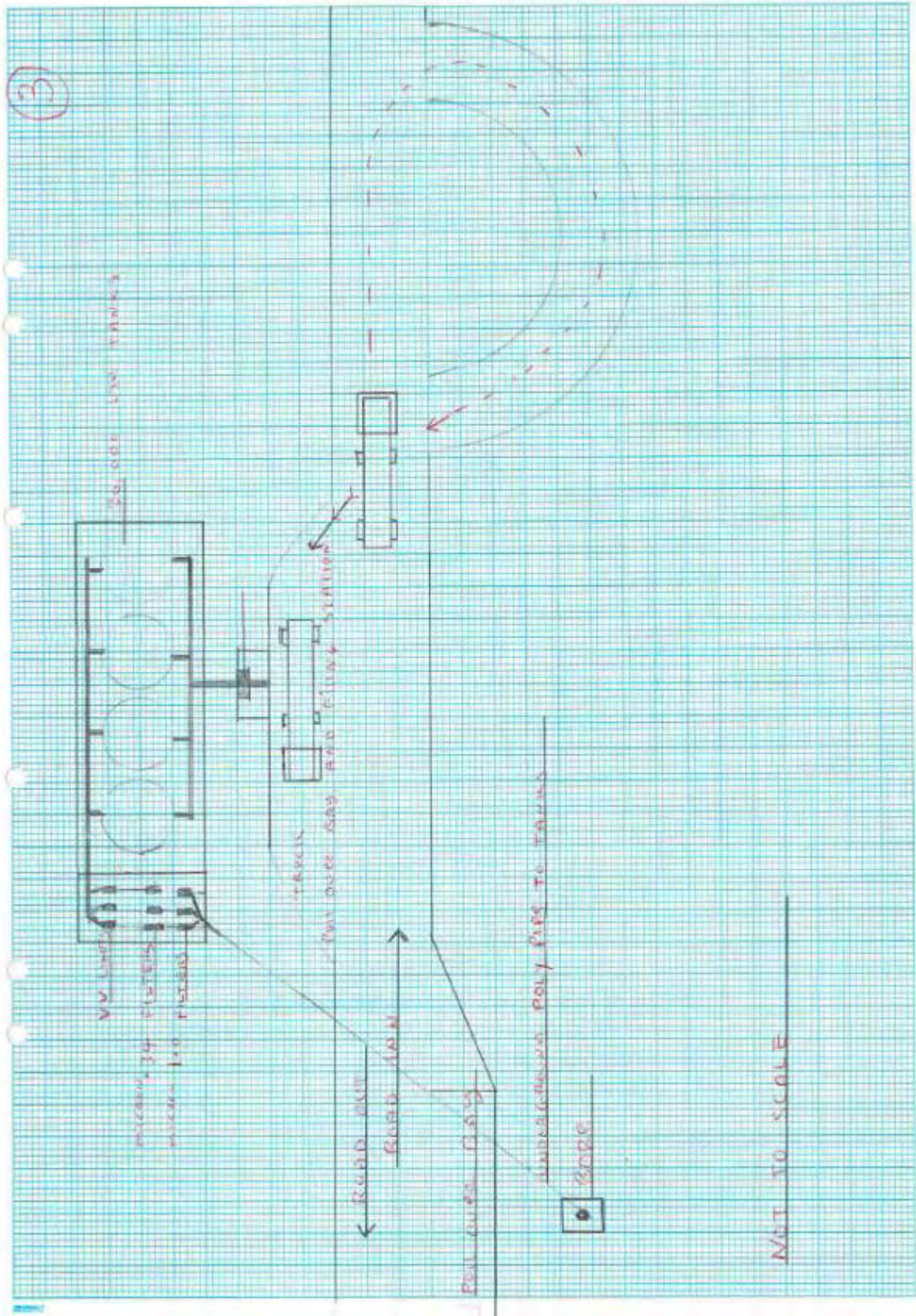
1:75



SIDE ELEVATION + HEIGHTS  
+ RETAINING WALL + TRUCK STATION

L. BASCO'S TANK









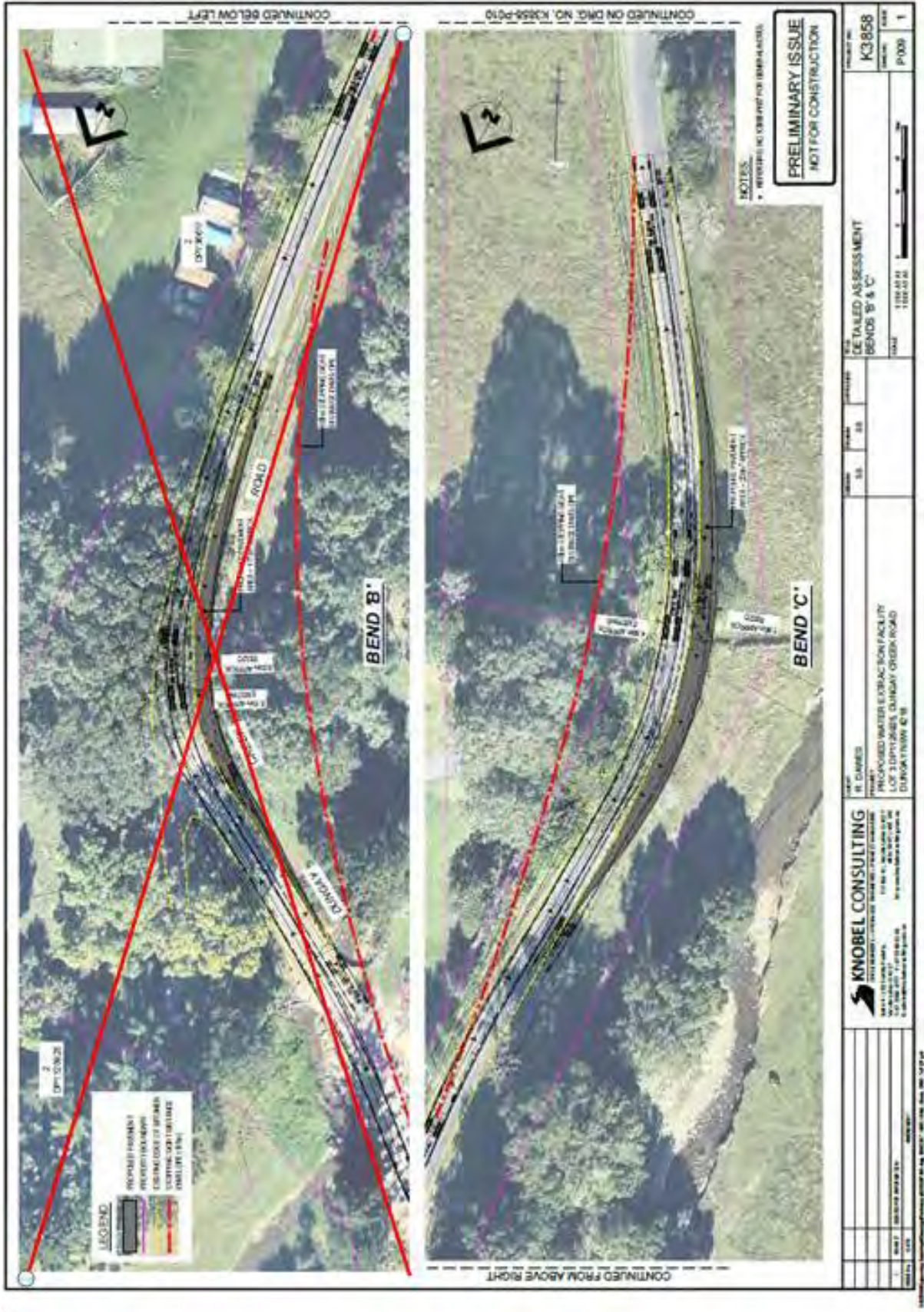












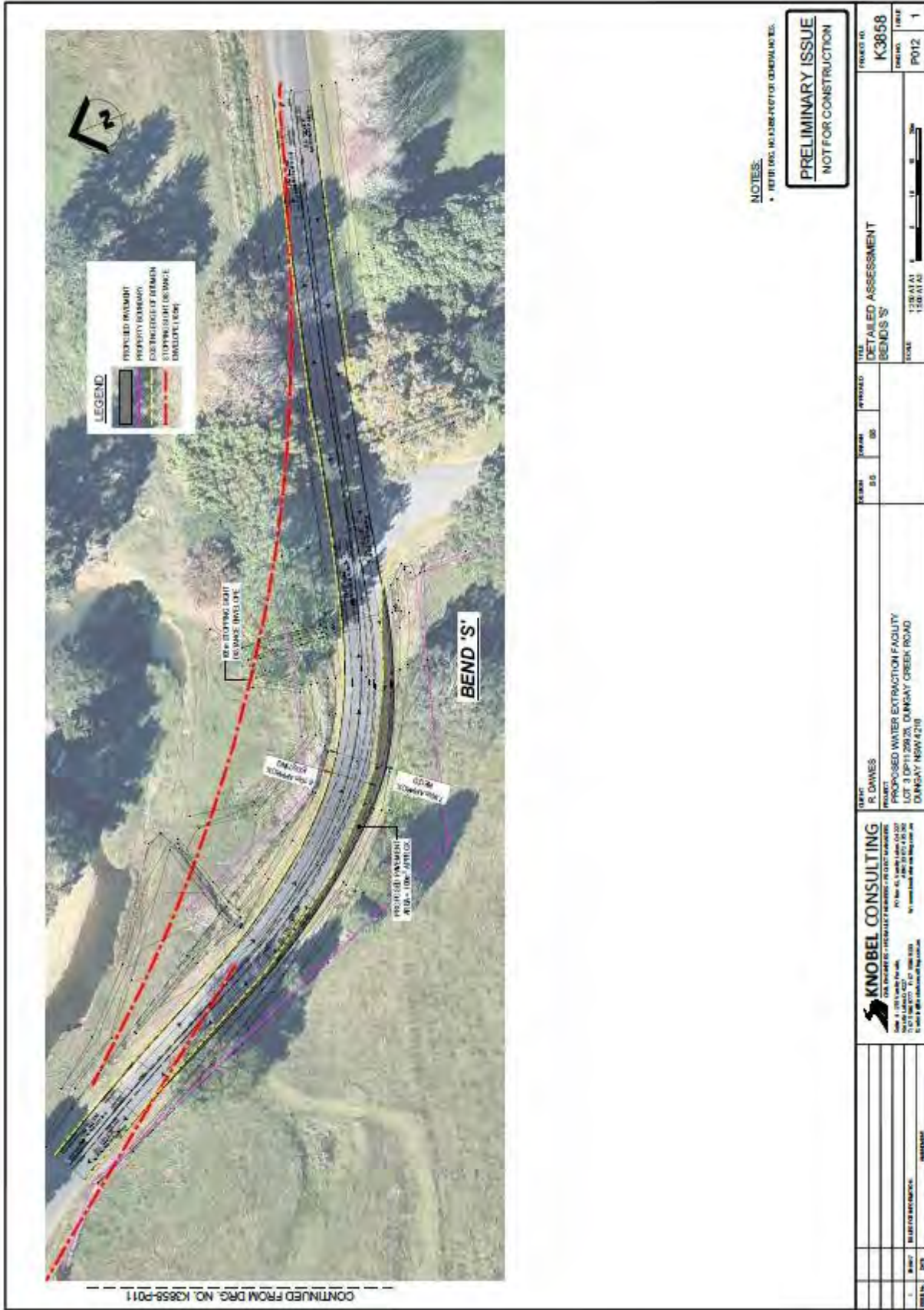










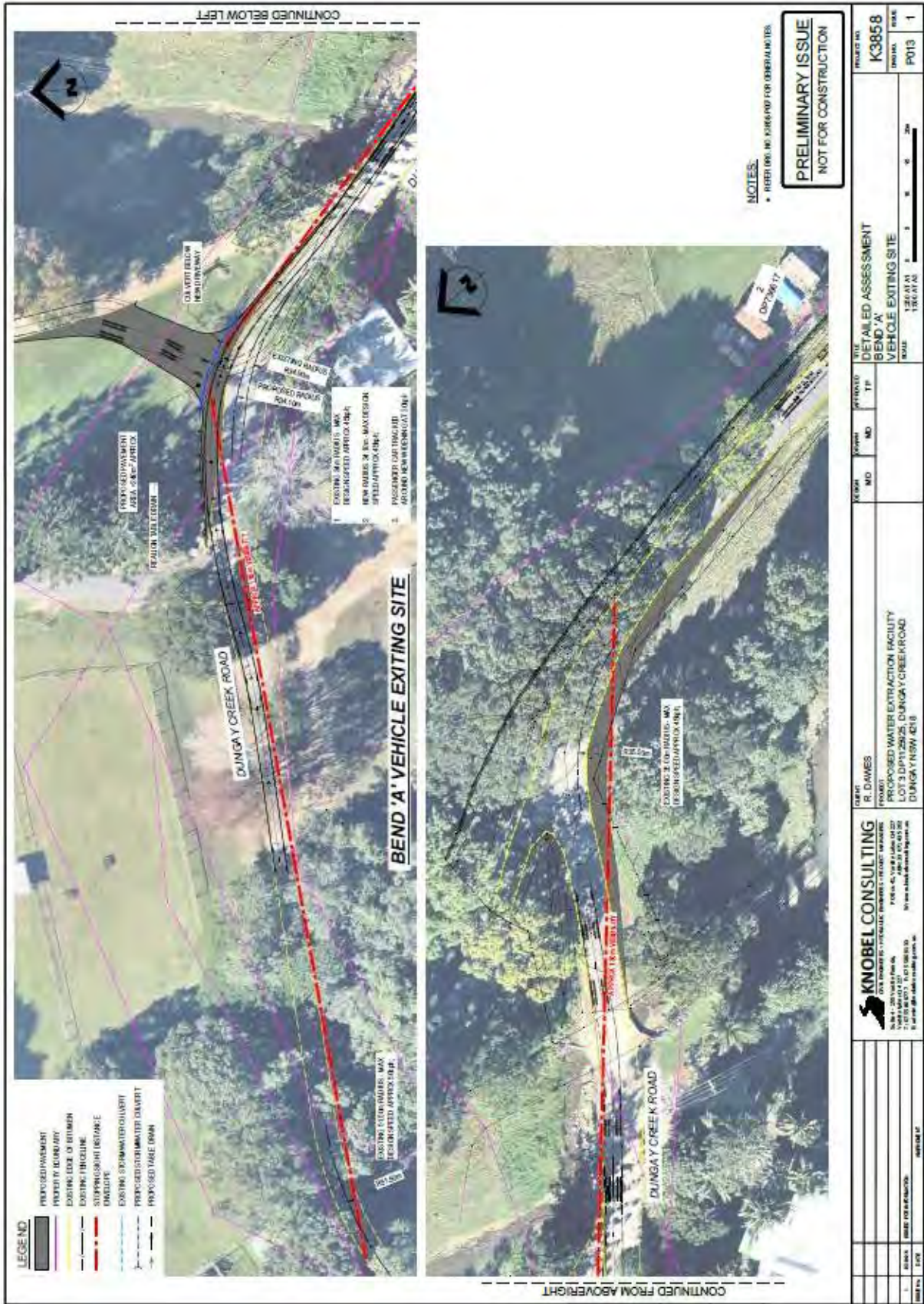


NOTES:  
 • REFER DRG. NO. K3856-P011 FOR GENERAL NOTES.

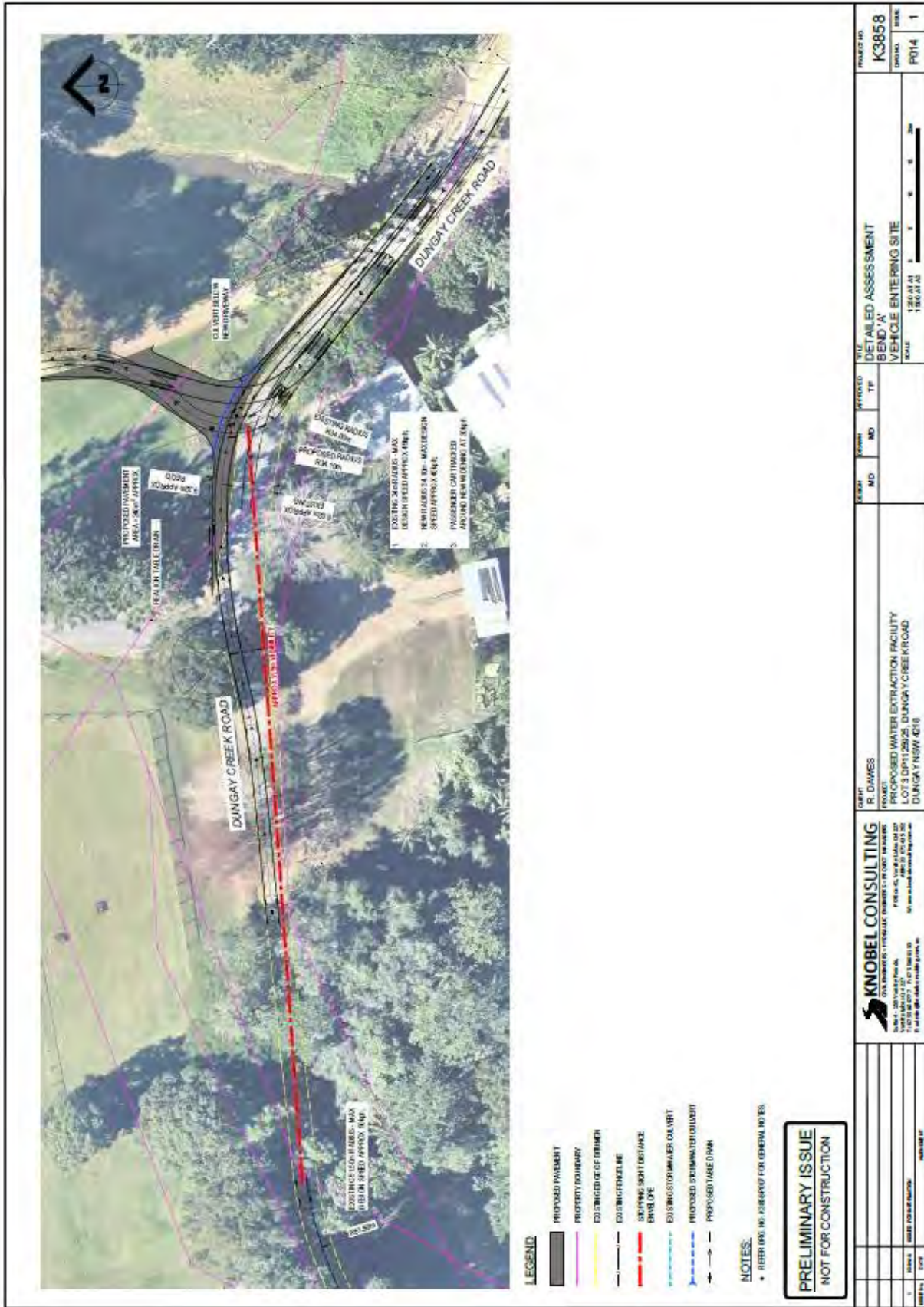
**PRELIMINARY ISSUE**  
 NOT FOR CONSTRUCTION

<b>KNOBEL CONSULTING</b> 27A BROADWAY, SYDNEY NSW 1585 PHONE: 02 9550 4444 FAX: 02 9550 4444 WWW.KNOBELCONSULTING.COM.AU		CLIENT: R. DAWES PROJECT: PROPOSED WATER EXTRACTION FACILITY LOT 3 DP41 299 29, DUNSMAY CREEK ROAD DUNSMAY NSW 4210	TITLE: DETAILED ASSESSMENT SHEET NO: BEND 'S' SCALE: 1:200 (A1) 1:500 (A2)	DRAWN: DS CHECKED: DS DATE: 12/01/18	PROJECT NO: K3856 DRAWING NO: P012 SHEET NO: 1
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**Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:**

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

The Tweed Local Environmental Plan 2014 applies to the majority of the site, with the exception of an area of approximately 8,600sqm to the northeast of the site where an area of land adjoining the northern boundary of the site is a deferred matter. The land in question is an environmental zone under the Tweed Local Environmental Plan 2000, being zoned Zone 7(d) Environmental Protection (Scenic/Escarpment).

Though the existing and proposed bore and filling areas are not located on the land zoned Zone 7(d), this land forms part of the site on which the proposal is located. As such consideration must be given to the relevant clauses of the Plan.

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

The aims of the plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*

*“The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and*

- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*

- (i) *that some or all development should be restricted to certain land within a zone,*  
(ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*  
(iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*

- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*

*Tweed Shire 2000+ Strategy  
Pottsville Village Strategy, and*

- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The existing and proposed extraction bore is located approximately 805m from the area zoned 7(d). However it is acknowledged that the aquifer from which the bore water is obtained would underlie both the RU2 portion of the site and the 7(d) portion of the site.

Water extraction (as proposed) was and is still a permissible land use under both LEP 2000 and LEP 2014 in that part of the site currently zoned RU2. The bores themselves and the extraction component of the proposed development are regulated by Water NSW at a State level. This State level has developed a systematic approach to water extraction through the water sharing plans which govern the location and amount of permissible licences. These systems have been developed to ensure that any water extraction does not compromise the aquifer system as a whole.

As the site has the required State Licences for the proposed 38ML the subject application in terms of extraction totals is deemed to satisfy the aims of the plan.

The application has also been considered having regard to the area's environmental and residential amenity qualities. The proposed activities will not compromise the properties ability to be used for ongoing agricultural pursuits. Furthermore, as discussed throughout the rest of this report the recommended conditions of consent (roadworks, sealing the internal driveway, limiting hours of operation to 9am-3pm, limiting hours of operation to five days a week and limiting the number of trucks to no more than 5 per day of operation) are considered adequate ameliorative measures to assist in protecting the amenity of the neighbours.

The proposed limited truck movements are considered to be consistent with the rural character of the area having regard to other rural pursuits and the traffic associated with the filming activities that occur at the end of Dungay Creek Road.

#### Clause 8 - Consent Considerations

Clause 8(1) states that:

- (1) *The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:*
  - (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
  - (b) *it has considered those other aims and objectives of this plan that are relevant to the development, and*
  - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The primary objective of Zone 7(d) Environmental Protection (Scenic/Escarpment) is to protect and enhance those areas of particular value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas and to maintain the visual amenity of prominent ridgelines and



areas. The secondary objective is to allow other development that is compatible with the primary function of the zone.

While the aquifer underlies the area zoned 7(d), the extraction point is located in lands Zone RU2, where the use is permissible with consent. As such, the objectives of Zone 7(d) cannot be used to reject an application which is otherwise permissible in an adjoining zone.

A number of the submissions raised concerns in relation to the proposed water extraction impacting on the stability of the escarpment. This is addressed later in the report.

In regards to cumulative impacts associated with the proposed land use and its potential duplication on other sites the recommended conditions of consent are considered suitable to mitigate against the possible cumulative impact scenarios of other properties in the area undertaking similar activities. Specifically the road improvements and limited trips and hours of operation are considered adequate to ensure the proposed development activities remain limited in nature and consistent with other permissible land uses in the locality. Furthermore, use of two bores and an extraction limit of 38ML is considered conservative given the total available water in the water sharing plan.

#### Clause 39A - Bushfire Protection

The objective of this clause is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The matter of bushfire is addressed under Clause 5.11 of the Tweed Local Environmental Plan 2014.

### **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 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 Tweed LEP 2014 allows the development of a water bottling facility in Zone RU2 Rural Landscape under Clause 7.15. The inclusion of Clause 7.15 has established that the clause itself would be consistent with the aims of the plan.

However, the specific circumstances in this case need to be reviewed to determine if the proposal itself is inconsistent with the aims set out above.

- As demonstrated in the hydrological report and agricultural impact report submitted by the applicant, the proposed water extraction is compliant with the State Water Sharing plans and capable of concurrently occurring with any normal agricultural pursuits of the land such as cattle grazing.
- The proposed driveway works and road improvements (as discussed later in this report) have also determined that the road is capable of safely accommodating the proposed vehicles without adversely affecting local ecology.
- The proposal will not have any detrimental impact on the various strategic policies and principles applicable to the Tweed caldera as the use will not be inconsistent with local and cultural values.
- The proposal will add to the local economy and small business through the generation of additional income for the land owner and associated Transportation Company.
- The extraction of water and the recharge of the aquifer as advised by the Office of Water which will ensure this business is sustainable and will not adversely impact local waterways. The actual extraction process will not have

any impact on scenic values as the development requires minimal changes to the existing rural property. The use of the road for 5 truckloads a day is consistent with the existing character and built environment.

- Council has no evidence to suggest that the proposed use would be contrary to ecologically sustainable development principals. The applicant's hydrogeologist report states the development is not likely to cause detriment to surface water or groundwater environments.
- The development will not impact the biological diversity or scenic quality of the locality given the development involves the removal of water from the aquifer via water trucks for transportation elsewhere.
- The land is not World Heritage listed, nor is the site of the existing bore state significant farmland.
- The development will not impact or be located within areas of high ecological value.
- The extraction of water will not impact upon the recovery of the Tweed Coast Koala population as no Koala vegetation will be removed to facilitate the development. The recommended conditions of consent manage and mitigate any habitat values occurring where road widening is proposed.

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

Clause 2.3(2) requires the consent authority to have regard to the objectives of a zone when determining a development application. The objectives of the RU2 Rural Landscape zone 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.*

Clause 7.15 of the LEP defines a '**water bottling facility**' as '*a building or place at which ground water from land in Zone RU2 Rural Landscape is extracted, handled, treated processed, stored or packed for commercial purposes.*'

Clause 7.15 further specifies that development for the purposes of a water bottling facility may be carried out on land in Zone RU2 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. Compliance with this caveat is assessed in more detail below.

Both the submitted hydrogeologist report and advice from the Office of Industry hydrogeologist (via Water NSW) indicates that the water extraction levels are

sustainable and there is negligible impact on the surface water or groundwater environments in the locality.

The submitted hydrogeologist report has advised that the available long-term average annual groundwater extraction limit within the subject water source (New England Fold Belt Coast Groundwater Source) has sufficient assigned volume to support the proposed annual groundwater extraction under the proposed development.

The rural landscape character will not be impacted by this development. The actual process of extracting the water will only be visible on the site due to the presence of water storage tanks and intermittent presence of water trucks. Trucks are considered a common site on rural roads to service properties in regards to garbage and sewer services, bulk tankers for the purposes of dairy and cattle farming and cane harvesting. The use of this rural property for the purposes of water extraction and hauling of this water off site by water tankers is not considered contrary to activities within the rural landscape that require trucks to conduct the business.

A hydrogeological assessment of the proposed bulk water extraction from the bore was commissioned and submitted by the applicant in support of the development. The objectives of this report were to identify whether the groundwater system from where the water will be drawn is connected to the surface water system and if extracted water is likely to be sourced directly from the groundwater or by leakage from the nearby stream or Creek. This assessment concluded that there is negligible hydraulic continuity with surface water or shallow groundwater despite proximity to drainage lines and the good yield of the water bore. It further states a very low likelihood of impact on surface water flow, surface water quality or groundwater quantity in the local area. Accordingly, this hydrological assessment provides evidence that the proposed development will not adversely impact a range of compatible land uses including extensive agriculture. This assessment was also reviewed by the NSW Department of Industry hydrologist that concurred with the findings of this assessment in regards to the adequacy of the report and conclusions.

The water extraction is considered a compatible use with the rural use of the land.

The application also involves upgrades to the road to facilitate the movement of water tankers on Dungay Creek Road. A 'road' (being defined in the LEP as a public road or a private road within the meaning of the *Roads Act 1993*, including a classified road) is permitted with consent in Zone RU2.

#### Clause 5.10 - Heritage Conservation

The site or the location of the proposed road upgrades are not identified as a heritage item, as being within a heritage conservation area or within the vicinity of either a heritage item or a heritage conservation area.

The site and proposed road upgrade locations are also unaffected by Council's Draft Aboriginal Cultural Heritage Management Plan mapping which identified Aboriginal Places of Heritage Significance and areas of Predictive Aboriginal Cultural Heritage.

Adjoining Dungay Creek Road is a dry stacked stone wall near Bend C. The applicant has nominated Bend C as requiring widening works. Such works can occur

on the opposite side of the road to avoid the dry stacked stone wall and appropriate conditions are recommended to ensure this outcome.

#### Clause 5.11 - Bush fire hazard reduction

The subject site is mapped as being bushfire prone. The NSW RFS who were notified of the application advised that no concerns or issues in relation to bushfire were raised.

Sections of the road to be upgraded as also mapped as bushfire prone. Any works undertaken in accordance with an approval for roadworks would result in reduced bushfire hazards.

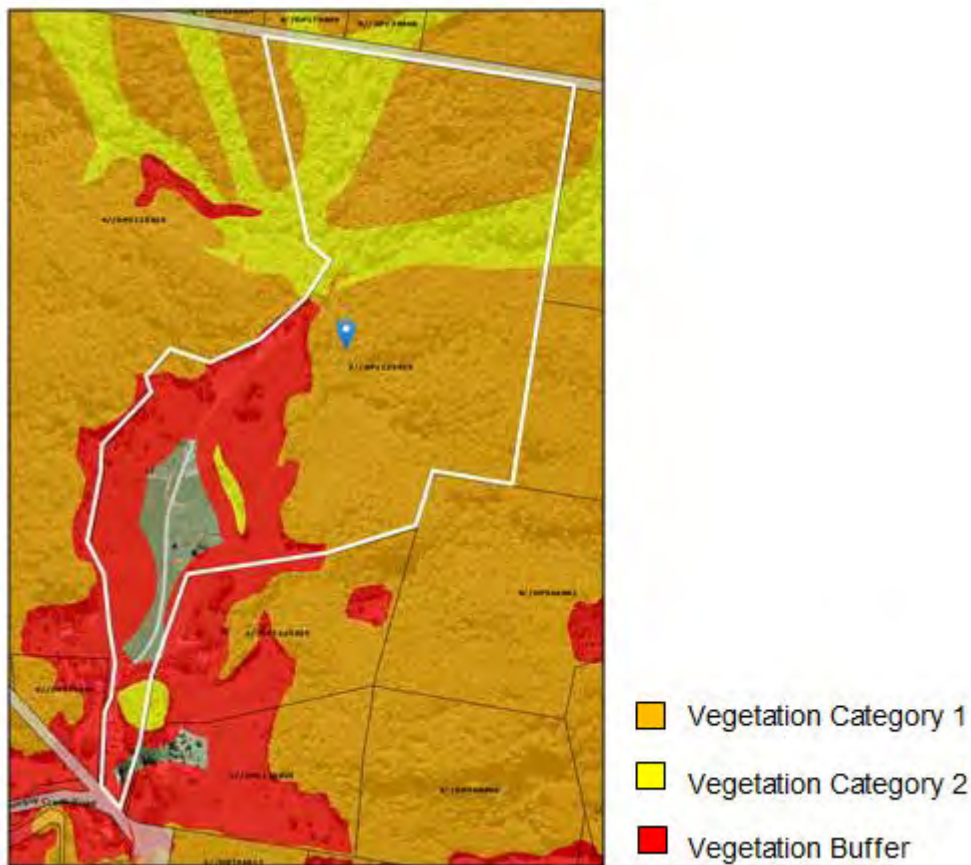


Figure 16: Bushfire prone land mapping

#### Clause 7.1 – Acid Sulfate Soils

The site is mapped as Acid Sulphate Soils Class 5. Development consent is needed for works within 500m 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 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

As the site is not within 500m of Class 1, 2, 3 or 4 land and as such no further consideration is required.

#### Clause 7.2 - Earthworks

Earthworks is defined in the LEP as 'excavation or fill'. While excavation would be required for the drilling of the second and third bore, this work has been authorised



by the water extraction licences and the current application does not seek approval for construction of the bores.

Road widening will be required at eight (8) locations on the Dungay Creek Road alignment to facilitate the movement of water tanks. While detailed realignment designs have not been submitted at this stage, some minor earthworks will be required.

Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

- a. *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

Dungay Creek runs along the road alignment. Significant erosion has occurred inside Bend L, close to the waterway with the existing road pavement extending to the top of the bank. Widening of the road on the waterway side would require rock works to stabilise the ground. To address this and to avoid the necessity for tree removals, the applicant was requested to consider widening the road on the northern side.

Any approval issued for the works would include conditions to ensure that the stability of the road and the adjoining land was not prejudiced by the earthworks.

- b. *the effect of the development on the likely future use or redevelopment of the land,*

The works are predominantly located within the road reserve. There are locations at which the proposed road works encroach onto private property. At these locations, Council will remedy any encroachments to ensure all public assets are within the road reserve before the applicant can proceed (prior to the commencement of any works). The extent of the roadworks is minor in nature and would not be considered to unreasonably impact on the future use or redevelopment of lands. The works would however improve safety for all road users.

- c. *the quality of the fill or the soil to be excavated, or both,*

The quality of the fill or soil to be excavated is not known at this stage. However given the minor extent of the earthworks required, this could be managed by condition if approval were to be issued.

- d. *the effect of the development on the existing and likely amenity of adjoining properties,*

Any impacts of the earthworks on the amenity of adjoining properties would be confined to the construction period (disruptions to traffic flow, noise, dust generation) and as such short term in nature and could be ameliorated by condition.

- e. *the source of any fill material and the destination of any excavated material,*

Given the minor extent of the earthworks required, this could be managed by condition if approval were to be issued.

f. *the likelihood of disturbing relics,*

The road upgrades are not proposed at any locations identified as being of likely Aboriginal heritage significance (as identified on Council's draft Aboriginal Cultural Heritage Plan Mapping).

g. *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

The upgrade proposed at Bend H will trigger the need for a controlled activity permit from NSW Office of Water due to the proximity to the creek.

h. *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*

The applicant's amended road improvement plans address matters raised by Council to avoid and mitigate the impacts of the proposed development.

i. *the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

The road upgrades are not proposed at any locations identified as being of heritage or archaeological significance. Changes to Bend C will ensure the retention of the existing stone walls.

Clause 7.3 – Flood Planning

The site is not affected by flooding.

Clause 7.4 - Floodplain risk management

The site is not affected by flooding.

Clause 7.7 – Drinking Water Catchments

The site is not located within a designated Drinking Water Catchment.

Clause 7.10 - Essential Services

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,
- b. the supply of electricity,
- c. the disposal and management of sewage,
- d. stormwater drainage or on-site conservation,

- e. suitable vehicular access.

The applicant states in the Statement of Environmental Effects (SEE) that the site is suitably serviced by electricity. The Noise Impact Assessment also specifies that all pumps will be run on mains electricity. The applicant amended the proposal to include a backup economy generator which has been reviewed and considered acceptable. This will be conditioned.

There will be no wastewater directly associated with the water extraction and transportation. However it is noted that the applicant recently received a complying development certificate to carry out alterations and additions to an existing shed on the site (north of the bore) and an Onsite Sewage Management System permit. Whilst the application for the Onsite Sewage Management System permit stated that the use of the shed was for storage, it would not be unreasonable to assume that the facilities in the shed could be used by workers (drivers) engaged in the transportation of the water.

Details of the stormwater drainage of the filling/hardstand area have not been submitted, however given the area of the site available for the disposal of stormwater, this matter could be managed by way of a condition of consent.

The applicant is proposing to upgrade the existing vehicular access to the site and undertake road improvement works to ensure 19m trucks have either the sight distance or road reserve width required to accommodate the proposed trucks. The proposal was referred to Council's Traffic Engineer and Development Engineer both of who recommend that the application is capable of approval subject to the recommended conditions of consent (see detailed traffic assessment at the end of this report).

#### Clause 7.15 – Water Bottling Facility

This clause allows for development to be carried out with development consent for the purposes of a water bottling facility on land in Zone RU2 Rural Landscape (or for the construction of a pipe or similar structure on any land for the purposes of conveying groundwater to a water bottling facility) 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.

Council has also received legal advice (on a separate but similar application for a water bottling facility at Rowlands Creek) that pursuant to Clause 7.15(1) of the Tweed Local Environmental Plan 2014 that Council has no power to grant consent for the purposes of a water bottling facility on the land unless it is satisfied that development will not have an adverse impact on natural water systems or the potential agricultural use of the land.

Therefore while the taking of up to 38ML of water from bores on the land is authorised by water access licences under the Water Management Act 2000, Council must independently apply its mind to the issue of whether it is satisfied that the development does not have an adverse impact on natural water systems. The fact that there are water access licences on the land issued under other legislation does not absolve Council from needing to satisfy itself in this regard.

## Water Sharing Plans

Water Sharing Plans are progressively being developed for river and ground water systems across NSW following the introduction of the *Water Management Act 2000*. These plans protect the health of rivers and groundwater while also providing water users with perpetual access licences, equitable conditions and increased opportunities to trade water through separation of land and water.

*‘An aquifer is an underground layer of water-bearing permeable rock or unconsolidated materials (gravel, sand, silt or clay) from which groundwater can be extracted. Aquifers can store large volumes of water, often accumulated over thousands or tens of thousands of years. Water enters (or recharges) aquifers via rainfall, surface flows from rivers and lakes or flow from adjacent aquifers.*

*Water sharing plans are required to reserve water for the overall health of the groundwater sources and to protect specific ecosystems that depend on groundwater, such as wetlands. This share of water reserved for the environment is also intended to sustain the aquifer system’s aquatic fauna and flora.*

*The water sharing plan defines a proportion of rainfall recharge that is available for extraction with the remainder of recharge reserved for the environment. Limiting the volume of extraction to a proportion of recharge is intended to reduce the risk of unsustainable groundwater extraction in the long term.*<sup>(1)</sup> *Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources – Background Document, Department of Primary Industries (Water), September 2016*

The subject site is located within the New England Fold Belt Coastal Groundwater Source governed by the Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources.

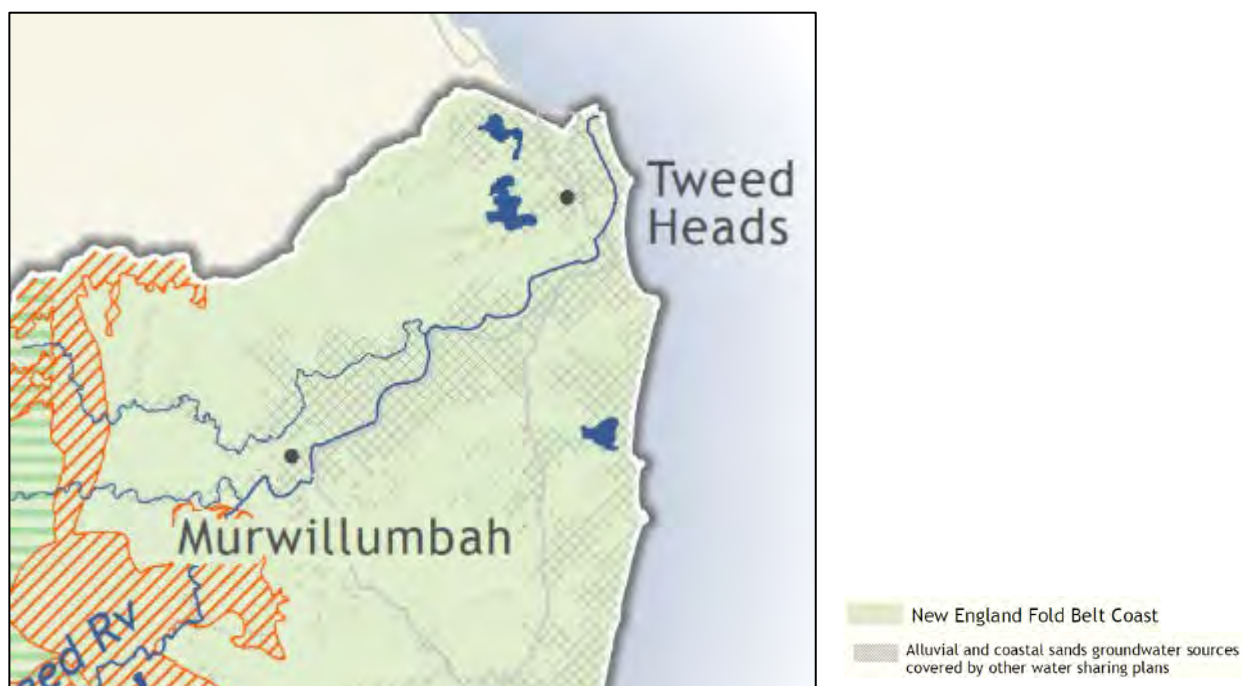


Figure 17: Extract from Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources 2016 (WSP033\_Version 1)

The following is extracted from the Water Sharing Plan

Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources – Background Document, Department of Primary Industries (Water), September 2016

### Groundwater Vulnerability

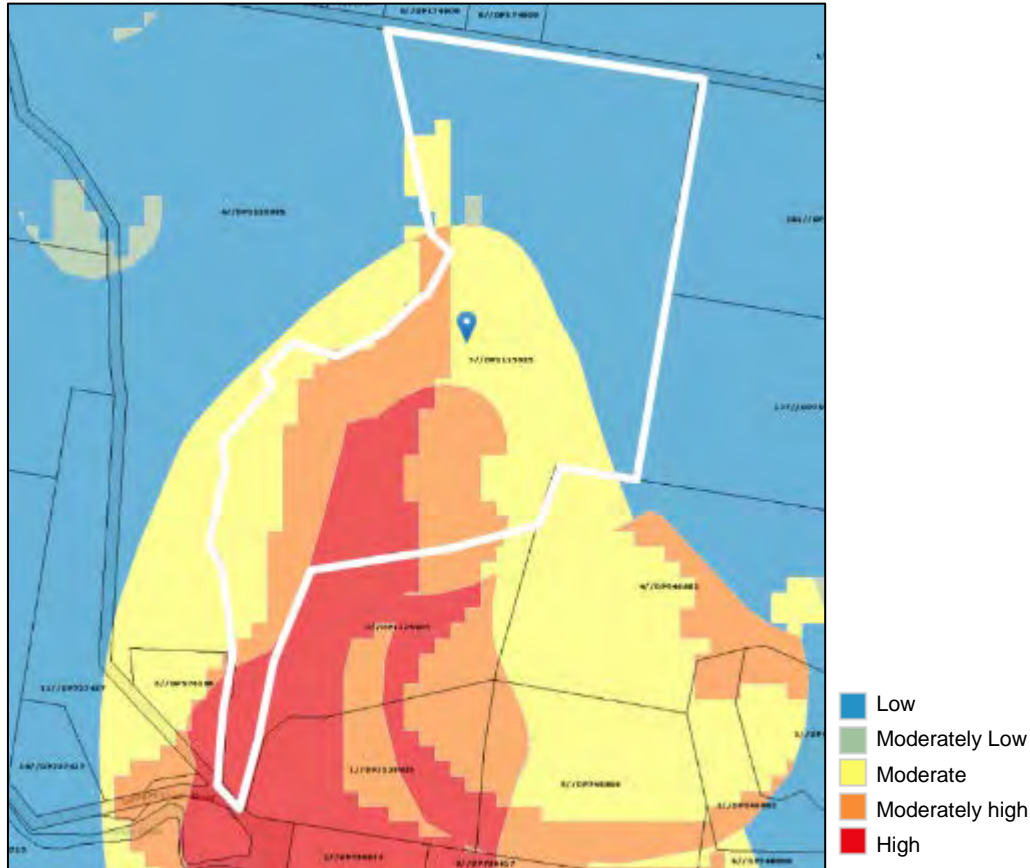


Figure 18: Ground Water Vulnerability as per Council's mapping system

### Hydrological assessment of the proposal

The hydrological assessment report prepared by Thomas Neame (Principal Hydrogeologist for Kobus Argent) submitted to Council on 4 March 2018 is summarised as follows:

- The subject water bore was drilled in September 2014 by rotary percussion method in accordance with DPI Water work licence number 30 WA 308 097. The bore was tested by airlift method and a yield of 1.8 litres/second was indicated.
- The subject water bore is located centrally within the site.
- The water bore lies at approximately 60m AHD on a gently sloping valley floor which has historically been cleared for grazing. The land rises sharply, from the cleared central valley floor, as steep forested slopes to the lot boundaries in the East, North and West at approximately 150-290m AHD. The valley is drained by an ephemeral watercourse which meanders southward within a largely informal shallow channel to its confluence with Dungay Creek, south of Dungay Creek Road.



- The Tweed Heads 1:250,000 Geological Map (Brunker et al. 1972) indicates the regional geology at the site consists of greywacke, slate and phyllite quartzite rock of the Palaeozoic Neranleigh – Fernvale Beds.
- The Driller's Log indicates a 32 m deep bore penetrating clay-rich unconsolidated sediments from surface to 13.5 m depth, beyond which is variably weathered or fresh greywacke rock to the base of the bore. Groundwater was encountered from 16 m depth, rising to 8.2 m depth, implying that the greywacke fractured aquifer was partially confined by the overlying unconsolidated sediments.
- The log records that 17 m of slotted PVC casing was installed in the bore from 31 m depth to 14 m depth, with gravel from the base of the annular space to 8.5 m depth. A grout seal was installed between 8.5 m depth and surface to protect the bore from surface pollutants.
- The water sample analysis indicated a high-quality source, low in dissolved minerals to the extent that it could be potentially corrosive to pipework (Langelier Saturation Index -3.3). There were no exceedances of the Australian Drinking Water Guidelines, although the limits of detection for Antimony, Mercury and Uranium were slightly higher than the guideline values.
- The soil samples confirmed that there were no organo-chlorine or organo-phosphorous pesticides present in the soils beside the bore.
- A pumping test was conducted in December 2017. The subject water bore was pumped continuously at an average rate of approximately 14,000 litres/hour for three hours. From a static rest water level of 8.1 m prior to the start of the test, the water was drawn down approximately 9.0 m, stabilising at a dynamic water level of approximately 17.2 m inside 30 minutes. Within one hour of the cessation of pumping, the water level in the bore had fully recovered to 8.1 m depth again. The rapid stabilisation of dynamic water level at around a metre beneath the top of the water bearing zone (16 m depth) under pumping conditions, coupled with the rapid recovery to the pre-pumping water level confirms the water bore is capable of delivering the required quantities of water. The rapid stabilisation of water level under pumping conditions indicates that the bore is connected hydraulically to a significant network of fractures within the confined greywacke aquifer. The rapid recovery of the bore water level to pre-pumping conditions also suggests that the source is not reliant on recharge from the overlying unconsolidated sediments.
- The subject water bore taps into the New England Fold Belt Coast Groundwater Source and access to water within this source is governed by the Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources. This plan prescribes limits to the availability of water. The water bore on the site has been granted a Water Access Licence (WAL) no. 41070 reference 30 AL 321 462 under this plan. The Upper Extraction Limit prescribed under the plan is 375,000 ML/y whilst the long-term average annual extraction limit (LTAAEL) is 60,000 ML/y. The volume of unassigned water at the commencement of the plan (July 2016) was 24,532 ML/y.
- When considered in terms of the prescribed LTAAEL or unassigned water, the proposed water extraction at the site comprises only approximately 0.06% and 0.15% respectively. Further, the Available Water Determination Order for the North Coast Fractured and Porous Rock Groundwater Sources 2017 (June 2017) confirms that access licence share components remain at 100%.

**This indicates that the water source is not under pressure of over extraction.**

- The presence of clay-rich unconsolidated sediments in the upper zone of the bore, the confined (pressure) head demonstrated by water level monitoring, together with the low total dissolved salts (TDS) content and absence of pesticides implies that there is negligible hydraulic continuity with surface waters or shallow groundwater despite proximity to the drainage line and the good yield of the water bore. Additionally, there are no perennial (type II) springs or mapped High Priority GDEs in the local area. **Together these lines of evidence indicate a very low likelihood of impact on surface water flow, surface water quality or groundwater quantity on potential types II or III GDEs in the local area.**
- The proposal is to extract up to 38 ML/y as a maximum, whilst DPI Water (2016) has reported that the current total water requirements for the New England Fold Belt groundwater source are estimated as greater than 35,000 ML/y against a total available water allocation of 60,000 ML/y. Based on this requirement, a total of greater than 24,500 ML/y unassigned water has been estimated for this water source. **This indicates that the proposed extraction equates to less 0.2% of the unallocated available water allocation.** Furthermore, the upper extraction limit for the New England Fold Belt groundwater source is estimated as 375,000 ML/y and **in this context the proposal equates to approximately 0.01%.**
- The proposed extraction of 38 ML/year from registered water bore number GW307778, NSW Office of Water (now DPI Water) licence number 30 BL 207 360, is unlikely to create a significant or material impact on other water users or the environment.

Dol Water reviewed this material and advised that the technical report prepared by Kobus Argent, dated 4th March 2018, details how their assessment has concluded that the extraction of up to 38ML/y from bore GW307778 is unlikely to create a significant or material impact on other water users or the environment.

It is important to note that GW307778 was authorised for irrigation and stock purposes under Water Act 1912 bore licence 30BL207306. The licence was granted with a condition that limited the annual extraction from this bore to a maximum of 19 megalitres. Two other irrigation bore licence were granted for this property for proposed bores.

The licensed entitlement between all three licences was 38 megalitres, however, each licence was subject to a condition which limited the maximum annual extraction to 19 megalitres from any individual bore. These three bore licences converted to an approval under the Water Management Act 2000 and while the conditions of the North Coast Fractured and Porous Rock Water Sharing Plan have not yet been finalised, the conditions limiting the maximum extraction from any individual bore will be carried forward.

Based on the available information, NSW Water did not support entitlement consolidation for extraction **from an individual bore**. Dol water cannot advise with confidence as to the significance of a hydrological connection between the bore GW307778 and the shallow aquifer / surface water systems under the proposed increased extraction. Dol Water recommended that additional assessment work could be required to support the application prior to approval consideration. Further

details on the requirements are available at [https://www.water.nsw.gov.au/data/assets/pdf\\_file/0009/547146/avail\\_ground\\_coastal\\_test\\_pumping\\_bore\\_licence\\_guide.pdf](https://www.water.nsw.gov.au/data/assets/pdf_file/0009/547146/avail_ground_coastal_test_pumping_bore_licence_guide.pdf)

Accordingly the applicant's hydrologist Thomas Neame (Principal Hydrogeologist for Kobus Argent) prepared a revised statement dated 4 June 2018 which acknowledged the proposed two bores rather than relying on a single bore as follows:

- The proposal includes the extraction of water for bottling purposes up to a total maximum annual entitlement of 38 ML/y (approx. 1.2 litres/second) from **two bores and not exceeding 19 ML/y (approx. 0.6 l/s) from each individual bore**. Currently one water bore has been installed on the site. This water bore was drilled in September 2014 by rotary percussion method in accordance with DPI Water work licence number 30 WA 308 097. The bore was tested by airlift method and an indicative yield of 1.8 l/s was obtained. A second bore will be drilled to the north east of the existing bore in accordance with the existing licence. This second bore will be utilised for the extraction of up to a maximum of 19 ML/y. The combined extraction of water from the two boreholes will not exceed 38 ML/y in accordance with the terms of the licences of each bore.
- Whilst few site-specific data are available, appropriate reasoning supported by external sources of published information have enabled an objective assessment to be completed. The assessment considers that the extraction of up to 19 ML/y from the subject bore (referenced DPI Water work licence no. 30 WA 308 097 on Lot 3 DP1125925) and 19 M L/y from a second bore which is yet to be installed to the north east on the same lot is **unlikely to create a significant or material impact on other water users or the environment**. It should be noted that air-lift test pumping of the existing bore was conducted sustainably at a rate of 14,000 l/s whilst the proposed combined extraction from the two licensed bores is approximately 4,300 l/s, approximately one third of the rate at which test pumping was previously conducted.
- In mitigation of the paucity of groundwater data from other nearby locations, it is recommended that should the extraction be approved, a groundwater monitoring borehole should be drilled and installed in the vicinity of the extraction bore, potentially lying to the west of the extraction bore, to monitor the effects of longer term groundwater extraction. The monitoring bore should also be used in conjunction with test pumping from the existing and yet-to-be installed extraction bores to verify the hydraulic characteristics of the aquifer. Monitoring of existing local registered bores throughout any periods of test pumping may also provide an additional means of verifying the sustainability of the proposed extraction.

NSW Water reviewed the amended report and have provided that:

*The initial report by Kobus Argent dated 4th March 2018 referred to an extraction of 38ML/year from registered water bore GW307778.*

*While the conditions granted under the Water Act 1912 allowed a property entitlement of 38ML between three bores, the licences were conditioned so that 19ML/year was the maximum that could be extracted from an individual bore. Therefore, DOI Water advised that they would not consider the extraction of 38ML/year from GW307778 without further assessment (pump test) to support the request to change the conditions of extraction.*

*The amended report dated 4th June 2018 advised that the 38ML/year would be taken from two bores, with each bore not exceeding 19ML/year.*

*This amended proposal is in line with the conditions of the licences granted under the Water Act 1912 which have subsequently converted to a works and use approval and an access licence under the Water Management Act 2000. Approval 30CA321463 authorises the existing bore GW307778 and two proposed bore sites on Lot 3 DP1125925 for irrigation purposes. Aquifer access Licence 30AL321462 (38 units/ML) also pertains to the property.*

*Regardless of whether the 19ML/year/bore is extracted for irrigation or industrial purposes, the impact of extraction would remain substantially the same, however, the following comments are provided:*

- an industrial user has the potential to extract at a more evenly spaced production rate and also pump during wetter climatic conditions as opposed to a reduced short term drawdown impact relative to extracting larger volumes over a shorter timeframe during the seasonal dry months when irrigation is likely to occur,*
- an industrial user is targeted to meet supply and demand with sales increasing over the hotter summer months, however, peak extraction rates for irrigation and industrial purposes are both likely to occur under similar climatic conditions,*
- Council may wish to consider aspects of the development application centred on managing the more concentrated months of truck movements, noise & dust etc. in order to balance social and community concerns.*

*The granting of a use approval for industrial purposes is not required as Clause 32 of the Water Management (General) Regulation 2011 states that a person is exempt from the requirement for a water use approval in relation to the use of water if the water is used for a purpose for which a development consent is in force under the EPA Act.*

*In conclusion, the subject property already holds a current work approval for the bores and an access licence for the 38 units. Therefore, no GTA's are required for this proposal as the licences and approvals are already in place.*

*Subject to the granting of development consent, extraction of water for water bottling purposes is permitted and no further approvals or amendments to the existing approval are required from Water NSW.*

Notwithstanding the issue of the license on the basis of Water Sharing Plans, the submission of the hydrogeologist report/s on behalf of the applicant has provided Council with additional evidence that the bore and associated bulk water extraction

for water bottling will not have an adverse impact on the natural water systems nor the potential agricultural use of the land. This confidence is supported by the review of the assessment by the Department of Industry hydrologist.

Specifically, the actual extraction levels are considered of a volume that will not cause any long term adverse impacts on the natural water systems as the natural recharge exceeds the overall extraction rate. Further, as the water from the bore is unlikely to be from surface water leakage from local drainage lines, there is little risk of the agricultural use of the land being impacted by the bulk extraction.

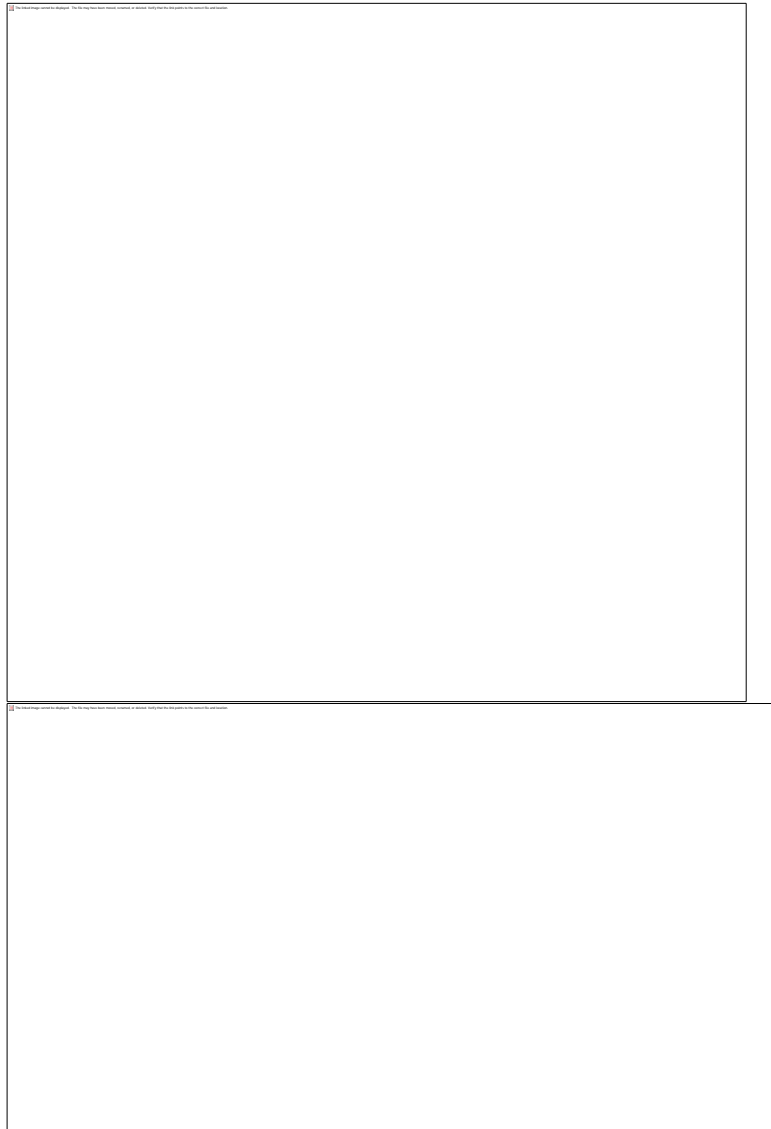
It is considered satisfactory that Council rely upon the background work undertaken by both the applicant's consultant and Department of Industry to determine the capability of the aquifer to accommodate basic landholder water rights combined with licenses such as this. These multiple levels of assessment should provide Council with sufficient evidence that Clause 7.15 of the Tweed LEP is duly satisfied and the application is worthy support in regard to the water extraction component.

Clause 7.15 also requires a review as to whether the water extraction will adversely affect the potential agricultural use of the land.

The intention of the Clause was to safeguard against irreversible changes to the land or landscape that would prejudice the future use of the site for agriculture following the extinguishing of the water extraction on the site (erecting large water bottling facilities/sheds on the site that would prejudice future crop production or laying pipework, etc).

Given that the site is identified on the land suitability mapping for grazing, banana production and not suitable for agriculture (see figure below) and the land is currently being partially used for grazing, it would appear that crop production on the site is likely to be limited.





**Figure 19: Agricultural Land Stability as per Council's mapping system**

The applicant was required to provide a statement detailing what the site is being used for now and its agricultural potential.

The applicant advised:

I refer to the above application and Council's request to demonstrate what impact the development will have on potential agricultural use of the land and what the land owners actual intentions are for future agricultural pursuits.

My family has owned the property since 1970. The property has been farmed for many purposes. It is the intention to keep the farm in our family for the long term.

Over the last 25 years the property has been used for grazing by cattle. It is the intention to continue cattle grazing as a source of income.

The proposed development has negligible impact on current or future farming pursuits. The property is 44 hectares and the land to be developed/disturbed is minimal and positioned such to have minimal impact on the farm. There is negligible loss of grazing land. No further roads are necessary as an existing farm road will be used. The structures are positioned immediately adjacent to this road. The new structures generally comprise water storage tanks which are consistent with such structures on a farm.

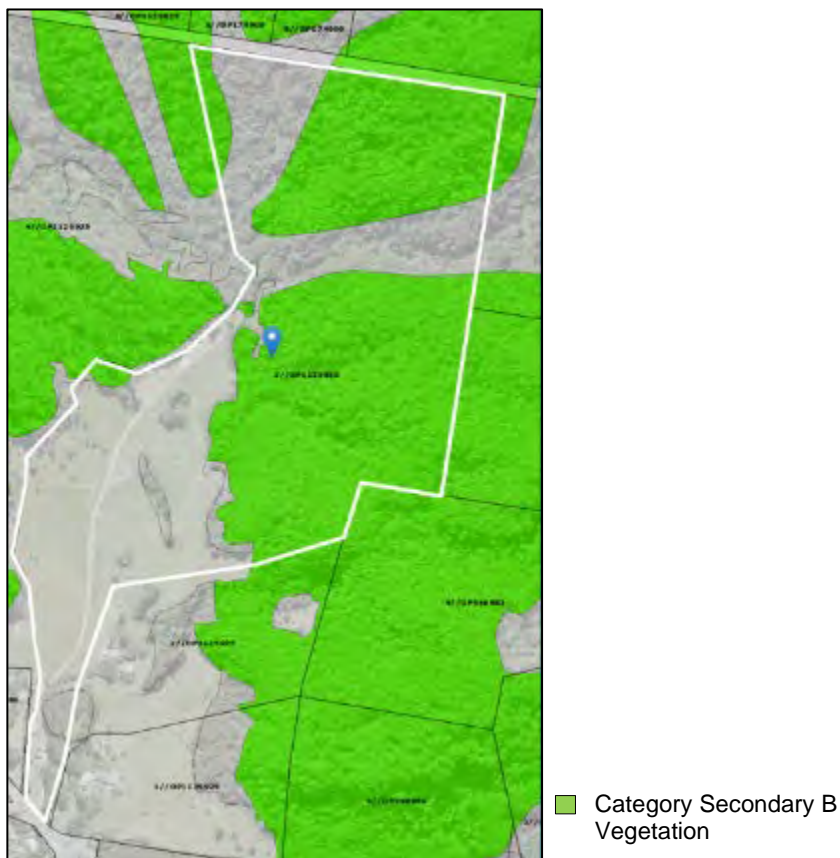
The applicant has demonstrated that the extraction of the water and its removal from the ecosystem will not impact on the potential agricultural use of both the landholding and the surrounding lands.

Clause 7.15 is considered satisfied.

### **State Environmental Planning Policies**

#### **SEPP No. 44 - Koala Habitat Protection**

The proposed development will not affect any koala habitat as the proposed bores, infrastructure, and driveway do not affect the known koala habitat areas as mapped below.



**Figure 20: Koala Habitat Category Mapping (based on 2009 Vegetation Mapping)**  
Furthermore, the proposed roadworks do not affect any known koala habitat areas.

#### **SEPP No. 55 - Remediation of Land**

The aim 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.

A search of Council records by the Environmental Health unit indicated:

- Land was subdivided through application DA05/0093. A Preliminary Site Investigation Report (Report Ref: HMC2005.3A dated May 2005) was submitted and assessed by the Environmental Health Section (EHS) for DA05/0093. The report was considered satisfactory by the EHS. The report however was targeted and as summarised in the report 'A site investigation and targeted soil sampling and analysis were used to assess the proposed dwelling site for the presence of remnant contaminants from former banana plantations'. The report does not consider the proposed development.
- The SEE states that the land has been and is being used for rural residential purposes and grazing. The SEE also states that the adjoining land uses are rural residential and grazing. Former plantations in the area were not addressed.
- An examination of the topographical map, Murwillumbah 9541-11-N dated 1976 (Scale 1:25 000), indicated that there were banana plantations on adjoining properties. However, adjoining properties were all part of the one land parcel prior to subdivision (DA05/0093). The existing bore site is located approximately in the area in below picture of the topographical map. The proposed second bore site location has not been identified. Agricultural/horticultural activities are listed in Schedule 1 as a potentially contaminating activity.
- The proposal is for water extraction, the SEE does not indicate what the water is being used for. It is unknown if the water is suitable for the proposed use and in consideration of the area being used previously for bananas and other plantations further consideration of contamination is required.
- Council historical aerial photo 1993 (1993\_run1\_am544\_012-1.jpg) and 1996 (1996aerials\2596028\_ph5.jpg) indicated that there were plantations in adjoining areas. Photo 1970 (1970\_run2\_1645\_5089-1.jpg) shows that the proposed area was cleared. No other historical aerial photographs are available.

Given the above information, it is considered that the proposed location of the water extraction facility is in an area where plantations were not directly located. However, further information is required as it is unknown if previous surrounding plantations have contaminated the groundwater source at the existing and proposed bore locations. The applicant is requested to provide to Council a preliminary contaminated land report prepared by a suitably qualified contaminated land consultant. The report is to provide evidence that the groundwater proposed to be extracted from the existing bore site and proposed bore site has not been contaminated by banana plantation activities. The report is to provide information on the uses of the water being extracted and its suitability for the proposed use (eg. drinking water). The assessment should be completed in accordance with the NSW Office of Environment and Heritage – *Guidelines for Consultants Reporting on Contaminated Sites* and NSW Office of Environment and Heritage – *Guidelines for Assessing Banana Plantation Sites*.

The applicant was requested to provide to Council a preliminary contaminated land report prepared by a suitably qualified contaminated land consultant. The report is to provide evidence that the groundwater proposed to be extracted from the existing bore site and proposed bore site has not been contaminated by banana plantation activities. The report is to provide information on the uses of the water being extracted and its suitability for the proposed use (eg. drinking water). The

assessment should be completed in accordance with the NSW Office of Environment and Heritage – Guidelines for Consultants Reporting on Contaminated Sites and NSW Office of Environment and Heritage – Guidelines for Assessing Banana Plantation Sites.

The applicants report stated:

*Council's concerns would appear to relate to the potential contamination of the groundwater from contaminants of potential concern (COPC). In agricultural areas these COPC are associated with agrichemical use. Agrichemical application using residual chemicals including arsenic, lead, DDT and dieldrin may have been previously associated with intensive land use such as cash cropping, banana plantation and sugar cane production prior to the mid 1980s.*

*Potential site contamination associated with these COPC is usually confined to the ground surface and various site contamination guidelines require soil investigation of the upper 75-150mm of the soil profile depending on the level of soil disturbance. Groundwater investigation is not normally undertaken in these agricultural situations as the agrichemicals have been found to be bound to the soil particles. Section 1.1 of Appendix A1 Schedule B7 The Derivation of HILs for Metals and Inorganics National Environment Protection (Assessment of Site Contamination) Measure 1999 as amended May 2013 states:*

*“DDT and its metabolites are essentially immobile in soil, becoming strongly absorbed onto the surface layer of soils”.*

*Section 2.3.4 of Appendix A3 Schedule B7 Derivation Of HILs For Organochlorine Pesticides National Environment Protection (Assessment of Site Contamination) Measure 1999 as amended May 2013 states:*

*“Both aldrin and dieldrin have high Koc values (log Koc = 6.67–7.67, ATSDR 2002), suggesting that these compounds are largely bound to soil particulates and immobile in soil. For plant uptake to be significant, the chemicals must be able to partition to soil water. With respect to aldrin and dieldrin bound to the soil, this is considered to be insignificant. Hence, the potential for plant uptake of aldrin and dieldrin from soil contamination is considered negligible.”*

*The NSW Department of Primary Industries, Animal Biosecurity and Welfare Primefact 1371, third edition, dated July 2017 states:*

*“Arsenic and DDT are very persistent and in soil, arsenic forms compounds that are strongly bound to soil particles. This stops it from leaching out through the soil”.*

*Various investigations by HMC of past agrichemical application during intensive agricultural land use has generally not recorded soil COPC concentrations exceeding health investigation levels on former broadacre cropping or plantation land use.*

*It appears the risk of COPC from current or past agrichemical use associated with intensive land use exceeding groundwater investigation levels is minimal. Any COPC are likely to be bound to the soil particles in the upper soil profile. A minimum 15m vertical buffer is provided between any potential soil surface contamination and the groundwater aquifer. The groundwater bore appears to have been installed by a licensed driller in accordance with minimum construction standards to prevent any ingress of surface water into the production bore.*

The information above provides an assessment of all available information including aerial photography and lab testing data from soil samples taken in close proximity to the abstraction wells.

The information has been assessed by a suitably qualified and experienced consultant and concludes that there is minimal risk of contamination from historical activities.

No further contaminated land considerations are required.

The site is considered suitable for the proposed purpose in regard to contamination.

#### SEPP (Rural Lands) 2008

The aims of this policy are to facilitate the orderly and economic use and development of rural lands for rural and related purposes; reduce the potential for land use conflicts by identifying Rural Planning and Rural Subdivisions Principles; and the identification of State Significant Agricultural Land.

The SEPP sets out eight (8) Rural Planning Principles which are as follows:

- a. the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- b. recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- c. recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,
- d. in planning for rural lands, to balance the social, economic and environmental interests of the community,
- e. the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,
- f. the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,
- g. the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
- h. ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.



The site is not identified as State Significant Agricultural Land. A narrow portion of land extending from Dungay Creek Road along the eastern boundary of the front of the site is identified as Regional Significant Agricultural land (1% of the site area). This area is the tip of a more extensive area of Regional Significant Agricultural land extending up from Murwillumbah and the Tweed River (Refer to Figure). The site itself is identified in Council’s Agricultural Land Capability Mapping as being suitable for grazing with occasional cultivation on the cleared section, with lands to the west and south of the site similarly identified (Refer to Figure).

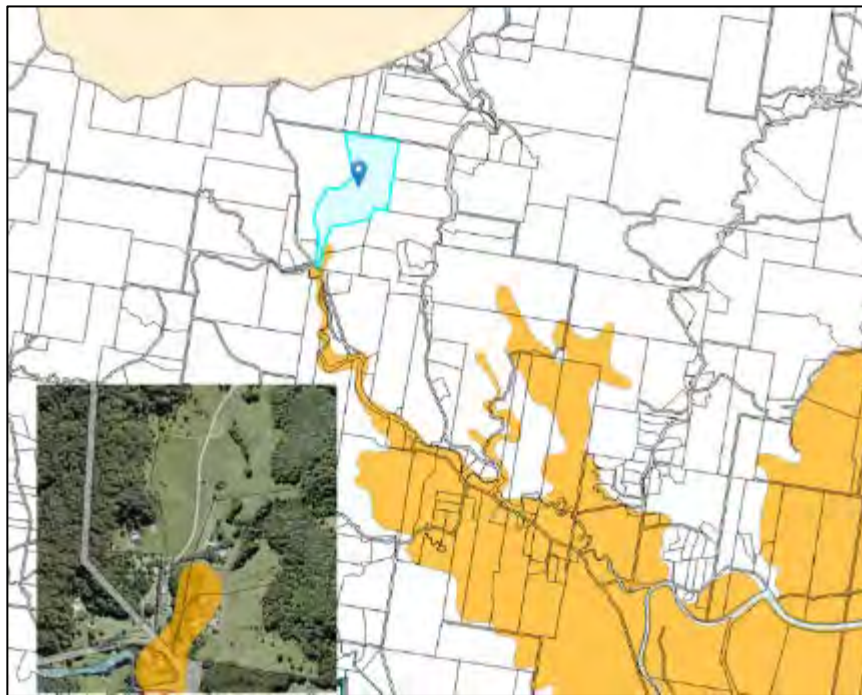


Figure 21: Regionally Significant Agricultural Land



Figure 22: Agricultural Land Capability

Portions of the subject site are mapped as bushland with a high and very high ecological status. These represent approximately 19.5% and 49% of the site respectively (Refer to Figure 2). Areas of land along the stretch of road from the subject site to Tomewin Road are also identified as low, moderate and very high

with Bend B coinciding with Moderate status mapping and Bend H with Very High status mapping Refer to Figure 2).

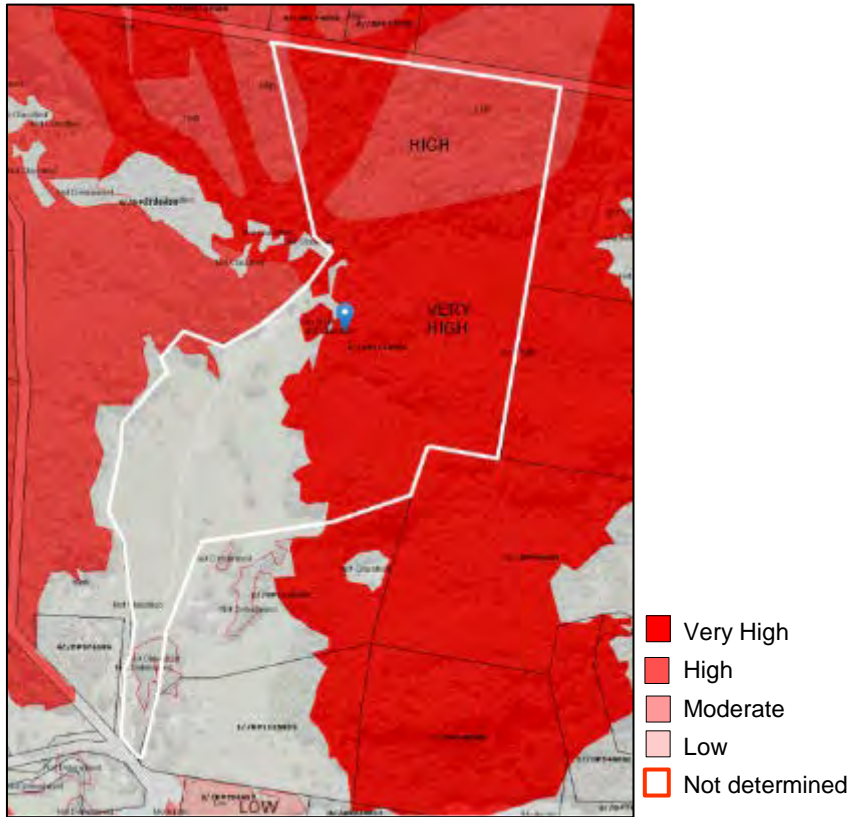


Figure 23: Ecological Status Mapping – Subject site

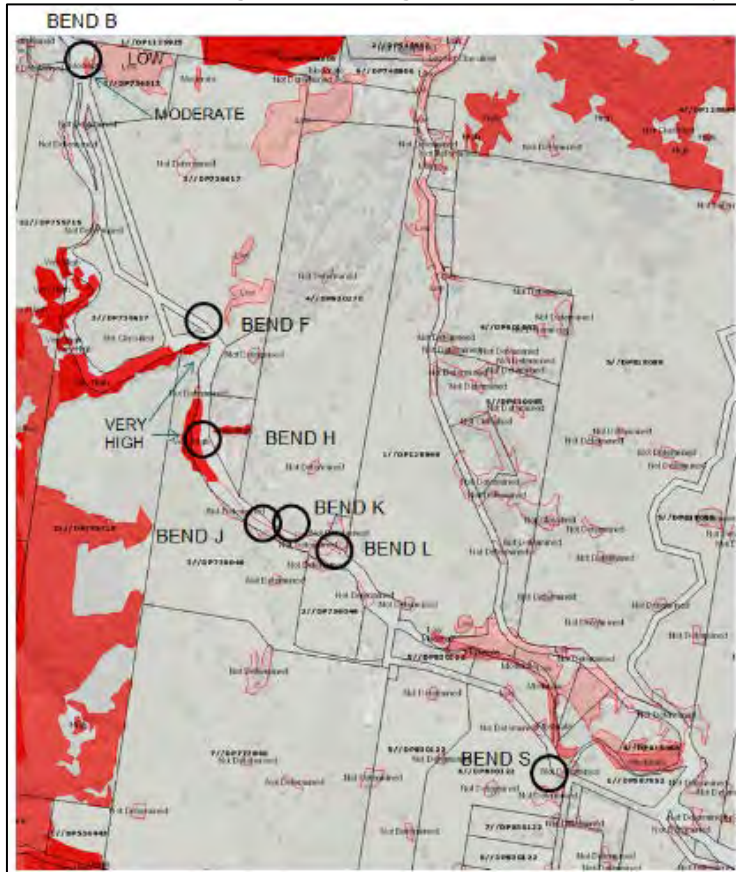


Figure 24: Ecological Status Mapping - Dungay Creek Road

The proposed water extraction operation will have a minimal footprint across the land and will not compromise any other normal agricultural pursuits.

Minor tree clearing in Council's road reserve will be necessary to accommodate the proposed road widening however suitable conditions have been recommended to mitigate this impact.

The intermittent truck presence on site is considered consistent with other rural uses.

The recommended conditions of consent are considered to mitigate any adverse local impact on the neighbours.

The proposal is considered to be compliant with the provisions of the Rural Lands SEPP.

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

Nil applicable.

Please note that Council's resolution from 15 November 2018 which in part states:

*Council re-instigates a more comprehensive planning proposal to remove clause 7.15 of the Tweed Local Environment Plan to prohibit water extraction for commercial water bottling facilities in light of the precautionary principle in regard to the long term sustainability of this activity, safety and amenity concerns, wear and tear on unsuitable rural roads, and the high level of opposition in the community for this activity.*

does not absolve Council from its statutory obligation to assess the subject application on its merits having regard to the current planning legislation.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The application is to extract water (38ML per year) from the property, bulk store it on site, fill heavy vehicles on site (maximum 19m length) and transport the water along Dungay Creek Road to its intersection with Tomewin Road.

The applicant in the SEE originally provided that a maximum of 6 to 8 trucks are expected to visit the site each day. However, this may vary given that the extraction of water is limited by a total yearly amount which may reduce truck movements on some days and increase movements on others. The applicant has advised that the operation will run 7 days a week from 7am to 9pm during daylight savings times and 7am to 7pm eastern standard time.

Further to this the applicant has advised, that the applicant would accept a condition limiting truck collections to 5 per day, 5 days per week Monday – Friday between the hours of 7am -8am + 9am – 3pm + 4pm -7pm.

The truck will enter and exit the site from Dungay Creek Road and onto Tomewin Road. The traffic safety issue for this DA is primarily related to the use of Dungay Creek Road and its access to the property.

The applicant originally provided that Dungay Creek Road is a bitumen sealed road with a 60km/h speed limit which is likely to have satisfactory width and standard to accommodate the truck trips. Further in the SEE the applicant refers to a 19m long truck and this is assumed to be the proposed vehicle for the water extraction movements. The existing driveway to the property will be used and council is advised that “the site (sic) distances each way along Dungay Creek Road are satisfactory.”

The applicant proposes to use a 19m articulated truck. Whilst these vehicles are not prohibited on this road, it was requested that the applicant provide further information on how a 19 metre articulated vehicle can safely travel along Dungay Creek Road and enter and leave the site safely.

Given that the larger vehicle needs to use the full width of the road, an assessment was requested of the route to determine if adequate sight distance was available for the truck to stop when a vehicle was approaching in the opposite direction. Should there be deficiencies in the required sight distances available, then the applicant should provide any proposed road upgrades required.

Further information was requested as below:

1. Provision of an engineering assessment of Dungay Creek Road from Campbells Road to and including the proposed 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 distances of 110m is provided to limit the risk of head on crashes on curves where the road seal width does not allow the safe passing (600mm clearance) of the largest design vehicles.
2. The assessment is to include confirmation that there is a compliant passing width along narrowed straight sections and indicate areas where shoulder widening is required.
3. Any proposed road upgrades are to be accompanied with sufficient detail, including but not limited to, dimensioned cross sections, sight distance longitudinal sections, details of all upgrades to horizontal and vertical alignments, earthworks extents and offsets to property boundaries, watercourses and significant vegetation.

A report was submitted compiled by Knobel consulting dated 9 April 2018 addressing road upgrades required for the proposed vehicle.

Knobel Consulting has been commissioned by to prepare an engineering design for the upgrade of Dungay Creek Road. The subject road we understand is currently accessed by buses and trucks. An application is proposed at the subject property for a water extraction facility. As a result, the safety of the road access along Dungay Creek Road was required to be assessed to determine any upgrades that would be needed to facilitate the trucks that would need to access the subject property.

The road varies in width and is constrained in parts by limited pavement width and sight distances. Below are the design parameters used:

**Stopping Sight Distance (SSD) analysis:**

- SSD assessment is based on the principles of 'Austroads Guide to Road Design', Part 3 (AGRD-03), Section 5.3 & Table 5.6.
- 70kph Design speed has been adopted for sight distance analysis. The existing road is sign posted at 60kph.
- 105m SSD generally adopted to suit 70kph design speed. Reaction time of 2.0 seconds adopted in line with AGRD-03 Table 5.2.

**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 0.6m separation (for sections of road only where adequate SSD is not achievable).
- The width of the existing bridge adjacent Bend 'N' is insufficient, such that safe passing of the above vehicles cannot be accommodated. Appropriate signage has been nominated in order to address this issue.

Turning templates were performed along Dungay Creek Road in line with the above widening philosophy. These turning paths are shown in plans K3492-P001 to K3492-P006. Where the required width was not available and suitable sight distance was not achievable, road widening was required. Sight distance lines are also shown on the above plans.

The required road widening design to facilitate the design truck operating to and from the site are shown in plans K3492-P007 to K3492-P012.

## Assessment

The relevant issues for consideration include whether the road is suitable for the proposed vehicle and whether the increase in traffic movements would impact on the road's capacity or safety.

Firstly, the proposed increase in traffic movements is not considered to be of concern in terms of road capacity as Dungay Creek Road carries very low traffic volumes and the proposed movements are not significant. There is however increased associated risk for a vehicle related crash arising from the application, particularly if the road is not suitable for the proposed design vehicle. The proposed regular use of a 19m semi-trailer on this road requires assessment as to the road safety implications.

Council's Senior Engineer Assets and Maintenance has confirmed that there are no vehicle weight restrictions on Dungay Creek Road and on its culvert crossings.

Dungay Creek Road is a rural low traffic volume road with varying sealed widths, several creek crossings, tight radius curves and a newly installed 60km/h speed limit.

Being a rural road with very low traffic volumes it is reasonable to expect that when vehicles are approaching from opposite directions that the limited seal width would require vehicles to decelerate to say 30km/h or lower when passing and utilise the road shoulder in some instances. In order to achieve this passing movement safely, firstly the drivers need to observe the approaching vehicle and reduce their speeds accordingly. This is particularly relevant for larger vehicles due to their swept path movement intruding into the path of oncoming vehicles on tight curves.

Traffic volume and speed counts were carried out by Council on Dungay Creek Road in 2016 at no. 282. The 7 day average vehicles per day were 217 and the









However this can be conditioned accordingly and addressed at detailed S138/Construction Certificate Stage.

*Bend H*

Knobel's original "Technical Design Brief" Traffic Report dated 31 August 2017: Widening on outside proposed. – Plan submitted.



Figure 29: Bend H

Appears adequate space within the road reserve although it will be close to the creek. Can be conditioned accordingly and addressed at detailed S138/Construction Certificate Stage.

*Bend J/K*

No works needed to Bend J.

Knobel's original "Technical Design Brief" Traffic Report dated 31 August 2017: Widening on inside proposed – Plan submitted.



Figure 30: Bend J & K Original

It is noted that the proposed road widening would occur on private land due to the road formation not being contained within the designated road reserve. It has now been brought to council's attention that the road at this bend is not located within the designated road reserve and this anomaly has been forwarded to the appropriate officers for rectification. This boundary adjustment needs to take place by Council as the road authority before works are carried out at this curve.



Figure 31: Public Road in Private Land

Council’s ecologist identified that the proposal to widen on the inside will result in the removal of 2 trees that are desired to be preserved. As such, Council’s further information letter to the applicant (dated 21 November 2017), requested the widening be applied to the outside of the bend.

Amended Plans were submitted under Knobel Consulting letterhead, dated 9 April 2018.



Figure 32: Bend K

The amended design is accepted and it is recommended that updated road widening plan “Knobel Consulting” Drawing No P011 Issue 2 (from Knobel Consulting letterhead, dated 9 April 2018) is referenced in the consent.

*Bend L*

Knobel’s original “Technical Design Brief” Traffic Report dated 31 August 2017: Widening on inside proposed – Plan submitted.





Figure 33: Bend L Original

Council's Ecologist concerned with closeness of proposed widening to creek plus would require removal of 3 trees desired to be preserved. As such, Council's further information letter to the applicant (dated 21 November 2017), requested the widening be applied to the outside of the bend.

Amended Plans were submitted under Knobel Consulting letterhead, dated 9 April 2018.

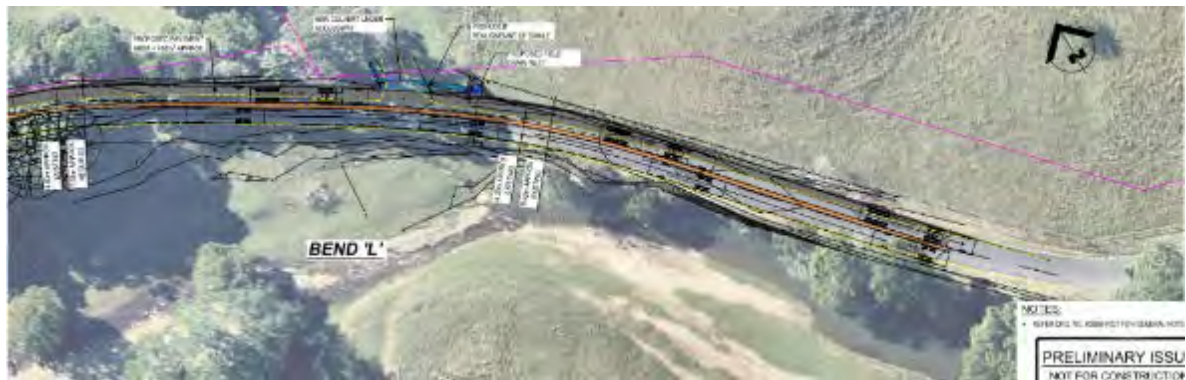


Figure 34: Bend L Amended

Council's ecologist identified that this proposal would also (possibly) require the removal of some trees, but these were most likely planted trees and their removal is deemed acceptable subject to conditions.

It is recommended that updated road widening plan "Knobel Consulting" Drawing No P011 Issue 2 (from Knobel Consulting letterhead, dated 9 April 2018) is referenced in the consent.

Bend S (near Campbell's Road)

Knobel's original "Technical Design Brief" Traffic Report dated 31 August 2017: Widening on outside proposed – Plan submitted.



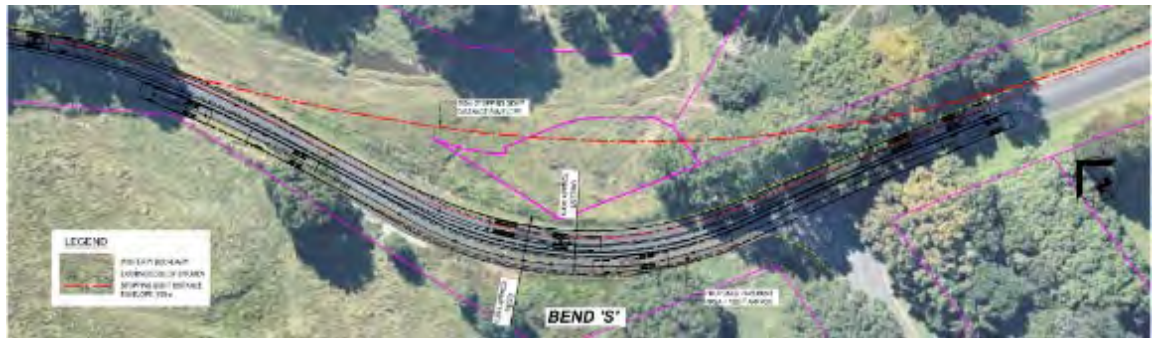


Figure 35: Bend S

Adequate space within the road reserve. Can be conditioned accordingly and addressed at detailed, S138/Construction Certificate Stage.

### *Summary*

This proposal is to cart bulk water from the site on Dungay Creek Road in a 19m semi-trailer to its final destination which is unknown but is assumed to be north in Queensland.

Dungay Creek Road is a rural road with varying road widths, a 60km/h speed limit (unusual for a rural road) and being a no through road with few residential properties along its length, a low traffic volume road. However, it is noted that at the end of Dungay Creek Road a separate development takes place that generates significant (in terms of increased) traffic volumes, during periods of the year, some of which involves the use of larger vehicles. While there is currently no condition of consent that limits truck size to that development it is understood that the developer uses a pilot vehicle to escort larger trucks to the site. The applicant is currently requesting a variation to the maximum (currently 80) number of vehicles that enter the site. Therefore, that development (I'm a Celebrity) which is beyond the driveway of this DA's access is entitled currently to legitimately generate 160 vehicle movements along Dungay Creek Road with no limitations on the size of the vehicles.

There is no signage or statutory limitations to prevent a semi-trailer general access vehicle travelling on the road. This is not unusual for rural roads where there is low traffic volumes and occasional use heavy vehicle use commensurate with agricultural activities.

It is difficult to determine or attribute road maintenance costs to the proposed development. The applicant has provided that a laden 19m truck would travel along the road, and in fact other Council maintained roads, up to 5 times a day for five days a week. The major determinant of the maintenance regime to roads is the volume of heavy vehicles as a percentage of total traffic. Whilst this development would add 25 laden trips a week to the road network it should be noted that the most recent data provided to council from I'm a Celebrity indicated that up to 25 heavy vehicles per day were entering their site.

The applicant has provided an assessment of the road's suitability, using appropriate Austroads Road Design Guidelines, for the proposed 19m truck and has identified that the access driveway needs to be relocated to improve sightlines

and several curves are required to be widened to facilitate safe movement along the road.

It is not unreasonable to expect that the proponent needs to carry out the works on the road to limit the risk of the regular use of the proposed vehicle.

Whilst there are a number of objectors to the proposed development on road safety grounds, subject to completion of the proposed road work upgrades including relocation of the driveway access there are no objections or further information required from the proponent.

In addition to the more generic conditions (as included in the recommendation) the following specific conditions should be noted as controlling the scope of the development to limit the impact on local residents.

- Only one truck generated by the site shall be permitted to travel on Dungay Creek Road or to be on site at any one time for the purposes of transporting water.
- No more than 5 trucks per day (5in, 5out), 5 days per week (Mon-Fri) are permitted for water extraction purposes
- No truck movements are to take place on Dungay Creek Road during school bus travel times. The consent has been limited to hours of operation as 9am – 3pm to cover this.

#### A11-Public Notification of Development Proposals

The application was notified on two separate occasions in 2016 and again in 2018. Council received in excess of 75 submissions opposing the development on both occasions. The submissions are detailed in a latter section of this report.

#### A16-Preservation of Trees or Vegetation

The development upon the site will not require any tree removal. The use of Dungay Creek Road for the 19m trucks will require some minor tree removal along the Dungay Creek Road route to provide suitable sight distances.

Council's Natural Resource Management Unit has assessed each location that requires the tree removal to provide these sight distances.

It was concluded that this tree removal would be unlikely to have a significant adverse impact on the local ecology.

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

The matters identified within the Regulations relating to the coastal policy and demolition of buildings or upgrading are not applicable due to the location of the property and the form of development that does not involve any structures other than water tanks.

#### **(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 site is approximately 20km from the coast and not located within a specific area identified under that Plan.

The site is not located adjacent to any coastal estuaries covered by this plan.

**Tweed Coast Estuaries Management Plan 2004**

The site is not located adjacent to any coastal estuaries covered by this plan.

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

The site is not located with the Cobaki or Terranora Broadwater areas to which this plan applies.

- (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 amongst a small lot rural subdivision area and accordingly there are several houses in close proximity to the entry driveway (303 Dungay Creek Road), the internal driveway (312 & 314 Dungay Creek Road) and the actual filling station itself (312 Dungay Creek Road where the land owners have approval to construct a new house directly overlooking the filling station). In addition there is the house on the subject site and two other sites to the east which are owned by the same owners as the subject land.

These houses are all shown diagrammatically below:



Figure 36: House Locations

Dungay Creek is also home to the filming of I'm a Celebrity Het Me Out of Here which has 80 - 120 vehicles per day access the site for 5-7 months of the year. This development has evolved over the years and current operations generally run quite smoothly with pilot vehicles used for larger trucks and good community consultation to alert local residents of any upcoming disruptions to the community.

The Dungay Creek Township accommodates a local diner, public primary school and a private small number high school.

The proposed trucks would be travelling through this community and would need to abide by normal road rules.

On balance of all issues discussed in this report the proposed development is considered capable of support in this community as the recommended conditions of consent are considered to adequately minimise the possible impacts arising from the proposed development.

Specifically:



- Sealing the internal driveway and removing cattle grids along this driveway will reduce dust and noise;
- Restricting use to Monday – Friday (9am – 3pm) with only 5 truckloads per day will allow a respite period for immediate neighbours;
- Requiring landscaping on the subject site to screen the internal driveway and filling station will limit (not completely remove due to topography) the available sight lines for the neighbours.

Based on these provisions, the application is considered capable of conditional approval as it would be considered to be consistent with normal agricultural use of the land which could include cattle yards, horse stables, landscaping material supply centres, truck depots etc.

#### Access, Transport and Traffic

The revised site access will provide sufficient sight distances each way along Dungay Creek Road.

There is plenty of space on site near the intended tanks for the trucks to park, fill up and turn around to exit in a forward manner.

Passing bays will be provided along the internal current gravel driveway.



Figure 37: Driveways from ROW to Lot 4 (left) subject site (centre) and Lot 2 (right)

It will be a condition of consent that the internal driveway is sealed and clear of any cattle grids that could exacerbate any noise from the trucks. At the point where Lot 4, Lot 3 and Lot 2 cross over as shown in the above photo the applicant should be responsible for funding any necessary maintenance (subject to landowners consent) given the heavy vehicle nature of this approval.

The revised internal access route is as follows:



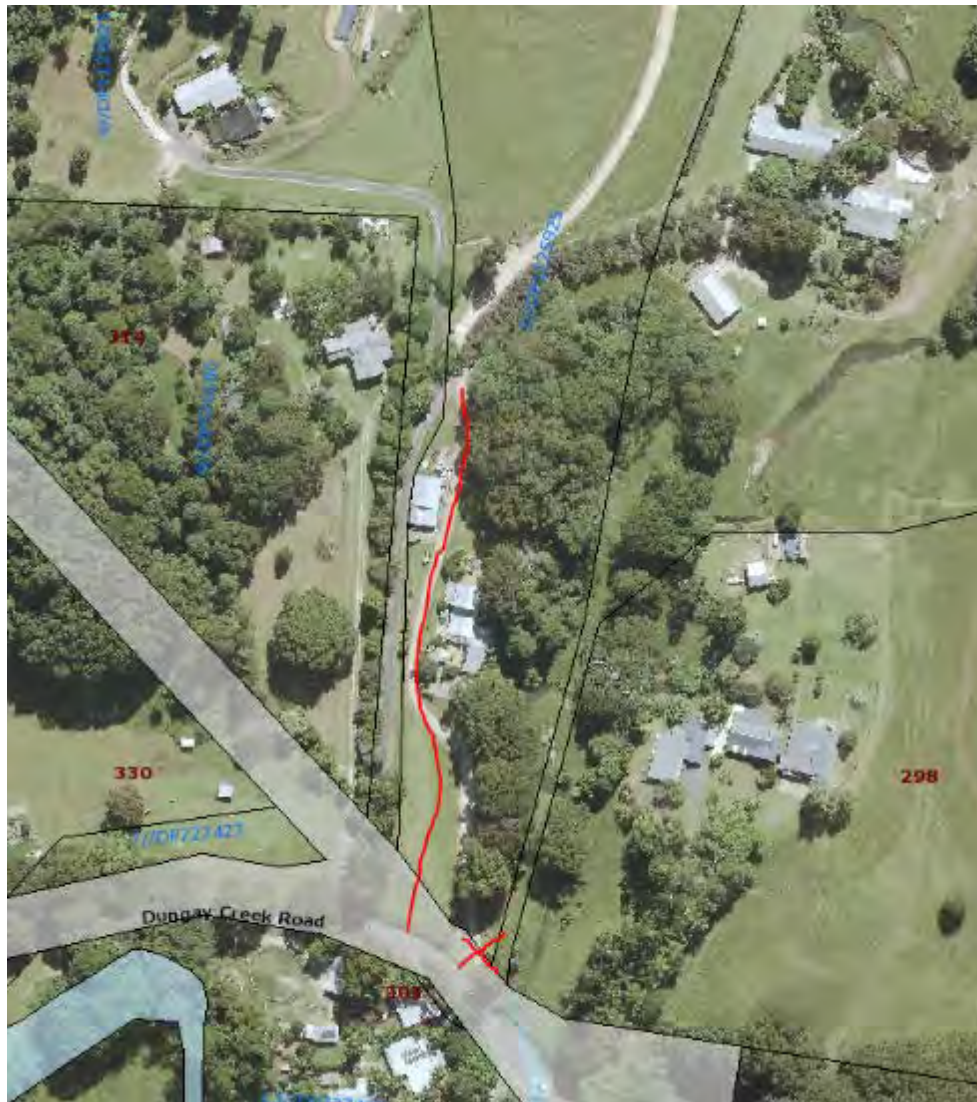


Figure 38: New access point and Internal driveway path

It is a condition of this recommendation that the proposed internal access is sealed in accordance with Council policy and it shall also be conditioned that the existing access off Dungay Creek Road is decommissioned with the site to rely on the new access constructed under this DA.

### Wetlands

Dungay Creek itself is located to the south of the subject site on the other side of Dungay Creek Road. However here is an internal stream that runs through the subject site into Dungay Creek shown diagrammatically below



Rank –W1 rating of 0-100

Figure 39: Wetlands Conservation Value Mapping

The applicant’s hydro geologist report has confirmed that the proposed water extraction will have a very low likelihood of impacting on surface water flow, surface water quality or groundwater quantity.

Based on this advice the application is recommended for approval.

Flora and Fauna

As the applicants Engineering Assessment under the title “Technical Design Brief - Dungay Creek Road, Dungay Creek” – prepared by Knobel Consulting dated 31 August 2017 and amended 9 April 2018 included recommendations for the upgrading of the proposed access and Dungay Creek Road at specific locations a review of the ecology in these areas was necessary.

Bend I.D	Impact – based on plans dated 08 February 2017	Comment and recommendation - 13 September 2017 and referenced in IR dated 21 November 2017	Impact – Based on revised plans submitted 10 April 2017	Comment and recommendation- July 2018
Bend B	No direct impact on ecological values	No comment	No direct impact on ecological values	The proposed widening to the inside bend avoids disturbance of native vegetation
Bend C	Two native trees occurring on the outside bend being <i>Toona ciliata</i> and <i>Guioa semi-glauca</i> (of approximately 400-500mm dbh) would likely require removal	<ul style="list-style-type: none"> <li>Adjust the road widening to occur on either side of the existing pavement to enable retention of a <i>Toona ciliata</i></li> </ul>	The widening of the inside bend only may result in the loss of one mature native <i>Eucalyptus dunnii</i> and one exotic <i>Jacaranda mimosifolia</i>	<ul style="list-style-type: none"> <li>The road was requested to be realigned to avoid removal of local native vegetation (<i>Toona ciliata</i> and <i>Guioa semi-glauca</i>) within</li> </ul>

Bend I.D	Impact – based on plans dated 08 February 2017	Comment and recommendation - 13 September 2017 and referenced in IR dated 21 November 2017	Impact – Based on revised plans submitted 10 April 2017	Comment and recommendation- July 2018
		<p>(Red Cedar) (not identified on the plan) to the north-west of the pavement</p> <ul style="list-style-type: none"> <li>Offsetting should occur for the loss of any tree at an appropriate ratio – this could involve contribution to a weed control program within the road reserve of a patch of Lowland Rainforest EEC</li> </ul>		<p>the road reserve on the western side of the carriageway. As a consequence of realigning the upgrade works to the inside bend, the structural root zone of a mature <i>Eucalyptus dunnii</i> will be encroached upon</p> <ul style="list-style-type: none"> <li>It is noted that the <i>E. dunnii</i> would appear to occur outside the species usual natural range (at elevation above 300m) and position in the landscape. A copse of the same species of tree occurs immediately on the adjacent land suggesting that the specimen within the road reserve is a planted individual</li> <li>Due to the maturity of the tree efforts should be made at the detailed road design stage to minimise disturbance and retain the tree, however it is acknowledged that removal may be unavoidable.</li> <li>In the case where the tree requires</li> </ul>

Bend I.D	Impact – based on plans dated 08 February 2017	Comment and recommendation - 13 September 2017 and referenced in IR dated 21 November 2017	Impact – Based on revised plans submitted 10 April 2017	Comment and recommendation- July 2018
				<p>removal following an assessment by a qualified arborist to facilitate road upgrades and to enable adequate sight lines compensatory works shall be undertaken within the Dungay Creek Road reserve (proximate to Bend B within the riparian corridor).</p> <p>It is understood concern was raised in public submissions regarding the impact of road upgrade works on a dry stacked stone wall at Bend C. The impact arose as a result of a Council request to modify the alignment of road upgrade works to occur on the eastern side (inside bend) of the existing pavement in an attempt to retain two native trees (Toona ciliata, Guioa semi-glauca) as detailed in this memorandum.</p> <p>We acknowledge the potential historic value of the dry stacked wall and likely impact of the upgrade works on the integrity of the wall.</p> <p>We do not oppose to reverting to the</p>

Bend I.D	Impact – based on plans dated 08 February 2017	Comment and recommendation - 13 September 2017 and referenced in IR dated 21 November 2017	Impact – Based on revised plans submitted 10 April 2017	Comment and recommendation- July 2018
				<p>previous design to avoid impact on the dry wall structure.</p> <p>Based on the former design the works will result in removal of one (1) <i>Toona ciliata</i>, one (1) <i>Guioa semi-glauca</i> and retention of a significantly sized <i>Eucalyptus gunni</i>.</p> <p>Compensatory planting requirements where tree removal is deemed necessary based on arboricultural assessment report would remain unchanged.</p> <p>Suitable conditions have been provided</p>
Bend F	No direct impact on ecological values	Likely require fill to the bend to maintain appropriate road geometry	Revised plan not provided – satisfied no impact based on previous plans	No comment
Bend H	No direct impact on ecological values	Existing vegetation is setback a sufficient distance from the proposed widened pavement.	Revised plan not provided – satisfied no impact based on previous plans	No comment
Bend K	<ul style="list-style-type: none"> <li>Widening would potentially result in the removal of two <i>Waterhousia floribunda</i> and disturbance to the root plate of one <i>W. floribunda</i> (all approximately 700mm dbh).</li> </ul>	<ul style="list-style-type: none"> <li>Consider widening the pavement on the outside bend, this would also assist with issues at Bend L</li> <li>Noted that a section of the pavement involving upgrade works</li> </ul>	<ul style="list-style-type: none"> <li>Pavement widening to the northern outside bend shoulder avoids impact on mature riparian vegetation occurring adjacent to the inside bend</li> <li>The planted vegetation</li> </ul>	<ul style="list-style-type: none"> <li>Reliance has been placed on the latest set of plans that depicts the existing fence-line on the northern edge of the proposed pavement.</li> <li>Furthermore the plans show no intent to undertake</li> </ul>



Bend I.D	Impact – based on plans dated 08 February 2017	Comment and recommendation - 13 September 2017 and referenced in IR dated 21 November 2017	Impact – Based on revised plans submitted 10 April 2017	Comment and recommendation- July 2018
	<ul style="list-style-type: none"> <li>This section may be qualify as an EEC Lowland Rainforest</li> </ul>	<p>traverses private land.</p> <ul style="list-style-type: none"> <li>Noted a single <i>Davidsonia johnsonii</i> (Smooth Davidson's Plum – Endangered) occurs on the neighbouring Lot to the north along the fence line. Unlikely to be impacted if widening occurs on the outside bend.</li> </ul>	<p>(comprising a single <i>Davidsonia johnsonii</i> (Smooth Davidson's Plum – Endangered) occurring adjacent to the northern shoulder extension and to the north of an existing fence line would be retained</p>	<p>drainage works adjacent to the planted vegetation north of the existing fence-line</p>
Bend L	<ul style="list-style-type: none"> <li>Significant erosion on the inside bend adjacent to the waterway. The existing pavement virtually extends to the top of bank. Unstable. Would likely require rock works to stabilise.</li> <li>3 native riparian trees would require removal</li> </ul>	<ul style="list-style-type: none"> <li>Consider widening of the outside bend. The road reserve would appear wide enough to allow for this.</li> <li>Would expect significant works and impact on a candidate EEC Lowland Rainforest unit (at adjoining Bend K) to facilitate upgrade works</li> </ul>	<ul style="list-style-type: none"> <li>Widening has been adjusted to occur on the northern outside bend</li> <li>No vegetation to be removed</li> </ul>	<p>No further issues as result of proposed upgrade works</p>
Bend S	<p>No direct impact on ecological values</p>	<p>No comment</p>	<p>Revised plan not provided - satisfied no impact based on previous plans</p>	<p>No comment</p>
Bend A Vehicle Exiting Site	<p>Plan not previously provided</p>	<p>No comment provided</p>	<p>No direct impact on ecological values</p>	<ul style="list-style-type: none"> <li>The new proposed access road traverses an area currently devoid of woody vegetation</li> <li>Excavation works avoid disturbance of native vegetation</li> </ul>

Bend I.D	Impact – based on plans dated 08 February 2017	Comment and recommendation - 13 September 2017 and referenced in IR dated 21 November 2017	Impact – Based on revised plans submitted 10 April 2017	Comment and recommendation- July 2018
Bend A	Plan not previously provided	No comment provided	No direct impact on ecological values	The widening of the inside bend avoids disturbance of native vegetation



Figure 40 Trees within the Dungay Creek road reserve at proposed Bend C

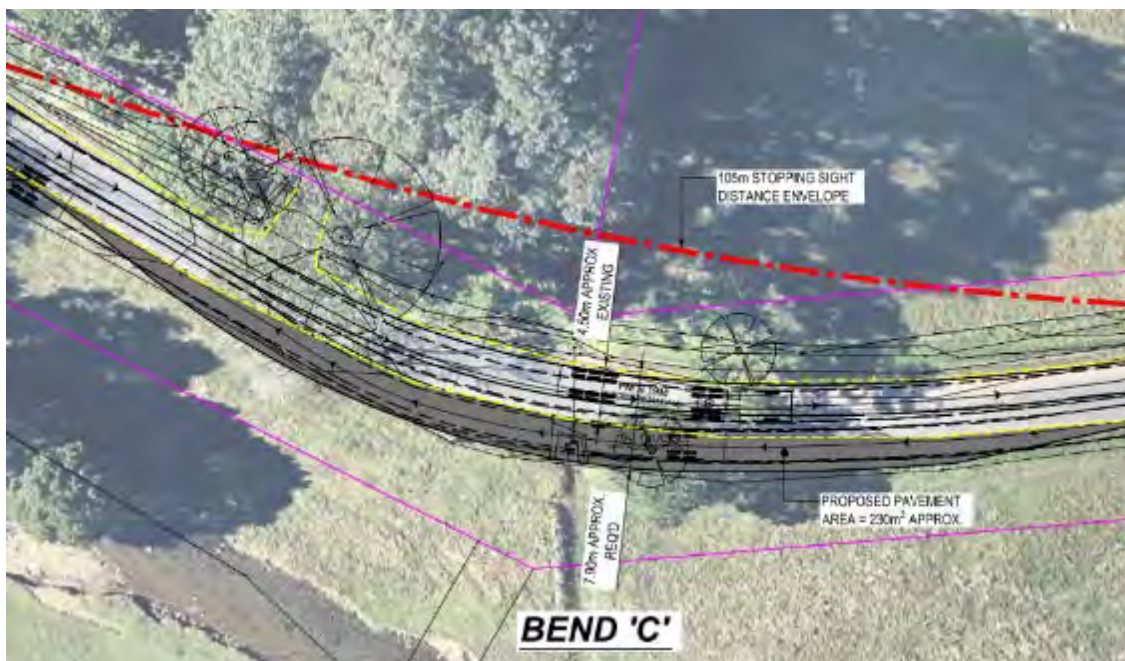


Figure 41 Engineering plans the Toona ciliata and Guioia semi-glauca will require removal. The Eucalyptus dunnii and Jacaranda mimosifolia are outside the works footprint.



The rear portions of the site are also partially mapped as a regional fauna corridors, and affected by key habitat mapping as follows:



Figure 42: Regional Fauna Corridor Mapping



Figure 43: Key Habitat Mapping

The proposed development will not affect these aspects of the site.

#### Amenity, Noise, Hours of Operation

The applicant submitted to Council a Noise Impact Assessment Report prepared by Craig Hill Acoustics (Reference: 310817/1) dated 6 December 2017.

#### *NSW Industrial Noise Policy (2000) and Noise Policy for Industry (2017)*

The report has been prepared in general accordance with the NSW Industrial Noise Policy and by a suitably experienced consultant for the level of assessment required.

Although the NSW Industrial Noise Policy (2000) has been superseded with the Noise Policy for Industry (2017) the Note 3 of the Implementation and transitional arrangements for the Noise Policy for Industry (2017) allows for the regulatory authority to determine the application based on the NSW Industrial Policy (2000) for up to a 1 year from the date. The application process started in 2016 and the noise report being reviewed is dated December 2017. The assessment of noise in accordance with NSW Industrial Noise Policy (2000) is considered adequate.

Noise assessment criteria for all activities except the noise from trucks on a public road has been assessed in accordance with NSW Industrial noise Policy (2000).

### *NSW Road Noise Policy*

Assessment criteria for the trucks on a public road have been assessed in accordance with the NSW Road Noise Policy.

Section 4.3 of the NSW Road Noise Policy provided details on strategies for traffic-generating developments on existing roads. Generally for commercial, industrial development on existing roads they are likely to provide limited potential for noise control. However, strategies include to minimise noise from traffic associated with the development can be applied. Examples include appropriate location of private access roads, times of use, clustering vehicle movements, using 'quiet' vehicles and using barriers and acoustic treatments.

It is considered that the impacts to amenity may be managed through conditions (strategies) in relation to the hours of operation and allowable truck movements. Suitable conditions are recommended.

### *Hours of Operation*

Proposed hours of use in the noise report are for daytime hours 7am to 6pm every day of the week. Time of day in the Noise Policy for Industry is defined as 7am to 6pm Monday to Saturday and 8am to 6pm Sundays and public holidays. It would be considered reasonable to allow operational hours for daytime hours as specified in the Noise Policy for Industry (2017). However the applicant has agreed to undertake operation between 9am and 3pm Monday – Friday with only 5 truckloads on these operational days. These limited hours will improve the conditions for concerned residents.

### *Truck Movements*

The noise report states in the introduction '*A maximum of 5 trucks per day is expected*'. This equates to 10 truck movements a day. Noise was modelled based on CORTN Road Traffic Model. The noise report indicates that the truck movements for the proposed development is considerably low traffic flow and makes it difficult to predict noise levels as modelling is based on a higher vehicle movement per day. However it states '*The additional 2 movements in an hour would not add noticeable to the existing 1h LAeq environment*'. It is considered that the proposed 10 truck movements are adequate and that there may be room for additional truck movements when conditioned based on 2 movements per hour as stated in the noise report.

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

### Contamination

The applicant submitted to Council a Contaminated Land Assessment Report 26 October 2017. The information provided an assessment of all available information including aerial photography and lab testing data from soil samples taken in close proximity to the abstraction wells.

The information has been assessed by a suitably qualified and experienced consultant and concludes that there is minimal risk of contamination from historical activities.

No further contaminated land considerations are required.'

Overall Site Suitability

In all other regards the applicant has submitted additional information as requested by Council to address the sites overall suitability of the site. Having regard to these reports including:

- Hydrogeological Reports
- Noise Impact Reports
- Contamination reports
- Traffic – Road Upgrade Analysis

The proposed development is considered capable of conditional approval.

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

The development application was notified for 14 days from 14 September to 28 September 2016. Eighty four (84) submissions were received during this time consisting of 74 submissions objecting to the proposal and 10 submissions in support of the application. A petition with 87 signatures in support of the proposal was also received. Two (2) late submissions (received after the notification period) objecting to the proposal were also received.

Issue	Specific issue or comment	Approx. number of times raised	Response
Amenity	<ul style="list-style-type: none"> <li>• Impacts on the character of the surrounding area  <i>"Against the clean and green ethos of tweed"</i></li> </ul>	4	<p>The subject site is zoned for rural purposes which permits a wide array of permissible uses. The addition of 5 loaded trucks a day 5 days a week with the minimal infrastructure proposed is generally consistent with the existing activities in the area.</p> <p>There is no evidence to suggest that the proposed development compromises any defined tweed ethos.</p>
	<ul style="list-style-type: none"> <li>• The proposed commercial development unsuitable in the locality</li> </ul>	1	<p>The proposed development is permissible subject to merit considerations. The reduced trips and hours of operation recommended are considered to adequately mitigate any negative impacts.</p>
	<ul style="list-style-type: none"> <li>• Residents entitled to quiet, peaceful and stress free life where the proposal will ruin this <i>"Residents should be entitled to peace and tranquillity"</i></li> </ul>	15	<p>All residents have a right to develop their properties in accordance with the lawful uses allowed on the site if the merits of the matter are deemed acceptable.</p> <p>The amended application is considered satisfactory subject to the recommended conditions of consent</p>



Issue	Specific issue or comment	Approx. number of times raised	Response
			to minimise the impacts to neighbours.
	<ul style="list-style-type: none"> <li>The local creek is part of character of the area</li> </ul>	1	The applicant's hydrogeologist reports conclude that the proposed development will not have an effect on the local creek.
	<ul style="list-style-type: none"> <li>Disruption, safety concerns and degradation to community and lifestyle</li> </ul>	2	The amended application is considered satisfactory subject to the recommended conditions of consent to minimise the impacts to neighbours.
	<ul style="list-style-type: none"> <li>No provision of respite for residents of Dungay Creek Road</li> </ul>	1	<p>The conditions offers respite by limiting the business to 9am – 3pm Monday – Friday only.</p> <p>This affords the residents respite on weekends and early morning/late afternoon.</p>
	<ul style="list-style-type: none"> <li>Distance for surrounding neighbours to the site is not sufficient</li> </ul>	1	The nearest dwelling is 20m from the internal driveway. This will need to be sealed to reduce noise and dust. The recommendation includes suitable conditions of consent.
	<ul style="list-style-type: none"> <li>The landscape buffer would not be satisfactory- foliage is sparse and very little in way of a buffer</li> </ul>	3	Landscaping will be conditioned to help limit view lines where possible. However elevational issues will prohibit landscaping from offering a full shield.
Visual	<ul style="list-style-type: none"> <li>Visual impacts have not been addressed</li> </ul>	2	<p>The development incorporates structures which are typically found on rural properties (bores, pumps, water tanks and trucks). Some landscaping will be required to limit the view lines where possible.</p> <p>The amended application is considered satisfactory subject to the recommended conditions of consent to minimise the impacts to neighbours.</p>
	<ul style="list-style-type: none"> <li>Adjoining property sits directly above and overlooks proposed development</li> </ul>	1	<p>The overlooking of the filling station will affect the adjoining neighbours as they will have a direct view to all site activities. However, this would be the case if the site owner installed a cattle yard or horse stables etc.</p> <p>The amended application is considered satisfactory subject to the recommended conditions of consent to minimise the impacts to neighbours specifically sealing the internal driveway to reduce noise and dust. Landscaping will also be conditioned to assist where possible.</p>
	<ul style="list-style-type: none"> <li>The site has already been cleared and is now a visual eye sore</li> </ul>	2	The site currently represents a typical farm. There are cattle grazing the site with ancillary infrastructure. The proposed development will have minimal impact on the visual appearance of the site.
Noise	<ul style="list-style-type: none"> <li>Related to traffic and truck movements along the road</li> </ul>	16	The applicant provided an amended acoustic report to address road noise. The proposed development satisfies

Issue	Specific issue or comment	Approx. number of times raised	Response
			the Australian Standards for road traffic noise.
	<ul style="list-style-type: none"> <li>Noise that may harm human or animal life</li> </ul>	3	The proposed development is not considered to produce a noise that would harm human or animal life.
	<ul style="list-style-type: none"> <li>Noise compounded from existing Granada Productions activities</li> </ul>	4	The area is subjected to activities from the filming of I'm a Celebrity Get Me Out of Here (mainly traffic as site operations are relatively quiet) . However the acoustic report considers the existing noise levels and considers the additional impact and has determined the proposed use is capable of approval without adversely affecting the neighbourhood.
	<ul style="list-style-type: none"> <li>Significant impacts to dwellings along Dungay creek road</li> </ul>	3	The applicant provided an amended acoustic report to address road noise. The proposed development satisfies the Australian Standards for road traffic noise.
	<ul style="list-style-type: none"> <li>Noise related to trucks passing on the damaged road</li> </ul>	3	The applicant provided an amended acoustic report to address road noise. The proposed development satisfies the Australian Standards for road traffic noise.
	<ul style="list-style-type: none"> <li>Noise from the site carries and echoes around the area</li> </ul>	3	The applicant provided an amended acoustic report to address road noise. The proposed development satisfies the Australian Standards for road traffic noise.
	<ul style="list-style-type: none"> <li>Noise of the trucks entering site over cattle grid and noise of pumps running, trucks compression breaking, stopping and starting</li> </ul>	5	The applicant provided an amended acoustic report to address road noise. The proposed development satisfies the Australian Standards for road traffic noise.
	<ul style="list-style-type: none"> <li>Noise from generator required for additional pumping relating to the second bore</li> </ul>	4	The application will be conditioned to connect to mains power with an acoustically treated generator meeting the provisions of the acoustic report.
Traffic	<ul style="list-style-type: none"> <li>The number of proposed trucks is excessive</li> </ul>	9	The original application proposed 5-8 trucks per day seven days a week.  The amended application has been reduced to 5 loaded truck Monday – Friday 9am – 3pm.
	<ul style="list-style-type: none"> <li>Trucks leading to additional hazard for bike riders</li> </ul>	3	The application now includes road improvements to ensure that the proposed truck can safely traverse the road having regard to other regular road users.
	<ul style="list-style-type: none"> <li>Additional impact on the road leading to the road infrastructure deterioration and degradation – cumulative impacts and traffic burden</li> </ul>	17	It is difficult to determine or attribute road maintenance costs to the proposed development. The applicant has provided that a laden 19m truck would travel along the road, and in fact other Council maintained roads, up to 5 times a day for five days a week. The major determinant of the maintenance regime to roads is the

Issue	Specific issue or comment	Approx. number of times raised	Response
			<p>volume of heavy vehicles as a percentage of total traffic. Whilst this development would add 25 laden trips a week to the road network it should be noted that the most recent data provided to council from I'm a Celebrity indicated that up to 25 heavy vehicles per day were entering their site.</p> <p>Road users contribute to road maintenance indirectly through the payment of registration fees to the State Government. The State government provide Local Government with road funding grants for the upkeep of rural roads. Council does not have the statutory ability to charge an ongoing levy for the use of the road for these trucks. A section 7.11 monetary contribution will be applied to the development as a one off payment.</p>
	<ul style="list-style-type: none"> <li>• Several narrow causeways and no passing lanes on the single carriageway, needing to pull off the road to pass traffic –               <ul style="list-style-type: none"> <li>- concerns included passing school bus</li> <li>- bridges that service the road are also single lane</li> </ul> </li> </ul>	22	<p>Council's Senior Engineer Assets and Maintenance has confirmed that there are no vehicle weight restrictions on Dungay Creek Road and on its culvert crossings.</p> <p>Dungay Creek Road is a rural low traffic volume road with varying sealed widths, several creek crossings, tight radius curves and a newly installed 60km/h speed limit.</p> <p>Being a rural road with very low traffic volumes it is reasonable to expect that when vehicles are approaching from opposite directions that the limited seal width would require vehicles to decelerate to say 30km/h or lower when passing and utilise the road shoulder in some instances. In order to achieve this passing movement safely, firstly the drivers need to observe the approaching vehicle and reduce their speeds accordingly. This is particularly relevant for larger vehicles due to their swept path movement intruding into the path of oncoming vehicles on tight curves.</p> <p>The road is considered capable of accommodating the proposed 5 loaded trucks 5 days a week.</p>
	<ul style="list-style-type: none"> <li>• The road is not of a suitable standard to accommodate movements and heavy trucks E.g. <i>"adding huge trucks to roads that were not designed to carry them is an obvious recipe for disaster"</i></li> </ul>	21	See comment above.
	<ul style="list-style-type: none"> <li>• Impact in relation to traffic and related impacts in addition to</li> </ul>	15	Council's assessment has considered the cumulative impact of additional

Issue	Specific issue or comment	Approx. number of times raised	Response
	Granada Production using the road during filming		trucks from Granada, existing agricultural pursuits, future possible agricultural pursuits and the proposed development.
	<ul style="list-style-type: none"> <li>Access roads would need upgrading to accommodate vehicles – concerns relating to guaranteeing this maintenance</li> </ul>	9	Road users contribute to road maintenance indirectly through the payment of registration fees to the State Government. The State
	<ul style="list-style-type: none"> <li>Costs involved with the maintenance of the roads as they are damaged</li> </ul>	12	government provide Local Government with road funding grants for the upkeep of rural roads. Council does not have the statutory ability to charge an ongoing levy for the use of the road for these trucks. A section 7.11 monetary contribution will be applied to the development as a one off payment.
	<ul style="list-style-type: none"> <li>Large number of blind corners and crests with no room to move aside – forcing commuters off road</li> </ul>	14	The proposed roadwork's would improve the pavement width in critical locations and ensure suitable sight distance to accommodate trucks being able to pass one another using normal good road behaviour.
	<ul style="list-style-type: none"> <li>Increase in animal deaths, disturbing domestic animals and increase in road kill due to additional traffic</li> </ul>	9	The proposed trips are considered consistent with normal agricultural or permissible uses in the zone.
	<ul style="list-style-type: none"> <li>Existing danger of the Dungay Creek Road and Campbell's Road T- intersection would increase with the trucks</li> </ul>	3	Sight distance in this location is sufficient to meet the rural road standards.
	<ul style="list-style-type: none"> <li>Additional trucks inconveniencing tourists using the road to the access Gold Coast</li> </ul>	1	The proposed trips are considered consistent with normal agricultural or permissible uses in the zone.
	<ul style="list-style-type: none"> <li>The rural roads should be protected from commercial traffic</li> </ul>	1	This comment is inconsistent with any permissible rural industries and would preclude most development option on rural land.
	<ul style="list-style-type: none"> <li>Speed limit would need to be reduced inconveniencing all residents</li> </ul>	1	The RMS are responsible for speed limits and will review any road speed limits upon request. A reduction in speed limits is not considered necessary by Council's Traffic Engineer.
	<ul style="list-style-type: none"> <li>Hazard of the deep drains along the road with no passing places</li> </ul>	1	The road has been reviewed in regards to the existing drains and subject to the proposed works occurring is considered suitable for the proposed development
	<ul style="list-style-type: none"> <li>The road is dusty in dry and muddy in wet – concerns relating to suitability of fully loaded semi-trailers in wet and impact of muddy tyres on the road way and carriageway</li> </ul>	1	<p>The applicant has provided an assessment of the road's suitability, using appropriate Austroads Road Design Guidelines, for the proposed 19m truck and has identified that the access driveway needs to be relocated to improve sightlines and several curves are required to be widened to facilitate safe movement along the road.</p> <p>Upon completion of these works the road will be considered suitable for the</p>

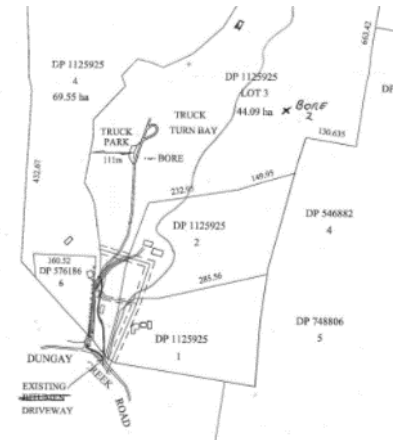
Issue	Specific issue or comment	Approx. number of times raised	Response
			development as propose din both wet and dry conditions.
	<ul style="list-style-type: none"> <li>Concerns that the trucks will not have enough room to safely enter the site</li> </ul>	2	The amended driveway access resolves this issue.
	<ul style="list-style-type: none"> <li>Increase litter on the road due to increase number of trucks</li> </ul>	1	Litter is a normal occurrence and will not be unreasonably exacerbated by this development.
	<ul style="list-style-type: none"> <li>Postal and garbage services required to maintain safe and functional access</li> </ul>	1	The proposed traffic analysis has catered for 19m vehicles being able to be accommodated while other service vehicles frequent the area. The amended traffic details address this.
	<ul style="list-style-type: none"> <li>Concerns relating to flooding road during heavy rainfall</li> </ul>	1	The area is susceptible to inundation during heavy rainfall of flooding events. If the local road is cut off the water trucks may not be able to service the site. This is the same for any vehicles accessing the area.
	<ul style="list-style-type: none"> <li>The long grass on road reserves is not maintained therefore causing additional hazard</li> </ul>	1	Rural road verges are maintained based on a maintenance regime which applies across the whole Shire. The traffic details demonstrate suitable sight lines which won't be unreasonably affected by long grass.
Right of carriageway	<ul style="list-style-type: none"> <li>Right of carriageway was only designed for cars and 4WD's – not designed or constructed by semi tankers</li> </ul>	3	The amended proposal does not rely on the right of way as he own have their own internal driveway which will be utilised.
	<ul style="list-style-type: none"> <li>Adjoining land owners consent for the use of the carriageway was not obtained and there is just one sealed access road being on the handle of part Lot 4</li> </ul>	3	The amended proposal does not rely on the right of way as he own have their own internal driveway which will be utilised.
	<ul style="list-style-type: none"> <li>Concerns relating to the cost of maintaining the carriageway for the residents</li> </ul>	1	The R.O.W. has already set up systems to discuss maintenance obligations. The very small section where the applicants driveway provides a ROW to other properties can be maintained by the proponent as specified by the recommended conditions of consent.
	<ul style="list-style-type: none"> <li>The carriageway is damaged and breaking down</li> </ul>	1	The amended proposal does not rely on the right of way as he own have their own internal driveway which will be utilised. The R.O.W. has already set up systems to discuss maintenance obligations. The very small section where the applicants driveway provides a ROW to other properties can be maintained by the proponent as specified by the recommended conditions of consent.
	<ul style="list-style-type: none"> <li>Passing bays become boggy and soft with the passing of heavy vehicles</li> </ul>	1	The amended proposal does not rely on the right of way as he own have their own internal driveway which will be utilised.  The new internal driveway will be required to be sealed.
	<ul style="list-style-type: none"> <li>Existing unauthorised works prior to lodgement of application</li> </ul>	3	This is a separate private civil matter that does not involve Council.



Issue	Specific issue or comment	Approx. number of times raised	Response
	<ul style="list-style-type: none"> <li>- road and drains have been damaged by the applicant</li> </ul>		
Zone conflict	<ul style="list-style-type: none"> <li>• Should not be permissible in RU2</li> </ul>	1	<p>TSC has resolved to make representations to have water extraction prohibited.</p> <p>However, this application must be assessed against the applicable legislation as it applies to the DA upon lodgement.</p>
	<ul style="list-style-type: none"> <li>• Impacts on environmental protection zone surrounding the lot</li> </ul>	1	<p>The hydrogeological report confirms that the proposed development will not impact the adjoining surface water, groundwater or agricultural viability.</p>
	<ul style="list-style-type: none"> <li>• Contrary to the objective of RU2 zone</li> </ul>	6	<p>The RU2 zone permits many uses with consent subject to their merit assessment. Uses such as landscaping supplies, depots etc. are all permissible with consent. The subject application has addressed many of the concerns initially raised by Council and it is now considered that the amended application addresses the zone objectives in the context of the local character.</p>
Water	<ul style="list-style-type: none"> <li>• Extracting more water from water table upstream will decrease flow of creek for domestic agricultural use</li> </ul>	22	<p>This statement is contrary to the applicant's hydro geologists report and the NSW Office of Water comments on the application.</p>
	<ul style="list-style-type: none"> <li>• Impacts on the water table, streams and creeks</li> </ul>	22	<p>Notwithstanding the issue of the license on the basis of Water Sharing Plans, the submission of the hydrogeologist report/s on behalf of the applicant has provided Council with additional evidence that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems nor the potential agricultural use of the land. This confidence is supported by the review of the assessment by the Department of Industry hydrologist.</p> <p>Specifically, the actual extraction levels are considered of a volume that will not cause any long term adverse impacts on the natural water systems as the natural recharge exceeds the overall extraction rate. Further, as the water from the bore is unlikely to be from surface water leakage from local drainage lines, there is little risk of the agricultural use of the land being impacted by the bulk extraction.</p>
	<ul style="list-style-type: none"> <li>• Level of the creek already falling – linked with Granada Productions</li> </ul>	13	<p>The evidence suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.</p>

Issue	Specific issue or comment	Approx. number of times raised	Response
	<ul style="list-style-type: none"> <li>Amount of water extracted from local aquifer. Commercial bore is not metered and therefore no way to govern amount of water drawn – who will pay for regulation</li> </ul>	11	Any new consent can be heavily conditioned to ensure monitoring and compliance with any conditions of consent going forward.
	<ul style="list-style-type: none"> <li>Unknown future effects downstream on drawing 38,000,000L of water at the head of the catchment</li> </ul>	12	The evidence suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.
	<ul style="list-style-type: none"> <li>The application relies on existing irrigation extraction licences – the proposal exceeds this use</li> </ul>	10	The site is licenced for 38ML irrelevant of use. The use of that water is regulated under the DA system.
	<ul style="list-style-type: none"> <li>Water is a precious resource and should not be exploited</li> </ul>	6	The NSW State system of water sharing plans in conjunction with Council's local planning controls allows the use of bore water for commercial extraction permits. As discussed in this report, the merits of this application against the current legislation indicates that the application is capable of conditional consent.
	<ul style="list-style-type: none"> <li>Much of the region relies on spring fed water for creek flow – if the water is removed from the source the creek flow will be reduced or stopped</li> </ul>	5	The evidence suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.
	<ul style="list-style-type: none"> <li>Creek course is not to be altered in anyway due to sensitivity of the site – site is mapped as being high ground water vulnerability</li> </ul>	3	The evidence suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.
	<ul style="list-style-type: none"> <li>Ground water is not a renewable resource and aquifers become depleted when extraction exceed replenishment</li> </ul>	3	The evidence suggests that the bore can be utilised for this extraction volume without depleting the resource.
	<ul style="list-style-type: none"> <li>Not supportive of selling water externally rather than utilising the resource locally</li> </ul>	4	The NSW State system of water sharing plans in conjunction with Council's local planning controls allows the use of bore water for commercial extraction permits. As discussed in this report, the merits of this application against the current legislation indicates that the application is capable of conditional consent.
	<ul style="list-style-type: none"> <li>Need for an assessment of level of water extracted and ability for water table to continue to function</li> </ul>	4	The evidence suggests that the bore can be utilised for this extraction volume without depleting the resource.
	<ul style="list-style-type: none"> <li>Uses a hydrological resource which, clearly has been over utilised and could affect continued viability of endangered fauna in the creek environment</li> </ul>	1	The available information suggests that the water source is not under pressure of over extraction as there is 24,532ML/y unassigned when this DA was submitted.
	<ul style="list-style-type: none"> <li>Research into why the creek bed has been dry before allowing additional water extraction</li> </ul>	1	The area has been in a long term drought which would have a direct correlation to the creek being dry.

Issue	Specific issue or comment	Approx. number of times raised	Response
			The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.
	<ul style="list-style-type: none"> <li>Large scale water extraction will dry up adjacent springs that emanate from the same aquifer – impacting water levels</li> </ul>	2	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.
	<ul style="list-style-type: none"> <li>Opposed to water extraction facilities in the shire generally</li> </ul>	2	The NSW State system of water sharing plans in conjunction with Council's local planning controls allows the use of bore water for commercial extraction permits. As discussed in this report, the merits of this application against the current legislation indicates that the application is capable of conditional consent.
	<ul style="list-style-type: none"> <li>Highlight that council is to consider all environmental impacts as the water extraction approval under Water Act 1912 has not expired and regulations now state that a person can use if the water is used for purpose for which development consent is in force under EP&amp;A Act 1979.</li> </ul>	2	This report is considered to cover all the statutory provisions under the EP&A Act 1979
	<ul style="list-style-type: none"> <li>Imperative that owners of the lands in the area have use of any water pumped from Dungay Creek, when necessary</li> </ul>	1	The area has available unassigned water units that could be purchased via the State.
	<ul style="list-style-type: none"> <li>Springs dry up from water extraction</li> </ul>	1	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.
	<ul style="list-style-type: none"> <li>Creation of cone of depressions that pull water down and away from where is flows underground, collapsing natural springs</li> </ul>	1	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems.
	<ul style="list-style-type: none"> <li>Concerns whether the application is keeping in with the Tweed River Estuary management plan</li> </ul>	1	Dungay Creek is at the very upper end of the catchment connecting to the Oxley River which connects to Tweed River. There is nothing in the management plans that prohibit the proposed development.
Social issues/ public interest	<ul style="list-style-type: none"> <li>Not for benefit of public but only applicant interest</li> </ul>	20	There is no criteria for Development Applications to benefit the general public.
	<ul style="list-style-type: none"> <li>Unknown impact on the local farmers</li> </ul>	6	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to be used for agricultural pursuits
	<ul style="list-style-type: none"> <li>Reduction in value of properties</li> </ul>	6	This is not a matter for consideration under the EP&A Act 1979

Issue	Specific issue or comment	Approx. number of times raised	Response
	<ul style="list-style-type: none"> <li>Loss of lifestyle and increase anxiety</li> </ul>	6	The recommended conditions of consent in regard to driveway sealing, hours of operation, trips numbers and tree planting are all proposed to assist in minimising impact on adjoining neighbours.
	<ul style="list-style-type: none"> <li>Concerns relating to general well-being of local community</li> </ul>	5	The proposed development is considered in keeping with permissible rural activity and general road use.
	<ul style="list-style-type: none"> <li>Proposal does not involve any local employment, tourism or education opportunities</li> </ul>	8	The proposed development represents a business opportunity for the landowner (which adds money to the local economy) and would employ a transportation company.
	<ul style="list-style-type: none"> <li>Compensation for loss or damage of livelihoods</li> </ul>	3	The NSW Planning system does not accommodate compensation for loss of amenity.
	<ul style="list-style-type: none"> <li>Compensation for the need to buy water</li> </ul>	2	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to be used for agricultural pursuits
	<ul style="list-style-type: none"> <li>Change in lifestyle for neighbours to accommodate the application</li> </ul>	3	The additional truck movements are considered compatible with permissible rural activities. The recommended conditions of consent are considered suitable to minimise the impact on adjoining properties.
	<ul style="list-style-type: none"> <li>Concerns relating to negative impact on Granada production that bring economy to the community each year</li> </ul>	1	The proposed development will not negatively impact on Granada
	<ul style="list-style-type: none"> <li>People will leave</li> </ul>	1	This is not a matter that would result in the DA being refused.
	<ul style="list-style-type: none"> <li><i>“community will bear the cost of one persons selfishness”</i></li> </ul>	1	
Drilling of new bore	<ul style="list-style-type: none"> <li>Location of the bore under the water sharing plan for Dungay Creek</li> </ul>	3	<p>The new bore is located east of the sites drainage line</p> 
	<ul style="list-style-type: none"> <li>Future and possibly larger water allocation leading to more trucks</li> </ul>	2	Any proposal for more trips and/or bigger trucks would need to go through the merit assessment by way of a new DA or Modification.

Issue	Specific issue or comment	Approx. number of times raised	Response
Sustainability	<ul style="list-style-type: none"> <li>Proposal is within a known area that droughts</li> </ul>	7	The NSW State Water Sharing Plans consider the climatic conditions of the area before determining the suitable extraction limits.
	<ul style="list-style-type: none"> <li>Increase and encouraging the use of plastic bottles</li> </ul>	7	The use is permissible within the zone and the matters this development is assessed against are limited to those prescribed within the Environmental Planning and Assessment Act 1979 and the Tweed Local Environmental Plan 2014.
	<ul style="list-style-type: none"> <li>Sustainability of the resource and volume it is extracted</li> </ul>	1	The NSW State Water Sharing Plans consider the sustainability of the resource before determining the suitable extraction limits.
Safety	<ul style="list-style-type: none"> <li>School bus route with children waiting on the road for pick up</li> </ul>	7	The recommendation conditions hours of operation to avoid the school bus.
	<ul style="list-style-type: none"> <li>Additional trucks on daily basis becoming hazard</li> </ul>	4	The applicant has provided an assessment of the road's suitability, using appropriate Austroads Road Design Guidelines, for the proposed 19m truck and has identified that the access driveway needs to be relocated to improve sightlines and several curves are required to be widened to facilitate safe movement along the road.
	<ul style="list-style-type: none"> <li>Safety issue for cars and school bus passing trucks</li> </ul>	7	See above
	<ul style="list-style-type: none"> <li>Increased trucks leads to increased danger</li> </ul>	4	See above
	<ul style="list-style-type: none"> <li>Increased danger of accessing the Dungay Creek Road from the driveway</li> </ul>	3	The applicant has proposed an alternative driveway that meets the sight line provisions.
	<ul style="list-style-type: none"> <li>Children using the right of carriageway to be picked up by school bus</li> </ul>	1	The internal driveway will have other people traversing it, this would be the case with any farm associated equipment. The truck drivers need to drive to suit the conditions.
	<ul style="list-style-type: none"> <li>Dungay Creek Road is often used by residents and visitors for activities and proposal would make this unsafe – walking, riding etc</li> </ul>	14	The road is a public asset that is used to facilitate vehicular movements as specified by law, the additional uses such as bike riding and horse riding must also abide by the same road rules. This space must be shared and good road behaviour is required by everyone. The proposed development is considered to be consistent with the other permissible rural uses in the zone.
	<ul style="list-style-type: none"> <li>Concerns linked to previous fatal accident turning onto Dungay road</li> </ul>	4	Individual road incidents are not cause to refuse permissible developments.
	<ul style="list-style-type: none"> <li>There should be a requirement for <i>"flashing lights to clear road of oncoming traffic to ensure safety on all road"</i> – similar to Granada production</li> </ul>	7	Pilot vehicles are only require in certain circumstances. A water truck is not required to have a pilot vehicle.
	<ul style="list-style-type: none"> <li>Risks to residential commuters</li> </ul>	2	The amended traffic report is considered adequate.



Issue	Specific issue or comment	Approx. number of times raised	Response
	<ul style="list-style-type: none"> <li>Land slip hazard</li> </ul>	3	Any roadworks or site works will be required to be substantiated with detailed engineering details.
Contamination	<ul style="list-style-type: none"> <li>Pollution from diesel fumes from the trucks</li> </ul>	4	The low volume of trucks will occur on a public road where trucks are permissible.
	<ul style="list-style-type: none"> <li>If disturbed chemicals from previous agricultural use of the land may leach into the stream below</li> </ul>	4	The contaminated report has ruled out the likelihood of the site being contaminated.
	<ul style="list-style-type: none"> <li>Sewerage contamination into Dungay Creek on the site</li> </ul>	1	The proposed application does not involve any sewerage works.
	<ul style="list-style-type: none"> <li>Concerns that poison was sprayed into Dungay Creek causing chemical contamination into water table</li> </ul>	1	The applicant has undertaken targeted weed spraying adjoining the creek. This is not a matter relevant to this DA.
	<ul style="list-style-type: none"> <li>Risk to the continual discharge and removal to increase chances of pollution and contamination of water impacting natural water system</li> </ul>	1	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to be used for agricultural pursuits
Hours of operation	<ul style="list-style-type: none"> <li>Proposed hours of operation excessive</li> </ul>	10	<p>The original hours of operation were 7am – 7pm.</p> <p>The applicant now proposes</p> <p>7am – 8am 9am – 3pm and 4pm – 7pm</p> <p>Monday – Friday</p> <p>The application is conditioned as 9am – 3pm to give the neighbours a reprieve and avoid the school bus hours without start stop hours of operation.</p>
Environment	<ul style="list-style-type: none"> <li>Potential that the site has vital habitat and rare and threatened flora and fauna species</li> </ul>	8	Council's ecologist has reviewed the application and recommended approval subject to conditions of consent for offsetting trees in the road reserve.
	<ul style="list-style-type: none"> <li>Importance of local creeks for survival of native fauna, livestock and maintaining character of region</li> </ul>	9	<p>The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to accommodate native flora and fauna,</p> <p>The proposed character is consistent with other permissible uses and will not change the character of the region which already has trucks in rural areas.</p>
	<ul style="list-style-type: none"> <li>Wildlife impact from reduction in creek flow</li> </ul>	7	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the

Issue	Specific issue or comment	Approx. number of times raised	Response
			natural water systems or the ability for the area to accommodate native flora and fauna,
	<ul style="list-style-type: none"> <li>Potential to severely impact the habitat and environment many are trying to protect</li> </ul>	5	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to accommodate native flora and fauna,
	<ul style="list-style-type: none"> <li>Unauthorised tree management and removal works prior to application lodgement</li> </ul>	5	This is not a matter for the subject application.
	<ul style="list-style-type: none"> <li>Specific concerns relating to the crayfish, frogs, platypus</li> </ul>	4	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to accommodate native flora and fauna,
	<ul style="list-style-type: none"> <li>Need to protect natural environment – irreversible environmental impact</li> </ul>	3	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to accommodate native flora and fauna,
	<ul style="list-style-type: none"> <li>Application may threaten agricultural land viability, risk nearby rainforest, wildlife and scenic views</li> </ul>	2	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to accommodate native flora and fauna,
	<ul style="list-style-type: none"> <li>Amount of rubbish and debris on the property near the creek and housing</li> </ul>	2	The subject site is rural in nature with rural pursuits. Rubbish piles have been cleaned up and the site is currently looking like a normal working property.
	<ul style="list-style-type: none"> <li>Rainforest and significant trees will be affected as agriculture and forested areas have co-existing for years</li> </ul>	1	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to accommodate native flora and fauna,
	<ul style="list-style-type: none"> <li>Large amounts of fossil fuels used during mining of water producing pollution</li> </ul>	1	The proposed development is permissible with consent and is consistent with other permissible uses in the zone. The reliance on fossil fuels for a truck and possible generator are not worthy of refusal of the application.
	<ul style="list-style-type: none"> <li>Taking water away and lowering water table results in salinity issues affecting rainforest and agriculture</li> </ul>	1	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for

Issue	Specific issue or comment	Approx. number of times raised	Response
			the area to accommodate native flora and fauna,
Climate change	<ul style="list-style-type: none"> <li>Unknown amount of rainfall due to changing climate leading to less water available</li> </ul>	1	The NSW State Water Sharing Plans consider climatic conditions. This area is not under pressure of over extraction.
	<ul style="list-style-type: none"> <li>Ecosystem is groundwater dependent in the changing climate – particularly if entering a period of reduced rainfall or drought</li> </ul>	2	The NSW State Water Sharing Plans consider climatic conditions. This area is not under pressure of over extraction.
	<ul style="list-style-type: none"> <li>Climate change increase demand for water and therefore scarcity challenge</li> </ul>	1	The NSW State Water Sharing Plans consider climatic conditions. This area is not under pressure of over extraction.
Areas lacking in the submitted application	<ul style="list-style-type: none"> <li>Little to no consideration of local community</li> </ul>	1	The amended traffic details, and noise impact assessments have resulted in recommended conditions of consent that minimise the impact on the neighbours.
	<ul style="list-style-type: none"> <li>Little regard for biodiversity and environment</li> </ul>	5	Council's ecologist has reviewed the application and recommended approval subject to conditions.
	<ul style="list-style-type: none"> <li>Little research be way of reports of soil testing, geology, environmental impacts affecting flora and fauna</li> </ul>	3	Council has received all the necessary reports including hydrogeological reports, contaminations details, soil surveys etc.
	<ul style="list-style-type: none"> <li>Lack of a comprehensive independent environmental impact study</li> </ul>	7	Council's ecologist has reviewed the application and recommended approval subject to conditions.
	<ul style="list-style-type: none"> <li>No mention of offsets</li> </ul>	1	Council's ecologist has reviewed the application and recommended approval subject to conditions which detail plant offsets.
	<ul style="list-style-type: none"> <li>No details of how the pumps will operate</li> </ul>	1	The Noise Impact Assessment originally mentioned mains power (which would need to be extended) this was amended later to initially use a generator. Condition have been recommended to ensure noise limits are not exceeded and mains power is installed after 12 months of operation.
	<ul style="list-style-type: none"> <li>Cumulative impacts on roads and residents of the truck movements have not been considered</li> </ul>	1	Council's Traffic Engineer considered cumulative impacts and resolved the additional trucks are in keeping with normal rural activity.
	<ul style="list-style-type: none"> <li>'our community' and 'our environment' are not taken into consideration</li> </ul>	2	This DA Assessment has had regard for the community views and the environment.
	<ul style="list-style-type: none"> <li>No proper noise assessment</li> </ul>	1	A Noise Assessment has been submitted and is deemed acceptable
	<ul style="list-style-type: none"> <li>No mention of the connection between the surface and ground water</li> </ul>	1	The evidence in this DA suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or the ability for the area to accommodate future agricultural pursuits.
<ul style="list-style-type: none"> <li>No assessment of the impact on future use of the land</li> </ul>	5	The applicant's agricultural comments state that the proposed development	

Issue	Specific issue or comment	Approx. number of times raised	Response
			will not compromise the sites ability to be used for agriculture in the future.
	<ul style="list-style-type: none"> <li>More information required to fully understand if the application is consistent with strategic objectives</li> </ul>	1	This report considers the applicable heads of consideration for the development.
	<ul style="list-style-type: none"> <li>No hydrology study included in the application or indication of how natural water system will be affected                             <ul style="list-style-type: none"> <li>- Not required for bore extraction under 20M/L</li> <li>- Suggestions to carry one out over whole of tweed area documenting number, capacity and depth of aquifers and time necessary for aquifer to recover to full capacity</li> </ul> </li> </ul>	6	The revised application included Hydrogeology statements that suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or groundwater quality.
	<ul style="list-style-type: none"> <li>Details within the application is not trustworthy or correct</li> </ul>	2	Council has independently assessed the application.
	<ul style="list-style-type: none"> <li>DA advertising sign was moved and no one could see it</li> </ul>	3	The application was notified and advertised in accordance with the relevant provisions. A second round of submissions were also conducted. The multiple submissions indicate that the community knew about the proposal.
	<ul style="list-style-type: none"> <li>Lack of consideration for the locality</li> </ul>	2	Council has independently assessed the application.
	<ul style="list-style-type: none"> <li>Traffic impacts not suitably addressed – need for a traffic management plan</li> </ul>	2	The revised traffic details have been deemed acceptable by Council's traffic engineer
	<ul style="list-style-type: none"> <li>Noise and dust impacts on neighbours have not been considered</li> </ul>	2	The proposed conditions of consent to seal the driveway, remove cattle grids and reduce hours of operation are all measures proposed to minimise the noise and dust concerns for the neighbours.
	<ul style="list-style-type: none"> <li>Misleading information in the application relating to number of trucks</li> </ul>	1	Council has independently assessed the application and has recommended a condition specifying no more than 5 trucks Monday – Friday.
	<ul style="list-style-type: none"> <li>Turning paths for trucks on the sharp turns have not been taken into consideration</li> </ul>	1	The amended traffic report undertakes truck turning paths.
	<ul style="list-style-type: none"> <li>No known load limit or engineering report for the structural strength of Dungay Creek Road or the causeways and crossings</li> </ul>	4	Dungay Creek Road does not have load limits and currently accommodates heavy vehicles. The proposed additional truck movements are considered capable of support.
	<ul style="list-style-type: none"> <li>No reports on the impacts of the quality of water and potential contamination</li> </ul>	6	Council has received all the necessary reports including hydrogeological reports, contaminations details, soil surveys etc.
	<ul style="list-style-type: none"> <li>Seasonal rainfall not taken into consideration when dry periods there should be restriction on water extraction</li> </ul>	1	The NSW State Water Sharing Plans take into account climatic conditions.
Other	<ul style="list-style-type: none"> <li>Already existing water extraction plants, an additional</li> </ul>	2	The NSW State Water Sharing Plans take into account possible over

Issue	Specific issue or comment	Approx. number of times raised	Response
	would be <i>“reckless and irresponsible... the water system is one interconnected system”</i>		extraction. In this plan area there was 24,532ML/y unassigned when DA16/0660 was lodged.
	<ul style="list-style-type: none"> <li>Proposal should be restricted to time outside of peak traffic Granada productions</li> </ul>	1	<p>The original hours of operation were 7am – 7pm.</p> <p>The applicant now proposes</p> <p>7am – 8am 9am – 3pm and 4pm – 7pm</p> <p>Monday – Friday</p> <p>The application is conditioned as 9am – 3pm to give the neighbours a reprieve and avoid the school bus hours without start stop hours of operation.</p>
	<ul style="list-style-type: none"> <li>Impacts from other extraction facilities in the shire</li> </ul>	1	The NSW State Water Sharing Plans take into account possible over extraction. In this plan area there was 24,532ML/y unassigned when DA16/0660 was lodged.
	<ul style="list-style-type: none"> <li>Precedent for the shire of commercial bores and water extraction</li> </ul>	6	Each application must be assessed on its merits.
	<ul style="list-style-type: none"> <li><i>“The proposed development is feeding an industry which is already causing great harm. “Spring” water is a totally unnecessary fad for most people, especially those living in Australia, and the pollution caused by its transport, bottling, and waste disposal is an increasing worldwide problem.”</i></li> </ul>	2	The proposed development is currently a permissible land use if all other factors are considered to have been adequately addressed. The evidence with this DA suggest no negative impacts from extraction the proposed volume.

Petition – 18 submitters

Issues raised	Response
<ul style="list-style-type: none"> <li>Adjoining property found to be affected by arsenic – not addressed in the current application and no soil testing completed.</li> </ul>	Contamination has been adequately addressed.
<ul style="list-style-type: none"> <li>Effects on aquifer and adjacent springs and creeks, additional studies should be conducted to determine these effects</li> </ul>	The revised application included Hydrogeology statements that suggests that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems or groundwater quality.
<ul style="list-style-type: none"> <li>Sustainability of the proposal as the area is a known area that droughts</li> </ul>	The NSW State Water Sharing Plans take into account climatic conditions
<ul style="list-style-type: none"> <li>No hydrology study or survey completed</li> </ul>	Council has received all the necessary reports including hydrogeological reports, contaminations details, soil surveys etc.
<ul style="list-style-type: none"> <li>Not for benefit of public but only applicants interest</li> </ul>	DA's do not need to benefit the public.



Petition – 18 submitters	
<ul style="list-style-type: none"> <li>Road through Dungay locality is single carriageway and not of a sufficient standard to accommodate movements and heavy trucks</li> </ul>	The traffic report has been determined as satisfactory.
<ul style="list-style-type: none"> <li>The road passes a number of schools being a major concern – children waiting on the side of the narrow road</li> </ul>	The road is already frequented by truck. Normal road rules apply.
<ul style="list-style-type: none"> <li>Current licence is for irrigation purposes only</li> </ul>	The applicant has the necessary licences from the State
<ul style="list-style-type: none"> <li>The proposal is not in alignment with the RU2 objective “to encourage sustainable primary industry production by maintaining and enhancing the natural resource base”</li> </ul>	It is considered that this assessment demonstrates that the development is a compatible use within the rural zone having regard to amenity, traffic and the environment.
<ul style="list-style-type: none"> <li>Several narrow causeways and no passing lanes - causeway is not of sufficient standard to accommodate trucks</li> </ul>	Dungay Creek Road does not have load limits and currently accommodates heavy vehicles. The proposed additional truck movements are considered capable of support.
<ul style="list-style-type: none"> <li>The proposal will lead to damage, noise and deterioration in addition to Granada Production using road during filming</li> </ul>	Cumulative impacts have been considered. The proposed use is considered consistent with normal rural activities which are permissible in the zone.

**Submissions FOR the proposal – no responses required**

Issues raised by individual submitters
Petition – 85 signatures
<ul style="list-style-type: none"> <li>Minimal impact on the community</li> <li>Only three trucks a day on a sealed road – little disturbance</li> <li>If approved in accordance with allocation set out by Water Board it should be better option for drinking water supply in the future</li> </ul>
<b>Positive comment at the end of a submission</b>
<ul style="list-style-type: none"> <li><i>“I would like to conclude that economic activity in the Tweed is to be welcomed and supported but this requires consideration of environmental and infrastructure limitations. The main consideration in this case is the impact of heavy vehicle traffic on road infrastructure, residents and road users. Frequent passage of heavy vehicles on Dungay Creek may necessitate the construction of additional passing bays and continuous repairs to the road and road shoulder.”</i></li> </ul>
<ul style="list-style-type: none"> <li>Extraction of water has already been approved and Granada has similar operation on the road</li> <li>Road has been improved, widened for safety of vehicles travelling along it</li> <li>Need to encourage local initiatives to create employment</li> </ul>
<ul style="list-style-type: none"> <li>Last water bore possible in Tweed Shire</li> <li>Future economic factors for the town</li> <li>Community support knowing where water has come from</li> <li>Impacts of chloride and fluoride for human consumption</li> </ul>
<ul style="list-style-type: none"> <li>Validity of concerns made by others regarding long term effects on the land and damage</li> <li>Appropriate steps have been taken to ensure business extracts water with minimal effect to land and residents</li> </ul>
<ul style="list-style-type: none"> <li>The business venture under the watch of the water board and relevant authorities would benefit the area</li> <li>Existing cane machinery and trucks in the area causing similar affects</li> </ul>
<ul style="list-style-type: none"> <li>Encouraging small local businesses in line with clause 1.2(2a) of the TLEP 2014</li> <li>Truck movements will occur on a public road with other companies using it with similar sized vehicles</li> </ul>
<ul style="list-style-type: none"> <li>There are strict rules relating to water extraction, assessment already been completed</li> <li>Licence issued means that it would be sustainable without having negative impact on the surrounding environment</li> </ul>

Issues raised by individual submitters
Petition – 85 signatures
<ul style="list-style-type: none"> <li>• Someone is doing something with rural land in local area</li> <li>• More the adequate access on the road</li> <li>• Passing trucks is sufficient</li> <li>• For example trucks taking equipment to the Granada site</li> <li>• Safe to walk and pass the trucks</li> <li>• Zoning allows for agricultural use and large trucks without consent</li> <li>• Department NSW water monitors all bore/ spring water extractions and allocated extraction cannot be exceeded – safety net</li> <li>• Extraction holds no threat to ground water</li> <li>• Bottled water used world- wide as contaminant free resource</li> </ul>

## Second Submissions

The development application was notified for a second 14 days from 18 July 2018 to 13 August 2018. 75 submissions were received during this time. Some incorporated videos detailing the current condition of the road, one on behalf of the Dungay Action Group included comments from a Professor Cook, and some from qualified town planners on behalf of local residents. All of which are summarised below:

Issue	Specific Issue	Comment	Response
How Council assess objections from community	Community concerns	Does Council take notice of resident's legitimate concerns? Strong local opposition should be given significant weight	Yes Council is reading and considering all submissions but they must also be considered in the context of the planning legislation. This report aims to undertake that balanced assessment and recommends that the proposal on merit is suitable for conditional approval having regard to the current legislation.
Comparison of similar land use		Must learn from the mistakes of the USA (does not refer to specific case) References made to Perth and their 'future-proofing' over water supply	The NSW State Water Sharing Plans set up the framework for water extraction.
Traffic	Truck size	Some areas will not allow other vehicles to pass when trucks are met Trucks exceed half the width of Dungay Creek Rd Damage caused by tankers are 10,000 times greater per km than a passenger vehicle	Council's Senior Engineer Assets and Maintenance has confirmed that there are no vehicle weight restrictions on Dungay Creek Road and on its culvert crossings.  Dungay Creek Road is a rural low traffic volume road with varying sealed widths, several creek crossings, tight radius curves and a newly installed 60km/h speed limit.  Being a rural road with very low traffic volumes it is reasonable to expect that when vehicles are

Issue	Specific Issue	Comment	Response
			<p>approaching from opposite directions that the limited seal width would require vehicles to decelerate to say 30km/h or lower when passing and utilise the road shoulder in some instances. In order to achieve this passing movement safely, firstly the drivers need to observe the approaching vehicle and reduce their speeds accordingly. This is particularly relevant for larger vehicles due to their swept path movement intruding into the path of oncoming vehicles on tight curves.</p> <p>The road is considered capable of accommodating the proposed 5 loaded trucks 5 days a week.</p>
	Increase in number of trucks	Additional trucks to Granada trucks already operating is too many Comparing water extraction/transport to other rural farming practices: too many trucks per day Truck movement compared to the quarry industry	The existing road usage and possible cumulative road impacts have been considered in this application.
	Proposed restrictions on truck movement	Reference made to Granada trucks– how they manage the restrictions on truck use, pilot vehicles for large vehicles and radio communication – will this count for water extraction businesses too? Granada appear to be responsive to community concerns and work with Council on traffic safety concerns. Granada’s breach of number of vehicle movement is predicted for extraction business (modification application to allow the increase of vehicle movement has been referred to).	<p>Granada’s management of larger trucks is undertaken by them without instruction from Council.</p> <p>Pilot vehicles are only meant to be used in certain circumstances. A water truck does not necessitate the need for a pilot vehicle.</p>
	Road Safety	Unsafe to walk, cycle, ride horses and transporting horse floats along the road with additional truck movement. Blind bends with no room on either side. Concern for cyclists.	The applicant has provided an assessment of the road’s suitability, using appropriate Austroads Road Design Guidelines, for the proposed 19m truck and has identified that the access driveway needs to

Issue	Specific Issue	Comment	Response
		<p>Concern for school children – trucks passing two schools (Dungay Public and Sathya Sai High School).                      Objector proposing wider road with clear markings where trucks cannot cross. Current entrance to site is a blind corner.                      Cattle crossing has become stressful and dangerous, will worsen with increase in traffic.                      Safety has not been given proper consideration.                      The proposal erodes the utility of Tomewin Road to everyone but the applicant.</p>	<p>be relocated to improve sightlines and several curves are required to be widened to facilitate safe movement along the road.                       The amended plans and new access meet the required standard</p>
	Speed limit	Speed limit must be reduced.	Speed limits are controlled by RMS not Council and can be reviewed upon request.
	Current road status	<p>Narrow and winding road, danger of collision.                      Narrow road causing difficulties for cars passing in multiple spots along road, with no room to pull out.                      School bus and waste removal trucks already challenging.                      Road in a vulnerable condition – lack of signage.                      There is a spring which erupts under the tarmac during rainfall and the truck movement will cause further degradation of the road surface.                      Broken surface and soft edges will worsen by truck traffic.                      Deep drains at intervals along the road.                      Passing bays will deteriorate over time – and do not want them on private land.                      Erosion damages after flood events will worsen with further heavy traffic.</p>	<p>The applicant has provided an assessment of the road's suitability, using appropriate Austroads Road Design Guidelines, for the proposed 19m truck and the amended plans are considered satisfactory as they propose to undertake works to improve the current road conditions.</p>
	Road upgrade required	<p>Road not constructed for tankers of the proposed size (19m).                      Road widening must be done appropriately.                      Vegetation removal required for better sight (however see Environmental Impacts on Flora and Fauna below).                      Bend K proposes road widening over private property – land owner states that permission will</p>	<p>The applicant has provided an assessment of the road's suitability, using appropriate Austroads Road Design Guidelines, for the proposed 19m truck and the amended plans are considered satisfactory as they propose to undertake works to improve the current road conditions.</p>

Issue	Specific Issue	Comment	Response
		not be given for the widening onto his property. Concern of road collapsing if road works come closer to rock wall along Bend C.	Where the public road currently encroaches on private land this situation will need to be remedied now that it has been brought to Council's attention. Once all public assets are in public road reserve the applicant will then be able to apply via A section 138 Application/Construction Certificate to undertake works can be lodged with Council as the road authority.
	Noise	Traffic noise intrusive and distressing. Concerns/statements that vegetation will not affectively minimise noise. Truck movement heard approximately one kilometre in each direction (as experienced with the Granada traffic). No "days off" per week from trucks. Air brakes, crashing and other noise from truck movement over dips in the road. Rev of engines uphill. The proposed hours and days per week is a concern.	The applicants Noise Impact Assessment has been determined as meeting the provisions for road traffic noise and noise more generally.  The recommended conditions of consent include hours between 9am – 3pm to better mitigate any impact on neighbours.
	Proposed route	Concerns raised related to trucks having to pass two schools.	The area is rural residential in nature and trucks currently use this road. The additional 5 loads a day for 5 days in the week is considered acceptable subject to drivers following normal traffic rules.
Property values	Decrease in property value	Peace, quiet and lack of traffic attracts people to the area. Objector proposes decrease in rates.	This is not a matter for consideration under the planning legislation.
Bores	Interferes with amenity of area	Noise, dust and pollution from bores	The application has been conditioned to have a sealed internal driveway to reduce noise and dust.
Licences	No monitoring of water being extracted	Licences should be based on irrigation and domestic use Commercial licences not consistent with the agricultural nature of the shire. Licences for commercial purposes should be prohibited.	The application has been conditioned to have monitoring device suitable for review by TSC upon request.



Issue	Specific Issue	Comment	Response
		Concerns related to breach of licences being ignored. Objectors concerned about amount of water being extracted as it is not actively monitored.	
Sustainability	Unsustainable industry (water bottling)	Plastic pollution No preservation measures	The application itself does not approve the end use of the water. This application is for the trucking of bulk water off the site for commercial purposes (likely using plastic bottles). The proposed use is permissible.
Loss of amenity	Loss of rural culture/lifestyle		The recommended conditions of consent include hours between 9am – 3pm Monday – Friday to better mitigate any impact on neighbours.
	Use of road	Children will no longer be able to play at the creek by crossings Horse riding or walks along road will no longer be possible	Dungay Creek Road is a public road which trucks are allowed to traverse. The Granada development already has at least 80 trips per day for several months of the year. The proposed 5 additional trucks Monday – Friday is considered reasonable in the context of the rural area.
	Heritage	Protect drywalls on local properties by issuing interim heritage orders to ensure road widening not to affect these properties	The drywalls at Bend C will be protected as the roadwork's have been left at the opposite side of the road
Environmental Effects	Carbon emissions	From truck movement	Trucks are a normal part of rural living (dairies, stables, landscape supplies, depots etc.)
	Air pollution	From truck movements on gravel roads.	
	Current drought	Local extraction of much needed water due to the current drought. Effecting local farmers. Water extracted should be given to farmers.	The NSW State Water Sharing Plans consider climatic conditions before determining the permitted allocations for water extraction.
	Impact on natural water system	Consequences of the unknown. Referrals to Clause 7.15 and the adverse impact on water systems. Productive farmland capability will be impacted and is not properly addressed in SEE. Current groundwater vulnerability: high-moderate high for the subject site. Objector requires Council to look further in to the possible impacts of removing the proposed	Notwithstanding the issue of the license on the basis of Water Sharing Plans, the submission of the hydrogeologist report/s on behalf of the applicant has provided Council with additional evidence that the bore and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems nor the potential agricultural use of the land. This confidence is supported by the review of the assessment by the

Issue	Specific Issue	Comment	Response
		<p>amount of water and how this will effect downstream. Ecological effects on fragile ecosystems. Extraction may prevent springs flowing upstream. Any connectivity between aquifer and creek cannot be confirmed/demonstrated. Concern that extraction will lead to drainage of the local aquifer. No guarantees that water quality will not be affected.</p>	<p>Department of Industry hydrologist.</p> <p>Specifically, the actual extraction levels are considered of a volume that will not cause any long term adverse impacts on the natural water systems as the natural recharge exceeds the overall extraction rate. Further, as the water from the bore is unlikely to be from surface water leakage from local drainage lines, there is little risk of the agricultural use of the land being impacted by the bulk extraction.</p>
	Water contamination	Due to site history of banana plantations and passionfruit farming.	The contamination report revealed no site contamination that would affect the site.
	Climate Change	Long dry periods, hotter weather, intense rain events must be assessed within the application.	The NSW State Water Sharing Plans consider climatic conditions before determining the permitted allocations for water extraction.
	Impact on flora and fauna	<p>Site and surroundings should be mapped as a wildlife corridor due to Koalas.</p> <p>Irreversible impact on local ecosystems due to volume of water being extracted. Cedar trees requested not to be removed.</p> <p>Subtropical rain forest near proposed site – relies on rainwater.</p>	Council's Ecologist has reviewed the application and recommended approval subject to conditions pertaining to offsetting tree loss in the road reserve.
	Geologically fragile land	<p>Landslide during flood near bore site.</p> <p>Landslip have previously occurred in the area and this is a concern.</p>	The bores have to be dug by a qualified licenced digger.
Approval consequences	Approval lead to further development of this nature	"Road widening, helicopter pads, more bores and trucks"	Each application gets assessed on its merits
Social affect	Mental and physical distress	Decrease in community value	Water Extraction applications are causing a very hostile situation in the community. This application must be assessed on its own merits having regard to the legislation surrounding the proposed use. The recommended conditions of consent have been drafted in an attempt to mitigate the proposed development to minimise impact to neighbours.
	Anxious for neighbours and family members	Increased risk of accidents	

Issue	Specific Issue	Comment	Response
No employment generated	Only benefits landowner and corporations	No public interest or benefits from the business. Multi-national interests only.	The application does not have to benefit the community. It will create a commercial operation for a local resident and employ a trucking company. This will add money to the local economy.
Flooding		Flood events will require further road repairs in the future. Rainwater runoff will become problematic with proposed road widening. Crucial stormwater drains and culverts missing for road upgrade plans.	In the event of flood damage all local traffic will be affected. This is not grounds to refuse the application.
Financial impact	Decrease in tourism	Increased traffic has potential to impact tourism.	There is no evidence to suggest that 5 trucks Monday – Friday will reduce tourism to the area.
	Increased rates	Concern for increased rates for future road repairs.	This is not a matter for consideration as part of this development application.
Current Application	Lack of information	Hydrogeology report not sufficient. Further studies requested – often by referring to Peter Cook’s report. Council must assess extraction under LEP not Water Management Act. Is Council going to request independent reports? Application should address how residents are impacted. Lack of scientific evidence (bore and connectivity to creek, springs and streams). Road Plan does not address neighbours impacted by the proposed truck movement. Council requested to appropriately address hours of operation. Lack of measurements to minimise impact of traffic. Legal advice from EDO: Clause 7.15, Council must be satisfied that development does not have an adverse impact on the water systems. Lack of environmental assessment of impact on water availability and ecology. DA inconsistent with Tweed Shire Council’s own guidelines. No research or analysis sited, no data from NSW Office of Water (real-time or monitoring systems).	The above report and/or the recommended conditions of consent discusses many of these issues. The Peter Cook Report is summarised below with a response from the applicant’s hydro geologist.

Issue	Specific Issue	Comment	Response
		<p>Comments that the application does not meet objectives of RU2 (“To encourage sustainable primary industry production....”).</p> <p>References made that approval of application opposes Council’s Guidelines: Community Strategic Plan 2017-2027.</p> <p>An environmental assessment is requested for the road upgrade alone. Will Council request own independent hydrological report?</p> <p>Request of information on who will undertake road works.</p> <p>Vegetation removal lacking details of species and assessment against Section A16 of DCP.</p> <p>Questions regarding second bore needing further consent.</p> <p>Reports provided with the current application should be site specific.</p> <p>Lack of addressing the most difficult corners along Dungay Road.</p>	

**Peter Cook’s Report**

A summary of the 5 page letter is as follows:

“Potential impact of groundwater pumping on Dungay Creek”

Peter Cook’s report has reviewed Kobus Argent’s report provided by the applicant. Dr Cook states in his review that the original hydrogeological report contains information on hydrogeological process, but lack sufficient information on the potential impact on Dungay Creek.

Dr Cook states he has not conducted a visit to the site and is not familiar with the Dungay Creek area.

Dr Cook: “Characteristics of unconsolidated sediments (loose accumulations of material) are key to determine whether pumping will impact Dungay Creek”.

Proximity to the pumping bores to the creek raise concerns. Water levels in the rock aquifer and the creek should be compared to assess connectivity to the creek.

Extraction limit and sustainability: volume of water pumped (38 ML/year) very small compared to upper extraction limit for the North Coast Fractured and Porous Rock Groundwater Source, however the amount of water pumped

does not necessarily minimise the potential impact on groundwater or natural water systems.

The existing Kobus Argent report lack measurements on flow rate and duration of flow in Dungay Creek. No water quality information provided from the aquifer or creek. Current hydrological conditions may change once fractured rock aquifer is pumped.

Cumulative impacts of multiple bores in one region: effect on groundwater and water availability.

Proposed further work that should be done:

Compare groundwater and surface water levels.  
Comparison of deep and shallow groundwater levels.  
Stream flow measurements of Dungay Creek.

### **Peter Cook's Report - TSC Response**

The report was forwarded to both Water NSW and the applicant's hydrogeologist.

Water NSW have not responded and not statutorily required to do so as their official comments on this application is that the 38ML has already been approved by the State with appropriate licences in place based on the State Water Sharing Plans. No conditions or general terms of approval are necessary as the existing licences prevail.

The applicant's hydro geologist has stated that:

*I have read Peter Cook's letter report and would make the following comments:*

*(Pagination excludes the biography page)*

*Page 2 para 1 - Peter Cook's report is based on an absence of site knowledge, excluding that gained from the Kobus Argent (KA) report, which is based on site visits and measured data.*

*Page 2, para 3 - The water strikes provide hydraulic evidence to support the geological evidence obtained during drilling of the borehole. No evidence has been found to suggest that the unconsolidated deposits are connected with the underlying fractured rock aquifer.*

*Page 2, para 5 - KA agrees that further information on the connectivity in the system could be obtained from monitoring the surface water system, unconsolidated groundwater levels (if these exist) whilst conducting pumping tests, as per recommendations made in the KA report. However, the current situation is unpumped and at equilibrium. It is important to note that in this situation the creek flow is not driven by groundwater levels in the fractured rock aquifer but responds with flow only during periods of prolonged rainfall leading to surface water run-off.*



*Page 3, para 2 - These are generic hydrogeological statements not based on any site specific evidence or understanding of this site. No evidence is available which demonstrates the fractured rock aquifer is contributing base flow to the creek in this location and the 'worst case' presented is without basis of evidence.*

*KA agrees that the water quality evidence could change under pumping conditions, though a head gradient already exists between the creek and the fractured rock aquifer groundwater which may be expected to influence the groundwater quality if a significant hydraulic connection were to exist.*

*Page 4, para 2 - It is not appropriate to consider future extractions outside of this application, until this application has been considered.*

*I have previously made recommendations and would re-iterate the following recommendations:*

- *A further site visit should be made to establish monitoring sites and protocols.*
- *Shallow bore(s) should be sunk into the unconsolidated deposits to recover soil samples for qualitative assessment and to facilitate monitoring of any groundwater in these deposits.*
- *A sample of creek water should be obtained during a period of flow recession for comparison against groundwater quality of the fractured rock aquifer.*
- *Further pumping tests should be conducted from the proposed extraction bore(s) with contemporaneous monitoring of creek water level and groundwater level in the unconsolidated deposits, if this exists.*

It is accepted by Council that the proposed water extraction is permissible, already has the necessary State Licences, will not affect surface water or groundwater quality, will not affect the sites ability to be used for ongoing agricultural pursuits and will not cause a risk of over extraction given the available State Water Units still on offer in this area. Therefore based on the recommendations of the applicants hydro geologist conditional consent is recommend. The hydro geologist recommendations are incorporated into the recommended conditions of consent.

#### Rural Fire Service

The site is identified as being bushfire prone. The application was referred to the NSW Rural Fire Service for comment.

Council was advised that the RFS raise no concerns or issues in relation to bushfire.

#### Water NSW

Council received advice from Water NSW stating that no General Terms of Approval are needed as all required licences are in place.

**(e) Public interest**

If a development is deemed to result in unacceptable amenity or environmental impacts it could be regarded as not being in the public interest. Despite the public receiving minimal direct benefit from this development, and members of the locality not supporting the concept of water harvesting, the development is considered acceptable based on the applicable legislation applying to this type of business. It is considered in the broader public interest to uphold the planning controls that apply under the Tweed LEP 2014 where water extraction is a permissible use by virtue of Clause 7.15. The above report addresses the relevant provisions and concludes that a recommendation for approval is justified in this instance. The public interest is not considered to be compromised by the use and therefore the application is supported.

**OPTIONS:**

That Council:

1. Approve Development Application DA16/0660 for a water extraction facility at Lot 3 DP 1125925 Dungay Creek Road, Dungay as per the recommendation.

**Or**

2. Refuse Development Application DA16/0660 for a water extraction facility at Lot 3 DP 1125925 Dungay Creek Road, Dungay for specified reasons.

Option 1 is recommended.

**CONCLUSION:**

Water extraction in the Tweed has become a very topical and sensitive matter with large numbers of the community philosophically opposed to the practice. Concerns have been raised in regard to the sustainability of using aquifer water for water bottling operations.

Whilst Tweed Shire Council has resolved to amend the Tweed LEP 2014 to prohibit the use the subject application must be assessed against the current relevant provisions of the Environmental Planning and Assessment Act 1979, the relevant SEPPs applying to the land and the Tweed Local Environment Plan 2000 and 2014.

While water extraction licences have been issued by Water NSW for the extraction of up to 38ML per annum under the Water Management Act 2000, Council must independently determine that it is satisfied that the development does not have an adverse impact on natural water systems or the potential agricultural use of the land.

The documentation submitted in support of the application demonstrates that the proposal will not have an adverse impact on natural water systems or the potential agricultural use of the land. It is also demonstrated that Dungay Creek Road can be upgraded to a standard to accommodate vehicles of the size and frequency proposed.

Given the layout of the subject site the proposed development could have a more direct impact on some of the adjoining houses than some other water extraction properties in the Tweed. A careful merit assessment of the possible amenity impacts has been undertaken in this regard

and it is considered that satisfactory mitigation measures and conditions of consent will ensure the development has a minimal impact on the locality including the safe operation of Dungay Creek Road. Such measures include sealing the internal driveway to reduce dust and noise, reduced hours of operation (9am – 3pm), reduced days of operation to Monday – Friday and reduced trips (no more than 5 per operational day). Therefore the proposal is supported subject to the application of appropriate conditions of consent.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Any appeal will have financial implications.

**c. Legal:**

The applicant has a right to appeal any determination of Council in the NSW Land and Environment Court based on merit or judicial review.

Any person can appeal any determination of Council in the Land & Environment Court for a judicial review (process only **not merit**).

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**4 [PR-PC] 8.2 Review of Determination of the Refusal of DA17/0805 for a Helipad at Lot 1 DP 735658; No. 477 Urliup Road Urliup**

**SUBMITTED BY: Development Assessment and Compliance**

mhm



Making decisions with you  
*We're in this together*

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

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

Council has received a request for a **Division 8.2 Review of Determination** for the refusal of development application DA17/0805 for a helipad at the subject site. The proposal is to use the helipad for private use only, specifically to provide personal transport to and from work for the applicant. The operator of the helicopter is a licensed pilot whom resides at the property. The proposal incorporates a maximum of seven flight movements per week, with proposed hours of operation being 6.30am to 6.30pm, seven days a week.

The original application was lodged in November 2017. The application was referred to the Planning Committee meeting of 5 July 2018, whereby it was resolved to defer any decision pertaining to the subject application in order to allow time for the submission of log books for helicopter movements undertaken to date from the subject site.

Council resolved to refuse the development application at the Planning Committee meeting of 2 August 2018. It is noted that the officer recommendation was for conditional approval.

Under the provisions of Division 8.2 of the Environmental Planning and Assessment Act 1979 the applicant has requested that Council review the determination of DA17/0805. The Review must be determined within six months of the original determination date (10 February 2019).

The provisions of the Environmental Planning and Assessment Act, 1979 requires that where the original application was determined by Council, the Review of Determination must also be determined by Council.

The request for the Review of Determination was received by Council on 16 August 2018. The applicant has addressed each of the three reasons for refusal, with the proposed flight movements and hours of operation remaining unchanged.

As part of the Review of Determination process, the application was advertised and notified to surrounding properties and to persons who made submissions through exhibition of the original development application. During the exhibition process 21 public submissions were received.

The Review was forwarded to Gold Coast Airport, the Civil Aviation Safety Authority (CASA) and Airservices Australia for comment. No objections were raised by any of these agencies.

All submissions received have been addressed within the report below.

An independent review of the proposal was undertaken by a suitably qualified acoustic consultant, highly experienced in the assessment of helicopters. The independent acoustic review found that whilst the applicant's acoustic assessment could not be supported, the proposal is recommended for approval, subject to specific conditions of consent. Of note, the independent acoustic review supported the officer's original assessment in that the recommended hours of operation for the helipad (7.00am to 7.00pm Monday to Saturday and 8.00am to 6.00pm Sundays) differ from that being proposed by the applicant (6.30am to 6.30pm).

A review of the three reasons for refusal has been undertaken, with each reason not considered to be applicable or relevant in terms of refusing the proposed helipad. The original development proposal was considered to be generally consistent with relevant environmental planning instruments and Council policy requirements. The development is considered to remain suitable for the subject site through this Review of Determination, given its permissibility at this location and subject to the imposition of relevant conditions of consent.

Conditional development consent of the application is recommended, noting several amendments and additional conditions have been applied following the independent acoustic review of the proposal.

## **RECOMMENDATION:**

**That Development Application DA17/0805 for a helipad at Lot 1 DP 735658; No. 477 Urliup Road BILAMBIL be approved subject to the following conditions:**

### **GENERAL**

- 1. The development shall be completed in accordance with the flight path plan stamped and approved by Council, except where varied by the conditions of this consent.**

[GEN0005]

### **USE**

- 2. Hours of operation of the helipad/helicopter are restricted to the following hours:**
  - \* 7.00am to 7.00pm - Mondays to Saturdays**
  - \* 8.00am to 6.00pm Sundays and Public Holidays**



**The above restrictions do not apply in the case of a Civil Aviation Safety Authority or medical emergency situation.**

[USE0185]

- 3. 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]

- 4. No intensification of use of the helipad/helicopter beyond a total of seven helicopter flight movements per week (including taking off or landing) is permitted under this consent.**

[USE0855]

- 5. The storage of fuel and refuelling of the helicopter is not permitted to occur on the subject site.**

[USENS01]

- 6. The operation and use of the helipad in accordance with this development consent is to be maintained in a flight log which records the date and time of all inbound and outbound flights from the subject site.**

**At any time, Tweed Shire Council Officers may request a copy of the log to be provided for audit of compliance with conditions of this development consent in regard to the times and frequency of flights in and out of the subject site.**

**The submission of the log at the request by Tweed Shire Council is to be accompanied by a Statutory Declaration by the pilot of the helicopter declaring that the information contained in the log is true and correct.**

[USENS02]

- 7. The development is restricted to the use of a Bell 206B JetRanger – III helicopter.**

- 8. The operation of the helicopter is restricted to a maximum of two persons on board the aircraft when in flight. The use of the helipad is for private use only.**

- 9. The only flight path that is to be used for the subject helipad is the flight path shown in the Craig Hill Acoustics Report of 15 November 2018 that accompanied the application.**

- 10. The subject helicopter must fly the nominated flight path on both arrivals and departures and is not permitted to deviate from the nominated flight path.**

- 11. The development is restricted to no more than two movements on any day. A movement is defined as a take-off or a landing.**

- 12. There will be no maintenance of the helicopter carried out on site.**

- 13. Prior to the commencement of operations, the applicant shall provide to Council documentation to identify the wind conditions (strength and direction) that will result in the approved flight path not being able to be used.**

- 14. Any modification to the flight path, operational restrictions or conditions nominated in this consent must be the subject of an application and include an acoustic assessment of the resultant impact from the proposed modifications.**
- 15. If this consent (DA17/0805) is commenced, development consent DA18/0637 is to be surrendered prior to such commencement, pursuant to Section 4.17 (1) of the EP&A Act 1979 (as amended) and the Clause 97 of the EP&A Regulations 2000.**

**REPORT:**

**Applicant:** Eniflat Pty Ltd  
**Owner:** Eniflat Pty Ltd  
**Location:** Lot 1 DP 735658; No. 477 Urliup Road Urliup  
**Zoning:** RU2 - Rural Landscape  
**Cost:** Nil

**Background:**

Site

The subject site is legally described as Lot 1 DP 735658, known as No. 477 Urliup Road, Urliup. The site is located within the rural setting of Urliup and comprises of a previously approved dual occupancy development as well as an approved rural industry comprising the harvesting and bottling of mineral water.

The helipad is located on a flat, cleared, grassed area at the rear of the existing dwellings. The surrounding terrain consists of steeply sloping hills to the north and south of the subject site.

Development History

DA17/0805 was submitted to Council in November 2017, proposing a helipad at the subject site for personal use. The subject site is zoned RU2 – Rural Landscape, with Helipads being a permissible use within the RU2 zone.

The application sought approval for a total of seven flight movements per week, which does not trigger designated development provisions, pursuant to Schedule 3 of the *Environmental Planning and Assessment (EP&A) Regulations 2000*. The proposed hours of operation are 6.30am to 6.30pm seven days a week, within which the seven flight movements would take place.

The proposed use of the helipad is for private use only, providing personal transport to and from work for the applicant. The operator of the helicopter is a licensed pilot whom resides at the subject site. The application was also supported by a Noise Impact Assessment (prepared by Craig Hill Acoustics) and a single flight path was proposed, indicating the approach and take-off path, noting that the helicopter would be above 500 feet when it travels beyond the property boundary. The flight path chosen was considered by the applicant to be the most appropriate in terms of surrounding terrain and potential impact on neighbouring properties.

Council officers recommended approval of the original proposal in July 2018, subject to conditions of consent. Of note was the recommendation for amended hours of operation to those proposed by the applicant. In this regard, a starting time of 7.00am (Mon – Fri) and 8.00am (Sun and public holidays) was recommended in Condition 3, rather than the proposed starting time of 6.30am, seven days a week.

However, a determination of the proposed development was deferred, with Councillors ultimately resolving to refuse the proposal on 2 August 2018 for the following reasons: -

1. *Pursuant to Section 4.15 (1) (b) the development is considered to be unacceptable due to noise impacts on the neighbours including cumulative impact from bulk water extraction trucks currently accessing the site.*
2. *Pursuant to Section 4.15 (1) (b) the development is considered to be unacceptable due concerns about the assumptions made in the acoustic report particularly in regard to the single flight path identified whereas this will be dependent on wind direction, as highlighted in a recent report on helicopter noise impacts 'Short Round Trip Helicopter Activity' 2018 by Air Services Australia.*
3. *Pursuant to Section 4.15 (1) (a) (i) the operation is not consistent with the rural zone as it is not for rural purposes or ancillary to rural development.*

### Proposed Development

The applicant's request for a formal Review of Determination was received on 16 August 2018.

It should be noted that a new application for a helipad (being ancillary to an existing dwelling) was also submitted for the same site on 17 August 2018. The new application (DA18/0637) has been assessed concurrently with the subject 8.2 Review of Determination.

DA17/0805 was formally re-advertised and re-notified to the adjoining landowners and to those who originally objected to the proposed development. The re-advertisement resulted in Council receiving a total of 21 written submissions objecting to the proposal. An assessment of the issues raised by the submissions is provided later in this report.

Further comment was also requested of the Gold Coast Airport, Civil Aviation Safety Australia (CASA) and Airservices Australia, with CASA and Airservices Australia providing formal comment. These are provided later in this report.

During the Review of DA17/0805, it was found that the EPA Guidelines used by the applicant's acoustic consultant and accepted by Council officers during the original assessment were obsolete and no longer applicable as assessment tools. It was considered appropriate that Council engage the services of a highly qualified acoustic consultant to review DA17/0805 (and DA18/0637) and provide independent advice in terms of the noise impacts associated with the proposed development. Further detail on the independent review is provided later in this report.

As noted previously, the applicant has provided a response to the three reasons for refusal, with no amendments proposed to the development. The following is a summary of the applicant's response and Council officer's comments to each point of refusal.

1. **Pursuant to Section 4.15 (1) (b) the development is considered to be unacceptable due to noise impacts on the neighbours including cumulative impact from bulk water extraction trucks currently accessing the site.**

The applicant has provided the following comment in response to the first reason for refusal:

*"Any assessment of cumulative impact requires the assessment of the application in combination with similar types (i.e. other helipads) already approved or proposed in the locality. To my understanding, there are none. Not by reference to other development*

*occurring on the Property. We are currently involved in Court proceedings. The Council has not had an issue with the noise of the trucks. It is not allowable in the assessment of this development application to refuse on the basis of other impacts arising from another application”.*

Comment:

The approved bulk water extraction activities on the subject site are considered to be unrelated to the proposed helipad. Any noise impacts associated with the approved water extraction trucks should be dealt with completely separately to any potential noise impacts arising from the proposed helipad.

In any event, the approved water extraction activities (which incorporates 12 truck movements per day) and the proposed helipad (having one flight movement inward bound and one flight movement outward bound per working day, up to a total of seven flight movements per week) are considered to be acceptable in terms of potential amenity impact.

With specific regard to the proposed helipad and as noted in detail later in this report, Council has engaged the services of an independent acoustic consultant experienced in the assessment of helipads, who is of the opinion that the noise impact associated with the use of the helipad is considered to be within acceptable limits of ANEF 13. Appropriate hours of operation have been recommended for DA17/0805 to ensure amenity concerns for the surrounding locality are suitably addressed.

Having undertaken a thorough assessment of the proposed helipad, pursuant to the provisions of Division 8.2 and Section 4.15 of the Environmental Planning & Assessment Act (as detailed later in this report), it is considered that *Refusal Reason 1* is not valid and the proposal is worthy of approval, subject to the recommended conditions of consent.

- 2. Pursuant to Section 4.15 (1) (b) the development is considered to be unacceptable due concerns about the assumptions made in the acoustic report particularly in regard to the single flight path identified whereas this will be dependent on wind direction, as highlighted in a recent report on helicopter noise impacts ‘Short Round Trip Helicopter Activity’ 2018 by Air Services Australia.**

The applicant has provided the following comment in response to the second reason for refusal:

*“The second reason given for refusal was by reference to a report entitled Short Round Trip Helicopter Activity. I was never provided with a copy of this report ahead of the decision to refuse the application. Having now read the report I cannot see how it is relevant in any way whatsoever. That report was prepared by Air Services Australia in 2018 in response to complaints against a service to provide round-trip scenic flights around the Gold Coast Airport. With my application the approach and take-off path was mandated by the application and the Council in its proposed conditions of consent. In assessing an application the Council must assume that conditions of approval must be assumed to be complied with. The decision also questioned the wind on the day of the test. The relevant standard requires light wind for the outcome to be valid”.*

Comment:

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The document noted in *Refusal Reason 2* is referenced incorrectly, with the actual title of the document being '*Investigation Report: Short Round-Trip Helicopter Activity at Gold Coast Airport*', prepared by Airservices Australia and dated April 2018.

The referencing of this document is not considered to be appropriate in that the report is in response to complaints regarding short round trip scenic helicopter flights over a thin strip of land adjacent to the Gold Coast Airport.

The Airservices Australia report is completely unrelated to the proposed flight path and intended use (transport to/from work) associated with the helipad at the subject site. The flight path requirements noted in the Airservices Australia report (in terms of having multiple directions to cater for varying wind and proximity to jet blast from nearby aircraft) is considered to be irrelevant to the proposed helipad for personal use at Uriup.

It is also noted that the applicant was not provided with an opportunity to address any issues raised by the Airservices Australia report, with the application lodged some six months prior to the release of the report.

As noted later in this report, the Gold Coast Airport, CASA and Airservices Australia have raised no objections to the original application or the subject Review of Determination, with CASA making a specific notation that "...that the proposed flight path and procedures outlined in the DA are within regulations".

It is also noted in CASA's '*Guidelines for the Establishment and Operation of Onshore Helicopter Landing Sites*' that one-way landing sites are not precluded. It is understood that such one-way proposals are not uncommon for personal use helipads, with such landing sites restricted in that strong winds will prohibit the landing of the subject helicopter (Bell Jet Ranger) if there is a tail wind that exceeds 17 knots at the landing site.

Having undertaken a thorough assessment of the proposed helipad, pursuant to the provisions of Division 8.2 and Section 4.15 of the Environmental Planning & Assessment Act (as detailed later in this report), it is considered that *Refusal Reason 2* is not valid and the proposal is worthy of approval, subject to the recommended conditions of consent.

**3. Pursuant to Section 4.15 (1) (a) (i) the operation is not consistent with the rural zone as it is not for rural purposes or ancillary to rural development.**

The applicant has provided the following comment in response to the third reason for refusal:

*"Finally, the development was said to be inconsistent with the rural zone. That decision was made against the advice of council officers which concluded that the helipad was consistent with the relevant zone objectives. The law establishes that development will be consistent with objectives if it is not antipathetic to them. Council applied the wrong legal test in refusing the application".*

Comment:

Section 4.15(1)(a)(ii) of the EP&A Act relates to the matters of consideration that the consent authority is to take into consideration. Matters that are of relevance to the development include the applicable zone objectives, pursuant to Tweed LEP 2014.

The objectives of the RU2 Rural Landscape zone are as follows:

- *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.*

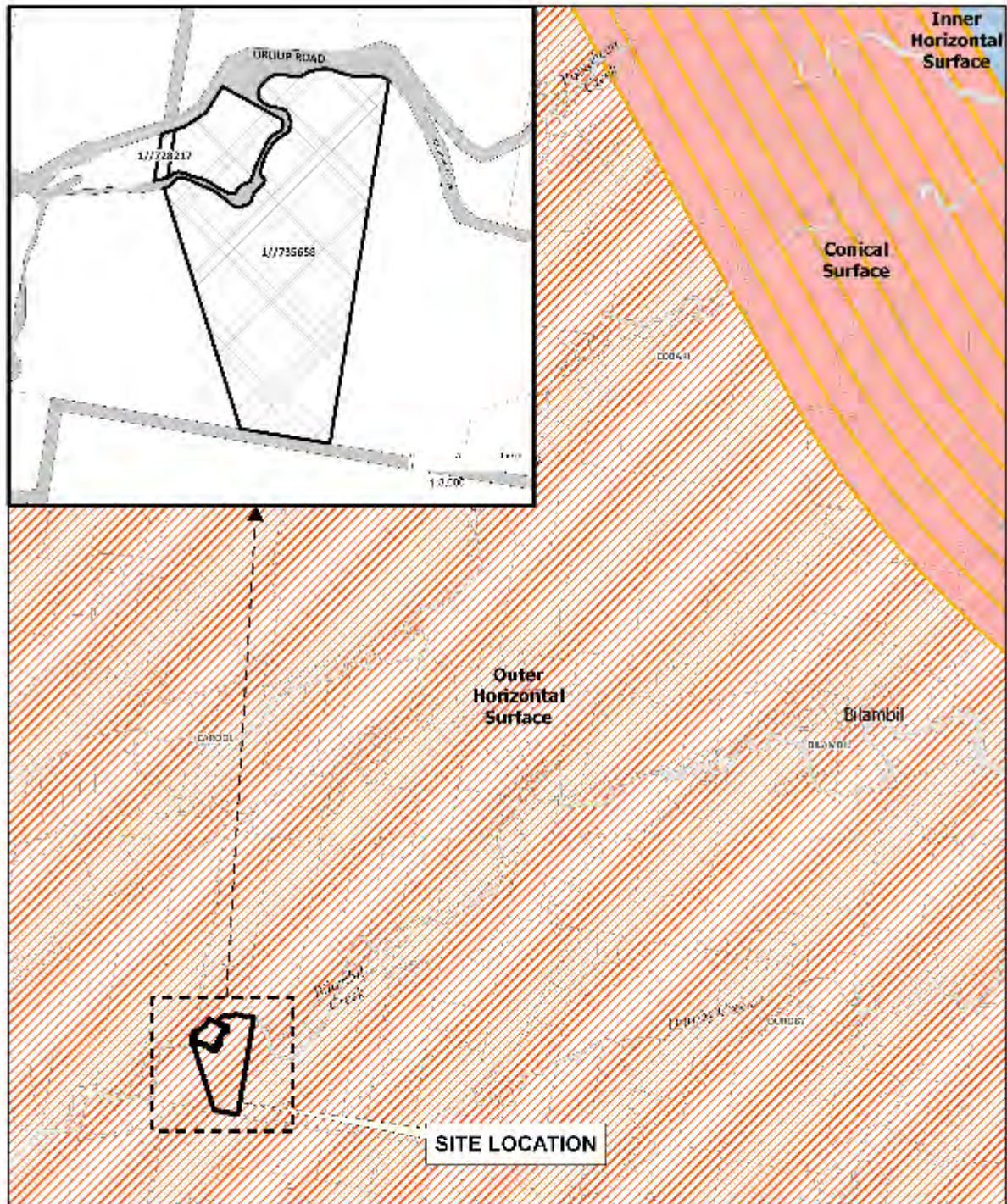
It is noted that the original assessment by Council officers considered the proposed helipad to be “...consistent with the objectives of the zone as far as delivery of a land use which is compatible to the Rural Landscape given it is for private use and does not comprise of any buildings or structures. The function and use of the site for the said purposes does not compromise agricultural land uses, the natural resource base or environmental qualities of the area and based on the information submitted and recommended conditions of consent, the use of a private helipad with a limited number of trips on a large rural land holding, is considered to maintain the rural landscape character of the land”.

In reviewing the application, the original officer assessment is concurred with, noting that a helipad is permitted with consent in the RU2 zone and the zone objectives do not require the proposal to be for a specific rural purpose as stated in the reason for refusal.

A review of *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* was undertaken, with the court appeal relating to a proposed heliport in an E3 zone. In the decision for this case, Commissioner Preston states that “...A consent authority’s obligation is to consider and determine the development application that has been made for the identified development on the identified land. If development on that land is permissible and acceptable (having regard to all relevant matters), it should be approved”. In this regard (as noted in the report below), all other matters (in terms of potential impacts) are considered to be acceptable, subject to conditions of consent.

Having undertaken a thorough assessment of the proposed helipad, pursuant to the provisions of Division 8.2 and Section 4.15 of the Environmental Planning & Assessment Act (as detailed later in this report), it is considered that *Refusal Reason 3* is not valid and the proposal is worthy of approval, subject to the recommended conditions of consent.

**SITE DIAGRAM:**



- GDA OLS Contours GDA OLS Zones**
- GDA OLS Contours
  - Inner Horizontal Surface
  - Outer Horizontal Surface
  - Take Off/Approach Surface

**Site Plan**

Lot 1 DP 728217 and Lot 1 DP 735658  
477 Uriup Road, BILAMBIL

0 15 0 45  
1:20,000

Disclaimer: This document is a preliminary site plan and is not to be used for construction purposes. It is intended for information purposes only. The Council is not responsible for the accuracy of the information contained herein. The Council is not responsible for the accuracy of the information contained herein. The Council is not responsible for the accuracy of the information contained herein. The Council is not responsible for the accuracy of the information contained herein.



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**TWEED**  
SHIRE COUNCIL

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**AERIAL PHOTOGRAPH:**



1:1,000 Scale  
0 50 100 m  
North Arrow  
GDA  
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**Aerial Photography 2018**  
Lot 1 DP 728217 and Lot 1 DP 735658  
477 Urrilip Road, BILAMBIL

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Boundaries shown should be considered approximate only





## DEVELOPMENT/ELEVATION PLANS:

Locality Map: Enflat Pty Ltd - Larry Karlos





### Legend

-  Lot 1 DP 735658
-  Watercourse
-  Cadastre

Disclaimer: The State of New South Wales and the NSW Department of Primary Industries, Water and its employees, officers, agents or servants are not responsible for the result of any actions taken of the information contained on this map or for any errors, omissions or inaccuracies contained in this map.



-  CHOPPER PARKING
-  Approach + T-off path.

**PHOTOGRAPH OF HELICOPTER:**





## CONSIDERATIONS UNDER DIVISION 8.2 REVIEWS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

### 8.2 Determinations and decisions subject to review

- (1) *The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:*
- (a) ***the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),***
  - (b) *the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),*
  - (c) *the decision of a council to reject and not determine an application for development consent.*

#### Comment

The original application was determined by Council. Accordingly, a review of the original determination is allowable.

- (2) *However, a determination or decision in connection with an application relating to the following is not subject to review under this Division:*
- (a) *a complying development certificate,*
  - (b) *designated development,*
  - (c) *Crown development (referred to in Division 4.6).*

#### Comment

Not applicable to the subject application. The development application is not a type referred to in (a) – (c) above. The proposal does not meet the designated development provisions, being only seven flight movements per week.

- (3) *A determination or decision reviewed under this Division is not subject to further review under this Division.*

#### Comment

Noted. Following the determination of this review, no further reviews are allowable in relation to DA17/0805.

### 8.3 Application for and conduct of review

- (1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*

#### Comment

This review has been undertaken in response to a request made by the applicant.

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- (2) *A determination or decision cannot be reviewed under this Division:*
- (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
  - (b) *after the Court has disposed of an appeal against the determination or decision.*

Comment

The appeal rights associated with DA17/0805 expire after six months from the original determination date. The refusal notice for DA17/0805 was issued on 10 August 2018 and therefore the 8.2 Review of Determination must be finalised before 10 February 2019.

- (3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

Comment

Whilst the applicant has addressed the reasons for refusal, no amendments have been made to the proposed development. The number of flight movements per week and proposed hours of operation remain unchanged from that originally approved. Accordingly, the substantially the same provisions are considered to be satisfied.

- (4) *The review of a determination or decision made by a delegate of a council is to be conducted:*
- (a) ***by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or***
  - (b) *by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*
- (5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*
- (6) *The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.*
- (7) *The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.*
- (8) *The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.*
- (9) *The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.*

Comment

The original application was determined by Council. Accordingly, the Review of Determination will be undertaken by Council.

## 8.4 Outcome of review

*After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.*

### Comment

Noted.

As a result of the independent acoustic assessment of the proposal (detailed later in this report), a number of additional conditions of consent (Conditions 7 – 14) have been recommended, along with an amendment to Condition No 3 (which will be renumbered to Condition 2) in relation to hours of operation. In addition, original Conditions 2, 5 and 6 have been removed from the revised list of recommended conditions. These conditions relate to amenity provisions, which are considered to be adequately replaced by the new conditions recommended by the independent acoustic assessment. Proposed Condition 15 relates to the need to surrender one of the consent, should both DA17/0805 and DA18/0637 be approved.

The amended/additional recommended conditions of consent are noted below:

**3. Hours of operation of the helipad/helicopter are restricted to the following hours:**

- \* 7.00am to 7.00pm - Mondays to Saturdays
- \* 8.00am to 6.00pm Sundays and Public Holidays

**The above restrictions do not apply in the case of an emergency situation.**

[USE0185]

- 7. The development is restricted to the use of a Bell 206B JetRanger – III helicopter.**
- 8. The operation of the helicopter is restricted to a maximum of two persons on board the aircraft when in flight. The use of the helipad is for private use only.**
- 9. The only flight path that is to be used for the subject helipad is the flight path shown in the Craig Hill Acoustics Report of 15 November 2018 that accompanied the application.**
- 10. The subject helicopter must fly the nominated flight path on both arrivals and departures and is not permitted to deviate from the nominated flight path.**
- 11. The development is restricted to no more than 2 movements on any day. A movement is defined as a take-off or a landing.**
- 12. There will be no maintenance of the helicopter carried out on site.**
- 13. Prior to the commencement of operations, the applicant shall provide to Council documentation to identify the wind conditions (strength and direction) that will result in the approved flight path not being able to be used.**



14. Any modification to the flight path, operational restrictions or conditions nominated in this consent must be the subject of an application and include an acoustic assessment of the resultant impact from the proposed modifications.
15. If this consent (DA17/0805) is commenced, development consent DA18/0637 is to be surrendered prior to such commencement, pursuant to Section 4.17 (1) of the EP&A Act 1979 (as amended) and the Clause 97 of the EP&A Regulations 2000.

#### **8.5 Miscellaneous provisions relating to reviews**

- (1) *The regulations may make provision for or with respect to reviews under this Division, including:*
  - (a) *specifying the person or body with whom applications for reviews are to be lodged and by whom applications for reviews and the results of reviews are to be notified, and*
  - (b) *setting the period within which reviews must be finalised, and*
  - (c) *declaring that a failure to finalise a review within that time is taken to be a confirmation of the determination or decision subject to review.*
- (2) *The functions of a consent authority in relation to a matter subject to review under this Division are the same as the functions in connection with the original application or determination.*
- (3) *If a decision to reject an application for development consent is changed on review, the application is taken to have been lodged on the date the decision is made on the review.*
- (4) *If a determination is changed on review, the changed determination replaces the earlier determination on the date the decision made on the review is registered on the NSW planning portal.*
- (5) *Notice of a decision on a review to grant or vary development consent is to specify the date from which the consent (or the consent as varied) operates.*
- (6) *A decision after the conduct of a review is taken for all purposes to be the decision of the consent authority.*
- (7) *If on a review of a determination the consent authority grants development consent or varies the conditions of a development consent, the consent authority is entitled (with the consent of the applicant and without prejudice to costs) to have an appeal against the determination made by the applicant to the Court under this Part withdrawn at any time prior to the determination of that appeal.*

#### Comment

The above provisions of Section 8.5 of the EP&A Act are noted. Refer to the assessment of the relevant EP&A Regulations below.

#### **CONSIDERATIONS UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATIONS 2000:**

- 113A Public participation: application under section 8.3 of the Act for review of council's determination**
-

- (1) *This clause applies to an application under section 8.3 of the Act for review by a council of its determination of a development application.*

Comment

Public notification of the Review of Determination was undertaken.

- (2) *An application to which this clause applies must be notified or advertised for a period not exceeding 14 days, but otherwise in the same manner as the original development application was notified or advertised.*

Comment

The exhibition of the Review of Determination was undertaken for a period of 14 days. The notification and advertisement of the Review was undertaken in the same manner as the original development.

- (3) *However, if the application is made to a council that has provided in a development control plan for the notification or advertising of such an application, the application is to be notified or advertised in accordance with the development control plan.*

Comment

The public notification was undertaken in accordance with Council's DCP A11 – *Public Notification of Development Proposals*.

- (4) *The council must cause copies of the application to be given to each concurrence authority for the development to which the application relates.*

Comment

The proposed development does not require approval from any concurrence authority.

- (5) *The notice or advertisement referred to in subclause (2) must contain the following information:*

- (a) *a brief description of the original development application and the land to which it relates,*
- (b) *a statement that submissions concerning the application for review may be made to the council within the period referred to in section 8.5 (1) (b) of the Act.*

Comment

The public notification contained a brief description of the application and the land to which it relates. The notification also stated the period within which submissions could be made in relation to the review.

- (6) *For the purposes of section 8.5 (1) (b) of the Act, the period within which submissions may be made in relation to such an application is the period specified:*

- (a) *in subclause (2), except as provided by paragraph (b), or*
- (b) *if the council has made a development control plan specifying such a period, in the development control plan.*

Comment

As noted above, the notification stated the period within which submissions could be made in relation to the Review.

- (7) *During the period referred to in subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period, any person may inspect the application and any accompanying information and make extracts from or copies of them.*

Comment

The notice for public notification made reference to Council's DA Tracker, whereby anyone can access, review and make copies of any of the submitted documentation supporting the proposed development.

**Schedule 3 – Designated Development**

Part 1 of Schedule 3 of the Environmental Planning & Assessment Regulations relates specifically to the types of development that is considered as Designated Development. If a proposal triggers any of the thresholds associated with a particular use, it is declared to be designated development for the purposes of the Act and the development application must be accompanied by an Environmental Impact Statement (EIS). In addition, any objectors to the proposal have rights of appeal on merit. An assessment of the relevant clause of Schedule 3 applicable to the proposed development is noted below.

2 Aircraft Facilities

Clause 2 relates to **Aircraft Facilities** for the landing, taking-off or parking of aeroplanes, seaplanes **or helicopters**. In relation to helicopter facilities, designated development provisions are triggered when there is an intended use of more than seven helicopter flight movements per week (including taking-off or landing), and are located within 1 kilometre of a dwelling not associated with the facilities.

- (b) *in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):*
  - (i) *that have an **intended use of more than 7 helicopter flight movements per week** (including taking-off or landing), and*
  - (ii) *that are **located within 1 kilometre of a dwelling not associated with the facilities**, or*
- (c) *in any case, that are located:*
  - (i) *so as to disturb more than 20 hectares of native vegetation by clearing, or*
  - (ii) *within 40 metres of an environmentally sensitive area, or*
  - (iii) *within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).*

As noted above, the proposed development proposes a maximum of seven flight movements per week. Accordingly, although the helipad is located within 1 kilometre of a dwelling not associated with the development, the proposed development is not considered to be Designated Development. As such, an EIS is not required. Appropriate conditions of consent have been applied to ensure the maximum flight movements do not exceed seven per week (with the exception of emergency situations).

## **CONSIDERATIONS UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

As noted below, the Review of Determination includes an assessment against the potential impacts associated with the proposed helipad and included acoustic and ecological impacts. The assessment also undertook a detailed analysis of the submissions associated with the Review. All other matters under S4.15 of the original assessment are considered to remain applicable to the proposed helipad, with no further assessment considered warranted as part of this Review.

### Acoustic Assessment

A review of the original development application and assessment of recent court judgements in relation to similar developments (i.e. helipads in a rural area) revealed that the previous EPA's Environmental Noise Control Manual being used by the applicant's acoustic consultant and Council was incorrect in terms of assessment criteria. The EPA's noise guidelines for helicopters was discontinued in 2000, with no replacement criteria being issued.

As confirmed in *Nessdee v Orange City Council* court judgement, it is considered that the appropriate assessment approach for assessing aircraft (including helicopters) is to use the ANEF system, with the design target for residential amenity being ANEF 13 at residential receivers that are newly exposed to aircraft operations. Rather than delaying the Review any further by requesting the applicant to undertake a new acoustic assessment using the correct criteria, it was considered appropriate for Council to engage the services of a highly experienced acoustic consultant to review the application and provide an independent assessment of this proposal (and DA18/0637) from an acoustic perspective.

The initial review of the application by the independent acoustic expert found that the applicant's acoustic assessment (prepared by Craig Hill Acoustics and dated 15 November 2017) was "*...inadequate and contains a number of significant errors, and does not provide sufficient material to justify the acoustic conclusions*". The assessment highlighted the lack of noise data to permit an evaluation of the noise impacts. Accordingly, the independent review noted on 5 November 2018 (refer to **Attachment 1**) that "*...it is impossible to utilise the Craig Hill Acoustics report of 15 November 2017 for the subject application. Therefore the application must be automatically refused*".

As noted above, the new application for a helipad ancillary to an existing dwelling (DA18/0637) has been assessed concurrently with the 8.2 Review, with the independent acoustic assessment reviewing both applications. Using their wealth of knowledge and expertise in the assessment of helicopters and helipads, the independent acoustic expert was able to apply recognised acoustic measurements and data for the Bell 206B JetRanger II helicopter (which was lacking in the Craig Hill acoustic report), to enable an acoustic assessment to be undertaken against the relevant noise criteria. The assessment of the new application found that DA18/0637 could satisfy noise targets, subject to certain requirements (refer to **Attachment 2**).

The independent acoustic expert was asked by Council officers whether the same recognised acoustic measurements and data applied to the acoustic assessment of DA18/0637 could be applied to the 8.2 Review, to determine if the DA17/0805 was acceptable in terms of noise impacts.

The acoustic assessment provided by Council's expert on 8 November 2018 (refer to **Attachment 3**) in relation to DA17/0805 notes the following:

*“For the nominated hours of operation and the advice that the helipad is for private purposes, specifically to provide the applicant with personal transport to and from work, then the flight prior to 7am is considered to be a take-off and as such occurs in the ANEF night period, whilst the landing would occur prior to 6.30pm and is assumed to therefore occur in the ANEF daytime period.*

*With respect to the idle and hover components I have utilised other measurements of a Bell 206 JetRanger II for a number of Sydney CBD Heliport assessments and adjusted the  $L_{AE}$  for distance attenuation to determine a contribution from those components.*

*It is noted that for the start up or shutdown of a helicopter there is an extended period of time (typically 2 minutes) to permit stabilisation of engine temperature. The 30 second idle period for testing (from AS2363) is to permit an audible break between individual movements. The author wrote the test procedure in AS2363 based on his previous testing.*

*For the hover component I have used the 30 seconds identified in the flight procedure noting that in some cases the in ground effect hover can be more than 30 seconds.*

*On the basis of the above assumptions and the data from Table 5.2 in the acoustic assessment (with the qualifications described above and the additional material from the second application) the following Table presents the derived contributions for each location.*

Location	Mode	Leq dB(A)	Time (secs)	$L_{AE}$	Movements		$L_{Aeq}$ (24 hrs)	ANEF
					day	night		
R1	T/O	64	181	88.8	1	0	37.2	
	Land	68	160	90.0	0	1	46.7	
	Idle	54.7	120	75.5	1	1	33.1	
	Hover	60.7	30	75.5	1	1	33.1	
	Cumulative						47.5	
R2	T/O	62.2	181	84.1	1	0	34.8	
	Land	65	160	86.4	0	1	43.0	
	Idle	59.3	120	80.1	1	1	37.7	
	Hover	65.3	30	80.1	1	1	37.7	
	Cumulative						45.4	
R3	T/O	61.4	181	82.8	1	0	33.4	
	Land	64.7	160	85.7	0	1	42.3	
	Idle	57	120	77.8	1	1	35.4	
	Hover	63	30	77.8	1	1	35.4	
	Cumulative						44.2	
R4	T/O	65	181	85.8	1	0	36.4	
	Land	65	160	86.9	0	1	43.5	
	Idle	61.4	120	82.2	1	1	39.8	
	Hover	67.4	30	82.2	1	1	39.8	
	Cumulative						46.6	



Location	Mode	Leq dB(A)	Time (secs)	L <sub>1E</sub>	Movements		L <sub>Aeq</sub> (24 hrs)	ANEF
					day	night		
R5	T/O	64	181	85.8	1	0	36.4	
	Land	62	160	84.3	0	1	40.9	
	Idle	54.2	120	75.0	1	1	32.6	
	Hover	60.2	30	75.0	1	1	32.6	
	Cumulative						43.1	

From the above results it can be seen that the proposed operations with a take-off before 7am and a landing between 7am and 7pm on each day would result in an ANEF less than 13, which is the appropriate criterion for a new flight path in an area not previously exposed to helicopter noise.

Under the requirement to consider potential adverse impacts under the Environment Planning and Assessment Act the noise from the helicopter operations significantly exceeds the “ambient Leq” of 45 dB(A) identified in the second acoustic report (for unspecified times) and has the potential to give rise to sleep disturbance at the residential dwellings identified as R1 – R5 inclusive.

Based upon the maximum level from helicopter movements recorded at locations R1 – R5 (Table 5.2 of the second acoustic report) there is potential for sleep disturbance during the “night period”. The maximum levels are greater than the 65 dB(A) limit proposed in the Nessdee P/L matter and significantly more than background +15 dB(A) being the general sleep disturbance limit provided by the EPA in their Noise Guide of Local Government, or the 52 dB(A) limit nominated by the EPA in the Noise Policy of Industry document.

**If the helicopter operations were restricted to daytime operations under AS2021 (between 7am and 7pm Monday to Saturday) and 8am to 6pm on a Sunday to accord with the EPA’s definition of daytime, then the issue of sleep arousal would be resolved and the resultant ANEF’s would be reduced with the highest ANEF being a value of 7.7 at location R1”.**

Further to the above assessment, the following conditions of consent have been recommended by Council’s expert, should consent be granted:

- The development is restricted to the use of a Bell 206B JetRanger – III helicopter.
- The operation of the helicopter is restricted to a maximum of two persons on board the aircraft when in flight.
- The only flight path that is to be used for the subject helipad is the flight path shown in the Craig Hill Acoustics Report of 15 November 2018 that accompanied the application.
- The subject helicopter must fly the nominated flight path on both arrivals and departures and is not permitted to deviate from the nominated flight path.
- **The hours of operation of the helipad are restricted to 7am – 7pm Monday to Saturday and 8am to 6pm on Sundays.**
- The development is restricted to no more than 2 movements on any day. A movement is defined as a take-off or a landing.

- *There will be no maintenance of the helicopter carried out on site.*
- *Prior to the commencement of operations, the applicant shall provide to Council documentation to identify the wind conditions (strength and direction) that will result in the approved flight path not being able to be used.*
- *Any modification to the flight path, operational restrictions or conditions nominated in this consent must be the subject of an application and include an acoustic assessment of the resultant impact from the proposed modifications.*

Upon advice of the above recommendation for hours of operation, the applicant was provided with an opportunity to respond to the independent acoustic assessment. The following responses were received:

Response 1

*"I don't agree with the restriction to start at 7am.*

*This Helicopter is used for private purposes only.*

*Council are responsible for the HELIPAD, not the flying itself. There is no restriction on times in this airspace.*

*The noise levels are within the acceptable levels. The EPA and CASA have no issues. Sleep disturbance is as much of an issue for the closest residents as a vehicle driving past the road such as a V8 or Harley Davidson which would be much noisier. No reasonable council would restrict a person's movements on the road while approving a DA for a garage, and thereby restricting a person's ability to attend work at the required time.*

*A helipad and a garage are essentially the same principal. They both accommodate the parking of a private vehicle which is used to transport one to and from work.*

*The helicopter is making less noise at the closest noise sensitive areas by the road than a Harley or V8 driving past at any unrestricted time to go to and from work. The Harley or V8 going past at the same point is literally less than 10 metres away from these residence and extremely loud.*

*To limit my travelling to work on time in the mornings (simply because I use a helicopter) is discrimination and moving into CASA's jurisdiction.*

*A helicopter or any aircraft is free to fly in this airspace at any time. How can the TSC take on CASA's jurisdiction and discriminate against me, while any other aircraft can fly through here at any time they wish? Again, TSC is looking at a DA for the helipad, not the flying in airspace".*

Response 2

*"In addition to the email below, I would like to offer a reasonable compromise (while taking into account the statements I have made below)*

*My work hours vary according to the busy season being summer for the work I do.*

*Therefore, it is unpractical as well as unfair and discriminatory based on points raised in the below email.*

*However, on the point of being unpractical, I offer a solution that accommodates the actual hours I would need while giving away more than what I ask in relation to the proposed hours of 7am to 7pm all year round.*

*Sundays can be 8am to 5pm as opposed to 8 till 6pm (I am happy to give up an hour on the Sunday all year round)*

*Monday to Sunday (during daylight savings time only) to be 630am to 7pm, and during the Winter times, 7am to 6pm. (here, I ask for the extra half hour only during summer*

*in the mornings that I need to stay employed and reflect what I need where I give up an hour in return during the winter times of an afternoon.*

*(All up, I ask for significantly less than what I am practically able to offer to give up simply to reflect my employment hours)*

*I make this offer while still standing by all points raised below.*

*No council gives time restraints to a person and dictates when they can drive their private vehicle to and from work when approving a DA for a garage or a single car park space on their property.*

*This is the same principal, however, given the closeness of the times you are suggesting, vs the actual times I need to transport myself to and from my employment and indeed, stay employed, I think this offer and compromise is reasonable”.*

### Officer Comment

Whilst the applicant’s request for a compromise in the proposed hours of operation (i.e. only an 30 minute non-compliance period with the EPA noise requirements during day light savings summer period) is relatively minor, the issue still arises that from an amenity point of view, any flight movements prior to 7am is considered to potentially result in sleep disturbance for nearby residences.

Council’s independent acoustic assessment did note that the noise levels would be reduced if the proposed flight path was in a straight line (as opposed to the current curved flight path). However, without detailed analysis against the appropriate standards, Council is not in a position to determine whether a straight line flight path would allow the noise levels to comply with the night time requirements (background + 5 dB(A) or 52 dB(A)). The applicant was advised that Council officers would be adopting the hours of operation as recommended by the independent acoustic assessment (i.e. 7am – 7pm Monday to Saturday and 8am to 6pm on Sundays).

With regard to the applicant’s comments in terms of noisy vehicles being unrestricted on the time they leave a property, the applicant was advised that such a scenario comes under different assessment criteria, with noisy vehicle complaints being dealt with by the Police and the EPA, with testing an option to ensure the vehicles are compliant with the relevant regulations.

In relation to the applicant’s comments on CASA’s jurisdiction, the applicant was advised that Council had received feedback from CASA recommending that Council’s “...assessment consider local residents’ concerns about potential noise and hours of operation”.

Having taken all of the above matters into consideration in terms of acoustic assessment, the conditions proposed by Council’s independent acoustic expert have been incorporated into an amended list of recommended conditions of consent for DA17/0805.

### Ecological Assessment

Council officer’s original assessment involved a comprehensive assessment of potential ecological impacts to flora and fauna. The assessment concluded that the proposed development is unlikely to result in adverse impact to threatened species, waterways and ecological processes.

Having undertaken a review of the application, Council officer's assessment of the proposed helipad remains unchanged from an ecological perspective.

In light of a submission specifically referencing the potential risk of Flying-fox strike and / or disruption to behaviour as a result of the proposed helicopter use, the following ecological comments were provided:

- *“Risks would expected to be elevated proximate to active Flying-fox camps due to concentrated high volume Flying –fox fly-in/fly-out activity. The subject site however is a significant distance from known active camps being approximately 8.5 km to the north-east (Big Island Terranora) and approximately 8.5 km to the south-west (East Murwillumbah).*

*It is noted that the Tweed Flying-fox Camp Management Plan dated March 2018 prepared by Ecosure includes aviation related management measures. However, such measures have only been recommended for those camps within relative close proximity to receptors that maintain regular and frequent aircraft movements (i.e. helicopters). As an example the Anchorage Island camp at Tweed Heads includes specific measures, however the camp is within 875 m of the Tweed Hospital and 2.7 km of the Gold Coast Airport. The subject site is well beyond 875 m of the nearest Flying-fox camp and in addition the proposed intensity of use (helicopter movements) would not be anticipated to be as frequent as those from the hospital or Gold Coast Airport.*

- *Based on the helicopter movement times (as recommended by Council officers), the temporal overlap from when proposed helicopter movement could occur (6:30pm) at a similar time of likely Flying-fox foraging movement (Camp Fly-out - usually at twilight) is seasonally limited to 3 months of the year between mid- May and July. Potential aircraft movement after 7:00am is after usual Flying-fox camp fly-in times”.*

The ecological review concluded that it is unlikely the proposed use of an aircraft undertaken in accordance with appropriate operational protocol would result in significant impact on Grey-headed Flying-fox, Black Flying-fox or their habitat. As such, the original ecological conclusions remain unchanged.

#### Referrals to Aviation Authorities

During the original assessment, comments was sought from the Gold Coast Airport and CASA. The Review of Determination was referred back to the same agencies, requesting any comments on the proposed development.

#### **Gold Coast Airport:**

Original comments from the Gold Coast Airport advised that the Airport does not object to the proposed helipad, suggesting consultation with neighbouring properties regarding this proposal to ensure the community is aware prior to operations commencing.

The Airport was advised of the Review of Determination and invited to provide further comment. The response from the Airport was that they had nothing further to add to their original comments.

**Civil Aviation Safety Authority (CASA):**

Original comments from CASA (dated 5 December 2017) noted the following:

*“CASA has reviewed the DA and has no comment on the proposal. CASA does not regulate helipads, in particular private use helipads.*

*However, I am advised that the proposed flight paths and procedures outlined in the DA are within regulations. The property is positioned approximately 12NM due west of the Gold Coast Airport where the lower limit is 2500 feet. Given the private nature of the operations, qualifications of the pilots and the assumed lack of helipad lighting, all operation to and from the helipad will be during the times that the air traffic control (ATC) tower will be active. Helicopters departing the property and wishing to enter the Gold Coast control area will have to make contact with ATC in the normal manner”.*

CASA was advised of the Review of Determination and invited to provide further comment. The following response was received on 10 October 2018:

*“CASA has reviewed the information provided and has no comment on the proposal and confirms that the advice provided on 5 December 2017 remains valid. A copy of this correspondence is attached for your information. CASA notes that the Gold Coast Airport does not object to the proposed helipad.*

*CASA does not regulate helicopter landing areas, however Civil Aviation Advisory Publication (CAAP) 92-2(2) Guidelines on establishment and operation of on-shore Helicopter Landing Sites provides guidelines based on the international standards and advice on the Australian Civil aviation regulations that pilots must adhere to when operating at these locations. A copy of the CAAP can be downloaded from the following link <https://www.casa.gov.au/files/922pdf>.*

*CASA suggests that Tweed Shire Council, as the building approval authority for the area, may need to assess the site in accordance with their planning scheme policy to ensure that it is suitable for aviation use. It is recommended that such an assessment considers local residents’ concerns about potential noise and hours of operation”.*

The abovementioned CAAP Guidelines have been reviewed as part of this assessment. The Guidelines set out factors that may be used by a helicopter pilot to determine the suitability of a place for the landing and take-off of helicopters. The document incorporates: operational factors that helicopter pilots need to consider prior to using a Helicopter Land Site (HLS); applicable attributes of an HLS; and recommended criteria for an HLS.

Whilst the Guidelines recommend a minimum of two approach and departure paths, it should be noted that the document specifically states that one-way HLS’s are not precluded. The Guidelines also include other considerations for the pilot, such as suitable fire protection and equipment being available at the HLS.

It is considered appropriate to apply a suitable condition of consent, which highlights the helicopter pilot’s requirement to adhere to the provisions of the Guidelines. In addition, a condition has been recommended in terms of the applicant obtaining certification for the proposed flight path from a suitable qualified aviation expert.

Following some additional enquiries from Council officers with regard to whether a second flight path was required and whether the helicopter movements would be limited to daylight hours only, CASA provided the following response on 26 October 2018:

*“As previously advised, the flight path outlined in the development application complies with civil aviation safety requirements, however in flying to and from a helicopter landing*



site (HLS), the requirements do not limit the pilot to a single flight path. The information contained in Civil Aviation Advisory Publication (CAAP) 92-2(2) explains the civil aviation requirements that apply to a pilot when using a HLS. In brief, the approach and departure are determined by the pilot in regard to standard flight rules considering wind direction, aircraft performance and other traffic. A copy of the CAAP can be downloaded from the following link <https://www.casa.gov.au/files/922pdf>.

CASA overlooks the pilot, aircraft and airspace and it is assumed that the pilot is suitably qualified to fly to the HLS regardless of operating times. There is no requirement under CASA regulations for the HLS to be lit, and CASA does not have authority to enforce the HLS owner to install lighting. However, the pilot must ensure the site is safe for the purpose of landing. Further information is available in CAAP 92-2(2).

CASA has no authority regarding enforcing conditions that apply within a land development approval. CASA's authority in relation to aircraft noise is limited to the engineering aspects of aircraft type certification. When issuing aircraft type certifications, the aircraft manufacturer must comply with noise standards that apply in the country of the aircraft's manufacture. Enquiries about aircraft noise should be directed to Airservices Australia. Further information is available at the following link <http://www.airservicesaustralia.com/aircraftnoise/>.

#### **Airservices Australia:**

The Review of Determination was also referred to Airservices Australia for comment. The following response was received on 15 October 2018:

*"Airservices has reviewed this Helipad application and the associated helicopter operation. With regards to the noise controls, this operation is outside of Airservices jurisdiction, and any noise controls associated with such an activity would be controlled/managed by the relevant planning approval authority, which in this instance, would be the Tweed Shire Council. However, we suggest the approval of this application should be based on the conditions that include the hours of operation and the noise.*

*We recommend that all relevant neighbouring properties are consulted regarding this proposal to ensure that the community is aware prior to the operations commencing, and that it is outside of Airservices jurisdiction to manage any noise complaints".*

#### Public Submissions

The Review of Determination was formally re-advertised and re-notified to the adjoining landowners and to those who originally objected to the proposed development. The re-advertisement resulted in Council receiving a total of 21 submissions objecting to the proposal.

The grounds for objection are discussed in the table below.

Summary of Objections	Applicant / Officer Response
<p><b>Noise Impact</b> generated by the helicopter to neighbouring properties is unacceptable.</p>	<p><b><u>Applicant's response</u></b> in terms of noise impact submissions:  <i>Development should be assessed by reference to objective standards not by reference to</i></p>

Summary of Objections	Applicant / Officer Response
<p>People and animals have been impacted, particularly when landing and taking off.</p> <p>I live under the direct outgoing and incoming flight path of this helicopter, a Bell Jet Ranger with a turbine engine as it travels from Urliup to Brisbane, via Pumpenbil to pick up and set down passengers, almost every day.</p>	<p><i>unqualified statements like the noise is unacceptable.</i></p> <p><i>Craig Hill Acoustics have prepared a Noise Impact Assessment (<b>Assessment</b>) on behalf of the Applicant.</i></p> <p><i>The Assessment concludes that based on the proposed approach and take off path predicted levels from proposed operations would not exceed the 82 L<sub>Amax</sub> limit required in the criteria at nearby residences.</i></p> <p><i>The Assessment also identifies that no noise attenuation is required.</i></p> <p><i>For those reasons the noise impacts are acceptable.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>Council engaged the services of a highly experienced acoustic consultant to undertake an independent assessment of the proposed helipad.</p> <p>The overall assessment noted that the proposed operations with a take-off <u>before</u> 7am and a landing between 7am and 7pm on each day would result in an ANEF less than 13 (which is the appropriate criterion for a new flight path in an area not previously exposed to helicopter noise). However, it was also noted that there is potential for sleep disturbance during the “night period” (i.e. prior to 7am).</p> <p>The assessment concluded that if the helicopter operations were restricted to daytime operations (between 7am and 7pm Monday to Saturday) and 8am to 6pm on a Sunday to accord with the EPA’s definition of daytime, then the issue of sleep arousal would be resolved.</p> <p>The independent acoustic expert’s recommended conditions have been applied in this regard.</p>
<p><b>Wind Direction and speed</b> have an impact on flying. Is another flight path documented to allow for an unfavourable wind speed and direction? Under what conditions would the helicopter be grounded?</p>	<p><b><u>Applicant’s response</u></b> in terms of flight path submissions:</p> <p><i>The application seeks approval for a single flight path. Another flight path is not required.</i></p> <p><b><u>Council Officer Comment:</u></b></p>

Summary of Objections	Applicant / Officer Response
	<p>The applicant has proposed only a single flight path. This scenario is not unusual for a personal use helipad.</p> <p>CASA has confirmed that a second flight path is <u>not</u> required, noting that the <i>Guidelines for the Establishment and Operation of Onshore Helicopter Landing Sites</i> (HLS), which explains the civil aviation requirements that apply to a pilot when using a HLS. In brief, the approach and departure are determined by the pilot in regard to standard flight rules considering wind direction, aircraft performance and other traffic.</p> <p>Council's independent acoustic expert has noted that the flight manual for the subject helicopter (Bell 2016 JetRanger II) can operate up to 17 knots of crosswind or tailwind. Whether conditions exceeding 17 knots would prevent the helicopter from taking off from the site or having to seek an alternative landing site.</p>
<p><b>Private Use</b> – the applicant has stated that helicopter is for private use, which has nothing to do with rural purposes.</p> <p>The proposed helipad is not an appropriate use for the rural and rural residential area.</p> <p>It is not necessary for access to work and the applicant has demonstrated a complete inability to comply with any conditions of consent.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The proposed use of the helicopter is for personal use, specifically to provide transport to and from work.</p> <p>The subject site is zoned RU2- Rural Landscapes and proposed land use (helipad) is permitted in the zone.</p> <p>The provisions of Section 4.15 (Evaluation) of the EP&amp;A Act require Council to assess the impacts associated with any development as proposed and the suitability of the subject site for such use. The “necessity” for access to work is not a valid consideration.</p> <p>As per Council's general policy, compliance action has not been undertaken as a development application is being currently assessed, which may permit such land use. It should be noted that any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review.</p>
<p><b>Relief of Payment</b> for this review. What impact will this decision have on all future DA refusals, if reviews are requested? Is a failed DA restricted to one review or are multiple reviews permitted?</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The applicant's request for reduced fees was not supported. Council's standard fees for an 8.2 Review of Determination (as set by legislation) have been applied.</p>

Summary of Objections	Applicant / Officer Response
	<p>As per the provisions of Division 8.2 of the EP&amp;A Act, any refused DA can be requested to be reviewed.</p> <p>In accordance with Section 8.2(3) of the EP&amp;A Act, further Reviews of a DA are not possible.</p>
<p><b>Refuelling</b> is taking place without authority or required safety regulations.</p> <p>Safety issues are also of major concern as apparently helicopter fuel is stored on-site and is refuelled on site. I have seen children, adults and cattle in those fields with no apparent safety fencing or warning. Photos included.</p> <p>On site helicopter fuel storage, a hazardous, dangerous highly flammable liquid and vapour.</p>	<p><b><u>Applicant's response</u></b> in terms of refuelling submissions:</p> <p><i>The application does not seek approval for storing fuel or refuelling the helicopter on site.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>The regulation for fuel storage areas would necessitate the construction of appropriate facilities to bund the fuel storage areas. This has not been sought as part of the original DA or 8.2 Review and therefore is not a matter for consideration under Section 4.15 of the Act. Notwithstanding, a special condition of development consent is recommended to prohibit the storage of fuel.</p>
<p><b>Height Requirements</b> – Impossible to gain a height off 500 miles as stated in the DA. Height is then changed to 500m, which illustrates how irresponsible the applicant is in providing correct information.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The proposed development relates to a requirement for the helicopter to be a minimum height of <u>500 feet</u> at the property boundary on inward / outward bound flight movements. The applicant has noted that they will comply with this requirement.</p>
<p><b>Public Interest</b> – with 12 houses within one kilometre, the helipad is not in the public interest.</p> <p>Proposal is contrary to public interest, particularly in relation to noise.</p>	<p><b><u>Applicant's response</u></b> in terms of public interest submissions:</p> <p><i>The development is in the public interest for the following reasons. The development is permitted with consent in the relevant zone. The impacts of the development are acceptable. The development can be approved, subject to conditions relating to hours of operation and noise.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>As noted within the body of this report, an independent acoustic assessment has been undertaken. The assessment has determined that the proposed flight movements will comply with the ANEF 13 criteria for areas previously not exposed to helicopter noise. Overall, the assessment concludes that subject to the</p>

Summary of Objections	Applicant / Officer Response
	<p>helicopter operations being within the “daytime” hours of 7am – 7pm Monday to Saturday and 8am – 6pm on Sundays, the proposal will meet EPA noise requirements.</p> <p>Accordingly, the proposed development is considered to be in the public interest, subject to compliance with the recommended hours of operation.</p>
<p><b>Incorrect Noise Assessment</b> – the noise assessment needs to be by an authorised government department with appropriate required regulations.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>As noted above, an independent acoustic assessment has been undertaken by acoustic consultant highly experienced in the assessment of helicopters.</p> <p>The independent review has identified a number of issues with the applicant’s acoustic report, including the use of incorrect assessment criteria.</p> <p>The independent assessment was able to apply recognised acoustic measurements and data to enable an acoustic assessment to be undertaken for the proposed helicopter, whereby it was concluded that the proposal meets the criteria for ANEF 13, which is applicable for areas that have not had previous exposure to helicopter noise.</p> <p>The conclusions made by the independent assessment are supported and the recommended conditions of consent have been applied.</p>
<p><b>Operating without a DA</b> – even when the DA was refused. The applicant is consistently making more than 10 trips a day, operates outside of EPA noise level times.</p> <p>DA17/0805 was refused, however the applicant is still operating as shown in attached photos.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>As per Council’s policy, compliance action has not been undertaken as a development application is being currently assessed, which may permit such land use.</p> <p>It should be noted that any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review. In the event that the application is refused, appropriate compliance action would be considered.</p>



Summary of Objections	Applicant / Officer Response
<p><b>Surrender of log books</b> – the applicant has stated that they will not surrender log books. TSC has no way of ensuring the applicant will “stick to the stringent controls”.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>An appropriate condition of consent has been applied whereby the applicant will be required to maintain a log book for all inbound and outbound flight movements.</p>
<p><b>Cumulative impact</b> of noise from the Eniflat Pty Ltd operations at the subject site is real and causes distress to the neighbours, stock and wildlife.</p> <p>Resident objections to the noise created by the water trucking operation have been previously documented to Council as to how it affects residents of Bilambil Valley and the community beyond generally.</p> <p>This is not an academic objection, since impacts from both the helicopter and trucking business are now in effect, with their continued operation by the applicant in defiance to the conditions of any granted consent.</p> <p><i>Cumulative</i> impact doesn't necessarily mean helicopter and trucks operating at the same time. The community feels that the 7 days truck operation is excessive already and potentially 7 days a week helicopter noise is unacceptable and unbalancing the community's interest of living in a peaceful rural area.</p>	<p><b><u>Applicant's response</u></b> in terms of cumulative impact submissions:</p> <p><i>Any assessment of cumulative impact requires the assessment of the application in combination with similar types (i.e. other helipads) already approved or proposed in the locality. To the Applicant's understanding there are none.</i></p> <p><i>Please also see the response to the query about noise impacts generally above.</i></p> <p><b><u>Applicant's response</u></b> in terms of livestock and fauna impact submissions:</p> <p><i>Such impacts do not arise. The Council in its review of the application reviewed the relevant information and concluded that the proposed development is unlikely to result in an adverse impact to threatened species, waterways or ecological processes.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>As noted within the body of this report, it is not considered appropriate to assess the noise impact associated with the proposed helipad along with any potential noise from an approved development within the same site.</p> <p>Any compliance matters associated with either development at the site will be dealt with separately, where required.</p> <p>The proposed seven flight movements per week to provide private transport to and from work for the applicant is considered to be acceptable in terms of noise impact, subject to the recommended conditions of consent.</p>
<p><b>Acoustic evidence</b> has not been provided to overturn section 4.15(b) and the applicant's position is purely their un-collaborated opinion.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>As noted within the body of this report, the second reason for refusal is not considered to be valid.</p>

Summary of Objections	Applicant / Officer Response
	<p>There is no requirement for a second flight path, as confirmed by the relevant authority (CASA). Airservices Australia have not objected to the proposed helipad.</p> <p>CASA has advised that the helicopter pilot is obliged to comply with the provisions of relevant guidelines, which do not preclude single flight paths. As previously noted, certain weather conditions may prevent the helicopter from taking off or landing, pursuant to the provisions of the flight manual for the subject helicopter.</p>
<p><b>Compliance</b> – it is not reasonable to assume the applicant’s compliance to any consent conditions as they currently continue to demonstrate a flagrant disregard for compliance with approved and proposed consent conditions.</p> <p>Specifically with regard to the helicopter (Registration VH-ITM) the following has been observed:</p> <ul style="list-style-type: none"> <li>• Significant flight path deviations from that proposed in the DA;</li> <li>• Flight tracking reveals helicopter use is inconsistent with the applicant’s stated purpose (to commute to and from his place of work). Flights have been tracked to a range of locations, including Tyalgum, Ipswich, Toowoomba, Grafton, Ulmarra, Dungay, Nobby’s Creek and Ormeau;</li> <li>• Transportation of aviation fuel to the applicant’s property has been observed and refuelling of the helicopter witnessed on a number of occasions contrary to the applicant’s assurance that approval for this operation is not necessary or being sought.</li> </ul> <p>The helicopter has been operating for a year now without authorisation. Ratifying</p>	<p><b><u>Applicant’s response</u></b> in terms of illegal land use submissions:</p> <p><i>The application seeks consent for the landing of the helicopter in a paddock for private use as per the description of the proposed development in the application form.</i></p> <p><i>The application does not seek development consent for past use.</i></p> <p><b><u>Applicant’s response</u></b> in terms of flight tracking submissions:</p> <p><i>The Applicant’s business interests take him to various locations.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>As noted above, any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review. In the event that the application is refused, appropriate compliance action would be considered.</p> <p>With regard to the helicopter observations, it should be noted that this assessment relates <u>only</u> to the helipad itself and the flight movements to and from the helipad. The ultimate destination (or flight) of the helicopter is not part of the assessment process for this application.</p> <p>An appropriate condition of consent has been applied prohibiting the transportation and storage of aviation fuel at the subject site. Any non-compliance with this requirement would trigger appropriate compliance action, should the application gain approval.</p>

Summary of Objections	Applicant / Officer Response
<p>this kind of conduct would be unethical and biased.</p> <p>The helicopter starts up at 6.15am, well before the 6.30am flight operating time requested in the DA – date and time stamped photos are attached as proof.</p> <p>DA approval is required for helipad on the Pumpenbil property where the applicant lands to pick up and set down passengers. Investigations on Council’s DA Tracker found no helipad approvals in that vicinity.</p> <p>Flights are already being made outside of the suggested operating hours of 6.30am – 6.30pm.</p>	<p>Appropriate conditions of consent have been applied with regard to hours of operation. Again, non-compliance with this requirement would trigger appropriate compliance action, should the application gain approval.</p>
<p><b>Not consistent with Rural Zone</b> – as it is not for a purpose ancillary to rural development. The applicant may have based their assumption on “advice of council staff”, however the helicopter stated purpose, being exclusively for personal use for his commute to work is not consistent with any rural activity on the property nor related to the business activity.</p>	<p><b><u>Applicant’s response</u></b> in terms of rural zoning submissions:</p> <p><i>The land is zoned Zone RU2 Rural Landscape under the Tweed Local Environmental Plan 2014.</i></p> <p><i>Development for the purpose of “dwelling houses” and “dual occupancies” are permitted with consent in the relevant zone, so too are “helipads”.</i></p> <p><i>The proposed helipad is considered to be consistent with the objectives of the zone as far as delivery of a land use which is compatible to the rural landscape, given it is for private use and does not comprise of any buildings or structures.</i></p> <p><i>We note that there is no requirement for the development to be ancillary to rural development. It can be regarded as ancillary to a dwelling.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>The subject site is zoned RU2- Rural Landscapes and the proposed land use (helipad) is permitted in the zone.</p> <p>As noted in the Nessdee case, if the proposal is permitted with consent and amenity issues are suitably addressed, approval should be granted.</p> <p>Following an independent assessment of the proposed development (in terms of acoustic impact) and subject to specific conditions of</p>

Summary of Objections	Applicant / Officer Response
	consent, the use of the helipad for private purposes is considered to be acceptable and consistent with the RU2 zone.
<p><b>Excessive operation</b> – requesting seven days operation is excessive, undermining the public interest and unrealistic that any employer would request to work seven days a week. Of note is the 7 trip per week limitation does not provide the round trips required to return “home”.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The proposed helipad is for one flight movement in and one flight movement out per day (to and from work) for a maximum of seven flight movements per week. The applicant has noted that his employment is casual and quite flexible in what days he is required to use the helicopter to get to work.</p> <p>The restriction of seven trips is based on the EP&amp;A provisions, with any more flight movements per week than seven triggering designated development provisions. This being the case, the applicant would need to make alternative arrangements to return home, if the max seven trips had already been utilised in any given week.</p>
<p><b>Ultimate responsibility</b> – it is unclear where the ultimate responsibility for the safe and conforming operation of the helicopter lies as in:</p> <ul style="list-style-type: none"> <li>• Eniflat Pty Ltd</li> <li>• Mr Larry Karlos</li> <li>• Mr Matthew Karlos</li> <li>• Helicopter owner (Matthew Karlos’ employer)</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <p>This matter is not considered to be a relevant planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</p>
<p><b>Third party</b> – we believe DA17/0805 has been submitted for a third party, being the owner operator of the helicopter.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The application is considered to be properly made, with the applicant being the operator of the helicopter. The ownership of the helicopter is not considered to be of relevance.</p>
<p><b>Strong support for the refusal</b> of DA17/0805. The Review show no substantive new grounds, evidence or reports to change that decision.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The applicant is not required to submit any new grounds or evidence, noting that the applicant has addressed the three reasons for refusal in their request for a Division 8.2 Review of Determination.</p> <p>A thorough assessment of the application has been undertaken by Council staff and independent acoustic expert. The conclusion of</p>

Summary of Objections	Applicant / Officer Response
	the Review is that the proposal is worthy of approval, subject to conditions of consent.
<p><b>Amenity Impact</b> – This is not and should not be an area for aircraft traffic. Every day in the early morning and when we sit down to dinner this helicopter buzzes at low altitude directly above my house causing noise pollution and disrupting our lives on a daily basis.</p> <p>I find the helicopter to be very noisy which impacts on, and is not in keeping with, the rural environment, lifestyle and amenity. It is the noisiest aircraft that frequently flies over our home and property.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>It is recognised that the surrounding locality has not been previously exposed to helicopter noise and the independent acoustic assessment reviewed the proposal accordingly. The conclusion of the review was such that the helicopter meets the provisions of ANEF 13, which is the appropriate criteria for areas previously not exposed to such noise.</p> <p>In terms of overall amenity, the independent assessment determined that the proposal (being one flight movement in and one flight movement out per day) was acceptable, subject to specific conditions of consent, which included restrictions to hours of operation being during daytime periods (ie 7am to 7pm Monday to Saturday and 8am to 6pm Sundays).</p>
<p><b>Impact on birds</b> – This area is a natural habitat for prolific and varied population of bird species that needs to be considered. Their daily routine and breeding habits would surely be disrupted by all the commotion not to mention the many species of raptors (birds of prey) that must be protected and considered.</p>	<p><b><u>Applicant's response</u></b> in terms of livestock and fauna impact submissions:</p> <p><i>Such impacts do not arise. The Council in its review of the application reviewed the relevant information and concluded that the proposed development is unlikely to result in an adverse impact to threatened species, waterways or ecological processes.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>The Review of Determination incorporates a further assessment of the proposal by Council officers in terms of ecological impacts, whereby it was concluded that the proposed development is unlikely to result in adverse impact to threatened species, waterways and ecological processes.</p>
<p><b>Vexation DA</b> initiated by the applicant following Council's earlier rejection of a similar DA.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The provisions of Division 8.2 of the Environmental Planning &amp; Assessment Act provides for an applicant to request a Review of Determination if the original application is refused. The applicant has simply undertaken their right to have the application reviewed.</p>



Summary of Objections	Applicant / Officer Response
<p><b>Alternative location</b> – Coolangatta Airport is so close, only minutes away. It could be used instead of a rural area.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>This matter is not the subject of a Section 4.15 Evaluation. The nexus of the need for a development or land use on a private lot of land is decided by the land owner. The regulation of that land use is based on the zoning of land, to which in this case, the zoning and the merits of the application permits a helipad, subject to conditions of consent.</p>
<p><b>Tweed Shire reluctance to act:</b></p> <ul style="list-style-type: none"> <li>• Cumulative impacts of Council decisions surrounding the Karlos property have seriously eroded the peace and harmony of the family's residing in Bilambil Valley and other residents of Tweed Shire using the roads and infrastructure.</li> <li>• Opinions and speculative assumptions being made by the applicant, while TSC officers have continually heavily favoured commercial business operating out of the Karlos property at Urliup at the local residents expense.</li> <li>• For example at no stage has acoustic testing evidence been presented to corroborate the claims made by the applicant with respect to helicopter movements.</li> <li>• At no stage has the applicant complied with any existing conditions of helicopter use.</li> <li>• Yet at no stage has TSC made any attempt to prosecute known breaches of consent</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• It is not considered appropriate to consider the impacts of an approved development using local roads when assessing the potential impacts of a helipad, which does not involve any road usage.</li> <li>• This application relates only to a proposed helipad and the assessment of any potential impacts directly related to that land use. Existing approvals relating to other commercial uses do not come into consideration.</li> <li>• An independent acoustic review has been undertaken, whereby it has been concluded that the proposed development complies with ANEF 13 noise requirements and is considered to be acceptable in terms of amenity subject to conditions of consent.</li> <li>• No approval for a helipad has been granted to date. If an approval is granted, the applicant will be subject to possible compliance action if conditions of consent are not complied with.</li> <li>• As per Council's general policy, compliance action has not been</li> </ul>

Summary of Objections	Applicant / Officer Response
<p>approvals over the subject lands.</p> <ul style="list-style-type: none"> <li>• Helicopter and other commercial operations currently moving out of the Karlos property are not consistent with a rural zoning and not ancillary to rural zone development.</li> </ul>	<p>undertaken as a development application is being currently assessed, which may permit such land use. It should be noted that any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review.</p> <ul style="list-style-type: none"> <li>• As noted within the body of this report, the Review of Determination concurs with the original officer assessment in that the proposal is considered to be consistent with the objectives of the RU2 zone and the use of a private helipad with limited flight movements per week is considered to maintain the rural landscape character of the land.</li> </ul>
<p><b>Regularity of Flights:</b></p> <ul style="list-style-type: none"> <li>• The applicant has been regularly landing, allegedly refuelling and then taking off from the subject property without Council approval for months.</li> <li>• Yet proposed development does not involve storage of fuel and refuelling on site.</li> <li>• Tweed Shire is aware of the facts that flights have been occurring but has done nothing to prevent the illegal nature of the flights.</li> <li>• Flights continue to occur without approval of a helipad.</li> <li>• The vehicle involved has allegedly never been approved for commercial</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• As noted above, any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review.</li> <li>• The applicant has clearly stated that the proposed helipad does not seek approval for storing fuel or refuelling the helicopter on site. Appropriate conditions of consent have been applied in this regard.</li> <li>• As noted above, any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review.</li> <li>• As noted above, any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review.</li> <li>• An Airservices report notes that “...<i>Under the Air Navigation (Aircraft Noise) Regulation 1984, before an aircraft may fly in Australia it must meet international noise standards</i></li> </ul>

Summary of Objections	Applicant / Officer Response
<p>purposes and is fact a QLD registered vehicle.</p> <ul style="list-style-type: none"> <li>• The vehicle involved regularly takes off from the Uriup property and according to Airport APP flies to remote locations without transiting through the airport or complying with former conditions of use.</li> <li>• Flight paths tracked and observed on the APP to date strongly suggest commercial use of this vehicle.</li> <li>• Consequently, what are the likely consequences if the purpose of such flights is for other than personal use?</li> </ul>	<p><i>that apply to the design and production of aircraft...Aircraft that do not meet these standards are prohibited from flying in Australia".</i> Accordingly, if the helicopter is QLD registered, it is assumed that it would have met the requirements of the Regulations. In any case, this matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</p> <ul style="list-style-type: none"> <li>• The application only relates to the use of a helipad and the associated take-off and landing movements from the subject site. The destination point of any flights from the subject site are not of relevance to the assessment of DA17/0805. Council officers are not aware of any requirement for the helicopter to transit through the airport, only that the pilot must comply with the directions of the airport control tower (if they are within the airspace being controlled by the tower), once the helicopter has left the ground. As noted above, no approval for a helipad has been granted to date. If an approval is granted, the applicant will be subject to possible compliance action if conditions of consent are not complied with.</li> <li>• As noted above, the application only relates to the use of a helipad and the associated take-off and landing movements from the subject site. The destination point of any flights from the subject site are not of relevance to the assessment of DA17/0805. The application clearly states that the proposal is for personal use, to provide transport to and from work. The application has been assessed accordingly.</li> <li>• A recommended condition of consent is that the flight movements are for personal use only. Appropriate compliance action would be</li> </ul>

Summary of Objections	Applicant / Officer Response
	<p>undertaken if was later found that the helipad was being used for commercial purposes.</p>
<p><b>Origins of Fights:</b></p> <ul style="list-style-type: none"> <li>• The applicant does not appear to own or have any financial interest in any part of the land subject to this application.</li> <li>• The applicant does not appear to retain any ownership of the vehicle involved in this application.</li> <li>• While the applicant may reside on the site from time to time, according to ASIC, Eniflat Pty Ltd is the owner of the subject land, and the applicant appears to retain zero financial interest in the said ownership company.</li> <li>• As such, the applicant attempts to create a precedent whereby anyone, without any ownership or financial interest in affected land, can apply for a DA approval over another owners land.</li> <li>• Is it acceptable for an applicant to submit a DA on behalf of a third party – which appears the case in this matter – wherein Fly-Wheel Pty Ltd is the legal owner – operator of the vehicle currently subject to this application.</li> <li>• The unresolved question remains over the continued operation of the current illegal flights. If the DA is approved, does this mean than anyone can enter the affected land and operate the nominated vehicle, or is the pilot to be</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act. The application includes owners consent. The applicant is not required to have any financial interest in the subject site.</li> <li>• Following on from above, any person can lawfully submit an application, providing they have the appropriate owners consent to do so.</li> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act. The ownership of the helicopter being used for flight movements does not come into consideration.</li> <li>• As noted above, any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review. An appropriate condition of consent can be applied to restriction helicopter use to the vehicle stated in the application (Bell Jet Ranger). An approval would not limit a particular person to the operation of the helicopter, nor is this considered a</li> </ul>

Summary of Objections	Applicant / Officer Response
<p>restricted to a nominated applicant – who in this case has no financial or other interest in the land?</p> <ul style="list-style-type: none"> <li>• Prior to any approval being granted would Council please advise what measures Council has established to determine whether or not breaches of any current DA's over the said land have occurred?</li> </ul>	<p>valid planning consideration under Section 4.15 of the EP&amp;A Act.</p> <ul style="list-style-type: none"> <li>• As noted previously, as per Council's policy, compliance action has not been undertaken as a development application is being currently assessed, which may permit such land use. It should be noted that any complaint / compliance matter associated with DA17/0805 will be dealt with separately at the completion of this Review. In the event that the application is refused, appropriate compliance action would be considered.</li> </ul>
<p><b>Risk Assessment Plan of Helicopter Operations:</b></p> <ul style="list-style-type: none"> <li>• Please advise what Council's plans / restrictions are currently in place to enforce helicopter safety breaches surrounding: <ul style="list-style-type: none"> <li>○ Fuel spillage. During refuelling, aviation fuel must be stored and/or transported onto the site.</li> <li>○ Fire on site. What firefighting measures are currently in place.</li> <li>○ Crash. What safety measures are in place to ensure the health and safety of local residents.</li> </ul> </li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• The safety operation of an aircraft is to comply with the Civil Aviation Regulation and Act as regulated through National Civil Aviation Safety Authority (CASA).</li> <li>• Fuel storage / or refuelling of the helicopter is not being proposed. An appropriate condition of consent has been applied in this regard.</li> <li>• The abovementioned Regulations include the provision of fire safety and fire safety equipment on board the aircraft. The CAAP Guidelines for Onshore Helicopter Landing Sites also provides for firefighting measures on ground.</li> <li>• Applicable provisions for a helicopter crash are not a valid planning consideration under Section 4.15 of the EP&amp;A Act. Such measures would be controlled / regulated by the appropriate Aviation Authority.</li> </ul>
<p><b>Payment of Damages if an Incident Occurs:</b></p> <ul style="list-style-type: none"> <li>• Please advise what Council's position is regarding payment of bonds / restitution in the</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <p>These matters are not valid planning matters requiring consideration under Section 4.15 of</p>



Summary of Objections	Applicant / Officer Response
<p>event of an incident involving the property / helicopter occurs. Is the liability attributed to one or more of the following entities:</p> <ul style="list-style-type: none"> <li>○ Eniflat Pty Ltd – who submitted the application as owners of the land.</li> <li>○ The Applicant – who is claiming to be the pilot but who is reportedly bankrupt and consequently insolvent.</li> <li>○ Tweed Shire Council – as they were the consenting authority who approved the application.</li> <li>○ Fly-Weel Pty Ltd – which is reportedly a QLD registered company and apparent owner of the vehicle.</li> <li>○ The applicant’s house and personal insurance company.</li> <li>○ The Civil Aviation Authority.</li> </ul>	<p>the EP&amp;A Act. They are civil matters which not regulated by Council.</p>
<p><b>Should the DA be approved, concerns are:</b></p> <ul style="list-style-type: none"> <li>● Noise levels and impact on the environment.</li> <li>● Hazards and risks to persons, waterways, stock, flora &amp; fauna.</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>● This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>● As noted within the body of this report, Council officers have undertaken a detailed assessment of the proposal in terms of potential hazards and risks. Appropriate conditions are in place to mitigate any potential impacts.</li> <li>● Conditions of consent would be very specific in the number of flights per</li> </ul>

Summary of Objections	Applicant / Officer Response
<ul style="list-style-type: none"> <li>• Variations to the number of flights/day and flight hours could increase, with or without DA approval.</li>   <li>• Variations to the flight path, with or without Council approval.</li>   <li>• The possibility of any number of individual helicopters coming &amp; going from that site could increase, with or without Council approval.</li> </ul>	<p>week and approved hours of operation. Any amendment of these would require further consent from Council. Appropriate compliance action would be undertaken if approved flight movements / hours were not being met.</p> <ul style="list-style-type: none"> <li>• Any approval would incorporate a flight path for the take-off and landing from the subject site. Any amendment of the approved flight path would require further consent from Council. Appropriate compliance action would be undertaken if the approved flight path was not being followed.</li>   <li>• An approval would limit the use of the helipad to that being proposed (i.e. personal use for transport to and from work). The operation and use of the helipad would be conditioned such that a flight log is maintained, which records the date and time of all inbound and outbound flights from the subject site. Any additional use of the helipad would require additional approval from Council.</li> </ul>

Having regard to the various issues raised through the submission period and addressed above, it is not considered that these would warrant refusal of the application.

Public interest

The proposed development is considered to be generally consistent with relevant environmental planning instruments, noise assessment criteria and Council policy requirements. As such, the Division 8.2 Review of Determination considers the proposal suitable for the subject site, given its permissibility at this location, limited number of flight movements per week and the provision of applicable conditions of consent. As such, the proposal is not considered to contravene the wider public interest.

**OPTIONS:**

1. Approve the Review of Determination, subject to the recommended conditions of consent; or
2. Approve the Review of Determination with amended conditions of consent; or
3. Refuse the Review of Determination with specified reasons and commence appropriate action to have the activity stop.

Council officers recommend Option 1.

**CONCLUSION:**

The above Division 8.2 Review of Determination assessment is considered to demonstrate that the proposal is generally acceptable with respect to the appropriate legislative considerations. An independent acoustic assessment concluded that the proposal is acceptable in terms of ANEF criteria and subject to conditions of consent (particularly in relation to hours of operation), the proposal is considered to be acceptable in terms of potential amenity impact. As such, it is recommended that the previous determination be reviewed and amended to a conditional approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable

**c. Legal:**

Should the applicant be dissatisfied with the decision for the Review of Determination the applicant may determine to lodge an appeal with the NSW Land & Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	Peer Review by the Acoustic Group - Acoustic Assessment DA17/0805 dated 5 November 2018 (ECM 5657802)
Attachment 2.	Peer Review by The Acoustic Group - Acoustic Assessment dated 7 November 2018 (ECM 5657803)
Attachment 3.	Peer Review by The Acoustic Group - Acoustic Assessment dated 8 November 2018 (ECM 5657804)

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5 [PR-PC] Development Application DA18/0637 for a helipad at Lot 1 DP 735658; No. 477 Urliup Road Bilambil

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you  
*We're in this together*

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

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

On 17 August 2018 Council received a Development Application for a Helipad (**ancillary to an approved existing dual occupancy**) at Lot 1 DP 735658 No 477 Urliup Road, Urliup (the subject site). The application states the ancillary helipad is for personal use with up to **ten flight movements per week**.

The subject site is zoned RU2 - Rural Landscape. Dual occupancies (which are a type of residential accommodation) and helipads are permissible development in the zone with consent from Council.

The submitted DA package was accompanied by a brief summary of the proposal, a Noise Impact Assessment Report and detail of the proposed single flight path to and from the subject site.

The summary of the proposal states:

- The use of the helipad is for private purposes only, specifically it is to provide personal transport to and from work;
- The operator of the aircraft is a licensed pilot whom resides at the subject site;
- Up to ten flight movements per week (in and out cumulatively) is sought;
- Proposed hours of use are between **6.15am - 6.30pm**, 7 days a week;
- The development will not involve the storage of fuel or refuelling on site;
- The approach and take off path has been designed to ensure the helicopter is above 500 feet when it travels beyond the boundary of the subject site and;

- The operation is in accordance with the Private Pilot License Helicopter (PPL(H)) granted by Civil Aviation Security Authority (CASA).

The application was initially advertised and neighbours were notified for a period of 14 days from 5 September to 19 September 2018. A typographical error in the initial advertising material (in relation to the proposed hours of operation) resulted in the proposal being re-advertised for an additional 14 days between 19 September and 3 October 2018. During the notification period 23 submissions were received. The matters raised by the submissions have formed part of the Section 4.15 Evaluation and are discussed later in this report.

The application was referred to internal departments and external stakeholders for consideration and review, including the Gold Coast Airport, Australian Government Civil Aviation Safety Authority (CASA) and Airservices Australia. No objections to the issuing of development consent from any of the internal departments or external authorities were raised, subject to the imposition of conditions of development consent.

During the public exhibition period, a number of complaints were made to Council regarding the helipad activities already occurring from the site without development consent. As per Council's policy, compliance action has not been undertaken as a development application is currently being assessed, which may permit such land use.

It should be noted that any complaint / compliance matter associated with DA18/0637 will be dealt with separately, following the determination of this application. In the event that the application is refused, appropriate compliance action would be considered.

The assessment contained herein demonstrates that the proposed use is consistent with the applicable environmental planning instruments and based on planning merit; is worthy of support subject to the imposition of conditions of consent to limit the operations (and associated impacts arising from the operations).

Of particular relevance is the independent acoustic assessment of the proposed development, which critically analysed the proposed flight movements of the subject helicopter (Bell 206B JetRanger II) against the relevant noise criteria for helicopters and provided an assessment of potential noise impacts arising from the proposal.

The independent acoustic review found that whilst the applicant's acoustic assessment could not be supported, the proposal is recommended for approval, subject to specific conditions of consent. Of note, the independent acoustic review recommended hours of operation for the helipad (7.00am to 7.00pm Monday to Saturday and 8.00am to 6.00pm Sundays), which differ from that being proposed by the applicant (6.15am to 6.30pm).

Having taken all matters into consideration, the application is recommended for approval subject to conditions of development consent.

The matter is being reported to Council given the number of submissions against the proposal, and the complex history of the subject site.

## **RECOMMENDATION:**

**That Development Application DA18/0637 for a helipad at Lot 1 DP 735658; No. 477 Urliup Road BILAMBIL be approved subject to the following conditions:**

## **GENERAL**

1. The development shall be completed in accordance with the flight path plan stamped and approved by Council, except where varied by the conditions of this consent.

[GEN0005]

## USE

2. Hours of operation of the helipad/helicopter are restricted to the following hours:
  - \* 7.00am to 7.00pm - Mondays to Saturdays
  - \* 8.00am to 6.00pm Sundays and Public Holidays

The above restrictions do not apply in the case of a Civil Aviation Safety Authority or medical emergency situation.

[USE0185]

3. 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]

4. No intensification of use of the helipad/helicopter beyond a total of ten helicopter flight movements per week (including taking off or landing) is permitted under this consent.

[USE0855]

5. The storage of fuel and refuelling of the helicopter is not permitted to occur on the subject site.

[USENS01]

6. The operation and use of the helipad in accordance with this development consent is to be maintained in a flight log which records the date and time of all inbound and outbound flights from the subject site.

At any time, Tweed Shire Council Officers may request a copy of the log to be provided for audit of compliance with conditions of this development consent in regard to the times and frequency of flights in and out of the subject site.

The submission of the log at the request by Tweed Shire Council is to be accompanied by a Statutory Declaration by the pilot of the helicopter declaring that the information contained in the log is true and correct.

[USENS02]

7. The development is restricted to the use of a Bell 206B JetRanger – III helicopter.
8. The operation of the helicopter is restricted to a maximum of two persons on board the aircraft when in flight. The use of the helipad is for private use only.
9. The only flight path that is to be used for the subject helipad is the flight path shown in the Craig Hill Acoustics Report of 15 November 2018 that accompanied the application.
10. The subject helicopter must fly the nominated flight path on both arrivals and departures and is not permitted to deviate from the nominated flight path.
11. The development is restricted to no more than two movements on any day. A movement is defined as a take-off or a landing.
12. There will be no maintenance of the helicopter carried out on site.



- 13. Prior to the commencement of operations, the applicant shall provide to Council documentation to identify the wind conditions (strength and direction) that will result in the approved flight path not being able to be used.**
- 14. Any modification to the flight path, operational restrictions or conditions nominated in this consent must be the subject of an application and include an acoustic assessment of the resultant impact from the proposed modifications.**
- 15. If this consent (DA18/0637) is commenced, development consent DA17/0805 is to be surrendered prior to such commencement, pursuant to Section 4.17 (1) of the EP&A Act 1979 (as amended) and the Clause 97 of the EP&A Regulations 2000.**

## REPORT:

**Applicant:** Eniflat Pty Ltd  
**Owner:** Eniflat Pty Ltd  
**Location:** Lot 1 DP 735658; No. 477 Urliup Road Bilambil  
**Zoning:** RU2 - Rural Landscape  
**Cost:** \$0

## Background:

### Site

The subject site is legally described as Lot 1 DP 735658, known as No. 477 Urliup Road, Urliup. The site is located within the rural setting of Urliup and comprises of a previously approved dual occupancy development (where upon the applicant resides) as well as an approved rural industry comprising the harvesting and bottling of mineral water.

The helipad is located on a flat, cleared, grassed area at the rear of the existing dwellings. The surrounding terrain consists of steeply sloping hills to the north and south of the subject site.

### Development History

In November 2017, Council received a development application for a helipad (DA17/0805) proposing seven flight movements per week, with hours of operation being proposed as 6.30am to 6.30pm seven days a week. The application was refused at Council's Planning Committee meeting of 2 August 2018. Subsequently, the applicant submitted a Division 8.2 Review of Determination on 16 August 2018. Both the 8.2 Review (DA17/0805) and the subject application (DA18/0637) have been assessed concurrently, with the differences between the two applications being the number of proposed flight movements and the proposed hours of operation.

### Proposed Development

DA18/0637 was submitted to Council on 17 August 2018, proposing a helipad (ancillary to an approved dual occupancy) at the subject site for personal use. The subject site is zoned RU2 – Rural Landscape, with the dual occupancy (and ancillary helipad) being permissible uses within the RU2 zone.

The application is seeking approval for a total of ten flight movements per week (five inward bound and five outward bound movements), which would ordinarily trigger designated development provisions (being greater than seven flight movements per week), pursuant to Schedule 3 of the *Environmental Planning and Assessment (EP&A) Regulations 2000*. However, the applicant is relying on the provisions of Clause 37A of Schedule 3 of the Regulations, which allows ancillary development to not be considered as designated development. This matter is discussed in more detail later in the report. The proposed hours of operation are 6.15am to 6.30pm seven days a week, within which the ten flight movements would take place.

The applicant has noted that the proposed hours of operation correspond to their hours of employment. The application states that a departure time of 6.15am will "...allow the applicant to continue being employed at his work by allowing him to arrive at the earliest time he is required". The application also notes that the applicant's employment is casual and may include up to five days a week. It is on this basis that the application proposes a total of ten flight movements per week.

The applicant notes that his employment included the use of the helicopter to fly to and from his place of employment, similar to that of a company car being used by an employee for the purpose of travelling to and from work.

Given the casual nature of his employment, the applicant has stated that he is “...*able to conduct records of flights that he will submit to Council over (say a 12 month period) to determine a more exact pattern of expected hours within the hours requested in the application*”.

The proposed use of the ancillary helipad is for private use only, providing personal transport to and from work for the applicant. The operator of the helicopter is a licensed pilot whom resides at the subject site. The application is supported by a Noise Impact Assessment and a single flight path was proposed, indicating the approach and take-off path, noting that the helicopter would be above 500 feet when it travels beyond the property boundary. The flight path chosen was considered by the applicant to be the most appropriate in terms of surrounding terrain and potential impact on neighbouring properties.

DA18/0637 was formally advertised and notified to the adjoining landowners for a period of 14 days. Due to a typographical error in the advertising material (in relation to the proposed hours of operation), the proposal was re-advertised for an additional 14 days. The re-advertisement resulted in Council receiving a total of 23 written submissions objecting to the proposal. An assessment of the issues raised by the submissions is provided later in this report.

Comment was requested from the Gold Coast Airport, Civil Aviation Safety Australia (CASA) and Airservices Australia, with CASA and Airservices Australia providing formal comment, details of which are provided later in this report.

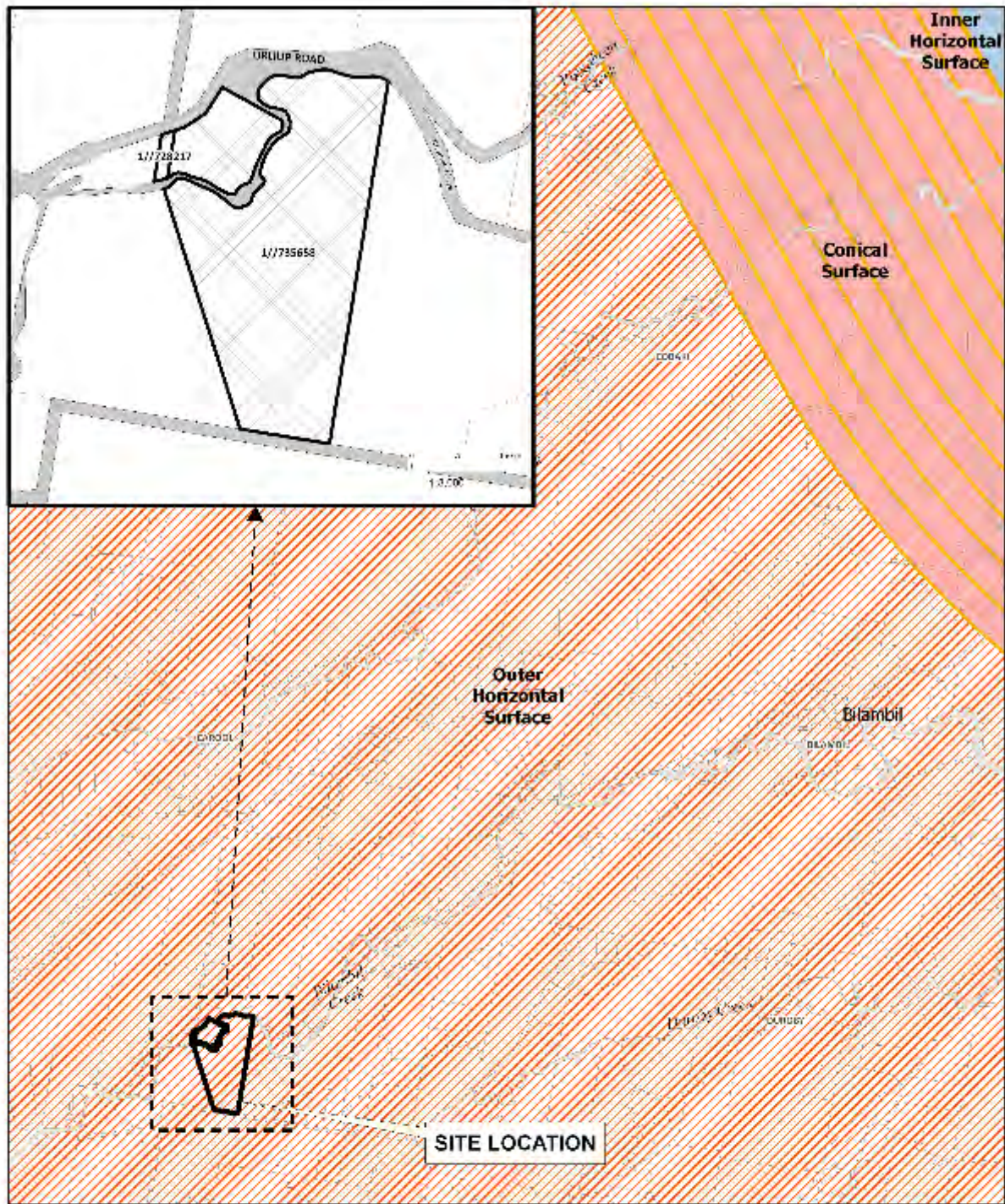
The applicant also provided a list of court appeals as cases of precedent to be taken into consideration when assessing DA18/0637, particularly in relation to the use of the helipad not being an independent use, but wholly ancillary to the use of the land for the purposes of the dual occupancy.

The application is supported by a Noise Impact Assessment (prepared by Craig Hill Acoustics), which considers potential impact from the proposal, concluding that the development meets relevant noise criteria. The applicant suggests that in real terms, the impacts associated with the proposed helipad are “...*analogous to a family sedan driving past the same points from where the acoustic readings were taken and provide more noise than the proposed helicopter movements*”.

During the assessment of DA18/0637, it was found that the EPA Guidelines used by the applicant's acoustic consultant were obsolete and no longer applicable as assessment tools. It was considered appropriate that Council engage the services of a highly qualified acoustic consultant to review DA18/0637 (and DA17/0805) to provide independent advice in terms of the noise impacts associated with the proposed development. Further detail on the independent review is provided later in this report.



**SITE DIAGRAM:**



- GDA OLS Contours**
- GDA OLS Contour
  - GDA OLS Contour
  - GDA OLS Contour
- GDA OLS Zones**
- Conical Surface
  - Inner Horizontal Surface
  - Outer Horizontal Surface
  - Take Off/Approach Surface

**Site Plan**

Lot 1 DP 728217 and Lot 1 DP 735658  
477 Uriup Road, BILAMBIL

0.75 0.7.50  
1:10,000

Disclaimer: This document is a preliminary site plan and is not intended to be used for any other purpose. It is the responsibility of the client to ensure that the information provided is accurate and up-to-date. The client acknowledges that the information provided is for general guidance only and is not intended to be used for any other purpose. The client acknowledges that the information provided is for general guidance only and is not intended to be used for any other purpose.

**GDA**

CONFIDENTIAL

02 959 3116

**TWEED SHIRE COUNCIL**

02 959 3116



**AERIAL PHOTOGRAPH:**



**Aerial Photography 2018**  
Lot 1 DP 728217 and Lot 1 DP 735658  
477 Uriup Road, BILAMBIL

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© Cadastre - Tweed Shire Council  
Boundaries shown should be considered approximate only

**GDA** 1:5,000 GDA Position  
0 50 100 m  
TWEED SHIRE COUNCIL  
11/02 4012 2400 | 1300 224 472  
11/02 4013 2420  
www.tweedshire.nsw.gov.au

**City of Cultural Centre**  
477 Uriup Road  
Cairns QLD 4870  
PO Box 110  
TWEED SHIRE COUNCIL

Each image will be an aerial photograph as the accuracy of this data, Tweed Shire Council makes no guarantee or warranty as to the accuracy of the data, and does not warrant or accept any liability for any potential errors or omissions, especially aerial photography, including satellite, ground, or aerial photography, or any other data source. The data is provided as a service to the community and is not intended to be used for any other purpose. The data is provided as a service to the community and is not intended to be used for any other purpose. The data is provided as a service to the community and is not intended to be used for any other purpose.





DEVELOPMENT/ELEVATION PLANS:

Locality Map: Enflat Pty Ltd - Larry Karlos





Legend

-  Lot 1 DP 735658
-  Watercourse
-  Cadastre

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-  CHOPPER PARKING
-  Approach + T-off path.

**PHOTOGRAPH OF HELICOPTER:**





## CONSIDERATIONS UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT REGULATIONS 2000:

### Schedule 3 – Designated Development

Part 1 of Schedule 3 of the Environmental Planning & Assessment Regulations relates specifically to the types of development that is considered as Designated Development. If a proposal triggers any of the thresholds associated with a particular use, it is declared to be designated development for the purposes of the Act and the development application must be accompanied by an Environmental Impact Statement (EIS). In addition, any objectors to the proposal have rights of appeal on merit. An assessment of the relevant clauses of Schedule 3 applicable to the proposed development are noted below.

#### 2 Aircraft Facilities

Clause 2 relates to **Aircraft Facilities** for the landing, taking-off or parking of aeroplanes, seaplanes **or helicopters**. In relation to helicopter facilities, designated development provisions are triggered when there is an intended use of more than seven helicopter flight movements per week (including taking-off or landing), and are located within 1 kilometre of a dwelling not associated with the facilities.

- (b) *in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):*
  - (i) *that have an **intended use of more than 7 helicopter flight movements per week** (including taking-off or landing), and*
  - (ii) *that are **located within 1 kilometre of a dwelling not associated with the facilities**, or*
- (c) *in any case, that are located:*
  - (i) *so as to disturb more than 20 hectares of native vegetation by clearing, or*
  - (ii) *within 40 metres of an environmentally sensitive area, or*
  - (iii) *within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).*

As noted above, the proposed development proposes a maximum of ten flight movements per week and the helipad is located within 1 kilometre of a dwelling not associated with the development. Ordinarily, the proposed development would be considered as designated development and an EIS required, as a result of the number of proposed flight movements and proximity to a dwelling. However, as noted below, the proposed development is considered to be ancillary development, thereby avoiding designated development provisions.

#### 37A Ancillary Development

The provisions of Clause 37A of Schedule 3 are as follows:

- (1) *Development of a kind specified in Part 1 is not designated development if:*
  - (a) it is ancillary to other development, and
  - (b) it is not proposed to be carried out independently of that other development.
- (2) Subclause (1) does not apply to development of a kind specified in clause 29 (1) (a).

The proposed helipad has been identified by the applicant as being ancillary to the existing dual occupancy on the site, which is the applicant's place of residence.

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The helipad is not proposed to be carried out independently of the existing residence, with the applicant linking the proposal to a garage or carport for a vehicle associated with the residence.

Accordingly, the proposed helipad is considered to be ancillary to the approved dual occupancy, being the take-off and landing site for the applicant's only form of transport to and from his place of employment.

Clause 29(1)(a) of Schedule 3 of the Regulations (which relates to sewerage systems or works) does not apply to the proposed development.

As such, the provisions of Clause 37A are considered to be applicable and designated development provisions are not applicable to the proposal.

**CONSIDERATIONS UNDER SECTION 4.15 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**

The aims of this plan as set out under Section 1.2 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 proposal relates to an ancillary helipad (in terms of the use of a part of the land, which is not open to the public, for take-off and landing movements of a helicopter) within the RU2 Rural Landscape Zone. As proposed, the helipad complies with the regulatory framework for such facilities including the relevant Environmental Planning Instruments which apply to the land (namely; Tweed LEP 2014) and therefore given its permissibility in the zone, is not contrary to the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The subject site is zoned RU2 – Rural Landscape and the objectives of this zone 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.*

The proposed development is defined as being ancillary to an approved **dual occupancy**, whilst noting that a **helipad** means *a place not open to the public used for the taking off and landing of helicopters*.

According to the Land Use Table, dual occupancies (which are a type of residential accommodation) and the ancillary helipad are permitted development in the zone, with consent.

The proposed development is considered to be consistent with the objectives of the zone as far as delivery of a land use which is compatible to the Rural Landscape, given the helipad is for private use and does not comprise of any buildings or structures. The function and use of the site for the said purposes does not compromise agricultural land uses, the natural resource base or environmental qualities of the area.

Following an assessment of the proposed development and subject to recommended conditions of consent, the use of a private helipad (being ancillary to a dual occupancy) with a limited number of flight movements (maximum of ten per week) on a large rural land holding, is considered to maintain the rural landscape character of the land.

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

Not applicable as no subdivision is proposed.

Clause 4.3 - Height of Buildings

Not applicable as no buildings works proposed.

Clause 4.4 – Floor Space Ratio

Not applicable as the proposed helipad does not seek any works and therefore does not contribute to the calculation of floor space ratio for the site.

Clause 4.6 - Exception to development standards

Not applicable as no exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as the proposed use is not listed under this Clause.

Clause 5.5 – Development within the Coastal Zone

Not applicable as the subject site is not located within the Coastal zoned being located approximately 13.8km westward of the coastal waters of the site.

Clause 5.10 - Heritage Conservation

The subject site is mapped as a predictive Aboriginal Place of Heritage Significance on Council's *Aboriginal Cultural Heritage Management Plan* (ACHMP).

In order to determine whether the site is affected by this Clause (and also considered Environmentally Sensitive Land); Council officers have conducted a search via the Office of Environment & Heritage Aboriginal Heritage Information Management System (AHIMS) of known Aboriginal sites and places.

The search revealed that there are no known Aboriginal sites or Aboriginal places on or within 200 metres of the subject site.

Notwithstanding the above, consideration of the proposed development having regard to the ACHMP and the objectives of this Clause has been undertaken and the proposed land use does not seek consent for any building works and therefore there is no impact to the natural environs of the land or its surrounds as far as Aboriginal Objects or relics are concerned.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as being bushfire prone however this application does not have any implications regarding the application of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as contained Class 5 Acid Sulfate Soils. However, this clause is not applicable given that the proposal relates to the use of the site only and therefore no works (and associated soil disturbance) is a matter for consideration for this application.

Clause 7.2 - Earthworks

The proposed development does not include any building or earthworks and therefore Council can be satisfied that the matters for consideration under this Clause do not apply.

Clause 7.3 – Flood Planning

The subject site is not mapped to be flood prone or within an area subject to PMF.

Clause 7.4 - Floodplain risk management

Not applicable.

Clause 7.5 - Coastal risk planning

The site is not mapped as being subject to coastal risk planning under this clause.

Clause 7.6 - Stormwater Management



The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

The proposed use of the site which is a cleared, grassed area for the purposes of a helipad (ancillary to a dual occupancy) will have no impact on stormwater management.

#### Clause 7.8 – Airspace operations

The subject site is located within the Outer Horizontal Surface Limitation under the Gold Coast Airspace Operation map.

The objectives of this Clause are:

- (a) *to provide for the effective and ongoing operation of the Gold Coast Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,*
- (b) *to protect the community from undue risk from that operation.*

Pursuant to Clause 7.8(2), given the proposed use of the ancillary helipad at the subject site is likely to penetrate the limitation or operational surface layer, the proposed development was referred to the National Civil Aviation Safety Authority (CASA), Gold Coast Airport and Airservices Australia for consideration and review.

All three agencies have reviewed the application and advised they raise no objection to the proposed use of the site as a helipad. Further detail on the agency comments is provided later in this report.

Based on the correspondence from the relevant external referral bodies; the development is considered to satisfy the matters for consideration under Clause 7.8(3).

#### Clause 7.9 - Development in areas subject to aircraft noise

Clause 7.9(1) states the objectives of this clause are as follows:

- (a) *to prevent certain noise sensitive developments from being located near the Gold Coast Airport and its flight paths,*
- (b) *to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,*
- (c) *to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.*

Clause 7.9(2) states that this Clause applies to development that:

- (a) *is on land that:*
  - (i) *is near the Gold Coast Airport, and*
  - (ii) *is in an ANEF contour of 20 or greater, and*
- (b) *the consent authority considers is likely to be adversely affected by aircraft noise.*

Clause 7.9(3) states that before determining a development application for development to which this clause applies, the consent authority:

- (a) *must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*
- (b) *must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021:2015, and*
- (c) *must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015.*

The subject site (land) is located within the Outer Airspace Operation Layer however the intent of this Clause is to ensure the consent authority considers and prevents noise impacts to the proposed development arising from airspace operations associated with aircraft moving to and from the Gold Coast Airport.

Therefore, having regard to the intent of the Clause and the circumstances to which this Clause applies (*see subclause 7.9(2)*); the proposed ancillary helipad is not considered to be a sensitive development that requires protection from impact of aircraft noise.

#### Clause 7.10 - Essential Services

In considering the provision of Essential Services for the development pursuant to Clause 7.10, no services are required for the ancillary helipad and therefore it is considered that the provisions of this Clause have been satisfied.

#### State Environmental Planning Policies

##### SEPP (Coastal Management) 2018

The subject site is not located within an area mapped under this policy and therefore SEPP (Coastal Management) 2018 does not apply.

##### SEPP No. 33 - Hazardous and Offensive Development

It is considered that the proposed development does not incorporate or propose any uses which trigger a SEPP 33 assessment. However, it is noted that the storage of fuel for refuelling of a helicopter, depending on the location and quantity, would require a SEPP 33 assessment in accordance with the *Hazardous and Offensive Development Application Guideline 'Applying SEPP 33'* (January 2011) Guideline by NSW Department of Planning.

Accordingly, a condition of consent has been recommended which explicitly prohibits the storage of fuel on the subject site and prevents the refuelling of the helicopter from occurring at the site.

##### SEPP No. 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 subject site contains a dual occupancy and rural industry which has been approved by Council. In addition, consideration of Contamination information as contained on Council GIS indicates that no known contamination has been recorded for the subject site and that no cattle tick dip sites are indicated within metres of the subject site.

However, in reviewing the history of the site, a concern was raised with regard to the use of chemicals for plant cultivation and the placement / burial of general waste within the subject site.

The applicant provided written responses clarifying that approximately 30 fruit trees were planted, but these were grown organically with no chemicals used. In addition it was noted that the area where general waste was historically buried is not in proximity to the proposed helipad, with no earthworks proposed for this application.

Council's Environmental Health Officer was satisfied with the applicant's responses, noting the written correspondence is accepted and indicate that potentially contaminating activities did not occur.

To ensure the prevention of contamination on the site, conditions of consent are recommended to prevent contaminating activities (i.e. fuel storage and filling operations) occurring on the site. As such, the proposed land use is considered to be consistent the provisions of the SEPP, and appropriate measures have been taken to ensure the ongoing use of the ancillary helipad will not jeopardise more sensitive residential land uses which are occurring on the site, further securing appropriate outcomes having regard to the objectives of this policy.

#### SEPP (Rural Lands) 2008

The aims of this Policy are as follows:

- (a) *to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) *to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) *to implement measures designed to reduce land use conflicts,*
- (d) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) *to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The subject site is zoned for rural purposes (RU2 – Rural Landscape). The site contains residential dwellings and an existing extractive water industry. The application states that the proposed ancillary helipad is for private use only and will be operated by one of the residents of the site.

The site is not identified as being State Significant Agricultural land and having considered the existing rural industry operations of the site and surrounding rural

residential land uses, the development is considered unlikely to compromise the ability for the subject site and surrounding rural lands to maintain land uses which are consistent with the aims of this policy.

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

Draft TLEP No. 17 – Short-term rental accommodation. This draft LEP has no bearing on the subject application.

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

Tweed Development Control Plan

There are no specific development controls which apply to the proposed use.

A11-Public Notification of Development Proposals

The application was initially advertised and neighbours were notified for a period of 14 days from 5 September to 19 September 2018. A typographical error in the initial advertising material (in relation to the proposed hours of operation) resulted in the proposal being re-advertised for an additional 14 days between 19 September and 3 October 2018.

During the notification period 23 submissions objecting the development application were received.

The details of the submissions are outlined in a later section of this report.

**(a) (iia) Any planning agreement or any draft planning agreement under section 7.4**

The development is not accompanied or affected by any planning agreement or any draft planning agreement under Section 7.4.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises of a land use which is permissible in the zone. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

Not applicable as the development does not propose any demolition.

Clause 93 Fire Safety Considerations

The proposed land use does not include any building works which would be subject to fire safety provisions under the BCA or Clause 93 of the Regulation.

However, a condition of development consent is recommended to prohibit the storage of aviation fuel for the aircraft as a measure to secure appropriate fire safety outcomes.

Clause 94 Buildings to be upgraded

The proposed development does require the upgrade of buildings pursuant to Clause 94 of the Regulation as no works are proposed on the site.

**(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 approx. 13.8km from the coastal foreshore and is not affected by coastal hazards. As such the proposed development does not contradict the objectives of the plan.

**Tweed Coast Estuaries Management Plan 2004**

Not applicable as the site is not located within the area to which this plan applies.

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

Not applicable as the site is not located within the area to which this plan applies.

**(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**

**Acoustic Impacts**

The application is supported by a Noise Impact Assessment prepared by Craig Hill Acoustics. The report was prepared according to the Environmental Protection Authority (EPA) Noise Control Guidelines to assess potential helicopter related noise impacts.



**Figure 1: Extract from submitted Noise Impact Assessment Report demonstrating the testing locations for affected residences**

A review of the development application and assessment of recent court judgements in relation to similar developments (i.e. helipads in a rural area) revealed that the previous EPA's Environmental Noise Control Manual being used by the applicant's acoustic consultant was incorrect in terms of assessment criteria. The EPA's noise guidelines for helicopters was discontinued in 2000, with no replacement criteria being issued.

As confirmed in *Nessdee v Orange City Council* court judgement, it is considered that the appropriate assessment approach for assessing aircraft (including



helicopters) is to use the ANEF system, with the design target for residential amenity being ANEF 13 at residential receivers that are newly exposed to aircraft operations. Rather than delaying the assessment of DA18/0637 any further by requesting the applicant to undertake a new acoustic assessment using the correct criteria, it was considered appropriate for Council to engage the services of a highly experienced acoustic consultant to review the application and provide an independent assessment of this proposal (and the DA18/0805 Review of Determination) from an acoustic perspective.

The independent acoustic assessment resulted in three reports being prepared by the acoustic expert, following a concurrent review of both helipad applications. The first report (dated 5 November 2018) found that the applicant's acoustic assessment (prepared by Craig Hill Acoustics and dated 15 November 2017) for DA17/0805 was "...*inadequate and contains a number of significant errors, and does not provide sufficient material to justify the acoustic conclusions*". The assessment highlighted the lack of noise data to permit an evaluation of the noise impacts and (based purely on a review of the Craig Hill report) concluded that DA17/0805 should be refused.

The second report provided by the independent expert (dated 7 November 2018) focussed only on the subject application (DA18/0637), whereby it was noted that the Craig Hill Acoustics report (dated 15 August 2018) included additional noise data not presented in the acoustic assessment for DA17/0805. The acoustic assessment provided by Council's expert on 7 November 2018 (refer to **Attachment 1**) in relation to DA18/0637 notes the following:

*"Notwithstanding the inadequacies of the material set out in the second Craig Hill Acoustics report, I have been instructed by the Council to see if I could utilise the data and determine the range of noise exposure levels that could occur as a result of the proposed development.*

*In undertaking that exercise I have to make a number of assumptions as to the basis of the assessment.*

*The SEE accompanying the second application identifies a maximum of 10 movements per week and typically a week would be restricted to 5 days of operations. Therefore, a reasonable person would consider that the assumption is one take off and one landing per day.*

*The ANEF system looks at an average day over the entire year of operations. Technically if one considers a limit of 10 movements per week then on an average over a year there would be slightly less than one landing and one take-off per day.*

*AS2363 requires at least four sets of measurements per location from which an average  $L_{AE}$  (sound exposure level – see clause 4.14 of AS 2363-1990) for each mode of the testing can be determined for each receiver location. It would appear on the material provided that the required average  $L_{AE}$  was not obtained.*

*Accordingly, on adopting the conservative approach of utilising one landing and one take-off per day every day of the week (which is not the case) then utilising those movements one can determine the ANEF value.*

*Table 5.2 of the Craig Hill Acoustics report has not provided the calculated  $L_{Aeq}$  level for the two movements per day.*

*For the nominated hours of operation and the advice that the helipad is for private purposes, specifically to provide the applicant with personal transport to and from work, then the flight prior to 7am is considered to be a take-off and as such occurs in the ANEF night period, whilst the landing would occur prior to 7pm and is assumed to therefore occur in the ANEF daytime period.*

*With respect to the idle and hover components I have utilised other measurements of a Bell 206 JetRanger II for a number of Sydney CBD Heliport assessments and adjusted the  $L_{AE}$  for distance attenuation to determine a contribution from those components.*

*It is noted that for the start up or shutdown of a helicopter there is an extended period of time (typically 2 minutes) to permit stabilisation of engine temperature. The 30 second idle period for testing (from AS2363) is to permit an audible break between individual movements. The author wrote the test procedure in AS2363 based on his previous testing.*

*For the hover component I have used the 30 seconds identified in the flight procedure noting that in some cases the in ground effect hover can be more than 30 seconds.*

*On the basis of the above assumptions and the data from Table 5.2 in the acoustic assessment (with the qualifications described above and the additional material from the second application) the following Table presents the derived contributions for each location.*

Location	Mode	Leq dB(A)	Time (secs)	$L_{10}$	Movements		$L_{Aeq}$ (24 hrs)	ANEF
					day	night		
R1	T/O	64	181	86.6	1	0	37.2	
	Land	68	160	90.0	0	1	46.7	
	Idle	54.7	120	75.5	1	1	33.1	
	Hover	60.7	30	75.5	1	1	33.1	
	Cumulative							
R2	T/O	62.2	181	84.1	1	0	34.8	
	Land	65	160	86.4	0	1	43.0	
	Idle	59.3	120	80.1	1	1	37.7	
	Hover	65.3	30	80.1	1	1	37.7	
	Cumulative							
R3	T/O	61.4	181	82.8	1	0	33.4	
	Land	64.7	160	85.7	0	1	42.3	
	Idle	57	120	77.8	1	1	35.4	
	Hover	63	30	77.8	1	1	35.4	
	Cumulative							
R4	T/O	65	181	85.8	1	0	36.4	
	Land	65	160	86.9	0	1	43.5	
	Idle	61.4	120	82.2	1	1	39.8	
	Hover	67.4	30	82.2	1	1	39.8	
	Cumulative							

Location	Mode	Leq dB(A)	Time (secs)	L <sub>1E</sub>	Movements		LAeq (24 hrs)	ANEF
					day	night		
R5	T/O	64	181	85.8	1	0	36.4	
	Land	62	180	84.3	0	1	40.9	
	Idle	54.2	120	75.0	1	1	32.6	
	Hover	60.2	30	75.0	1	1	32.6	
	Cumulative						43.1	

*From the above results it can be seen that the proposed operations with a take-off before 7am and a landing between 7am and 7pm on each day would result in an ANEF less than 13, which is the appropriate criterion for a new flight path in an area not previously exposed to helicopter noise.*

*Under the requirement to consider potential adverse impacts under the Environment Planning and Assessment Act the noise from the helicopter operations significantly exceeds the “ambient Leq” of 45 dB(A) identified in the second acoustic report (for unspecified times) and has the potential to give rise to sleep disturbance at the residential dwellings identified as R1 – R5 inclusive.*

*Based upon the maximum level from helicopter movements recorded at locations R1 – R5 (Table 5.2 of the second acoustic report) there is potential for sleep disturbance during the “night period”. The maximum levels are greater than the 65 dB(A) limit proposed in the Nessdee P/L matter. This limit was from the EPA sleep arousal criterion of background +15 dB(A).*

*Based on the “ambient” level of 45dB(A) obtained in the day it is not unreasonable to assume a background level prior to 7am to be less than 40 dBA.*

*On that basis the maximum levels provided by Craig Hill Acoustics are significantly greater than background +15 dB(A) being the general sleep disturbance limit provided by the EPA in their Noise Guide of Local Government, or the 52 dB(A) limit nominated by the EPA in the Noise Policy of Industry document.*

***If the helicopter operations were restricted to daytime operations under AS2021 (between 7am and 7pm Monday to Saturday) and 8am to 6pm on a Sunday to accord with the EPA’s definition of daytime, then the issue of sleep arousal would be resolved and the resultant ANEF’s would be reduced. For that scenario I have determined the highest ANEF being a value of 7.7 would occur at location R1”.***

Following the above acoustic assessment, the second report made the following conclusions in relation to the proposed ancillary helipad:

*“The acoustic assessment submitted with the application does not (as required by AS2363) provide noise information related to the hover mode, or the idle mode of the helicopter, but identifies noise levels with respect to the “flight”.*

*The assessment of the helipad under the ANEF system involves all noise associated with the helicopter that is detected at receiver locations from start-up of the helicopter to shut down of the helicopter.*

*In this regard additional data for the nominated helicopter type has been extracted from acoustic measurements conducted for the Sydney CBD heliport where such material was placed in the public domain and was*

*subject to independent auditing via a Commission of Inquiry that verified the accuracy of the results.*

*The subject application under DA18.0637 proposes operations in the morning prior to 7am, which by way of the ANEF system involves a weighting factor to be added to those flights / operations of +6 dB as a result of night-time operations being considered equivalent to 4 day time operations.*

*On the basis of the restriction of 10 helicopter movements per weekend and a maximum of two movements per day, the various levels in terms of the ANEF have been determined by utilisation of the A-weighted levels with the correction factor of -35 dB being a method originally proposed by the New South Wales State Pollution Control Commission in 1982. The -35 dB correction factor has also been used by the Civil Aviation Authority in their assessment of helicopter transit lanes in Sydney and by Airservices Australia in their assessment of take-off operations to the north from the third runway at Sydney Airport (Runway 34R) being a separate exercise some year later after the original EIS for the Third Runway.*

*The issue of helicopter operations from the subject site prior to 7am, Monday to Saturday, or prior to 8am on Sundays occurs in the Airservices Australia / EPA night-time respectively.*

*The maximum levels obtained by Craig Hill Acoustics at each of the five reference locations represents noise levels significantly greater than that recommended by the EPA in their Noise Policy of Industry or the Noise Guide of Local Government.*

*Night-time operations exceed the noise limit nominated for the East Orange heliport.*

*It is recommended that no helicopter operations be permitted prior to 7am. Therefore, to maintain the general 12 hour window suggested in the application, **for Monday to Saturdays the operating times should be restricted to 7am to 7pm, whilst on Sundays in terms of convention for night-time period used in acoustic Standards it may be appropriate to restrict the operating hours from 8am to 7pm.***

*The use of the nominated single flight path does not involve a straight in approach from an elevated gate external to the subject site, and the directly straight down to the helipad.*

*From the Craig Hill Acoustic report from the entry gate to the south –east of location R1 there is a straight line track that then incorporates a slight right-hand curve and then a 90 degree left hand curve into the helipad. **Whether the nominated flight track satisfies aviation requirements is a matter outside my expertise and should be evaluated by an aviation consultant with expertise in helicopter operations.***

*The flight path that has been nominated for the application is assumed to be the flight path that was tested upon which the noise exposure levels have been determined. Therefore, **the subject helicopter must fly the nominated flight path on both arrivals and departures and is not permitted to deviate from the nominated flight path.***

***At times, there will be certain weather conditions that exceed the operational limits identified in the flight manual for the subject***

**helicopter and as such would prohibit the use of the flight path. This would require the helicopter to not take off from the site, or on arriving to the area the helicopter would have to seek an alternative landing site.**

**If the use of only the flight path that has been provided in the application provides limitations to the subject operation, then the use of alternative flight paths for the initial take-off leg for the final approach would need to be the subject of a separate application / modification which must be supported by appropriate and proper acoustic measurements.**

*The application relates to a specified helicopter type upon which noise levels have been obtained and used for assessing the application. There is no information contained in the application documentation to identify the loading of the helicopter, or the number of persons on board. One can automatically guarantee that there was at least one person on board (being the pilot). As the helicopter was not tested at maximum load (as required by AS2363) then a condition of consent **should restrict the operations to a Bell 206B JetRanger III with a maximum of two persons on board**".*

A third report (dated 8 November 2018) was then provided by Council's independent acoustic expert, incorporating a number of recommended conditions of consent that are applicable for both applications, should consent be granted. These included:

- *The development is restricted to the use of a Bell 206B JetRanger – III helicopter.*
- *The operation of the helicopter is restricted to a maximum of two persons on board the aircraft when in flight.*
- *The only flight path that is to be used for the subject helipad is the flight path shown in the Craig Hill Acoustics Report of 15 November 2018 that accompanied the application.*
- *The subject helicopter must fly the nominated flight path on both arrivals and departures and is not permitted to deviate from the nominated flight path.*
- ***The hours of operation of the helipad are restricted to 7am – 7pm Monday to Saturday and 8am to 6pm on Sundays.***
- *The development is restricted to no more than 2 movements on any day. A movement is defined as a take-off or a landing.*
- *There will be no maintenance of the helicopter carried out on site.*
- *Prior to the commencement of operations, the applicant shall provide to Council documentation to identify the wind conditions (strength and direction) that will result in the approved flight path not being able to be used.*
- *Any modification to the flight path, operational restrictions or conditions nominated in this consent must be the subject of an application and include an acoustic assessment of the resultant impact from the proposed modifications.*



Upon advice of the above recommendation for hours of operation, the applicant was provided with an opportunity to respond to the independent acoustic assessment. The following responses were received:

Response 1

*"I don't agree with the restriction to start at 7am.*

*This Helicopter is used for private purposes only.*

*Council are responsible for the HELIPAD, not the flying itself. There is no restriction on times in this airspace.*

*The noise levels are within the acceptable levels. The EPA and CASA have no issues.*

*Sleep disturbance is as much of an issue for the closest residents as a vehicle driving past the road such as a V8 or Harley Davidson which would be much noisier. No reasonable council would restrict a person's movements on the road while approving a DA for a garage, and thereby restricting a person's ability to attend work at the required time.*

*A helipad and a garage are essentially the same principal. They both accommodate the parking of a private vehicle which is used to transport one to and from work.*

*The helicopter is making less noise at the closest noise sensitive areas by the road than a Harley or V8 driving past at any unrestricted time to go to and from work. The Harley or V8 going past at the same point is literally less than 10 metres away from these residence and extremely loud.*

*To limit my travelling to work on time in the mornings (simply because I use a helicopter) is discrimination and moving into CASA's jurisdiction.*

*A helicopter or any aircraft is free to fly in this airspace at any time. How can the TSC take on CASA's jurisdiction and discriminate against me, while any other aircraft can fly through here at any time they wish? Again, TSC is looking at a DA for the helipad, not the flying in airspace".*

Response 2

*"In addition to the email below, I would like to offer a reasonable compromise (while taking into account the statements I have made below)*

*My work hours vary according to the busy season being summer for the work I do. Therefore, it is unpractical as well as unfair and discriminatory based on points raised in the below email.*

*However, on the point of being unpractical, I offer a solution that accommodates the actual hours I would need while giving away more than what I ask in relation to the proposed hours of 7am to 7pm all year round.*

*Sundays can be 8am to 5pm as opposed to 8 till 6pm (I am happy to give up an hour on the Sunday all year round)*

*Monday to Sunday (during daylight savings time only) to be 630am to 7pm, and during the Winter times, 7am to 6pm. (here, I ask for the extra half hour only during summer in the mornings that I need to stay employed and reflect what I need where I give up an hour in return during the winter times of an afternoon.*

*(All up, I ask for significantly less than what I am practically able to offer to give up simply to reflect my employment hours)*

*I make this offer while still standing by all points raised below.*

*No council gives time restraints to a person and dictates when they can drive their private vehicle to and from work when approving a DA for a garage or a single car park space on their property.*

*This is the same principal, however, given the closeness of the times you are suggesting, vs the actual times I need to transport myself to and from my employment and indeed, stay employed, I think this offer and compromise is reasonable”.*

#### Officer Comment

Whilst the applicant's request for a compromise in the proposed hours of operation (i.e. only an 30 minute non-compliance period with the EPA noise requirements during day light savings summer period) is relatively minor, the issue still arises that from an amenity point of view, any flight movements prior to 7am is considered to potentially result in sleep disturbance for nearby residences.

Council's independent acoustic assessment did note that the noise levels would be reduced if the proposed flight path was in a straight line (as opposed to the current curved flight path). However, without detailed analysis against the appropriate standards, Council is not in a position to determine whether a straight line flight path would allow the noise levels to comply with the night time requirements (background + 5 dB(A) or 52 dB(A)). The applicant was advised that Council officers would be adopting the hours of operation as recommended by the independent acoustic assessment (i.e. 7am – 7pm Monday to Saturday and 8am to 6pm on Sundays).

With regard to the applicant's comments in terms of noisy vehicles being unrestricted on the time they leave a property, the applicant was advised that such a scenario comes under different assessment criteria, with noisy vehicle complaints being dealt with by the Police and the EPA, with testing an option to ensure the vehicles are compliant with the relevant regulations.

In relation to the applicant's comments on CASA's jurisdiction, the applicant was advised that Council had received feedback from CASA recommending that Council's "...assessment consider local residents' concerns about potential noise and hours of operation”.

Having taken all of the above matters into consideration in terms of acoustic assessment, the conditions proposed by Council's independent acoustic expert have been incorporated into a list of recommended conditions of consent for DA18/08637.

#### Ecological Impacts

Council's Natural Resource Management (NRM) Unit have reviewed the application and undertaken a comprehensive assessment of potential ecological impacts to flora and fauna.

The NRM Unit have noted the following:

*“The current proposal seeks approval for extended hours of operation and an increased number of trips compared to that of the previous application. NRM raise no issue to the proposed increased intensity of use in terms of*

*daily movements. However, consistent with recommendations made under DA17/0805, the NRM Unit support the position of Council's noise expert in seeking to restrict operating hours to 7:00 am. On the basis that the time restriction is imposed and that best practice management of potentially hazardous material is implemented, NRM are satisfied that the proposal would unlikely result in adverse impact on biodiversity values".*

The NRM assessment concludes that the proposed development is unlikely to result in adverse impact to threatened species, waterways and ecological processes.

Appropriate conditions have been recommended to prevent hazardous material storage which further protects the environment from ecological impacts resulting from the development.

#### Context and Setting

The subject site is located within a rural landscape area and therefore benefits from large lot rural lands which contain a range of land uses that are conducive to the built and natural rural environment.

The location of the ancillary helipad is such that the helicopter is capable of reaching a height of 500ft by the time the helicopter reaches the boundary of the subject site, which complies with CASA / Airservices Australia requirements.

Having regard to the rural context and setting, it is considered that the hours of operation associated with the flight movements for the ancillary helipad should be regulated so as to protect the amenity of surrounding residences. Therefore, in accordance with the recommendations of the independent acoustic assessment, a condition of consent is recommended to restrict the helipad operations to be permitted within EPA's "daylight" hours of 7.00am to 7.00pm Mondays to Saturdays and 8.00am to 6.00pm Sundays. The restricted hours combined with the restricted number of flight movements (maximum of ten per week) are considered to appropriately mitigate potential impacts to the surrounding area.

#### Access, Transport and Traffic

The proposed helipad will have no impact on vehicle access, transport or traffic in the surrounding area.

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

#### Surrounding Land uses/Development

As mentioned previously in the report, the subject site is located within a rural setting and the provision of an ancillary helipad at the subject site could potentially create an undesirable impact to surrounding residences. However, following a detailed analysis of the noise created by the subject helicopter for ten flight movements per week and restrictions applied to the hours of operation, the proposal is considered to meet the applicable noise criteria for helicopters.

Therefore, having regard to the permissibility of the development in the zone combined with the limited frequency of use of the ancillary helipad and recommended conditions of consent to further regulate the manner in which the helipad is used, it is considered that the site is suitable for the proposed development.

#### Flora and Fauna

The subject site contains vegetation that is likely to form a habitat for native flora and fauna. However, the area of land which will accommodate the helipad is clear of vegetation and the activities (take-off and landing flight movements of a helicopter) associated with the ancillary helipad would not encroach upon the vegetation, as the aircraft would be airborne by the time it reached the vegetated area on the site (and surrounds). Furthermore, the frequency and nature of the use (during daylight hours) is likely to mitigate impacts associated with the safety of wildlife resulting from the helipad use.

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

Referrals to Aviation Authorities

During the assessment of DA18/0637, comments was sought from the Gold Coast Airport, CASA and Airservices Australia.

**Gold Coast Airport:**

Comments associated with DA17/0805 from the Gold Coast Airport advised that the Airport did not object to the proposed helipad, suggesting consultation with neighbouring properties regarding this proposal to ensure the community is aware prior to operations commencing.

The Airport was advised of the new application (DA18/0637) for an ancillary helipad and were invited to provide further comment. The response from the Airport was that they had nothing further to add to their original comments.

**Civil Aviation Safety Authority (CASA):**

Original comments from CASA (dated 5 December 2017) in relation to DA17/0805 noted the following:

*“CASA has reviewed the DA and has no comment on the proposal. CASA does not regulate helipads, in particular private use helipads.*

*However, I am advised that the proposed flight paths and procedures outlined in the DA are within regulations. The property is positioned approximately 12NM due west of the Gold Coast Airport where the lower limit is 2500 feet. Given the private nature of the operations, qualifications of the pilots and the assumed lack of helipad lighting, all operation to and from the helipad will be during the times that the air traffic control (ATC) tower will be active. Helicopters departing the property and wishing to enter the Gold Coast control area will have to make contact with ATC in the normal manner”.*

CASA was advised of the new application (DA18/0637) and invited to provide further comment. The following response was received on 10 October 2018:

*“CASA has reviewed the information provided and has no comment on the proposal and confirms that the advice provided on 5 December 2017 remains valid. A copy of this correspondence is attached for your information. CASA notes that the Gold Coast Airport does not object to the proposed helipad.*

*CASA does not regulate helicopter landing areas, however Civil Aviation Advisory Publication (CAAP) 92-2(2) Guidelines on establishment and operation of on-shore Helicopter Landing Sites provides guidelines based on the international standards and advice on the Australian Civil aviation regulations that pilots must adhere to when operating at these locations. A*

*copy of the CAAP can be downloaded from the following link <https://www.casa.gov.au/files/922pdf>.*

*CASA suggests that Tweed Shire Council, as the building approval authority for the area, may need to assess the site in accordance with their planning scheme policy to ensure that it is suitable for aviation use. It is recommended that such an assessment considers local residents' concerns about potential noise and hours of operation".*

The abovementioned CAAP Guidelines have been reviewed as part of this assessment. The Guidelines set out factors that may be used by a helicopter pilot to determine the suitability of a place for the landing and take-off of helicopters. The document incorporates: operational factors that helicopter pilots need to consider prior to using a Helicopter Land Site (HLS); applicable attributes of an HLS; and recommended criteria for an HLS.

Whilst the Guidelines recommend a minimum of two approach and departure paths, it should be noted that the document specifically states that one-way HLS's are not precluded. The Guidelines also include other considerations for the pilot, such as suitable fire protection and equipment being available at the HLS.

It is considered appropriate to apply a suitable condition of consent, which highlights the helicopter pilot's requirement to adhere to the provisions of the Guidelines. In addition, a condition has been recommended in terms of the applicant obtaining certification for the proposed flight path from a suitable qualified aviation expert.

Following some additional enquiries from Council officers with regard to whether a second flight path was required and whether the helicopter movements would be limited to daylight hours only, CASA provided the following response on 26 October 2018:

*"As previously advised, the flight path outlined in the development application complies with civil aviation safety requirements, however in flying to and from a helicopter landing site (HLS), the requirements do not limit the pilot to a single flight path. The information contained in Civil Aviation Advisory Publication (CAAP) 92-2(2) explains the civil aviation requirements that apply to a pilot when using a HLS. In brief, the approach and departure are determined by the pilot in regard to standard flight rules considering wind direction, aircraft performance and other traffic. A copy of the CAAP can be downloaded from the following link <https://www.casa.gov.au/files/922pdf>.*

*CASA overlooks the pilot, aircraft and airspace and it is assumed that the pilot is suitably qualified to fly to the HLS regardless of operating times. There is no requirement under CASA regulations for the HLS to be lit, and CASA does not have authority to enforce the HLS owner to install lighting. However, the pilot must ensure the site is safe for the purpose of landing. Further information is available in CAAP 92-2(2).*

*CASA has no authority regarding enforcing conditions that apply within a land development approval. CASA's authority in relation to aircraft noise is limited to the engineering aspects of aircraft type certification. When issuing aircraft type certifications, the aircraft manufacturer must comply with noise standards that apply in the country of the aircraft's manufacture. Enquiries*

*about aircraft noise should be directed to Airservices Australia. Further information is available at the following link <http://www.airservicesaustralia.com/aircraftnoise/>”.*

**Airservices Australia:**

DA18/0637 was referred to Airservices Australia for comment. The following response was received on 15 October 2018:

*“Airservices has reviewed this Helipad application and the associated helicopter operation. With regards to the noise controls, this operation is outside of Airservices jurisdiction, and any noise controls associated with such an activity would be controlled/managed by the relevant planning approval authority, which in this instance, would be the Tweed Shire Council. However, we suggest the approval of this application should be based on the conditions that include the hours of operation and the noise.*

*We recommend that all relevant neighbouring properties are consulted regarding this proposal to ensure that the community is aware prior to the operations commencing, and that it is outside of Airservices jurisdiction to manage any noise complaints”.*

Public Submissions

The application was initially advertised and neighbours were notified for a period of 14 days from 5 September to 19 September 2018. A typographical error in the initial advertising material (in relation to the proposed hours of operation) resulted in the proposal being re-advertised for an additional 14 days between 19 September and 3 October 2018. During the notification period 23 submissions were received.

The grounds for objection are discussed in the table below.

Summary of Objections	Applicant / Officer Response
<p><b>Noise Impact</b> generated by the helicopter to neighbouring properties is unacceptable.</p> <p>People and animals have been impacted, particularly when landing and taking off.</p> <p>I live under the direct outgoing and incoming flight path of this helicopter, a Bell Jet Ranger with a turbine engine as it travels from Urliup to Brisbane, via Pumpenbil to pick up and set down passengers, almost every day.</p>	<p><b><u>Applicant’s response</u></b> in terms of noise impact submissions:</p> <p><i>Development should be assessed by reference to objective standards not by reference to unqualified statements like the noise is unacceptable.</i></p> <p><i>Craig Hill Acoustics have prepared a Noise Impact Assessment (<b>Assessment</b>) on behalf of the Applicant.</i></p> <p><i>The Assessment concludes that based on the proposed approach and take off path predicted levels from proposed operations would not exceed the 82 L<sub>Amax</sub> limit required in the criteria at nearby residences.</i></p> <p><i>The Assessment also identifies that no noise attenuation is required.</i></p>



Summary of Objections	Applicant / Officer Response
	<p><i>For those reasons the noise impacts are acceptable.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>Council engaged the services of a highly experienced acoustic consultant to undertake an independent assessment of the proposed helipad.</p> <p>The overall assessment noted that the proposed operations with a take-off <u>before</u> 7am and a landing between 7am and 7pm on each day would result in an ANEF less than 13 (which is the appropriate criterion for a new flight path in an area not previously exposed to helicopter noise). However, it was also noted that there is potential for sleep disturbance during the “night period” (i.e. prior to 7am).</p> <p>The assessment concluded that if the helicopter operations were restricted to daytime operations (between 7am and 7pm Monday to Saturday) and 8am to 6pm on a Sunday to accord with the EPA’s definition of daytime, then the issue of sleep arousal would be resolved.</p> <p>The independent acoustic expert’s recommended conditions have been applied in this regard.</p>
<p><b>Wind Direction and speed</b> have an impact on flying. Is another flight path documented to allow for an unfavourable wind speed and direction? Under what conditions would the helicopter be grounded?</p>	<p><b><u>Applicant’s response</u></b> in terms of flight path submissions:</p> <p><i>The application seeks approval for a single flight path. Another flight path is not required.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>The applicant has proposed only a single flight path. This scenario is not unusual for a personal use helipad.</p> <p>CASA has confirmed that a second flight path is <u>not</u> required, noting that the <i>Guidelines for the Establishment and Operation of Onshore Helicopter Landing Sites (HLS)</i>, which explains</p>

Summary of Objections	Applicant / Officer Response
	<p>the civil aviation requirements that apply to a pilot when using a HLS. In brief, the approach and departure are determined by the pilot in regard to standard flight rules considering wind direction, aircraft performance and other traffic.</p> <p>Council's independent acoustic expert has noted that the flight manual for the subject helicopter (Bell 2016 JetRanger II) can operate up to 17 knots of crosswind or tailwind. Whether conditions exceeding 17 knots would prevent the helicopter from taking off from the site or having to seek an alternative landing site.</p>
<p><b>Private Use</b> – the applicant has stated that helicopter is for private use, which has nothing to do with rural purposes.</p> <p>The proposed helipad is not an appropriate use for the rural and rural residential area.</p> <p>It is not necessary for access to work and the applicant has demonstrated a complete inability to comply with any conditions of consent.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The proposed use of the helicopter is for personal use, specifically to provide transport to and from work.</p> <p>The subject site is zoned RU2- Rural Landscapes and proposed land use (helipad) is permitted in the zone.</p> <p>The provisions of Section 4.15 (Evaluation) of the EP&amp;A Act require Council to assess the impacts associated with any development as proposed and the suitability of the subject site for such use. The “necessity” for access to work is not a valid consideration.</p> <p>As per Council's general policy, compliance action has not been undertaken as a development application is being currently assessed, which may permit such land use. It should be noted that any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of this application.</p>
<p><b>Designated Development</b> - 10 helicopter trips requires an EIS, coupled with 12 dwellings within a kilometre. The DA cannot proceed until the EIS is provided.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>As noted in the body of this report, designated development provisions are not considered to be applicable (pursuant to Clause 37A of Schedule</p>

Summary of Objections	Applicant / Officer Response
	<p>3 of the Regulations), given that the proposed helipad is ancillary to the existing dual occupancy and the flight movements are for private use to enable the applicant to travel to work. As such, the application can proceed.</p>
<p><b>Refuelling</b> is taking place without authority or required safety regulations.</p> <p>Safety issues are also of major concern as apparently helicopter fuel is stored on-site and is refuelled on site. I have seen children, adults and cattle in those fields with no apparent safety fencing or warning. Photos included.</p> <p>On site helicopter fuel storage, a hazardous, dangerous highly flammable liquid and vapour.</p>	<p><b>Applicant's response</b> in terms of refuelling submissions:</p> <p><i>The application does not seek approval for storing fuel or refuelling the helicopter on site.</i></p> <p><b>Council Officer Comment:</b></p> <p>The regulation for fuel storage areas would necessitate the construction of appropriate facilities to bund the fuel storage areas. This has not been sought as part of this application and therefore is not a matter for consideration under Section 4.15 of the Act. Notwithstanding, a condition of development is recommended to prohibit the storage of fuel.</p>
<p><b>Public Interest</b> – with 12 houses within one kilometre, the helipad is not in the public interest.</p> <p>Proposal is contrary to public interest, particularly in relation to noise.</p>	<p><b>Applicant's response</b> in terms of public interest submissions:</p> <p><i>The development is in the public interest for the following reasons. The development is permitted with consent in the relevant zone. The impacts of the development are acceptable. The development can be approved, subject to conditions relating to hours of operation and noise.</i></p> <p><b>Council Officer Comment:</b></p> <p>As noted within the body of this report, an independent acoustic assessment has been undertaken. The assessment has determined that the proposed flight movements will comply with the ANEF 13 criteria for areas previously not exposed to helicopter noise. Overall, the assessment concludes that subject to</p>

Summary of Objections	Applicant / Officer Response
	<p>the helicopter operations being within the “daytime” hours of 7am – 7pm Monday to Saturday and 8am – 6pm on Sundays, the proposal will meet EPA noise requirements.</p> <p>Accordingly, the proposed development is considered to be in the public interest, subject to compliance with the recommended hours of operation.</p>
<p><b>Incorrect Noise Assessment</b> – the noise assessment needs to be by an authorised government department with appropriate required regulations.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>As noted above, an independent acoustic assessment has been undertaken by acoustic consultant highly experienced in the assessment of helicopters.</p> <p>The independent review has identified a number of issues with the applicant’s acoustic report, including the use of incorrect assessment criteria.</p> <p>The independent assessment was able to apply recognised acoustic measurements and data for the proposed helicopter (based on their previous experience), whereby it was concluded that the proposal meets the criteria for ANEF 13, which is applicable for areas that have not had previous exposure to helicopter noise.</p> <p>The conclusions made by the independent assessment are supported and the recommended conditions of consent have been applied.</p>
<p><b>Operating without a DA</b> – even when the DA was refused. The applicant is consistently making more than 10 trips a day, operates outside of EPA noise level times.</p> <p>DA17/0805 was refused, however the applicant is still operating as shown in attached photos.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>As per Council’s policy, compliance action has not been undertaken as a development application is being currently assessed, which may permit such land use.</p> <p>It should be noted that any complaint / compliance matter associated with DA18/0637 will be dealt with</p>

Summary of Objections	Applicant / Officer Response
	<p>separately after the determination of this application. In the event that the application is refused, appropriate compliance action would be considered.</p>
<p><b>Surrender of log books</b> – the applicant has stated that they will not surrender log books. TSC has no way of ensuring the applicant will “stick to the stringent controls”.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>This statement is considered to be incorrect. The applicant has clearly stated in their SEE that they are willing to conduct records of flights over a 12 month period to get an accurate pattern of expected hours of operation.</p> <p>An appropriate condition of consent has been applied whereby the applicant will be required to maintain a log book for all inbound and outbound flight movements.</p>
<p><b>Cumulative impact</b> of noise from the Eniflat Pty Ltd operations at the subject site is real and causes distress to the neighbours, stock and wildlife.</p> <p>Resident objections to the noise created by the water trucking operation have been previously documented to Council as to how it affects residents of Bilambil Valley and the community beyond generally.</p> <p>This is not an academic objection, since impacts from both the helicopter and trucking business are now in effect, with their continued operation by the applicant in defiance to the conditions of any granted consent.</p> <p><i>Cumulative</i> impact doesn't necessarily mean helicopter and trucks operating at the same time. The community feels that the 7 days truck operation is excessive already and potentially 7 days a week helicopter noise is unacceptable and unbalancing the community's</p>	<p><b><u>Applicant's response</u></b> in terms of cumulative impact submissions:</p> <p><i>Any assessment of cumulative impact requires the assessment of the application in combination with similar types (i.e. other helipads) already approved or proposed in the locality. To the Applicant's understanding there are none.</i></p> <p><i>Please also see the response to the query about noise impacts generally above.</i></p> <p><b><u>Applicant's response</u></b> in terms of livestock and fauna impact submissions:</p> <p><i>Such impacts do not arise. The Council in its review of the application reviewed the relevant information and concluded that the proposed development is unlikely to result in an adverse impact to threatened species, waterways or ecological processes.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>As noted within the body of this report, it is not considered appropriate to assess the noise</p>

Summary of Objections	Applicant / Officer Response
<p>interest of living in a peaceful rural area.</p>	<p>impact associated with the proposed helipad along with any potential noise from an approved development within the same site. In any case, the water extraction activities and proposed helipad are considered to be acceptable in terms of potential amenity impact.</p> <p>Any compliance matters associated with either development at the site will be dealt with separately, where required.</p> <p>The proposed ten flight movements per week to provide private transport to and from work for the applicant is considered to be acceptable in terms of noise impact, subject to the recommended conditions of consent.</p>
<p><b>Strong Bias</b> – TSC Planning and Compliance Dept shows a strong bias to the occupants of 477 by selective use of legislation.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>This statement is considered to be completely inaccurate. The applicant has every right to submit an application for the proposed development. The assessment process has been undertaken in a professional and unbiased manner, assessing the application against all relevant and applicable legislation.</p>
<p><b>Compliance</b> – it is not reasonable to assume the applicant's compliance to any consent conditions as they currently continue to demonstrate a flagrant disregard for compliance with approved and proposed consent conditions.</p> <p>Specifically with regard to the helicopter (Registration VH-ITM) the following has been observed:</p> <ul style="list-style-type: none"> <li>• Significant flight path deviations from that proposed in the DA;</li> <li>• Flight tracking reveals helicopter use is inconsistent with the applicant's stated</li> </ul>	<p><b><u>Applicant's response</u></b> in terms of illegal land use submissions:</p> <p><i>The application seeks consent for the landing of the helicopter in a paddock for private use as per the description of the proposed development in the application form.</i></p> <p><i>The application does not seek development consent for past use.</i></p> <p><b><u>Applicant's response</u></b> in terms of flight tracking submissions:</p> <p><i>The Applicant's business interests take him to various locations.</i></p> <p><b><u>Council Officer Comment:</u></b></p>



Summary of Objections	Applicant / Officer Response
<p>purpose (to commute to and from his place of work). Flights have been tracked to a range of locations, including Tyalgum, Ipswich, Toowoomba, Grafton, Ulmarra, Dungay, Nobby's Creek and Ormeau;</p> <ul style="list-style-type: none"> <li>• Transportation of aviation fuel to the applicant's property has been observed and refuelling of the helicopter witnessed on a number of occasions contrary to the applicant's assurance that approval for this operation is not necessary or being sought.</li> </ul> <p>The helicopter has been operating for a year now without authorisation. Ratifying this kind of conduct would be unethical and biased.</p> <p>The helicopter starts up at 6.15am, well before the 6.30am flight operating time requested in the DA – date and time stamped photos are attached as proof.</p> <p>DA approval is required for helipad on the Pumpenbil property where the applicant lands to pick up and set down passengers. Investigations on Council's DA Tracker found no helipad approvals in that vicinity.</p> <p>Flights are already being made outside of the suggested operating hours of 6.30am – 6.30pm.</p>	<p>As noted above, any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of this application. In the event that the application is refused, appropriate compliance action would be considered.</p> <p>With regard to the helicopter observations, it should be noted that this assessment relates <u>only</u> to the helipad itself and the flight movements to and from the helipad. The ultimate destination (or flight) of the helicopter is not part of the assessment process for this application.</p> <p>An appropriate condition of consent has been applied prohibiting the transportation and storage of aviation fuel at the subject site. Any non-compliance with this requirement would trigger appropriate compliance action, should the application gain approval.</p> <p>Appropriate conditions of consent have been applied with regard to hours of operation. Again, non-compliance with this requirement would trigger appropriate compliance action, should the application gain approval.</p>
<p><b>Not consistent with Rural Zone</b> – as it is not for a purpose ancillary to rural development. The applicant may have based their assumption on "advice of council staff", however the helicopter stated purpose, being exclusively for personal use for his commute to work is not consistent with any rural activity on the</p>	<p><b>Applicant's response</b> in terms of rural zoning submissions:</p> <p><i>The land is zoned Zone RU2 Rural Landscape under the Tweed Local Environmental Plan 2014.</i></p> <p><i>Development for the purpose of "dwelling houses" and "dual occupancies" are permitted with</i></p>

Summary of Objections	Applicant / Officer Response
<p>property nor related to the business activity.</p>	<p><i>consent in the relevant zone, so too are “helipads”.</i></p> <p><i>The proposed helipad is considered to be consistent with the objectives of the zone as far as delivery of a land use which is compatible to the rural landscape, given it is for private use and does not comprise of any buildings or structures.</i></p> <p><i>We note that there is no requirement for the development to be ancillary to rural development. It can be regarded as ancillary to a dwelling.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>The subject site is zoned RU2- Rural Landscapes and the proposed land use (ancillary helipad) is permitted in the zone.</p> <p>As noted in the Nessdee case, if the proposal is permitted with consent and amenity issues are suitably addressed, approval should be granted.</p> <p>Following an independent assessment of the proposed development (in terms of acoustic impact) and subject to specific conditions of consent, the use of the helipad for private purposes is considered to be acceptable and consistent with the RU2 zone.</p>
<p><b>Excessive operation</b> – the application to increase the flights from 7 to 10, 7 days a week is excessive and will have an impact on all who co-exist in the neighbourhood.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The proposed helipad is for one flight movement in and one flight movement out per day (to and from work) for a maximum of ten flight movements per week. Subject to conditions of consent, the proposed flight movements are considered to be acceptable.</p>
<p><b>Ultimate responsibility</b> – it is unclear where the ultimate responsibility for the safe and</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>This matter is not considered to be a relevant planning matter requiring</p>

Summary of Objections	Applicant / Officer Response
<p>conforming operation of the helicopter lies as in:</p> <ul style="list-style-type: none"> <li>• Eniflat Pty Ltd</li> <li>• Mr Larry Karlos</li> <li>• Mr Matthew Karlos</li> <li>• Helicopter owner (Matthew Karlos' employer)</li> </ul>	<p>consideration under Section 4.15 of the EP&amp;A Act.</p>
<p><b>Third party</b> – we believe DA18/0637 has been submitted for a third party, being the owner operator of the helicopter.</p>	<p><b><u>Council Officer Comment:</u></b> The application is considered to be properly made, with the applicant being the operator of the helicopter. The ownership of the helicopter is not considered to be of relevance.</p>
<p><b>Negative Impacts</b> – Refusal is the only acceptable response to protect nearby residents.</p>	<p><b><u>Council Officer Comment:</u></b> As with any DA, a merit assessment is undertaken to assessment impacts associated with a development and the site suitability.  A thorough assessment of the application has been undertaken by Council staff and independent acoustic expert. The conclusion of the assessment is that the proposal is worthy of approval, subject to conditions of consent.</p>
<p><b>Noise Impact</b> – the acoustic report states that noise are no greater than 55dB. After speaking with people in the aviation industry, it would be more like 150dB</p>	<p><b><u>Council Officer Comment:</u></b> As noted within the body of this report, an independent acoustic assessment has been undertaken. The assessment has determined that the proposed flight movements will comply with the ANEF 13 criteria for areas previously not exposed to helicopter noise. Overall, the assessment concludes that subject to the helicopter operations being within the “daytime” hours of 7am – 7pm Monday to Saturday and 8am – 6pm on Sundays, the proposal will meet EPA noise requirements.</p>
<p><b>Flight path</b> – the application states that the helicopter goes in a southerly direction. The helicopter</p>	<p><b><u>Council Officer Comment:</u></b> Appropriate conditions of consent have been applied which require the</p>

Summary of Objections	Applicant / Officer Response
<p>has flown over my house four times in the past 12 months. My property is in the opposite direction.</p>	<p>helicopter to fly on the nominated flight path. Appropriate compliance action would be undertaken if it was found that the applicant was breaching conditions of consent.</p>
<p><b>Adverse Effect</b> of TSC protocol that non-compliance will be ignored if the applicant provides a DA.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>As per Council's policy, compliance action has not been undertaken as a development application is being currently assessed, which may permit such land use and apply conditions of consent to mitigate any potential impacts.</p> <p>It should be noted that any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of this application. In the event that the application is refused, appropriate compliance action would be considered.</p>
<p><b>Liability</b> – helicopters are expensive to maintain, so we need to be sure that whoever is deemed responsible has the financial resources to ensure the safe operation and maintenance of the aircraft and that they are in a position to provide adequate compensation and remedy in the event of an accident.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>These matters are not valid planning matters requiring consideration under Section 4.15 of the EP&amp;A Act. They are civil matters which not regulated by Council.</p>
<p><b>Amenity Impact</b> – This is not and should not be an area for aircraft traffic. Every day in the early morning and when we sit down to dinner this helicopter buzzes at low altitude directly above my house causing noise pollution and disrupting our lives on a daily basis.</p> <p>I find the helicopter to be very noisy which impacts on, and is not in keeping with, the rural environment, lifestyle and amenity. It is the noisiest aircraft that frequently flies over our home and property.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>It is recognised that the surrounding locality has not been previously exposed to helicopter noise and the independent acoustic assessment reviewed the proposal accordingly. The conclusion of the review was such that the helicopter meets the provisions of ANEF 13, which is the appropriate criteria for areas previously not exposed to such noise.</p> <p>In terms of overall amenity, the independent assessment determined that the proposal (being one flight</p>

Summary of Objections	Applicant / Officer Response
	<p>movement in and one flight movement out per day) was acceptable, subject to specific conditions of consent, which included restrictions to hours of operation being during daytime periods (i.e. 7am to 7pm Monday to Saturday and 8am to 6pm Sundays).</p>
<p><b>Impact on birds</b> – This area is a natural habitat for prolific and varied population of bird species that needs to be considered. Their daily routine and breeding habits would surely be disrupted by all the commotion not to mention the many species of raptors (birds of prey) that must be protected and considered.</p>	<p><b><u>Applicant’s response</u></b> in terms of livestock and fauna impact submissions:</p> <p><i>Such impacts do not arise. The Council in its review of the application reviewed the relevant information and concluded that the proposed development is unlikely to result in an adverse impact to threatened species, waterways or ecological processes.</i></p> <p><b><u>Council Officer Comment:</u></b></p> <p>An assessment of the proposal by Council officers in terms of ecological impacts has been undertaken, whereby it was concluded that the proposed development is unlikely to result in adverse impact to threatened species, waterways and ecological processes.</p>
<p><b>Vexation DA</b> initiated by the applicant following Council’s earlier rejection of a similar DA.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>The provisions of Division 8.2 of the Environmental Planning &amp; Assessment Act provides for an applicant to request a Review of Determination if the original application is refused. The applicant has simply undertaken their right to have the application reviewed.</p>
<p><b>Alternative location</b> – Coolangatta Airport is so close, only minutes away. It could be used instead of a rural area.</p>	<p><b><u>Council Officer Comment:</u></b></p> <p>This matter is not the subject of a Section 4.15 Evaluation. The nexus of the need for a development or land use on a private lot of land is decided by the land owner. The regulation of that land use is based on the zoning</p>

Summary of Objections	Applicant / Officer Response
	<p>of land, to which in this case, the zoning and the merits of the application permits a helipad, subject to conditions of consent.</p>
<p><b>Tweed Shire reluctance to act:</b></p> <ul style="list-style-type: none"> <li>• Cumulative impacts of Council decisions surrounding the Karlos property have seriously eroded the peace and harmony of the family's residing in Bilambil Valley and other residents of Tweed Shire using the roads and infrastructure.</li> <li>• Opinions and speculative assumptions being made by the applicant, while TSC officers have continually heavily favoured commercial business operating out of the Karlos property at Urliup at the local residents expense.</li> <li>• For example at no stage has acoustic testing evidence been presented to corroborate the claims made by the applicant with respect to helicopter movements.</li> <li>• At no stage has the applicant complied with any existing conditions of helicopter use.</li> <li>• Yet at no stage has TSC made any attempt to prosecute known breaches of consent approvals over the subject lands.</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• It is not considered appropriate to consider the impacts of an approved development using local roads when assessing the potential impacts of a helipad, which does not involve any road usage.</li> <li>• This application relates only to a proposed helipad and the assessment of any potential impacts directly related to that land use. Existing approvals relating to other commercial uses do not come into consideration.</li> <li>• An independent acoustic review has been undertaken, whereby it has been concluded that the proposed development complies with ANEF 13 noise requirements and is considered to be acceptable in terms of amenity subject to conditions of consent.</li> <li>• No approval for a helipad has been granted to date. If an approval is granted, the applicant will be subject to possible compliance action if conditions of consent are not complied with.</li> <li>• As per Council's general policy, compliance action has not been undertaken as a development application is being currently assessed,</li> </ul>



Summary of Objections	Applicant / Officer Response
<ul style="list-style-type: none"> <li>• Helicopter and other commercial operations currently moving out of the Karlos property are not consistent with a rural zoning and not ancillary to rural zone development.</li> </ul>	<p>which may permit such land use. It should be noted that any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of this application.</p> <ul style="list-style-type: none"> <li>• As noted within the body of this report, the proposal is considered to be consistent with the objectives of the RU2 zone and the use of a private helipad with limited flight movements per week is considered to maintain the rural landscape character of the land.</li> </ul>
<p><b>Regularity of Flights:</b></p> <ul style="list-style-type: none"> <li>• The applicant has been regularly landing, allegedly refuelling and then taking off from the subject property without Council approval for months.</li> <li>• Yet proposed development does not involve storage of fuel and refuelling on site.</li> <li>• Tweed Shire is aware of the facts that flights have been occurring but has done nothing to prevent the illegal nature of the flights.</li> <li>• Flights continue to occur without approval of a helipad.</li> <li>• The vehicle involved has allegedly never been approved for commercial</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• As noted above, any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of this application.</li> <li>• The applicant has clearly stated that the proposed helipad does not seek approval for storing fuel or refuelling the helicopter on site. Appropriate conditions of consent have been applied in this regard.</li> <li>• As noted above, any complaint / compliance matter associated with DA18/0637 will be dealt with separately at the completion of this Review.</li> <li>• As noted above, any complaint / compliance matter associated with DA17/0805 will be dealt with separately after the determination of this application.</li> </ul>

Summary of Objections	Applicant / Officer Response
<p>purposes and is fact a QLD registered vehicle.</p> <ul style="list-style-type: none"> <li>• The vehicle involved regularly takes off from the Urliup property and according to Airport APP flies to remote locations without transiting through the airport or complying with former conditions of use.</li> <li>• Flight paths tracked and observed on the APP to date strongly suggest commercial use of this vehicle.</li> </ul>	<ul style="list-style-type: none"> <li>• An Airservices report notes that “...<i>Under the Air Navigation (Aircraft Noise) Regulation 1984, before an aircraft may fly in Australia it must meet international noise standards that apply to the design and production of aircraft...Aircraft that do not meet these standards are prohibited from flying in Australia</i>”. Accordingly, if the helicopter is QLD registered, it is assumed that it would have met the requirements of the Regulations. In any case, this matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>• The application only relates to the use of a helipad and the associated take-off and landing movements from the subject site. The destination point of any flights from the subject site are not of relevance to the assessment of DA18/0637. Council officers are not aware of any requirement for the helicopter to transit through the airport, only that the pilot must comply with the directions of the airport control tower (if they are within the airspace being controlled by the tower), once the helicopter has left the ground. As noted above, no approval for a helipad has been granted to date. If an approval is granted, the applicant will be subject to possible compliance action if conditions of consent are not complied with.</li> <li>• As noted above, the application only relates to the use of a helipad and the</li> </ul>

Summary of Objections	Applicant / Officer Response
<ul style="list-style-type: none"> <li>Consequently, what are the likely consequences if the purpose of such flights is for other than personal use?</li> </ul>	<p>associated take-off and landing movements from the subject site. The destination point of any flights from the subject site are not of relevance to the assessment of DA18/0637. The application clearly states that the proposal is for personal use, to provide transport to and from work. The application has been assessed accordingly.</p> <ul style="list-style-type: none"> <li>A recommended condition of consent is that the flight movements are for personal use only. Appropriate compliance action would be undertaken if was later found that the helipad was being used for commercial purposes.</li> </ul>
<p><b>False Statements:</b></p> <ul style="list-style-type: none"> <li>SEE states that the applicant does not own a car and is bankrupt. He has been frequently sighted over the past year driving a Ford Mustang.</li> <li>The application states the helicopter for private use. There is good reason to believe that the helicopter is operated at least in part for commercial use.</li> <li>DA states that there is no storage of fuel or refuelling of the helicopter. Witnesses have observed the delivery of fuel to the property. Refueling of the helicopter has also been observed.</li> <li>Flight tracking reveals helicopter use inconsistent with the DA's stated purpose to commute to and from his place of work.</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>The applicant has clearly stated that the proposed helipad is for private use to allow transport to and from his employment. Appropriate conditions of consent have been applied in this regard.</li> <li>Appropriate conditions have been recommended with regard to fuel storage and refuelling. As noted above, any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of the application.</li> <li>The application only relates to the use of a helipad and the associated take-off and landing movements from the subject site. The destination</li> </ul>

Summary of Objections	Applicant / Officer Response
	<p>point of any flights from the subject site are not of relevance to the assessment of DA18/0637. The application clearly states that the proposal is for personal use, to provide transport to and from work. The application has been assessed accordingly.</p>
<p><b>Property Values</b> are impacted by the proposal.</p>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> </ul>
<p><b>Origins of Fights:</b></p> <ul style="list-style-type: none"> <li>• The applicant does not appear to own or have any financial interest in any part of the land subject to this application.</li> <li>• The applicant does not appear to retain any ownership of the vehicle involved in this application.</li> <li>• While the applicant may reside on the site from time to time, according to ASIC, Eniflat Pty Ltd is the owner of the subject land, and the applicant appears to retain zero financial interest in the said ownership company.</li> <li>• As such, the applicant attempts to create a precedent whereby anyone, without any ownership or financial interest in affected land, can apply for a DA approval over another owners land.</li> <li>• Is it acceptable for an applicant to submit a DA on behalf of a third party – which appears the case in this matter – wherein Fly-Wheel</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act. The application includes owners consent. The applicant is not required to have any financial interest in the subject site.</li> <li>• Following on from above, any person can lawfully submit an application, providing they have the appropriate owners consent to do so.</li> <li>• This matter is not a valid planning matter requiring</li> </ul>

Summary of Objections	Applicant / Officer Response
<p>Pty Ltd is the legal owner – operator of the vehicle currently subject to this application.</p> <ul style="list-style-type: none"> <li>• The unresolved question remains over the continued operation of the current illegal flights. If the DA is approved, does this mean that anyone can enter the affected land and operate the nominated vehicle, or is the pilot to be restricted to a nominated applicant – who in this case has no financial or other interest in the land?</li> <li>• Prior to any approval being granted would Council please advise what measures Council has established to determine whether or not breaches of any current DA's over the said land have occurred?</li> </ul>	<p>consideration under Section 4.15 of the EP&amp;A Act. The ownership of the helicopter being used for flight movements does not come into consideration.</p> <ul style="list-style-type: none"> <li>• As noted above, any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of this application. An appropriate condition of consent can be applied to restriction helicopter use to the vehicle stated in the application (Bell Jet Ranger). An approval would not limit a particular person to the operation of the helicopter, nor is this considered a valid planning consideration under Section 4.15 of the EP&amp;A Act.</li> <li>• As noted previously, as per Council's policy, compliance action has not been undertaken as a development application is being currently assessed, which may permit such land use. It should be noted that any complaint / compliance matter associated with DA18/0637 will be dealt with separately after the determination of this application. In the event that the application is refused, appropriate compliance action would be considered.</li> </ul>
<p><b>Risk Assessment Plan of Helicopter Operations:</b></p> <ul style="list-style-type: none"> <li>• Please advise what Council's plans / restrictions are currently in place to enforce helicopter safety breaches surrounding: <ul style="list-style-type: none"> <li>○ Fuel spillage. During refuelling, aviation fuel</li> </ul> </li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• The safety operation of an aircraft is to comply with the Civil Aviation Regulation and Act as regulated through National Civil Aviation Safety Authority (CASA).</li> </ul>

Summary of Objections	Applicant / Officer Response
<p>must be stored and/or transported onto the site.</p> <ul style="list-style-type: none"> <li>○ Fire on site. What firefighting measures are currently in place.</li> <li>○ Crash. What safety measures are in place to ensure the health and safety of local residents.</li> </ul>	<ul style="list-style-type: none"> <li>● Fuel storage / or refuelling of the helicopter is not being proposed. An appropriate condition of consent has been applied in this regard.</li> <li>● The abovementioned Regulations include the provision of fire safety and fire safety equipment on board the aircraft. The CAAP Guidelines for Onshore Helicopter Landing Sites also provides for firefighting measures on ground.</li> <li>● Applicable provisions for a helicopter crash are not a valid planning consideration under Section 4.15 of the EP&amp;A Act. Such measures would be controlled / regulated by the appropriate Aviation Authority.</li> </ul>
<p><b>Payment of Damages if an Incident Occurs:</b></p> <ul style="list-style-type: none"> <li>● Please advise what Council's position is regarding payment of bonds / restitution in the event of an incident involving the property / helicopter occurs. Is the liability attributed to one or more of the following entities: <ul style="list-style-type: none"> <li>○ Eniflat Pty Ltd – who submitted the application as owners of the land.</li> <li>○ The Applicant – who is claiming to be the pilot but who is reportedly bankrupt and consequently insolvent.</li> <li>○ Tweed Shire Council – as they were the consenting authority</li> </ul> </li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <p>These matters are not valid planning matters requiring consideration under Section 4.15 of the EP&amp;A Act. They are civil matters which not regulated by Council.</p>



Summary of Objections	Applicant / Officer Response
<p>who approved the application.</p> <ul style="list-style-type: none"> <li>○ Fly-Weel Pty Ltd – which is reportedly a QLD registered company and apparent owner of the vehicle.</li> <li>○ The applicant’s house and personal insurance company.</li> </ul>	
<p><b>Should the DA be approved, concerns are:</b></p> <ul style="list-style-type: none"> <li>• Noise levels and impact on the environment.</li> <li>• Hazards and risks to persons, waterways, stock, flora &amp; fauna.</li> <li>• Variations to the number of flights/day and flight hours could increase, with or without DA approval.</li> <li>• Variations to the flight path, with or without Council approval.</li> <li>• The possibility of any number of individual helicopters coming &amp; going from that site</li> </ul>	<p><b><u>Council Officer Comment:</u></b></p> <ul style="list-style-type: none"> <li>• This matter is not a valid planning matter requiring consideration under Section 4.15 of the EP&amp;A Act.</li> <li>• As noted within the body of this report, Council officers have undertaken a detailed assessment of the proposal in terms of potential hazards and risks. Appropriate conditions are in place to mitigate any potential impacts.</li> <li>• Conditions of consent would be very specific in the number of flights per week and approved hours of operation. Any amendment of these would require further consent from Council. Appropriate compliance action would be undertaken if approved flight movements / hours were not being met.</li> <li>• Any approval would incorporate a flight path for the take-off and landing from the subject site. Any amendment of the approved flight path would require further consent from Council. Appropriate compliance action would be undertaken if the approved</li> </ul>

Summary of Objections	Applicant / Officer Response
could increase, with or without Council approval.	<p>flight path was not being followed.</p> <ul style="list-style-type: none"> <li>An approval would limit the use of the helipad to that being proposed (i.e. personal use for transport to and from work). The operation and use of the helipad would be conditioned such that a flight log is maintained, which records the date and time of all inbound and outbound flights from the subject site. Any additional use of the helipad would require additional approval from Council.</li> </ul>

Having regard to the various issues raised through the submission period and addressed above, it is not considered that these would warrant refusal of the application.

**(e) Public interest**

The subject application has generated a substantial amount of interest from residences in the local area. The objections largely relate to concerns surrounding amenity associated with residential/rural living.

Council’s role in assessing these objections is to balance the land owner’s rights to develop their property in accordance with the applicable legislation. The assessment must have regard to the merits of the application as well as its potential impact on the amenity of neighbours.

In this regard, the application seeks consent for a maximum of ten helicopter flight movements (five inward bound and five outward bound movements) per week during nominated hours of operation.

It is considered that whilst the ancillary helipad operations are clearly of great concern to surrounding residences, the environmental planning instruments that apply to the proposed development give weight to supporting the development, subject to appropriate conditions of consent.

The application has been considered by Council officers; with no objections being raised to the development subject to the imposition of conditions of consent as scheduled in this report. The independent acoustic assessment found the proposal to be compliant with relevant noise criteria and concluded that subject to conditions on consent, the ancillary helipad would be acceptable in terms of potential amenity impact. In addition, external regulatory authorities have been consulted with in regard to the proposed use of the site for the purposes of an ancillary helipad, with no objections received.

As such, it is considered that the proposed development, subject to conditions of consent to restrict its operation and frequency, is in the public interest as it would facilitate an appropriate framework for Council to regulate the development by way of enforcement of compliance with conditions which are imposed to protect

the amenity of surrounding residences and ensure the operations are within the means to which consent has been sought.

**OPTIONS:**

1. Approve the development application subject to recommended conditions of consent.
2. Approve the development application with amended conditions.
3. Refuse the development application with specified reasons and commence appropriate action to have the activity stop.

Council officers recommend Option 1.

**CONCLUSION:**

The subject application has been subject to a vigorous assessment against the provision of the Environmental Planning & Assessment Act, Tweed Local Environmental Plan 2014 and relevant state and local provisions. Submitters concerns have been given due consideration and conditions of consent have been recommended to limit the operations and therefore mitigate potential impacts arising from the development. Based on the merits of the proposal, the application is considered worthy of support and recommended for approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable

**c. Legal:**

The applicant has a right to appeal Council's determination in the NSW Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Peer Review by The Acoustic Group - Acoustic Assessment dated 7 November 2018 (ECM 5657803)

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**6 [PR-PC] Development Application DA18/0910 for a Water Bottling Facility and Use of Existing Structures for the Purposes of Commercial Water Extraction at Lot 1 DP 735658; No. 477 Urliup Road Bilambil**

**SUBMITTED BY: Development Assessment and Compliance**

mhm



Making decisions with you  
*We're in this together*

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

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

Council is in receipt of a new development application for a water bottling facility (as defined under Tweed LEP 2018 which includes bulk water extraction) and use of existing structures for the purposes of commercial water extraction at No. 477 Urliup Road, Urliup.

The subject site has a history of complaints from the general public regarding water extraction (as approved by DA03/0445) specifically regarding the size of permissible trucks, the number of permissible trucks, the total permissible volume of extraction allowed and whether the structures on site are lawful.

A recent Land & Environment Court Matter 307373 of 2017 clarified the legal interpretation of the old consent (DA03/0445) and has highlighted that DA03/0445 only had approval for:

- One bore as per DA03/0445;
- One 30,000L storage tank in the sites pool shed as per DA03/0445;
- 6m trucks in length;
- 6 loads of water per day (12 trips) of operation (but not exceeding 5ML a year);
- 5ML of extraction commencing 1 July each year; and
- Hours of operation
  - Monday – Friday 7am – 6pm
  - Saturday & Sunday 8.00am – 6.00pm

The Court judgement outlined that the above operation (6m trucks holding 13,000L x 6 loads of water a day) would equate to 28.5ML and the consent only authorised 5ML as the General

Terms of Approval issued by the State Government formed part of the consent despite more recent approvals at a State level authorising 60ML for the subject site. The judgement clarified that, despite what licences the State approved under the Water Management Act 2000, the Council's consent under the Environmental Planning & Assessment Act 1979 still needed to be satisfied, which meant the old State General Terms of Approval in DA03/0445 should have been updated with either a modification or new DA from the applicant to align the State approval with Council's approval.

The applicant has promptly responded to this judgement and recognised the need to remedy his site approvals to reflect what he thought he already had approval for.

Therefore DA18/0910 seeks approval for:

- A Water Bottling Facility (as defined under Tweed LEP 2014 which includes bulk water extraction) with a **28.5ML** annual extraction limit (commencing 1 July of each year as per the licences);
- Use of existing unapproved infrastructure (tanks, pipes, bores, shelter, and driveway) on site for the commercial water extraction business – a Building Certificate (BC) has been lodged for these structures and this report includes the assessment of the BC;
- 6m trucks (carrying capacity approx. 13,000L);
- 6 loaded truckloads a day (12 total trips) = 42 total truckloads per week; and
- Hours of Operation (Seven days a week)
  - 7am – 6pm Monday – Friday and
  - 8am – 6pm Saturdays & Sunday

The applicant later amended their consent to seek approval for a 7.3m truck as one of their three trucks presently used on site measures 7.3m if the bull bar and extended cab areas are included. The applicant states it's their intention to presently stay with the three Ross trucks, two of which are 6m and one of which is 7.3m. Each have a carrying capacity of 13,000L.

This development application and separate building certificate provide a mechanism for the subject site's current operations to be legitimised for any future operations. It allows Council to apply more stringent conditions of consent which will enable Council to monitor site activities and undertake compliance in the future if necessary.

The change from DA03/0445 to DA18/0910 is from a 5ML allocation to a 28.5ML, and the use of different infrastructure (bores, tanks, pipes, filling stations, filling station shelter and driveway). However, the subject site already has a State Licence for 60ML. The applicant may apply for future DA's at a later date to extract up to his State allocation, however this DA was lodged in the first instance to ensure the family business can continue to operate but in a lawful manner if the subject application is approved.

DA18/0910 is a new stand alone application and must be assessed on its own merits, the comparative substantially the same test for Modifications does not apply to this new application.

The application has been supported by:

- A Building Certificate for all unauthorised structures relating to the commercial water extraction (this application was accompanied by a Structural Engineers

Assessment, Statutory Declarations from Larry Karlos regarding the construction methodology of the storage tank slabs and the filling station slab, details of the pipework for the operation, and historical data in regards to the bores construction from a licenced drilling company Wayne Richter Drilling Pty Ltd ;

- Copies of all the site State Licences for extraction up to 60ML per year;
- A Ground Water Assessment prepared by Ecological Australia dated December 2016; and
- A Statement of Environmental Effects describing the operation.

The application was publically exhibited between Wednesday 7 November 2018 to Wednesday 21 November 2018, and during this time 30 submitters contributed 34 submissions objecting to the proposal for the following main reasons.

- History of non-compliance
- Road Safety
- Sustainability of the industry and
- Amenity

While water extraction licences have been issued by Water NSW for the extraction of up to 60ML per annum for the purposes of irrigation, Council must consider if it is satisfied that the development (28.5ML) will not have an adverse impact on natural water systems or the potential agricultural use of the land.

DPI Water 2016 provide that the potential for connectivity between fractured and porous rock aquifers, and surface water is perceived to be low to medium in the Water Sharing Plan. The potential for impact on stream value and ecosystem function as a result of abstractions from this source is considered to be low as ground water is not seen as a major contributor. The travel time between ground water and surface water is considered to be years to decades.

The applicant's ground water assessment provides evidence to support the DPI conclusions above as summarised below:

- Although the Bilambil Creek is present on the site, there is no evidence to suggest a connection between the surface and groundwater systems, with microbiological water quality analysis of the two systems suggesting a direct disconnect. This has evidenced both by water quality analysis and water level observations with the Creek during periods of pumping;
- Groundwater levels are reported as relatively consistent throughout the year and are not influenced by season;
- Groundwater is consistently pumped across the year. During the dry season when flows decline in the ephemeral or intermittent sections of 911ambll Creek upstream of the site, water remains in the section of the creek running through the site whilst groundwater abstractions from the Neranleigh-Femvale Beds continue. Water levels recorded In November 2016 during the pumping test shows that pumping has no Impact on Bilambil Creek. The presence of a significant connection between the creek and the underling aquifer would be expected to result In changes to the water level In the creek with the creek potentially drying up completely;
- Microbiological water quality of water sampled from Bilambil Creek and from bores Illustrates very significant faecal contamination (as evidenced by E. coli in



the sample) of the surface waters whilst Neranlegh-Femvale groundwater abstracted from B5 reveals no E. coli;

- Despite sewage tank outlets on the site being located within 50 m of the some of the bores, no E. coli have been detected; and
- The water quality of the bores is good and extracted water is clear.

It is considered that the applicant and this assessment has demonstrated that the extraction of the water and its removal from the ecosystem will not impact on the potential agricultural use of both the landholding and the surrounding lands.

It is considered that this assessment has demonstrated that safe access to the site can be achieved and that Urliup Road can adequately accommodate the 6m-7.3m trucks as the size of trucks, the number of truck movements and the hours of operation are relatively the same as those approved under the existing consent that was approved in 2003 (and later modified) The access driveway has been constructed to accommodate the proposed vehicle and given that the truck length is less than a car towing a trailer, and there are no road upgrades required for the proposed vehicle, there are no objections to the application.

For these reasons the application is recommended for conditional approval which will enable better monitoring and compliance if necessary in the future.

Please note that Council's resolution from 15 November 2018 which in part states:

*Council re-instigates a more comprehensive planning proposal to remove clause 7.15 of the Tweed Local Environment Plan to prohibit water extraction for commercial water bottling facilities in light of the precautionary principle in regard to the long term sustainability of this activity, safety and amenity concerns, wear and tear on unsuitable rural roads, and the high level of opposition in the community for this activity.*

does not absolve Council from its statutory obligation to assess the subject application on its merits having regard to the current planning legislation. Therefore the following report considers the information currently available to assess DA18/0910.

## **RECOMMENDATION:**

**That:**

- A. Building Certificate BC18/0108 be approved concurrently with DA18/910 as detailed below.**
- B: Development Application DA18/0910 for a water bottling facility and use of existing structures for the purposes of commercial water extraction at Lot 1 DP 735658; No. 477 Urliup Road Bilambil be approved subject to the following conditions:**

## **GENERAL**

- 1. This development authorises a water bottling facility and the use of its associated infrastructure which already exists on site (bores, pipes, tanks, filling station structures and driveway) as defined in Clause 7.15 of Tweed LEP 2014, maximum extraction 28.5ML per year, and shall be completed in accordance**

with the

- **Statement of Environmental Effects (November 2018):**

The approved plans are as follows

- **Locality Map: Eniflat Pty Ltd marked Annexure A**
- **Figure 4.1 Bore Location Plan Groundwater Assessment Ecological Australia 2016**

except where varied by the conditions of this consent.

[GEN0005]

## **USE**

- 2. The Applicant is to maintain all relevant licences and permits from State Agencies as statutorily required while ever acting on this consent. The State licences are to cover the extraction amount authorised by this consent being 28.5ML**

[USENS01]
- 3. 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]
- 4. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.**

[USE0145]
- 5. All plant and equipment installed or used in or on the premises:**
  - (a) Must be maintained in a proper and efficient condition, and**
  - (b) Must be operated in a proper and efficient manner.**

In this condition, “plant and equipment” includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]
- 6. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.**

[USE0255]
- 7. The applicant shall comply with all requirements of the NSW Food Authority with respect to the commercial production, transport and sale of extracted water.**

[USENS02]
- 8. All activities shall comply with the Food Act 2003 and the Food Standards Codes where applicable.**

[USENS03]
- 9. All connections, hoses and fittings that are used for the supply of extracted water shall be constructed of food grade material and shall be maintained to the satisfaction of the NSW Food Authority.**

[USENS04]
- 10. A vehicle no larger than a 7.3m truck in length shall service the site with a carrying capacity of no more than 13,000L each.**

[USENS05]

11. Trucks accessing the site are restricted to the following hours at the subject site:
- 7:00 am to 6:00 pm - Mondays to Fridays
  - 8:00 am to 6:00 pm Saturdays and Sundays
  - All deliveries and pickups relating to the business are to occur within the approved hours
- [USE0185]
12. No more than 6 trucks per day (6 in 6 out) are permitted for water extraction purposes to the maximum annual extraction limit of 28.5ML. Should the extraction limit be reached in any given extraction year (commencing 1 July of each year) water extraction is to cease immediately and not commence until the new extraction year commences.
- [USENS07]
13. The applicant is to utilise a monitoring bore at all times.
- [USENS08]
14. Each bore is to have a meter installed demonstrating extraction volume. The meter readings are to be reported to Council biannually in a statement for review. The physical meter is to be made available to Tweed Shire Council upon request at any time.
- [USENS09]
15. The site is to install a CCTV system that records truck movements to the filling station 24 hours a day, 7 days a week, 365 days a year, with data to be archived and held for a period of 3 months. The CCTV is to be set to date and time stamp. In addition, the site is to maintain a log book containing data on every truck that enters the site for water extraction purposes. The log book is to contain information including:
- (a) Truck length
  - (b) Truck carrying capacity in volume
  - (c) Licence Plate
  - (d) Drivers Name
  - (e) Volume of water taken
  - (f) Time of day
  - (g) Running tally of water extracted from the site

The log book is to be provided to Council biannually demonstrating compliance with the conditions of this consent. CCTV footage is to be provided upon request to enable Council to audit compliance.

[USENS10]

16. Within 3 months of this consent being issued the applicant is to engage a hydrogeologist to:
- (a) Undertake a sample of creek water during a period of flow recession for comparison against groundwater quality of the fractured rock aquifer.
  - (b) Undertake further pumping tests from the existing bores with contemporaneous monitoring of creek water level and groundwater level in the unconsolidated deposits, if this exists.

The findings of this information is to be submitted to both Tweed Shire Council and Water NSW in the form of a Water Extraction Management Plan for review and approval. The Water Extraction Management Plan should contain details such as:

- **Monitoring requirements (location of monitoring bore)**
- **Any Required Ongoing Test & Reporting Mechanisms For Test Results**
- **Trigger points to stop water extraction**
- **Specifying the need for each bore to have a meter device as required by Condition 14**
- **Details of the log books required by Condition 15**
- **Bi -Annual reporting regime to Tweed Shire Council as required by Condition 15.**
- **Any other pertinent information recommended by the applicant's hydrogeologist.**

[USENS10]

**REPORT:**

**Applicant:** Mr L Karlos  
**Owner:** Eniflat Pty Ltd  
**Location:** Lot 1 DP 735658; No. 477 Urliup Road Bilambil  
**Zoning:** RU2 - Rural Landscape  
**Cost:** Nil – no structures proposed use of existing only proposed

**Background:**

**Site**

The subject site is legally described as Lot 1 DP 735658, known as No. 477 Urliup Road, Urliup.

The recent Land and Environment Court judgement made the following observations about the site:

*A site inspection was held on the first day of the hearing. Urliup Road between Bilambil village and the site is a narrow, tar-sealed rural road. It lacks made foot paths. It winds through the rural countryside. At a number of points, it would be difficult for two cars to pass and, as I was personally able to observe at a location near the site, it would not be possible for a car and a six- metre rigid tanker to pass at some locations...*

*The site is level between Urliup Road and Bilambil Creek ...*

*There are five licensed bores on the site.*

*One of them, a "stock and domestic supply bore", is located in the vicinity of Mr Karlos's, dwelling. It was his evidence, on site, that this bore was used for domestic-related activities such as garden-watering; topping up his swimming pool; washing his car; and other domestic activities of this nature. He did, however, observe that the potable water supply for the dwelling was not drawn from this bore but was obtained from the water that was pumped for the purposes of his commercial operations. He observed that this arrangement had been adopted because the bores that were used for water extraction were drilled and encased to bedrock, thus providing a higher quality water supply than could be obtained from the stock and domestic bore.*

*Of the four bores associated with his commercial activities, one of them is on the upward slope on the southern side of Bilambil Creek, approximately halfway between the storage tanks for the water extraction business and the boundary fence with the neighbouring property to the south-west. Mr Karlos explained that this bore was used for monitoring purposes and enabled checking of any "cone of depression" drawdown in the immediate water table.*

*The three remaining bores are located, approximately in a straight line, with one of them being located toward the centre of the grassed area enclosed within the perimeter of the turning loop roadway. The other two bores are up the slope on the southern side of Bilambil Creek but down-slope from the storage tanks later discussed. The bore which is the further south of these two bores, Mr Karlos advised me, had been drilled significantly deeper than the adjacent, middle bore. As a consequence, Mr Karlos informed me that that deeper bore to the south of the creek, together with the bore in the*

*middle of the truck-turning arrangement, were the two bores which were used primarily for water extraction, with the shallower of the three being kept in reserve but, as I understood him, used from time to time.*

*Mr Karlos pumps to five storage tanks located a little further up-slope from the two bores on the southern side of Bilambil Creek. A flat pad has been benched and these tanks, each with a capacity of 22,000 litres (giving a total storage capacity of 110,000 litres) have been installed in a closely spaced line on their pad, across the slope in a generally east-west line.*

*Mr Karlos informed me that, when pumping water to the storage tanks, the extraction rate was approximately 10,000 litres per hour. He also informed me that water was generally pumped from the storage tanks to fill up road tankers removing water to the bottling plant, rather than using gravity feed (although I did understand that gravity feed might be possible if required).*

*The filling station for the road tankers had a partial low brick enclosure that appeared to be about knee-high and open toward where the road tanker would pull up. There was also an awning over the equipment for the water loading apparatus. It was Mr Karlos's evidence that it took approximately 15 minutes to fill a six-metre road tanker. However the driver also had a range of administrative duties in recording gauge readings and other needed data in a log book - with this data being the necessary information required for Mr Karlos's administration of the commercial relationships he has with those who bottle the water he supplies.*

*The nature and location of what exists on the site for the operation of Mr Karlos's commercial water extraction activities, and the nature and extent of the approved activities and the approved locations of those activities, are matters to which it will be necessary to return. For the present purposes, it has been sufficient to provide this somewhat detailed description of the nature and location of the elements of Mr Karlos's installation to understand where they are and what they do.*

### **Site Development History (DA03/0445)**

The recent Land and Environment Court judgement made the following observations about the scope of the 2003 consent (DA03/0445):

*I have earlier set out, in some detail, Mr Karlos's description during the course of the site inspection of the present activities which are undertaken at the site in furtherance of his commercial water extraction business. To understand a matter which subsequently requires to be considered (the extent to which Mr Karlos's present water extraction infrastructure has been changed when compared to that which was approved by the 2003 consent with those changes having been made without any approval by the Council), it is necessary to examine the precise terms of the 2003 consent.*

*It is to be noted that the description of the development in the Notice of Determination of a Development Application signed by the Council's Manager, Development Assessment on 14 August 2003 describes the approved use as being:*

***Use of an existing stock and domestic water bore for the purpose of a rural industry comprising the harvesting and bottling of mineral water***



*Although Mr Karlos may be presumed to have the necessary Water Management Act 2000 approvals for the sinking of the additional bores now used for the purposes of his commercial water extraction activities, that approval does not constitute (or substitute) for approval under the EP&A Act. The use for which the 2003 consent was given is that which was expressly described in the Notice of Determination as set out above.*

*Condition (1) of the 2003 consent set the general parameters for that which was approved by the Council in granting that consent. Condition (1) has not been modified in any fashion during the intervening period. The condition is in the following terms:*

- (1). The development shall be completed in accordance with the Statement of Environmental Effects and accompanying plans prepared by Jim Glazebrook & Associates Pty Ltd dated March 2003, except where varied by these conditions.*

*Although there were (and remain) 13 further conditions imposed by the Council arising from its own assessment processes as well as the GTAs imposed at the request of the Water Regulator, these conditions act only in the fashion mandated by condition (1) to add to, alter or restrict matters contained in the Statement of Environmental Effects (the SEE) and the plans lodged with the original application to the extent that that is a necessary consequence of a relevant specific condition.*

*For present purposes, in undertaking the jurisdictional examination mandated by s 4.55 of the EP&A Act, conditions (3), (4) and the two volumetric water extraction conditions (all of which have been earlier reproduced) provide the starting point for the mandated comparative process to determine whether the jurisdictional "gate" is open for the modification application with which I am concerned.*

*Condition (1) mandates that the development must be carried out in accordance with the SEE, as lodged with the Council in support of the development application leading to the granting of the 2003 consent. In setting out various elements of the SEE in the following paragraphs, I have added emphasis where I consider it is appropriate as providing a proper understanding of the relevant limitations imposed by the 2003 consent.*

*The SEE that was lodged with the 2003 development application, and incorporated in the 2003 consent by condition (1), set out a number of matters that are relevant in these proceedings. The SEE was in Exhibit 6 at Tab 2. First, under the heading "Background", the SEE noted:*

*The rural industry would comprise the bottling of mineral water for commercial sale. The water is obtained from **an existing bore** located on the subject land.*

*The current bore licence (30BL 179893), issued by the Department of Land and Water Conservation on 25 January 2002 is for stock and domestic purposes only.*

*Accordingly, development consent from Tweed Shire Council for the rural industry, and a commercial license from the Department of Land and Water Conservation, are required prior to the commencement of commercial bottling operations.*

*In the description of the proposal, under the heading "General", the SEE said:*

*It is proposed to establish a mineral water bottling operation of the land. The proposal comprises:*

- *installation of a 30,000 litre storage tank in the existing pool shed,*
- *installation of filter systems to both the inlet and outlet of the storage tank,*
- *connection of the existing bore to the storage tank,*
- *establishment of a work and storage area for the bottling operations within the confines of the pool shed.*

*The second element in the general description of the proposal is under the heading "Infrastructure". This read:*

*The infrastructure associated with the operation consists of the following:*

- *existing bore, located approximately 150 metres from the pool shed (Bore Licence No 30BI179893 issued by the Department of Land and Water Conservation, 25 January 2002),*
- *pool shed, part of building approval 1221/95 issued by Tweed Shire Council, 1 November, 1995,*
- *30,000-litre plastic storage tank,*
- *filter system,*
- *20-litre storage bottles,*
- *details of the location of the pool shed is indicated on the plans.*

*I have earlier set out a somewhat detailed description of the physical facilities utilised by Mr Karlos at the present time for his water extraction enterprise and the manner of their operation.*

*The facilities as presently on the site are to be contrasted with those for which approval was sought in the plans incorporated by express reference in condition (1) of the 2003 consent. The plans referred to in the 2003 consent were tendered by the Council, and became Exhibit 6.*

*It is convenient to provide a copy of these plans at sufficiently large a scale to enable ready understanding of them as it is necessary to refer to them in some detail as set out below. A copy of the 2003 consent plans (at A4 reproduction) forms Annexure A to this decision.*

*As can be seen from a comparison of these plans with the earlier description of the present state of development at Mr Karlos's site, there is no relevant coincidence between that which was approved in the 2003 consent and that which was observed during the course of the site inspection.*

*The 2003 consent permitted extraction of water for commercial bottling purposes from a single existing bore located on the property. It is to be inferred from the Figure 3 Site Plan (see Annexure A) that this bore is the one described by Mr Karlos as currently being used for monitoring purposes and located toward the boundary of the site with the neighbouring property to the west. As earlier set out, water for Mr Karlos's current commercial water extraction operation is obtained from three separate bores (in the generally linear arrangement earlier discussed at [48] and [49]), none of which were identified in the 2003 consent plans;*

*The water pumped from the bores used for extracting water for commercial usage purposes is stored in five 22,000 litre tanks part way up the hill on the southern side of Bilambil Creek (as earlier described at [50]). The 2003 consent plan authorised the use of a single 30,000 litre tank said to be contained in a building described as Pool Shed shown in Figure 2 Pool Shed Layout (also see Annexure A); and*

*The water loading facilities currently utilised to load the present six-metre tanker trucks which carry water from the site to the bottling plant (a loading facility of some technical sophistication and incorporating equipment permitting the data recording by the tanker trucks' drivers as earlier discussed, at [52]) is not depicted at all on the 2003 development consent Figure 3 Site Plan; and*

*The loop road which has been constructed to facilitate movements of the tanker trucks to and from the loading facility described in the preceding point is also absent from the 2003 development consent plans in the Figure 3 Site Plan. I observe that it has not been suggested to me by Mr El-Hage that construction of this loop road was not an activity which would have required the granting of the Council's approval prior to its construction.*

*...In addition, there is no basis of which I am aware permitting the conclusion that this additional infrastructure for commercial water bottling purposes is exempt from the requirement for consent to be given by the Council.*

*There is no certification of the adequacy of this additional infrastructure for building certificate purposes, nor any application for consent for it to be used for the purposes of commercial water extraction (in line with the approach set out by Bignold J in Ireland v Cessnock Council (1999) 110 LGERA 311; (1999) NSWLEC 250 and subsequently followed consistently by this Court), that would permit approval for future use for such purposes.*

### **Proposed Development**

Therefore, having regard to the judgment findings above, the current Development Application and associated Building Certificate seek to remedy all of the issues identified by the Court.

The current DA seeks approval for the following as extracted from the applicant's Statement of Environmental Effects:

*Eniflat holds a number of licences (Annexure B) to extract water from a number of existing bores on the Site. The bores are licensed to extract 60ML in any 12 month period for commercial purposes. Details of the existing licenses are set out in the table below:*

Licence No.	Bore no.	Purpose	Vol/Y (ML)	Issue Date	Expiry Date
30WA320494	Bore 1	Commercial	5	4-Jun-08	30-Jun-19
30WA320492	Bore 2	Commercial	15	24-Jan-16	13-Sep-21
30BL207402	Bore 3	Monitoring	n/a	14-Sep-16	No expiry
30WA308262	Bore 4	S&D	n/a	12-Mar-15	No expiry
30WA320492	Bore 5	Commercial	40	14-Sep-16	13-Sep-21
<b>Total</b>			<b>60</b>		

*The applicant has operated a rural industry comprising the harvesting and bottling of mineral water on the Site since 2003.*

*The Applicant seeks development consent for the following development:*

*(A) the use of the existing bores for commercial water extraction purposes;*

*(B) the use of existing storage tanks for commercial water extraction purposes;*

*and*

*(A) the use of existing shelter/filling station, and driveway for commercial water extraction purposes.*

*(B) Commercial Water Extraction for 28.5ML*

*The approximate location of each of the bores is shown on the attached plan (Annexure A).*

*The location of the existing storage tanks, shelter/filling station and driveway are shown on the attached sketch plan (Annexure A).*

*In summary the proposal is to take water from the existing bores on the Site by trucks to commercial bottlers and distributors in QLD and possibly NSW in future. (Currently Yatala and Mansfield QLD)*

*The proposal would involve:*

- (i) a maximum of 28.5ML of water would be taken out in each 12 month period.*
- (ii) the water would be transported by 6m trucks with a maximum capacity of 13,000 litres. The vehicles are rigid trucks with a maximum length of 6 metres;*
- (iii) approval is sought for up to 6 loads per day (i.e. 12 trips per day);*
- (iv) the operating hours would be between 7 am to 6 pm Monday to Friday and between 8 am and 6 pm on Saturday and Sunday.*
- (v) all the necessary infrastructure to support the operation is currently in place.*

*The size of trucks, the number of truck movements and the hours of operation are the same as those approved under the existing consent that was approved in 2003 and has been subsequently modified (DA03/0445). The difference between DA03/0445 and the requested application is a conditioned 5ML capacity per year to the proposed request of 28.5ML to lawfully achieve the approved trips within the total ML capacity.*

The applicant later amended their consent to seek approval for a 7.3m truck as one of their three trucks presently used on site measures 7.3m when the bull bar and extended cab areas are included. The applicant states it's their intention to presently stay with the three Ross trucks, two of which are 6m and one of which is 7.3m. Each have a carrying capacity of 13,000L.











DEVELOPMENT/ELEVATION PLANS:

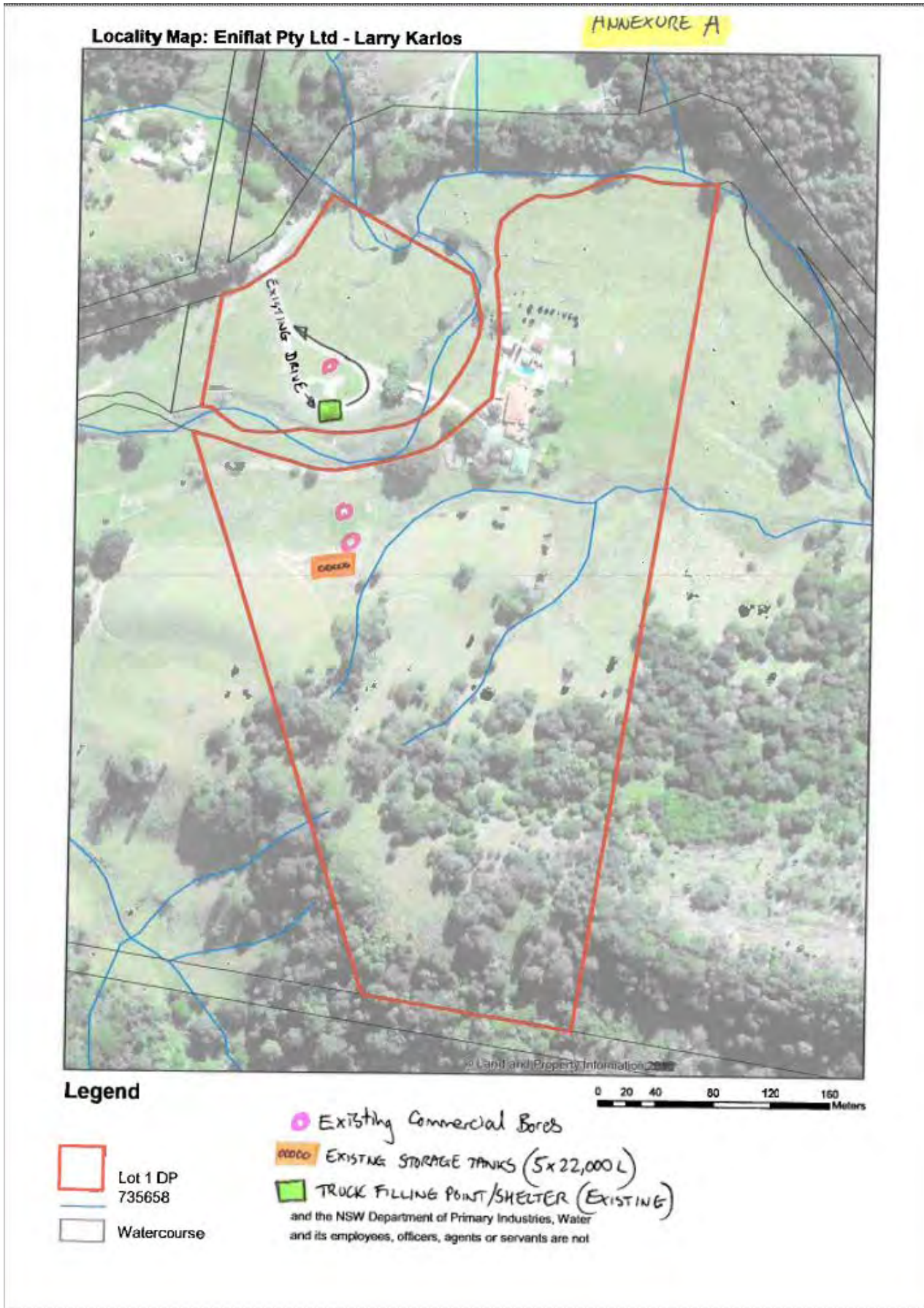






Figure 4-1: Bore location plan

Annexure B (1 of 4)

**BOX 1026Y  
(AK945509)**



NEW SOUTH WALES  
**CERTIFICATE OF TITLE**  
WATER MANAGEMENT ACT, 2000

WAL TITLE REFERENCE	
WAL40789	
SECTION	DATE OF ISSUE
1	30/11/2016
CERTIFICATE AUTHENTICATION CODE	
XZMV-VY-YKKM	

This certificate is issued under s87B of the Water Management Act, 2000.

WARNING NOTE: INFORMATION ON THIS REGISTER IS NOT GUARANTEED

TENURE TYPE: CONTINUING

HOLDER(S)

-----  
ENIFLAT PTY LTD

(WB AK945509)

ENCUMBRANCES

- 
1. SECURITY INTERESTS IN THE WATER ENTITLEMENT REPLACED BY THIS ACCESS LICENCE THAT WERE REGISTERED OR CAPABLE OF BEING REGISTERED WITH LPI OR ASIC BEFORE THE COMMENCEMENT DATE OF THIS LICENCE 1/7/2016 MAY BE RECORDED ON THIS LICENCE WITHIN THREE YEARS FROM THE COMMENCEMENT DATE. SEE NOTES.
  2. TERM TRANSFER: NIL

ACCESS LICENCE DETAILS

-----  
CATEGORY: AQUIFER

SHARE COMPONENT:

SHARE - 55 UNITS  
WATER SOURCE - NEW ENGLAND FOLD BELT COAST GROUNDWATER SOURCE  
WATER SHARING PLAN - NORTH COAST FRACTURED AND POROUS ROCK  
GROUNDWATER SOURCES 2016

EXTRACTION COMPONENT:

TIMES/RATES/CIRCUMSTANCES - SUBJECT TO THE CONDITIONS OF THE WATER  
ACCESS LICENCE  
EXTRACTION FROM - AQUIFER  
EXTRACTION ZONE - WHOLE WATER SOURCE

NOMINATED WORKS:

WORK APPROVAL NUMBER(S) - 30WA320492  
INTERSTATE TAGGING ZONE - NIL

CONDITIONS

-----  
LICENCE CONDITIONS FORM A PART OF THIS LICENCE AND AFFECT THE SHARE AND EXTRACTION COMPONENTS. CONDITION STATEMENTS ARE AVAILABLE FROM THE NSW OFFICE OF WATER (NOW).

NOTES

-----  
A WATER LICENCE INFORMATION SHEET IS AVAILABLE FROM THE NSW OFFICE OF WATER (NOW) AND SHOULD BE REFERRED TO IN INTERPRETING THIS LICENCE.  
NOW WEBSITE WWW.WATER.NSW.GOV.AU, PHONE 1800 353 104, EMAIL  
INFORMATION@KATER.NSW.GOV.AU

END OF PAGE 1 CONTINUED OVER

Annexure B (2 of 4)

BOX 1026Y  
(AK945509)

PAGE 2



NEW SOUTH WALES  
**CERTIFICATE OF TITLE**  
WATER MANAGEMENT ACT, 2000



WAL TITLE REFERENCE	
WAL40789	
SECTION	DATE OF ISSUE
1	30/11/2016
CERTIFICATE AUTHENTICATION CODE	
XZMV-VY-YKKM	



*Water Services Licence*  
www.water.nsw.gov.au

This certificate is issued under s87B of the Water Management Act, 2000.

NOTES (CONTINUED)

-----  
NOW REFERENCE NUMBER: 30AL320490  
PREVIOUS WATER ACT LICENCE NUMBER S : 30PT921128, 30BL183219,  
30BL207356.

\*\*\*\* END OF CERTIFICATE \*\*\*\*



Amend 5 (3 of 4)

BOX 1026Y  
(AK945509)



NEW SOUTH WALES  
**CERTIFICATE OF TITLE**  
WATER MANAGEMENT ACT, 2000



NSW TITLE REFERENCE	
WAL40790	
ENTROR	DATE OF ISSUE
1	30/11/2016
CERTIFICATE AUTHENTICATION CODE	
3WXP-2V-HY6R	



This certificate is issued under s87B of the Water Management Act, 2000.

WARNING NOTE: INFORMATION ON THIS REGISTER IS NOT GUARANTEED

TENURE TYPE: CONTINUING

HOLDER(S)

ENIPLAT PTY LTD

(WB AK945509)

ENCUMBRANCES

- SECURITY INTERESTS IN THE WATER ENTITLEMENT REPLACED BY THIS ACCESS LICENCE THAT WERE REGISTERED OR CAPABLE OF BEING REGISTERED WITH LPI OR ASIC BEFORE THE COMMENCEMENT DATE OF THIS LICENCE 1/7/2016 MAY BE RECORDED ON THIS LICENCE WITHIN THREE YEARS FROM THE COMMENCEMENT DATE. SEE NOTES.
- TERM TRANSFER: NIL

ACCESS LICENCE DETAILS

CATEGORY: AQUIFER

SHARE COMPONENT:

SHARE - 5 UNITS  
WATER SOURCE - NEW ENGLAND FOLD BELT COAST GROUNDWATER SOURCE  
WATER SHARING PLAN - NORTH COAST FRACTURED AND POROUS ROCK  
GROUNDWATER SOURCES 2016

EXTRACTION COMPONENT:

TIMES/RATES/CIRCUMSTANCES - SUBJECT TO THE CONDITIONS OF THE WATER  
ACCESS LICENCE  
EXTRACTION FROM - AQUIFER  
EXTRACTION ZONE - WHOLE WATER SOURCE

NOMINATED WORKS:

WORK APPROVAL NUMBER(S) - 30WA320494  
INTERSTATE TAGGING ZONE - NIL

CONDITIONS

LICENCE CONDITIONS FORM A PART OF THIS LICENCE AND AFFECT THE SHARE AND EXTRACTION COMPONENTS. CONDITION STATEMENTS ARE AVAILABLE FROM THE NSW OFFICE OF WATER (NOW).

NOTES

A WATER LICENCE INFORMATION SHEET IS AVAILABLE FROM THE NSW OFFICE OF WATER (NOW) AND SHOULD BE REFERRED TO IN INTERPRETING THIS LICENCE. NOW WEBSITE [WWW.WATER.NSW.GOV.AU](http://WWW.WATER.NSW.GOV.AU), PHONE 1800 353 104, EMAIL [INFORMATION@WATER.NSW.GOV.AU](mailto:INFORMATION@WATER.NSW.GOV.AU)

END OF PAGE 1 CONTINUED OVER

Annexure B (4 of 4)

BOX 1026Y  
(AK945509)

PAGE 2

NEW SOUTH WALES

# CERTIFICATE OF TITLE

WATER MANAGEMENT ACT, 2000



WAL TITLE REFERENCE	
WAL40790	
EDITION	DATE OF ISSUE
1	30/11/2016
CERTIFICATE AUTHENTICATION CODE	
3WXP-2V-HY6R	

This certificate is issued under s87B of the Water Management Act, 2000.



NOTES (CONTINUED)

NOW REFERENCE NUMBER: 30AL320493

PREVIOUS WATER ACT LICENCE NUMBER(S): 30PT921581, 30BL184761.

\*\*\*\* END OF CERTIFICATE \*\*\*\*

# BUILDING CERTIFICATE APPLICATION DETAILS

BC18/0108

Customer Service | 1300 892 872 | (02) 9070 2400  
PO Box 615 Murrumbidgee NSW 2586  
Fax (02) 9070 2425 | ASN 90 178 732 496  
tsc@tweed.nsw.gov.au | www.tweed.nsw.gov.au



## Application for a Building Information Certificate

made under the *Environmental Planning and Assessment Act 1979* section 6.26

### A1. Applicant

Surname/s

Given Name/s

OR

Company/  
Organisation

Postal  
Address

Reference

Telephone

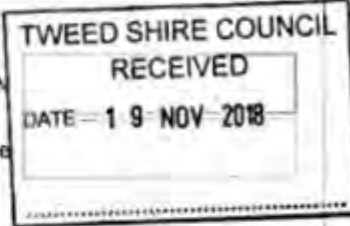
Mobile

Facsimile

Email

The applicant is:

- The owner of the land on which the building is erected; or
- Any other person with the consent of the owner of the land; or
- The purchaser under a contract for the sale of property, that comprises or includes the building or part, or by the purchaser's Australian legal practitioner or agent; or
- A public authority that has notified the owner of its intention to apply for the certificate.



### A2. Owner's Consent

As the owner/s of the subject land, I/we give consent to the lodgement of this application and to an authorised officer of Council to enter the premises for the purposes of inspecting work relevant to this application.

Name/s

ALL owners

Company  
(provide name &  
title of signatory)

Signature/s  
ALL owners

For access contact

Telephone

### A3 Particulars of Building

Type of Building  
eg. dwelling/units/commercial

5 x 22,000L Storage tanks, FILLING STATION/SHOWER, 3x Commercial bores, DRIVEWAY, PIPEWORK for commercial water extraction. *Plus associated Slab, footings.*

Description of part  
(if applicable)

Floor Area (m<sup>2</sup>)

200

Whole/Part

Does this building information certificate relate to unauthorised work?

Yes

No

**Application for a Building Information Certificate**

made under the *Environmental Planning and Assessment Act 1979* section 6.26

**A4. Land Description**

Lot Number	<input type="text" value="1"/>	Section	<input type="text"/>	DP/NPP/SP	<input type="text" value="735658"/>
	<input type="text"/>		<input type="text"/>		<input type="text"/>
	<input type="text"/>		<input type="text"/>		<input type="text"/>
	<input type="text"/>		<input type="text"/>		<input type="text"/>

Unit/Street No  Street:  Suburb/Town

**A5. Payment of Application**

Once your application(s) has been lodged, you will receive a Tax Invoice(s) via email. Please indicate how you wish to pay.

By Post Please post your cheque, made payable to Tweed Shire Council.

By Telephone Via Council's dedicated credit card payment telephone line.

In Person Cash, cheque, EFTPOS and credit cards (Visa and MasterCard) are accepted at either of the Customer Service offices between 8.30am and 4.00pm (AEST) Monday to Friday.

**NOTE!** A surcharge applies to payment via credit card.

**A6. Applicants Declaration**

I declare that all the information in this application is true and correct.

I understand that if the information is incomplete the application may be delayed or rejected.

Applicants Name

Date



### Application for a Building Information Certificate

made under the *Environmental Planning and Assessment Act 1979* section 6.26

#### Fee Schedule

##### Building Type

Single Dwelling	\$250.00	
Dual Occupancy	\$250.00	per unit (attached or detached)
Additional Inspection of Building before Issuing Building Certificate	\$90.00	

##### All Other Buildings

Not exceeding 200 square metres	\$250.00	
Exceeding 200 square metres but not exceeding 2,000 square metres	\$250.00	plus an additional 50 cents per square metre for each square metre over 200
Exceeding 2,000 square metres	\$1,165.00	plus an additional 7.5 cents per square metres for each square metre over 2,000
Information will be emailed and posted. When both are required a fee will apply	\$14.00	

**NOTE!**


*Additional fees may be charged in accordance with Clause 260 of the EP&A Regulations 2000 for unauthorised work.*



14 Nov 2018



**RE: STRUCTURAL ASSESSMENT AND CERTIFICATION FOR TANK SLAB AND FILLING STATION STEEL STRUCTURE**

Dear 

Following our site inspection on the 24<sup>th</sup> October 2018 at the above address, we make the following report regarding the structural assessment and certification of the tank slab and steel framed structure at the filling station.

Additionally, a Statutory Declaration has been provided by the owner/builder regarding the details of the concrete elements including concrete depths and the reinforcement within these elements. We have used this in conjunction with what we assessed on site in determining the structural adequacy of these elements.

**Site Wind Assessment**

- Structure Importance Level = 1
- Region B
- Terrain Category 2.5
- Ms = 1
- Mt = 1
- Md = 0.95 (For forces on entire structure)
- Cp,e = +/-0.5 (for awning structure)
- Vr = 48 m/s (Ult)

**Filling Station Steel Structure:**

This is a steel framed cantilevered structure with the following details: -

- Two 310UB32 columns 5000 tall. These columns area at 5850 ctrs.
- 5000x6000 steel roof frame that cantilevers off the UB columns.
- The roof consists of two roof beams that cantilever off the columns. These roof beams consist of 2/C200 sections.
- C150 purlins span between the roof beams and the centres of these vary from 1000-1500 ctrs.

CHARTERED PROFESSIONAL ENGINEERS & SCIENTISTS,

office@aldersonassociates.com.au  
www.aldersonassociates.com.au

42 Main St, Clonsilla VIC 3440  
(02) 8499 1552

011 88 888 100788







**Structural Assessment**

Based on the advice provided on the statutory declaration, and the visual inspection, it is our opinion that the tank slab is structural adequate, taking into account the limitations noted below.

Additionally, given the age of this structure and its location, this structure would have experienced some severe rainfall and wind events and given it is current condition, this supports our opinion of structural adequacy.

Whilst, the tanks slab has performed adequately for a number of years, given the tanks slab is located in the lower section of a hill, we do recommend that the owner should inspect the structure after extreme rainfall events, to ensure there is no undermining of any of the soils below any of the footings/slab.

**Certificate of Adequacy:**

Note, that we are unable to view all the structural elements such those elements encased in concrete or buried within the ground. In these instances, where the structure is not visible, we have inspected the structure to confirm it is performing adequately in conjunction with reviewing the advice provided on the statutory declaration. Based on our inspection and assessment noted above, we can confirm that the concrete elements, discussed in this report, are not indicating signs of movement that would lead us to have concerns regarding the structural adequacy of these elements.

Our assessment on this site has been limited to the concrete tank slab and supporting footings and the steel framed structure and footings at the filling station. We have not undertaken any geotechnical investigations on this site or have reviewed any other structural elements/aspects of the property.

Based on the above notes, we certify, the filling station structure and tank slab have adequate strength in accordance with the relevant Australian Standards and widely accepted engineering principles.

As with all structures, ongoing maintenance and monitoring is required to ensure long-term serviceability of the structure.

Yours faithfully,  
Greg Alderson and Associates Pty Ltd

**Anthony Mallam**  
BE(civil) hons, MIEAust, NER, CPEng, RPEQ 6987

CHARTERED PROFESSIONAL ENGINEERS & SCIENTISTS.

gld@aldersonassociates.com.au  
www.aldersonassociates.com.au

41 Main St, Clunes VIC 3480  
02 8429 1552



Greg Alderson  
Associates



Figure 1 – Filling Station awning roof



Figure 2 – Filling station column showing baseplate connection and surface rust

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43 Main St, Clunes NSW 2480  
02 6629 1552

ABN 58 594 160 789





Greg Alderson  
Associates



Figure 3 – Front retaining wall of tanks slab



Figure 4 – Hairline shrinkage crack in tanks slab

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www.aldersonassociates.com.au

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02 6629 1552

ABN 58 594 160 789



Greg Alderson  
Associates



Figure 5 – Tank slab

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office@elderassociates.com.au  
www.elderassociates.com.au

43 Main St, Clares NSW 2480  
02 6629 1552

ABN 58 594 160 789

Commonwealth of Australia  
**STATUTORY DECLARATION**  
*Statutory Declarations Act 1959*

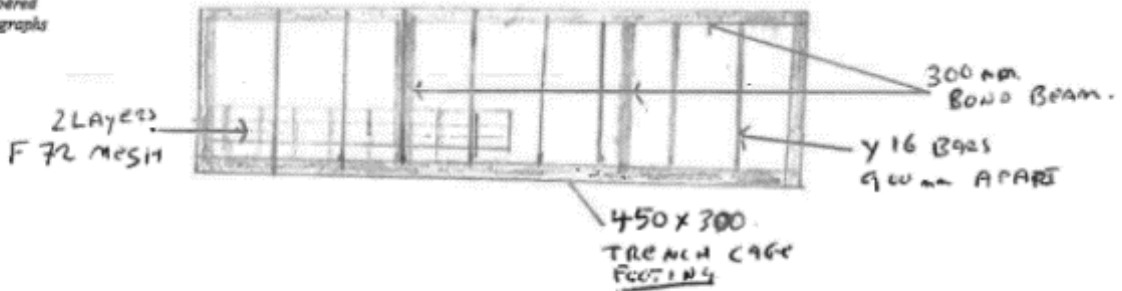
1 Insert the name, address and occupation of person making the declaration

I, LARRY KARLOS OF 477 UCLING RD PILAMBIL  
AM A WATER WHOLESALE BUSINESS THAT THE  
PLANS BELOW ARE TRUE.

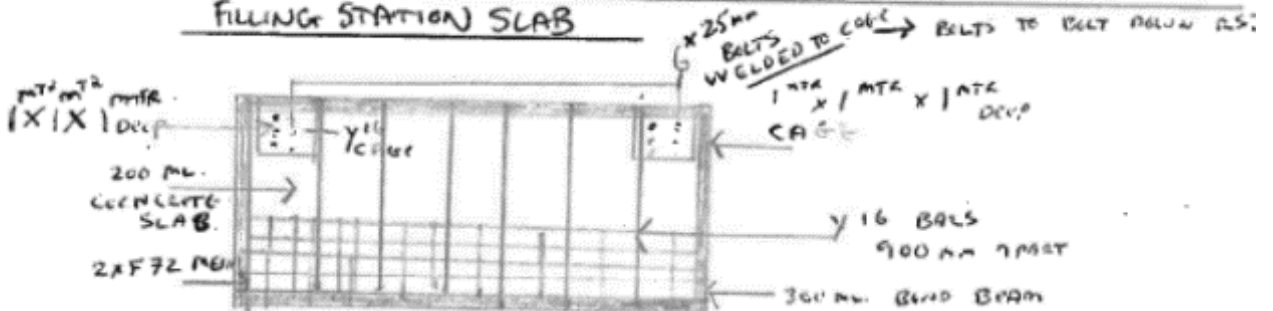
make the following declaration under the *Statutory Declarations Act 1959*:

2 Set out matter declared to in numbered paragraphs

STORAGE TANKS SLAB



FILLING STATION SLAB



I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

[Signature]

4 Place  
 5 Day  
 6 Month and year

Declared at Southport on 31 of October 2018

7 Signature of person before whom the declaration is made (see over)

Before me, [Signature]

8 Full name, qualification and address of person before whom the declaration is made (in printed letters)

Vasilios Chronopoulos  
DENTIST-SPECIALIST  
SOUTHPORT  
 Professor Vasilios Chronopoulos  
 DENTAL IMPLANTS & AESTHETICS  
 Suite 3 | 39 White Street  
 Southport QLD 4215 Australia

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment





Mobile: 0427 904 801

Email: [snpumps@gmail.com](mailto:snpumps@gmail.com)

Post: P.O.Box 1074, Coolangatta QLD 4225

Larry Karlos

Date: 14/10/2018

Refer: Pipe work report

Pipe work from the tanks to the pumps is 80 mm and 50 mm UPVC pressure pipe PN12.5 food grade pipe and valves.

Pipe work from pumps is 150 mm and 100 mm UPVC PN12.5 food grade to filling station, system fitted with standard water meter to 80 mm camlock fitting for commercial use.

System is also to 25 mm irrigation outlet.

Poly pipe work to domestic outlets.

All pipe work is in a one-meter deep trench with 50 mm of sand bedding around all pipes.

If you have any questions regarding the above, please do not hesitate in contacting myself.

Regards

Simon Nash

Simon Nash pumps and irrigation

**NSW DEPARTMENT OF LAND AND  
WATER CONSERVATION  
Natural Resource Products**

**FORM A PARTICULARS OF COMPLETED  
WORK**

**Codes table**

DRILLING METHOD										3
1	Auger - Hollow Flight					9	Rotary - Percussion - (Down hole hammer)			
2	Auger - Solid flight					10	Rotary - Percussion - Foam injection			
3	Cable Tool - Drill & drive casing					11	Rotary - Reverse circulation ñ Air			
4	Cable Tool - Mud stabilised					12	Rotary - Reverse circulation ñ Mud			
5	Rotary air					13	Rotary - Coring			
6	Rotary - Air/foam					14	Jetted - Air			
7	Rotary - Mud					15	Jetted - Water			
8	Rotary - Water					16	Other - See page 2, No 11			
WATER BEARING ZONE										4
TEST METHOD					FLOW MEASURING DEVICE					
1	Airlift	6	Pump - Helical Rotor		A	Container of known volume	F	Weir - Rectangular		
2	Bailer	7	Pump - Jet		B	Flow Meter	G	Weir - V Notch - 60°		
3	Pump - Centrifugal	8	Pump - Turbine		C	Flume	H	Weir - V Notch - 90°		
4	Pump - Cylinder	9	Freeflow		D	Orifice, plate & manometer	I	Other		
5	Pump - Electric submersible				E	Ultra sonic meter				
CASING / LINER DETAILS										5/6
MATERIAL					METHOD OF FIXING					
1	A.B.S	6	PVC - Class 12	11	Steel - Seamless	1	Glued	6	Welded - Butt	
2	Aluminium	7	PVC - Class 15	12	Steel Stainless 304	2	Kwik-lock	7	Welded - Collar	
3	Concrete cylinder	8	PVC - Class 18	13	Steel Stainless 316	3	Packer	8	Other	
4	Fibre glass (FRP)	9	Steel - ERW	14	Other	4	Riveted			
5	PVC - Class 9	10	Steel - Galvanised			5	Screwed			
CASING SUPPORT METHOD					TYPE OF CASING BOTTOM					
1	Driven into small hole	5	Held in clamp		1	Open end	5	Casing shoe		
2	Seated on bottom	6	Other		2	End cap	6	Wash down shoe		
3	Seated on backfill				3	Plug - concrete	7	Cementing shoe		
4	Cemented				4	Plug - wood	8	Other		
WATER ENTRY DESIGN										6
OPENING TYPE					SLOT ALIGNMENT					
1	Casing - Bridge slot	7	Casing - Plasma-cut slot		D	Diagonal				
2	Casing - Drilled holes	8	Casing - Perforated in hole		H	Horizontal				
3	Casing - Hand sawn slot	9	Screen - gauze / mesh		V	Vertical				
4	Casing - Louvre slot	10	Screen - round wire		<i>For MATERIAL and FIXING Codes Please refer to CASING DETAILS code table.</i>					
5	Casing - Machine slotted	11	Screen - wedge wire							
6	Casing - Oxy-cut slot									
GRAVEL PACK – METHOD OF PLACEMENT										7
1	Poured or shovelled into annulus	2	Placed through tremie pipe	3	Reverse circulated					
WORK PARTLY BACKFILLED OR ABANDONED – SEALING MATERIAL										11
1	Cement grout	3	Bentonite	5	Clay	7	Gravel			
2	Concrete	4	Drilled cuttings	6	Sand	8	Coarse stone			
DRILLER'S ROCK STRATA DESCRIPTION										15
Reporting sequence	1 Rock type	2 Colour	3 Grain size	4 Texture	To save confusion, write the full name of colour and abbreviate the following: light = lt, dark = dk, fine grained = fg, medium grained = mg, coarse grained = cg Texture can relate to: weathered, fractured, broken, hard, soft, etc.					
Example.	Sandstone	dk Grey	mg	Fractured						

Scientific and Technical Operating Procedures

Form: a	Refer to Document: a0009	Issue: 2	Date Issued: 15/06/2001
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**NSW DEPARTMENT OF LAND AND WATER CONSERVATION**  
Natural Resource Products

**FORM A 01062**  
**PARTICULARS OF COMPLETED WORK**

Page 1/3

Driller's Licence No: <u>DL1433</u> Class of Licence: <u>2</u> Driller's Name: <u>MAX RITTER</u> Assistant Driller's Name: <u>WAYNE LOWEN</u> Contractor: <u>ARMAX DRILLING P/L</u>	Work Licence No: <u>30 BL 179893</u> Name of Licensee: <u>LARRY KACHOS</u> Intended Use: <u>DOMESTIC</u> Completion Date: <u>22-2-02</u>
New bore <input type="checkbox"/> <input checked="" type="checkbox"/> Replacement Bore <input type="checkbox"/> Deepened <input type="checkbox"/> Enlarged <input type="checkbox"/> Reconditioned <input type="checkbox"/> Other (specify) ..... Final Depth <u>30</u> m	

DRILLING DETAILS			
From (m)	To (m)	Hole Diameter (mm)	Drilling Method Code
0	15	200	5
15	30	150	9

WATER BEARING ZONES											
From (m)	To (m)	Thickness (m)	S W L (m)	Estimated Yield (L/s)		Test method Code	DDL at end of test (m)	Duration		Salinity (Conductivity or TDS)	
				Individual Aquifer	Cumulative			Hrs	min	Cond. (µS/cm)	TDS (mg/L)
23	25	2	15		0.944	1	20	1		300	PPM

CASING / LINER DETAILS										
Material Code	OD (mm)	Wall Thickness (mm)	From (m)	To (m)	Method of Fixing Code	Casing Support Method		Type of casing bottom		Casing Protector
						Code		Code		
5	125	6	0	30	1					
Centralisers installed: No <input type="checkbox"/> Yes <input type="checkbox"/> (Indicate on Sketch) Sump installed: No <input type="checkbox"/> Yes <input type="checkbox"/> From <u>25</u> m To <u>30</u> m Pressure cemented: No <input type="checkbox"/> Yes <input type="checkbox"/> From _____ m To _____ m Casing Protector cemented in place: No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>										

WATER ENTRY DESIGN											
General							Screen	Slot Details			
Material Code	OD (mm)	Wall thickness (mm)	From (m)	To (m)	Opening type Code	Fixing Code	Aperture (mm)	Length (mm)	Width (mm)	Alignment Code	
5	125	6	20	32	5	1		150	3	V	

GRAVEL PACK										
Type	Grade	Grain size (mm)		Depth (m)		Quantity				
		From	To	From	To	Litres	or m <sup>3</sup>			
Rounded <input type="checkbox"/>	Graded <input type="checkbox"/>	4	6	15	30		3			
Crushed <input type="checkbox"/>	Ungraded <input checked="" type="checkbox"/>									
Bentonite/Grout seal: No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Method of placement of Gravel Pack: Code <u>1</u>										

For DLWC use only:  G  W

NSW DEPARTMENT OF LAND AND WATER CONSERVATION  
Natural Resource Products

**FORM A 01062**  
**PARTICULARS OF COMPLETED WORK**

Page 2/3

Work Licence No: 30 BL79873

**BORE DEVELOPMENT** 8

Chemical used for breaking down drilling mud No  Yes  Name: LADY KOLLOS

Method	Bailing/ Surging <input type="checkbox"/>	Jetting <input type="checkbox"/>	Airlifting <input checked="" type="checkbox"/>	Backwashing <input type="checkbox"/>	Pumping <input type="checkbox"/>	Other:
Duration	hrs	hrs	hrs	hrs	hrs	hrs

**DISINFECTION ON COMPLETION** 9

Chemical/s used	Quantity applied (litres)	Method of application
<u>CHLORINE</u>	<u>4</u>	<u>POURED INTO BORE</u>

**PUMPING TESTS ON COMPLETION** 10

Test type	Date	Pump intake depth (m)	Initial Water Level (S W L) (m)	Pumping rate (L/s)	Water Level at end of pumping (DDL) (m)	Duration of Test (hrs)	Recovery	
							Water level (m)	Time taken (hrs) (min)
Multi stage (stepped drawdown)	Stage 1							
	Stage 2							
	Stage 3							
	Stage 4							
Single stage (constant rate)								

Height of measuring point above ground level: ..... m Test Method Code ..... See Code Table 4

**WORK PARTLY BACKFILLED OR ABANDONED** 11

Original depth of work : ..... metres . Is work partly backfilled : No  Yes

Is work abandoned : No  Yes  Method of abandonment: Backfilled  Plugged  Capped

Has any casing been left in the work No  Yes  From ..... (m) To ..... (m)

Sealing / fill type Code	From depth (m)	To depth (m)	Sealing / fill type Code	From depth (m)	To depth (m)

Site chosen by: Hydrogeologist  Geologist  Driller  Diviner  Client  other  12

Lot No 1 DP No 735658 13

Work Location Coordinates Easting 153.25.66 Northing 28.11.57 Zone S

GPS: No  Yes  >> AMG/AGD  or MGA/GDA  (See explanation)

Please mark the work site with "X" on the DLWC CLID map.  
Indicate also the distances in metres from two (2) adjacent boundaries, and attach the map to this Form A package.

**Signatures:**

Driller: [Signature] Licensee: [Signature]

Date: 25-2-02 Date: 25-2-02



Bore (2)

NSW Department of Infrastructure,  
Planning and Natural Resources

**FORM A PARTICULARS OF COMPLETED BORE**  
VERSION 2004

Driller's Licence No: <u>4 78545</u> Class of Licence: Driller's Name: <u>TIM WALDRON</u> Assistant Driller's Name: Contractor: <u>SLADE Pty Ltd.</u> New bore <input checked="" type="checkbox"/> Replacement Bore <input type="checkbox"/> Deepened <input type="checkbox"/> Enlarged <input type="checkbox"/> Reconditioned <input type="checkbox"/> Other (specify) _____ Final Depth: <u>90</u> m				Work Licence No: <u>30 BL 183219</u> Name of Licensee: <u>L. KARLOS</u> Intended Use: <u>COMMERCIAL</u> Completion Date: <u>26/7/07</u>						
<b>DRILLING DETAILS</b>										
From (m)	To (m)	Hole Diameter (mm)	Drilling Method Code							
<u>0</u>	<u>16.2</u>	<u>204</u>	<u>5</u>							
<u>16.2</u>	<u>90.8</u>	<u>165</u>	<u>5</u>							
<b>WATER BEARING ZONES</b>										
From (m)	To (m)	Thickness (m)	S W L (m)	Estimated Yield (L/s)		Test method Code	DDL at end of test (m)	Duration (Hrs min)		Salinity (Conductivity or TDS) (µS/cm) (mg/L)
<u>19.5</u>	<u>20</u>	<u>0.5</u>		<u>0.5</u>		<u>1</u>	<u>NA</u>			<u>TABLE 600</u>
<u>65</u>	<u>78</u>		<u>10.85</u>		<u>2.9</u>	<u>1</u>	<u>NA</u>			
<b>CASING / LINER DETAILS</b>										
Material Code	OD (mm)	Wall Thickness (mm)	From (m)	To (m)	Method of Fixing Code	Casing Support Method Code		Code		
<u>11</u>	<u>219</u>	<u>4.8</u>	<u>0</u>	<u>9</u>	<u>1 + 5</u>			<u>2</u>		
<u>5</u>	<u>140</u>		<u>0</u>	<u>90.8</u>	<u>2 + 4</u>			<u>1</u>		
Type of casing bottom Code										
Centralisers installed: No <input type="checkbox"/> Yes <input type="checkbox"/> (Indicate on Sketch)										
Sump installed: No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> From <u>34.8</u> m To <u>90.8</u> m										
Pressure cemented: No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> From <u>0</u> m To <u>16.8</u> m										
Casing Protector cemented in place: No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>										
<b>WATER ENTRY DESIGN</b>										
General							Screen		Slot Details	
Material Code	OD (mm)	Wall thickness (mm)	From (m)	To (m)	Opening type Code	Fixing Code	Aperture (mm)	Length (mm)	Width (mm)	Alignment Code
<u>5</u>	<u>140</u>	<u>5</u>	<u>18</u>	<u>90.8</u>	<u>3</u>	<u>1 + 5</u>	<u>100</u>	<u>150</u>	<u>4</u>	<u>1</u>
<b>GRAVEL PACK</b>										
Type	Grade	Grain size (mm)		Depth (m)		Quantity				
		From	To	From	To	Litres or m <sup>3</sup>				
Rounded <input type="checkbox"/>	Graded <input type="checkbox"/>									
Crushed <input type="checkbox"/>	Ungraded <input type="checkbox"/>									
Bentonite/Grout seal: No <input type="checkbox"/> Yes <input type="checkbox"/>										
Method of placement of Gravel Pack Code										
<b>BORE DEVELOPMENT</b>										
Chemical used for breaking down drilling mud: No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Name: _____										
Method	Bailing/ Surging <input type="checkbox"/>	Jetting <input type="checkbox"/>	Airlifting <input checked="" type="checkbox"/>	Backwashing <input type="checkbox"/>	Pumping <input type="checkbox"/>	Other: _____				
Duration	hrs	hrs	hrs	hrs	hrs	hrs				
<b>DISINFECTION ON COMPLETION</b>										
Chemical/s used			Quantity applied (litres)			Method of application				
<b>PUMPING TESTS ON COMPLETION</b>										
Test type	Date	Pump intake depth (m)	Initial Water Level (S W L) (m)	Pumping rate (L/s)	Water Level at end of pumping (DDL) (m)	Duration of Test (hrs)	Recovery			
							Water level (m)	Time taken (hrs)	(min)	
Multi stage (stepped drawdown)	Stage 1									
	Stage 2									
	Stage 3									
Single stage (constant rate)										
Height of measuring point above ground level: _____ m Test Method Code _____ See Code Table 4										
For DIPNR use only: G W _____										







NSW Government

Department of Water & Energy

**FORM A  
PARTICULARS OF COMPLETED WORK**

Driller's Licence No: DL1698 **1**  
 Class of Licence: 6  
 Driller's Name: WAYNE RICHTER  
 Assistant Driller: KAREN RICHTER  
 Contractor: WAYNE RICHTER DRILLING

New bore  Replacement bore   
 Deepened  Enlarged   
 Reconditioned  Other (specify)   
 Final Depth 40 m

Work Licence No: ~~306207356~~ **2**  
 Name of Licensee: 306207356 Eniffat P/L  
 Intended Use: Commercial  
 Completion Date: 30.9.16

**DRILLING DETAILS** **3**

From (m)	To (m)	Hole Diameter (mm)	Drilling Method Code
0	6	250	9 + Steel
6	40	170	9

**WATER BEARING ZONES** **4**

From (m)	To (m)	Thickness (m)	SWL (m)	Estimated Yield (L/s)		Test method Code	DDL at end of test (m)	Duration		Salinity (Conductivity or TDS)	
				Individual Aquifer	Cumulative			Hrs	min	Cond. (µS/cm)	TDS (mg/L)
17	19	2	2.4	1.9	1.9	1	20	30		190	
34	37	3	2.4	0.03	1.93	1	40	30		190	

**CASING / LINER DETAILS** **5**

Material Code	OD (mm)	Wall Thickness (mm)	From (m)	To (m)	Method Fixing Code	Casing support method Code	Type of casing bottom Code
6	140	7.6	0	40	1+5	2	2

Centralisers installed No  Yes  (indicate on sketch)  
 Sump installed No  Yes  From 38 m To 40 m  
 Pressure cemented No  Yes  From      m To      m  
 Casing Protector cemented in place No  Yes

**WATER ENTRY DESIGN** **6**

General							Screen	Slot Details		
Material Code	OD (mm)	Wall Thickness (mm)	From (m)	To (m)	Opening type Code	Fixing Code	Aperture (mm)	Length (mm)	Width (mm)	Alignment Code
6	140	7.6	16	22	5	1+5	3	100		✓
6	140	7.6	34	38	5	1+5	3	100		✓

**GRAVEL PACK** **7**

Type	Grade	Grain size (mm)		Depth (m)		Quantity (Litres or m³)
		From	To	From	To	
Rounded <input type="checkbox"/>	Graded <input type="checkbox"/>	SAND		15	16	
Crushed <input type="checkbox"/>	Ungraded <input type="checkbox"/>	open hole		16	40	
Bentonite/Grout seal No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>				0	15	1800L
Method of placement of Gravel Pack Code <u>2</u>		Washouts + fractures				

For Departmental use only: **GW**



NSW Government  
Department of Water & Energy

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**FORM A  
PARTICULARS OF COMPLETED WORK**

Work Licence No: 30BL207356

**BORE DEVELOPMENT** **8**

Chemical used for breaking down drilling mud No  Yes  Name: \_\_\_\_\_

Method Bailing/Surging  Jetting  Airlifting  Backwashing  Pumping  Other: \_\_\_\_\_

Duration \_\_\_\_\_ hrs \_\_\_\_\_ hrs \_\_\_\_\_ hrs \_\_\_\_\_ hrs \_\_\_\_\_ hrs \_\_\_\_\_ hrs

**DISINFECTION ON COMPLETION** **9**

Chemical/s used CHLORINE Quantity applied (litres) 1 1/2 Method of application INJECTED

**PUMPING TESTS ON COMPLETION** **10**

Test type	Date	Pump intake depth (m)	Initial Water Level (SWL) (m)	Pumping rate (L/s)	Water Level at end of pumping (DDL) (m)	Duration of Test (hrs)	Recovery	
							Water level (m)	Time taken (hrs) (mins)
Multi stage (stepped drawdown)	Stage 1							
	Stage 2							
	Stage 3							
	Stage 4							
Single stage (constant rate)								

Height of measuring point above ground level \_\_\_\_\_ m Test Method Code  See Code Table 4

**WORK PARTLY BACKFILLED OR ABANDONED** **11**

Original depth of work: 110 metres Is work partly backfilled: No  Yes

Is work abandoned: No  Yes  Method of abandonment: Backfilled  Plugged  Capped

Has any casing been left in the work No  Yes  From \_\_\_\_\_ m To \_\_\_\_\_ m

Sealing / fill type Code	From depth (m)	To depth (m)	Sealing / fill type Code	From depth (m)	To depth (m)

Site chosen by: Hydrogeologist  Geologist  Driller  Diviner  Client  Other \_\_\_\_\_ **12**

Lot No 1 DP No 5280 735658 **13**

Work Location Co ordinates Easting 14-516 Northing 25-653 Zone WGS84

GPS: No  Yes  >> AMG/AGD  or MGA/GDA  (See explanation)

Please mark the work site with "X" on the CLID provided map.  
Indicate also the distances in metres from two (2) adjacent boundaries, and attach the map to this Form A package.

**Signatures:**

Driller: [Signature] Licensee: [Signature]

Date: 30.9.16 Date: 30.9.16



NSW Government

Department of Water & Energy

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**FORM A  
PARTICULARS OF COMPLETED WORK**

Work Licence No: 30BL207356

DRILLER'S ROCK/STRATA DESCRIPTION (LITHOLOGY)			WORK CONSTRUCTION SKETCH
Depth		Description	
From (m)	To (m)		
0	0.5	Brown loamy Soil	
0.5	5	Gravel	
5	10.5	Decomposed Grey wacky	
10.5	13	Grey wacky	
13	13.5	Fracture	
13.5	17	Grey wacky	
17	19	Fracture	
19	19.5	Hard Grey wacky	
19.5	22	Softer slightly broken Grey wacky	
22	34	Very Hard grey wacky	
34	37	Soft Grey wacky with quartz	
37	40	Hard grey wacky	

15

**WORK NOT CONSTRUCTED BY DRILLING RIG**

16

Method of excavation: Hand dug  Back hoe  Dragline  Dozer  Other \_\_\_\_\_

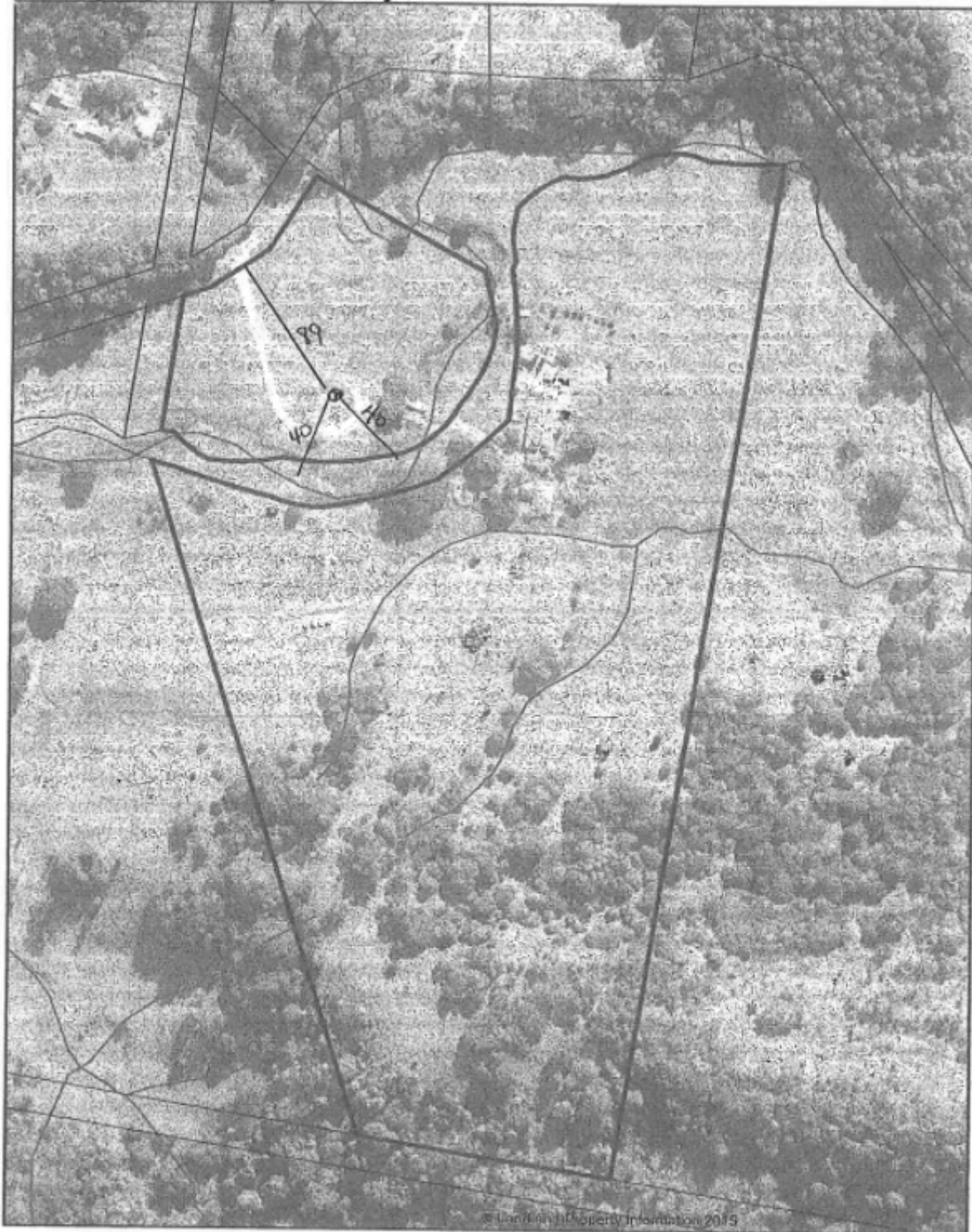
Depth (m)	Length (m)	Width (m)	Diameter (m)	Lining material	Dimensions of liner (m)	From Depth (m)	To Depth (m)

**Please attach copies of the following if available**




17

Geologist log No  Yes  Laboratory analysis of water Sample No  Yes  Pumping test(s) No  Yes   
 Geophysical log No  Yes  Sieve analysis of aquifer material No  Yes  Installed Pump details No  Yes

**Locality Map: Eniflat Pty Ltd - Larry Karlos**



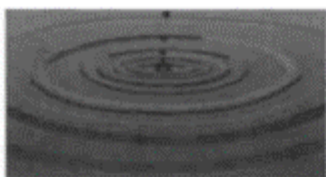
**Legend**

-  Lot 1 DP 735658
-  Watercourse
-  Cadastre

Disclaimer: The State of New South Wales and the NSW Department of Primary Industries, Water and its employees, officers, agents or servants are not responsible for the result of any actions taken of the information contained on this map or for any errors, omissions or inaccuracies contained in this map.







**Wayne Richter  
Drilling Pty Ltd**

60 Harper Road, Barney View  
Qld. 4287  
Ph; 07 5544-3237  
[richterdrilling@bigpond.com](mailto:richterdrilling@bigpond.com)

Water Bore Log  
477 Urliup Rd Bilambil NSW  
S28°14.516  
E153°25.653  
30BL207356

Date Drilled: 19.9.2016

Casing details: 125mm I.D.  
Class 12 PVC with PVC end cap

(All measurements are from ground level)

Depth: 40m

Standing water  
Level: 2.4m

Supply Airlifted: 1.9l/s

Salinity: 190 microsiemens/cm

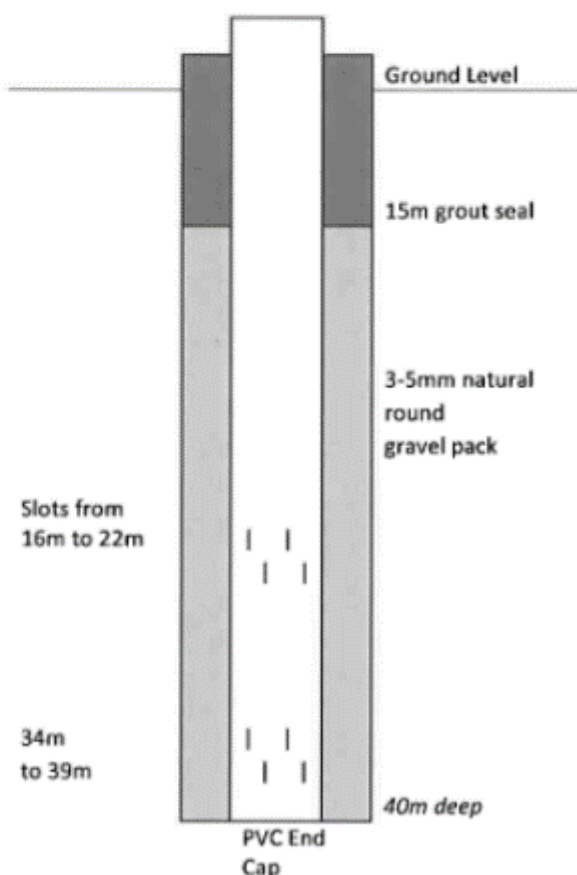
Set pump suction at: 37m

Casing height above ground:  
1.2m

Thank you for the job.

This bore is totally guaranteed for workmanship and materials. If you experience any problems or have any questions please don't hesitate to phone.

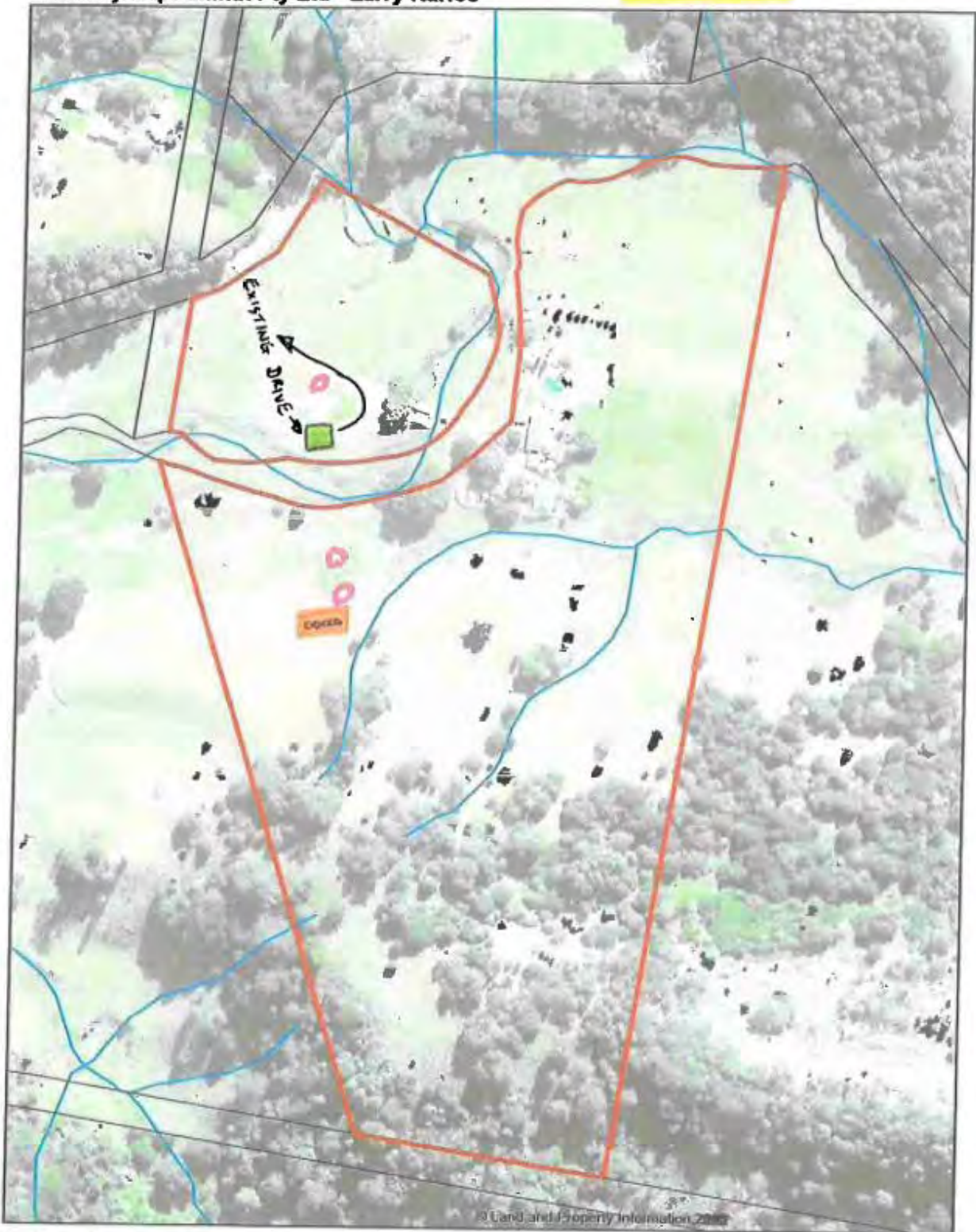
Thanks again,  
Wayne Richter










Locality Map: Eniflat Pty Ltd - Larry Karlos

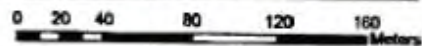
FIGURE 11



Legend

-  Lot 1 DP 735658
-  Watercourse

-  Existing Commercial Bores
  -  EXISTING STORAGE TANKS (5x22,000 L)
  -  TRUCK FILLING POINT/SHELTER (EXISTING)
- and the NSW Department of Primary Industries, Water and its employees, officers, agents or servants are not



## Assessment of Building Certificate BC18/0108

### Building Unit Report

DA Number	DA18/0910 & BC18/0108
Description	water bottling facility and use of existing structures for the purposes of commercial water extraction
Property Description	Lot 1 DP 735658; No. 477 Urliup Road BILAMBIL
Report Date	22 November 2018



#### ISSUES

- The subject Development relates to commercial water extraction including a water bottling facility and associated structures which were erected without prior Council approval approximately fifteen years ago.

#### COMMENTS

- A. The owner's son Matthew Karlos has lodged a Building Information Certificate application in respect of the unauthorised structures (Five 22 000 litre water storage tanks and associated footings and slabs, filling station/shelter, three commercial bores, driveway and pipework for commercial water extraction) associated with the Commercial Water Extraction carried out on site. This application includes structural engineer's certification in respect of the associated structures.
- B. *A site inspection was carried out on the morning of the 19 November 2018 with the owner Larry Karlos in respect of this DA and the BIC application. On site I introduced myself to Mr L Karlos and he accompanied me on my inspection of the subject plant.*
- C. *I asked LK about the construction and he advised me all works were carried out fifteen years ago. During the inspection of the structures he detailed to me the construction of the footings and reinforced concrete slab and associated structural elements. It was observed on site the reinforced concrete retaining walls and surface water drains associated with the water tanks*



*were all functioning adequately. The application includes from Greg Alderson Associates dated 14 November 2018 structural engineers certification of structural adequacy of the structures associated with the Commercial Water Extraction. From my inspection of the water storage tank holding area and associated retaining walls, the sampling point structures and the roofed tanker filling station there was no obvious indicators in respect of the aforementioned structures being structurally inadequate.*

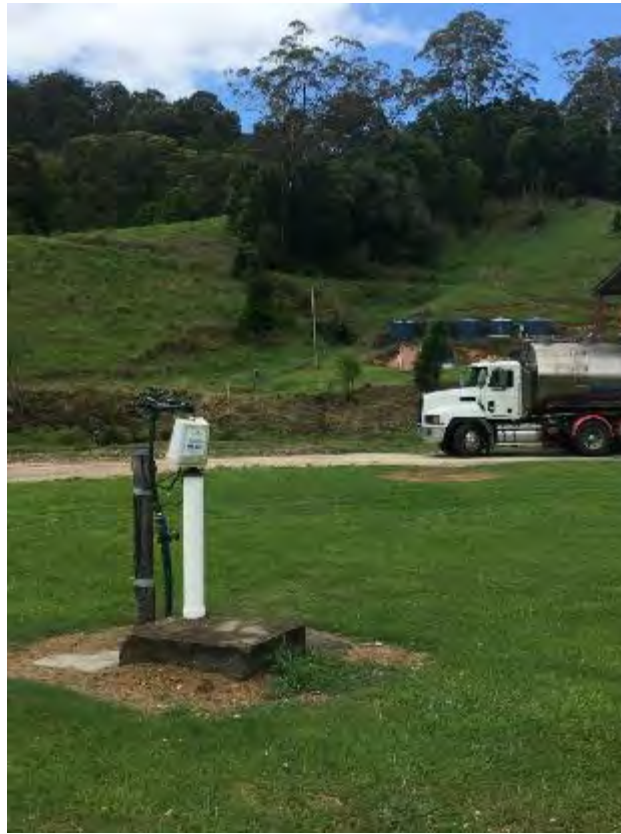
*Subject to planning consent being issued for the Commercial water Extraction there are no grounds to require the structures to be repaired, demolished, altered, added to or rebuilt as prescribed in Section 6.25 of the Environmental Planning and Assessment Act 1979 No 203 and refuse the issue of the Building Information Certificate.*

*Accordingly no objection is raised to the issue of the BC subject to the issue being concurrent with the issue of the development consent.*

*At the conclusion of the inspection a 6 metre long water tanker arrived and commenced filling. The photographs following relate to the subject structures.*







## **RECOMMENDATION**

No objections are raised to the proposal subject to the issue of Building Information Certificate which is to be concurrent with the issue of any Development consent.

**Senior Building Surveyor Date: 29 November 2018**

Therefore, the recommendation for approval of DA18/0910 (which deals with the use of the unauthorised structures going forward) also includes a recommendation for Council to approve the Building Certificate. The Building Certificate is a Certificate which acknowledges that the structures are engineer certified to be sound and that accordingly the Council will not make an order or take proceedings for a period of seven years (noting that the DA18/0910 could validate the use of these structures going forward).

An extract from the legislation is duplicated below to outline the Building Certificate pathway.

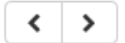


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## Environmental Planning and Assessment Act 1979 No 203

Current version for 26 October 2018 to date (accessed 23 November 2018 at 07:42)

Part 6 > Division 6.7



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### Division 6.7 Building information certificates

#### 6.22 Who may apply for building information certificates (cf previous s 149B)

The following persons may apply for a building information certificate in relation to a building:

- (a) the owner of the land on which the building is erected,
- (b) any other person with the consent of the owner of that land,
- (c) the purchaser under a contract for the sale of property that comprises or includes the building, or the purchaser's Australian legal practitioner or agent,
- (d) a public authority that has notified the owner of that land of its intention to apply for the certificate.

#### 6.23 Making of applications for building information certificates (cf previous s 149B)

- (1) Applications for building information certificates are to be made to the council for the area in which the land to which the application relates is situated.
- (2) The regulations may provide for the procedure for making and dealing with applications for building information certificates.

**Note.** Division 7.4 enables the regulations to prescribe the fee for an application for a certificate.

- (3) The regulations may assign an area that is outside a local government area to be part of a specified adjoining local government area in relation to building information certificates. For the purposes of this Division, the assigned area is taken to be a part of the local government area concerned.

#### 6.24 Issue of building information certificates (cf previous s 149D)

- (1) A council is (subject to this Division) required to issue a building information certificate as soon as practicable after an application for the certificate is made to the council.
- (2) The regulations may prescribe the form and manner in which a building information certificate is issued.



**6.25 Issue, nature and effect of building information certificate** (cf previous ss 149D, 149E)

- (1) A building information certificate is to be issued by a council only if it appears that:
  - (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the *Local Government Act 1993*:
    - (i) to order the building to be repaired, demolished, altered, added to or rebuilt, or
    - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
    - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or
  - (b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.
- (2) A building information certificate is a certificate that states that the council will not make an order or take proceedings referred to in subsections (3) and (4).
- (3) A building information certificate operates to prevent the council:
  - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
  - (b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,in relation to matters existing or occurring before the date of issue of the certificate.
- (4) A building information certificate operates to prevent the council, for a period of 7 years from the date of issue of the certificate:
  - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
  - (b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.
- (5) However, a building information certificate does not operate to prevent a council from making a development control order that is a fire safety order or a building product rectification order (within the meaning of the *Building Products (Safety) Act 2017*).
- (6) An order or proceeding that is made or taken in contravention of this section is of no effect.

**6.26 Miscellaneous provisions relating to building information certificates** (cf previous ss 149A, 149C, 149D, 149G)

- (1) A building information certificate may apply to the whole or to part only of a building.
- (2) On receipt of an application for a building information certificate, the council may, by notice in writing served on the applicant, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may reasonably be necessary to enable the proper determination of the application.
- (3) If the applicant is able to provide evidence that no material change has occurred in relation to the building since the date of a survey certificate which, or a copy of which, is supplied to the council by the applicant, the council is not entitled to require the applicant to supply a more recent survey certificate.
- (4) If the council refuses to issue a building information certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.
- (5) The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building information certificate.
- (6) The council must not refuse to issue or delay the issue of a building information certificate by virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in section 6.25 (1) (a) (Issue, nature and effect of building information certificate).
- (7) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building information certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.
- (8) The council must keep a record of building information certificates issued.
- (9) A person may inspect the record at any time during the ordinary office hours of the council.
- (10) A person may obtain a copy of a building information certificate from the record with the consent of the owner of the building.



**Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:**

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

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:

- (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 Tweed LEP 2014 allows the development of a water bottling facility in Zone RU2 Rural Landscape under Clause 7.15. The inclusion of Clause 7.15 has established that the clause itself would be consistent with the aims of the plan.

However, the specific circumstances in this case need to be reviewed to determine if the proposal itself is inconsistent with the aims set out above.

- As demonstrated in the groundwater assessment and agricultural comments submitted by the applicant, the proposed water extraction is compliant with the State Water Sharing plans and capable of concurrently occurring with any normal agricultural pursuits of the land such as cattle grazing.
- The already constructed driveway works have ensured that vehicles can enter the site safely and turn around on site and leave in a forward direction.

- The proposal will not have any detrimental impact on the various strategic policies and principles applicable to the Tweed Caldera as the use will not be inconsistent with local and cultural values.
- The proposal will add to the local economy and small business through the generation of additional income for the land owner and associated Transportation Company.
- The extraction of water and the recharge of the aquifer as advised by the Office of Water which will ensure this business is sustainable and will not adversely impact local waterways. The actual extraction process will not have any impact on scenic values as the development utilises existing unauthorised infrastructure which has been in place for 15 years. A Building Certificate ensures the structures are suitable for the intended ongoing use.
- The use of the road for 6 truckloads a day is consistent with the existing character and built environment as the trucks are no different to a car and trailer, a campervan or a garbage truck and have been operating in this manner for many years.
- Council has no evidence to suggest that the proposed use would be contrary to ecologically sustainable development principals. The applicant's groundwater assessment states the development is not likely to cause detriment to surface water or groundwater environments.
- The development will not impact the biological diversity or scenic quality of the locality given the development involves the removal of water from the aquifer via water trucks for transportation elsewhere.
- The land is not World Heritage listed.
- The development will not impact or be located within areas of high ecological value.
- The extraction of water will not impact upon the recovery of the Tweed Coast Koala population as no Koala vegetation will be removed to facilitate the development.

The proposed development is considered to be consistent with the aims of the Tweed LEP 2014

Clause 2.3 – Zone objectives and Land use table

The subject site is zoned RU2 – Rural Landscape and the objectives of this zone 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.*

Clause 7.15 of the LEP defines a **'water bottling facility'** as *'a building or place at which ground water from land in Zone RU2 Rural Landscape is extracted, handled, treated processed, stored or packed for commercial purposes.'*

Clause 7.15 further specifies that development for the purposes of a water bottling facility may be carried out on land in Zone RU2 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. Compliance with this caveat is assessed in more detail below.

Both the submitted groundwater assessment and advice from Water NSW indicates that the water extraction levels are sustainable and there is negligible impact on the surface water or groundwater environments in the locality.

The submitted groundwater assessment has advised that

*The Proposal is assessed under the Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources. The abstraction takes from the New England Fold Belt Coast Groundwater source which is a fractured rock aquifer. The upper extraction limit, based on estimated recharge rates, is 375,000 ML/year for the New England Fold Belt Coast (DPI Water, 2016). The current water requirements are only 35,468 ML/year with the majority of abstractions required for town water supply.*

Therefore the available long-term average annual groundwater extraction limit within the subject water source (New England Fold Belt Coast Groundwater Source) has sufficient assigned volume to support the proposed annual groundwater extraction (28.5ML) under the proposed development.

The rural landscape character will not be impacted by this development. The actual process of extracting the water will only be visible on the site due to the presence of the existing water storage tanks, filling station and intermittent presence of water trucks. Small trucks like that proposed are considered a common sight on rural roads to service properties in regards to garbage and sewer services, postal deliveries. Furthermore, larger trucks that service dairy and cattle farming and cane harvesting are also common occurrences in the broader area. The use of this rural property for the purposes of water extraction and hauling of this water off site by water tankers is not considered contrary to activities within the rural landscape that require trucks to conduct the business.

A groundwater assessment concluded that there is negligible hydraulic continuity with surface water or shallow groundwater despite proximity to Bilambil Creek and the good yield of the water bore (especially Bore 5). Therefore water extraction is considered a compatible use with the rural use of the land.

The zone objectives are considered satisfied.





Clause 7.1 – Acid Sulfate Soils

The site is mapped as contained Class 5 Acid Sulfate Soils. However, this clause is not applicable given that the proposal relates to the use of the site only and therefore no works (and associated soil disturbance) is a matter for consideration for this application.

Clause 7.2 - Earthworks

The proposed development does not include any building or earthworks and therefore Council can be satisfied that the matters for consideration under this Clause do not apply.

Clause 7.3 – Flood Planning

The subject site is not mapped to be flood prone or within an area subject to PMF.

Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

The proposed use of the site which is a cleared, grassed area for the purposes of a water extraction will have no impact on stormwater management.

Clause 7.10 - Essential Services

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,
- b. the supply of electricity,
- c. the disposal and management of sewage,
- d. stormwater drainage or on-site conservation,
- e. suitable vehicular access.

The applicant states in the Statement of Environmental Effects (SEE) that all essential services necessary for the development are available at the Site.

The site is serviced by mains power. The current water storage tanks contain a float and when the trucks come in and extract water the mains power kicks in for the pumps (which are inaudible and underground) to refill the storage tanks. As soon as the storage tanks are full the mains power turns off the pumps.

There are no further works required to service this development as the existing access is deemed acceptable

### Clause 7.15 – Water Bottling Facility

This clause allows for development to be carried out with development consent for the purposes of a water bottling facility on land in Zone RU2 Rural Landscape (or for the construction of a pipe or similar structure on any land for the purposes of conveying groundwater to a water bottling facility) 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.

Council has also received legal advice (on a separate but similar application for a water bottling facility at Rowlands Creek) that pursuant to Clause 7.15(1) of the Tweed Local Environmental Plan 2014 that Council has no power to grant consent for the purposes of a water bottling facility on the land unless it is satisfied that development will not have an adverse impact on natural water systems or the potential agricultural use of the land.

Therefore while the taking of up to 28.5ML of water from bores on the land is authorised by water access licences (as they authorise 60ML) under the Water Management Act 2000, Council must independently apply its mind to the issue of whether it is satisfied that the development does not have an adverse impact on natural water systems. The fact that there are water access licences on the land issued under other legislation does not absolve Council from needing to satisfy itself in this regard.

### *Water Sharing Plans*

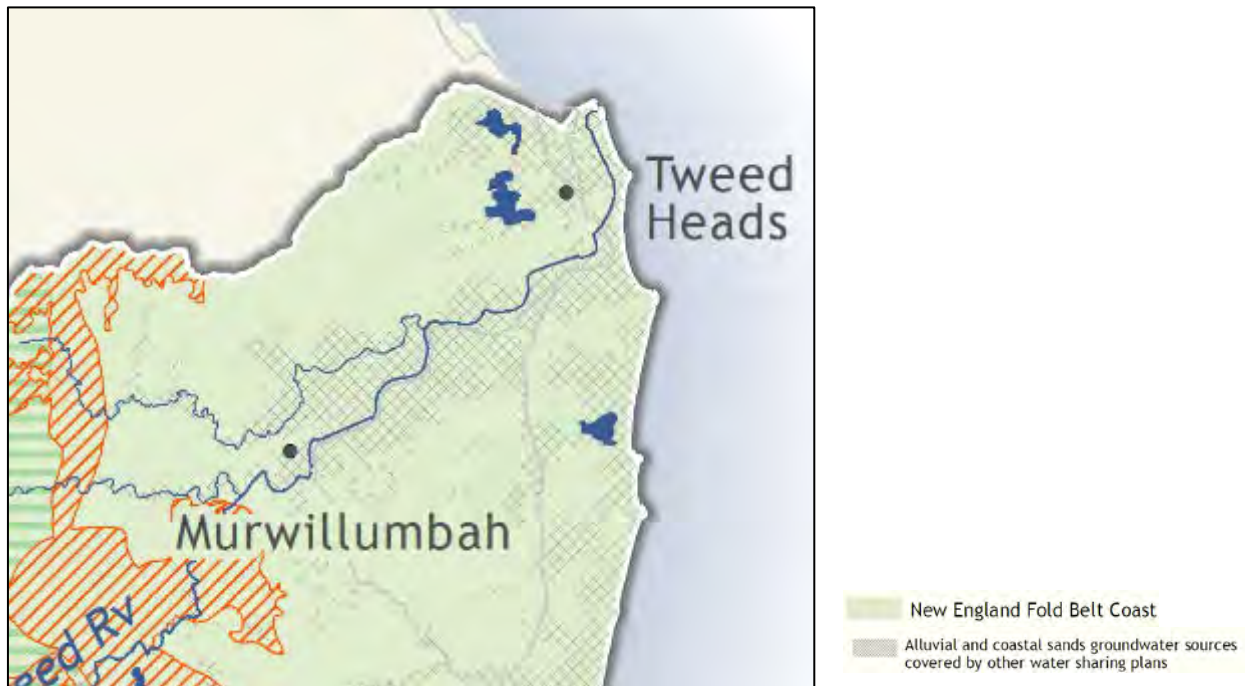
Water Sharing Plans are progressively being developed for river and ground water systems across NSW following the introduction of the *Water Management Act 2000*. These plans protect the health of rivers and groundwater while also providing water users with perpetual access licences, equitable conditions and increased opportunities to trade water through separation of land and water.

*‘An aquifer is an underground layer of water-bearing permeable rock or unconsolidated materials (gravel, sand, silt or clay) from which groundwater can be extracted. Aquifers can store large volumes of water, often accumulated over thousands or tens of thousands of years. Water enters (or recharges) aquifers via rainfall, surface flows from rivers and lakes or flow from adjacent aquifers.*

*Water sharing plans are required to reserve water for the overall health of the groundwater sources and to protect specific ecosystems that depend on groundwater, such as wetlands. This share of water reserved for the environment is also intended to sustain the aquifer system’s aquatic fauna and flora.*

*The water sharing plan defines a proportion of rainfall recharge that is available for extraction with the remainder of recharge reserved for the environment. Limiting the volume of extraction to a proportion of recharge is intended to reduce the risk of unsustainable groundwater extraction in the long term.’*

The subject site is located within the New England Fold Belt Coastal Groundwater Source governed by the Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources.

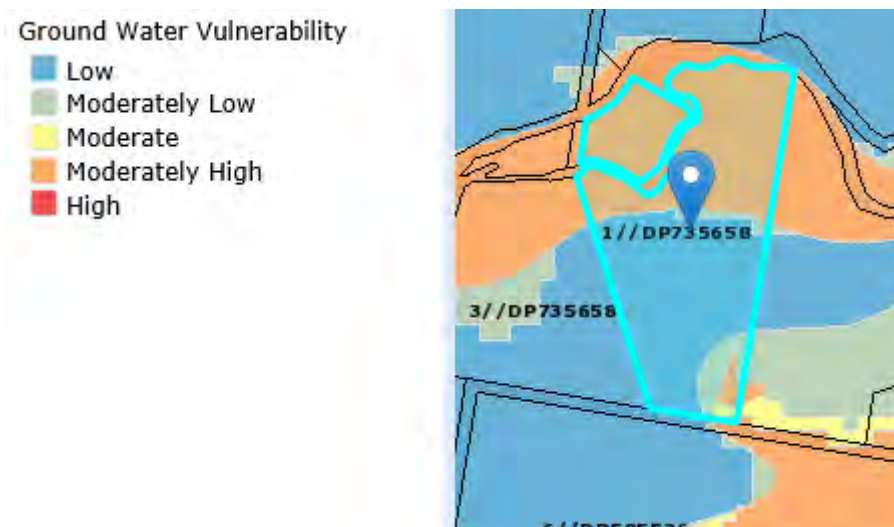


Extract from Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources 2016 (WSP033\_Version 1)

The following is extracted from the Water Sharing Plan

Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources – Background Document, Department of Primary Industries (Water), September 2016

### Groundwater Vulnerability



Ground Water Vulnerability as per Council's mapping system

Groundwater assessment of the proposal

The groundwater assessment prepared by Eco Logical Australia submitted with the DA. The report is from 2016 and canvasses the possibility of sustainably extracting more than what they called the already existing 28.5ML. Therefore given it concludes that more could be taken without impact this report is considered suitable to demonstrate that the existing proposed extraction to 28.5ML is acceptable:

*Conclusion of applicants Ground water Assessment prepared by Ecological Australia dated 3 December 2016*

*A hydrogeological assessment has been undertaken for the site at 477 Urliup Road, Bilambil and including the adjoining 483 Urliup Road site, The assessment has been conducted to Investigate potential groundwater and surface water Impacts from a combined commercial groundwater abstraction of up to 98 ML/ year.*

*The following conclusions have been drawn:*

- The site is assessable under the Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources (commenced 1st July 2016) within the New England Fold Belt Coast Groundwater Source;*
- The site currently abstracts groundwater from the Neranleigh-Fernvale Beds which is a fractured rock aquifer consisting of fractured greywacke to a proven depth of 90 m;*
- There are no other bores abstracting water from the Neranleigh-Fernvale Beds within 2 km of the site. The nearest groundwater bore is 900 m to the south west and abstracts from the overlying Lamington Volcanics fractured rock aquifer which is covered by the same Water Sharing Plan as the Neranleigh-Fernvale Beds but is classed as the North Coast Volcanics groundwater source. It is considered that the potential for impact on other groundwater bores from the abstraction is very low;*
- Interpretation of the water quality and water level data gathered as part of this assessment indicates that there is unlikely to be a hydraulic connection between groundwater within the Neranleigh-Fernvale Beds and Bilambil Creek. Abstraction of groundwater from the Neranleigh-Fernvale Beds is not considered likely to have an impact on this surface water system;*
- There are no groundwater dependent ecosystems within 1 km of the site, and none beyond 1 km which would be likely to be impacted by the abstraction due to the inferred absence of a hydraulic connection between the surface water and groundwater system; and*
- It is considered that additional abstraction bores, completed within the Neranleigh-Fernvale Beds and in accordance with the guidance from the relevant Water Sharing Plan (DPI Water, 2016) may be installed within 40 m radial distance of Bilambil Creek with negligible risk of detrimental impact to the creek.*

*The cumulative Impact from a total abstraction of up to 98 ML/ year has been assessed and is concluded to have very low to negligible risk to the surface water and groundwater systems.*

*The conditions of the abstraction licence allow OPI Water to vary the water allocation volumes at any time and It Is envisaged that an Increase of the total cumulative annual abstraction rate may be sought In the future. On the basis of the current hydrogeological conceptual model and recent data It Is considered likely that a cumulative annual abstraction rate of up to 120 ML/year from the combined 477 and 483 Uriup Road sites will not have more than a very low to negligible risk to the surface water and groundwater systems. The risk to the environment of a cumulative annual abstraction rate above 120 ML/year may need further assessment involving the analysis of long-term groundwater level monitoring data from periods Where the composite site Is abstracting at the current maximum licensed rate of 98 ML/year.*

Water NSW reviewed this material as part of the current DA and stated:

*the water access licences and work approvals are already in place and that the proposed extraction amount is less than the existing water access licences.*

*This being the case, WaterNSW has no need to comment on the proposal and no further consents are required from WaterNSW for the applicant to use the works for water bottling purposes other than obtaining the relevant development consent for such activities.*

The applicant's SEE states:

- (a) The Applicant has had a Groundwater Assessment prepared for the Site by Eco Logical in December 2016 (the Groundwater Assessment - Annexure C).*
- (b) The Groundwater Assessment examined the current level of extraction (up to 60 megalitres per year) and considered a proposal to increase the extraction to 98 megalitres per year).*
- (c) The Groundwater Assessment considered the impact of extraction on groundwater dependent ecosystems, groundwater users and surface water systems and concluded that the potential impacts of extraction up to 98 megalitres was either very low or negligible. The proposed 28.5ML is therefore also very low or negligible.*
- (d) It should also be noted that the extraction of water is governed by the relevant water sharing plan and the conditions on the licenses to ensure the equitable and sustainable use of the groundwater.*
- (e) Water NSW is the relevant regulatory authority for the licences. WaterNSW has assessed the appropriateness of the bores and the extraction rates prior to issuing the relevant licences.*
- (f) Water NSW has a copy of the Groundwater assessment and are satisfied with the assessment to the best of the Applicant's knowledge*

Notwithstanding the issue of the license on the basis of Water Sharing Plans, the submission of the groundwater assessment on behalf of the applicant has provided

Council with additional evidence that the existing bores and associated bulk water extraction for water bottling will not have an adverse impact on the natural water systems nor the potential agricultural use of the land. This confidence is supported by the review of the assessment by Water NSW.

Specifically, the actual extraction levels are considered of a volume that will not cause any long term adverse impacts on the natural water systems as the natural recharge exceeds the overall extraction rate. Further, as the water from the bore is unlikely to be from surface water leakage from local drainage lines, there is little risk of the agricultural use of the land being impacted by the bulk extraction.

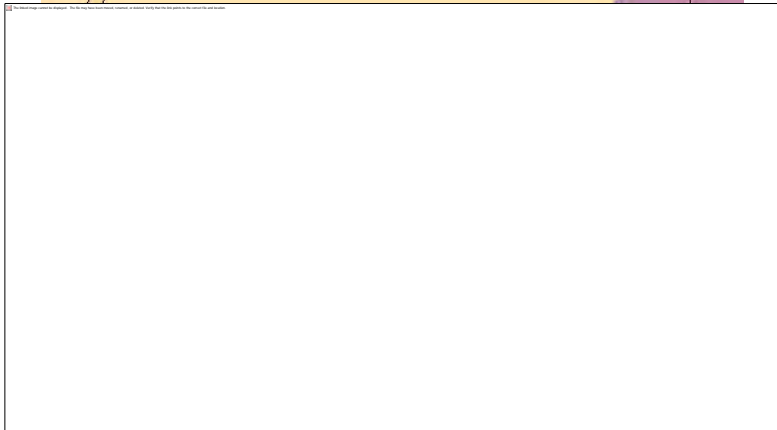
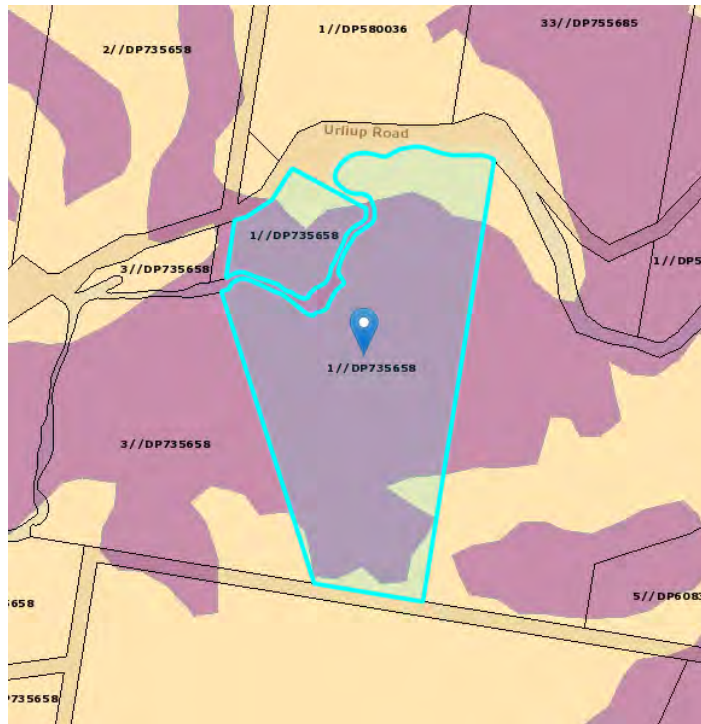
It is considered satisfactory that Council rely upon the background work undertaken by both the applicant's consultant and Water NSW to determine the capability of the aquifer to accommodate basic landholder water rights combined with licenses such as this. These multiple levels of assessment should provide Council with sufficient evidence that Clause 7.15 of the Tweed LEP is duly satisfied and the application is worthy support in regard to the water extraction component.

Clause 7.15 also requires a review as to whether the water extraction will adversely affect the potential agricultural use of the land.

The intention of the Clause was to safeguard against irreversible changes to the land or landscape that would prejudice the future use of the site for agriculture following the extinguishing of the water extraction on the site (erecting large water bottling facilities/sheds on the site that would prejudice future crop production or laying pipework, etc).

Given that the site is identified on the land suitability mapping for partial grazing, and not suitable for agriculture (see figure below) and the land is currently being partially used for grazing, it would appear that crop production on the site is likely to be limited.





Agricultural Land Stability as per Council's mapping system

The extraction of the water and its removal from the ecosystem will not impact on the potential agricultural use of the landholding, nor the surrounding lands.

Clause 7.15 is considered satisfied.

### **State Environmental Planning Policies**

#### **SEPP (Coastal Management) 2018**

The subject site is not located within an area mapped under this policy and therefore SEPP (Coastal Management) 2018 does not apply.

#### **SEPP No. 33 - Hazardous and Offensive Development**

It is considered that the proposed development does not incorporate or propose any uses which trigger a SEPP 33 assessment.

#### **SEPP No. 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 subject site contains a dual occupancy and prior rural industry which has been approved by Council. In addition, consideration of Contamination information as contained on Council GIS indicates that no known contamination has been recorded for the subject site and that no cattle tick dip sites are indicated within metres of the subject site.

However, in reviewing the history of the site, a previous concern was raised with regard to the use of chemicals for plant cultivation and the placement / burial of general waste within the subject site.

The applicant provided written responses clarifying that approximately 30 fruit trees were planted, but these were grown organically with no chemicals used. In addition it was noted that the area where general waste was historically buried is not in proximity to the proposed helipad, with no earthworks proposed for this application.

Council's Environmental Health Officer was satisfied with the applicant's responses, noting the written correspondence is accepted and indicate that potentially contaminating activities did not occur.

As such, the proposed land use is considered to be consistent the provisions of the SEPP, and appropriate measures have been taken to ensure the ongoing use of the water extraction will not jeopardise more sensitive residential land uses which are occurring on the site.

#### SEPP (Rural Lands) 2008

The aims of this Policy are as follows:

- (a) *to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) *to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) *to implement measures designed to reduce land use conflicts,*
- (d) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) *to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The subject site is zoned for rural purposes (RU2 – Rural Landscape). The site contains residential dwellings and an existing extractive water industry.

The site is identified as being Regionally Significant farmland however the proposed ongoing water extraction will not jeopardise the sites ability to be used for any other agricultural pursuits and therefore the development is considered unlikely to compromise the ability for the subject site and surrounding rural lands to maintain land uses which are consistent with the aims of this policy.



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

Draft TLEP No. 17 – Short-term rental accommodation. This draft LEP has no bearing on the subject application.

Nil applicable.

Please note that Council's resolution from 15 November 2018 which in part states:

*Council re-instigates a more comprehensive planning proposal to remove clause 7.15 of the Tweed Local Environment Plan to prohibit water extraction for commercial water bottling facilities in light of the precautionary principle in regard to the long term sustainability of this activity, safety and amenity concerns, wear and tear on unsuitable rural roads, and the high level of opposition in the community for this activity.*

does not absolve Council from its statutory obligation to assess the subject application on its merits having regard to the current planning legislation.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposal is to transport water from the site along Urliup Road to Bilambil Village and then assumed north to water bottling facilities in Queensland.

The proposed vehicle is approximately 6m truck (one of the three trucks used is slightly longer at 7.3m and therefore despite the applicant asking for 6m trucks a conditions of consent is recommended at 7.3m to authorise the current operations) with a capacity of 13,000 litres in each truck.

Approval is sought for up to 6 loads per day and 7 days per week, 52 weeks per year.

It is noted that the size of trucks, the number of truck movements and the hours of operation are reactively the same as those approved under the existing consent that was approved in 2003 and has been subsequently modified (DA03/0445).

Urliup Road is a public road.

It is noted that Urliup Road is narrow and windy and is sign posted to warn it's users as such, but as a public road it still does not exclude the use of large vehicles i.e. a truck delivery of bricks, etc., but the responsibility is on the driver knowing that he/she can safely gain access to and return from the job site. The difference here is that this applicant wants these traffic movements on a regular basis.

Council's Garbage Contractors (solo) service Urliup Road with a 9.5m long (2.5m wide) standard garbage truck (details provided below).

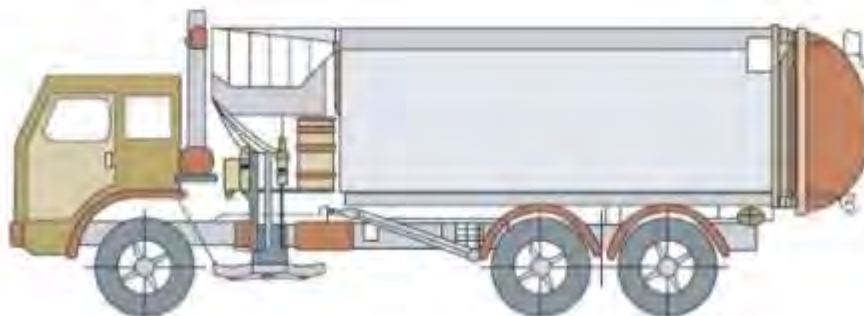
### Appendix E: Garbage Truck Dimensions for Residential Waste Collection

Developments that require Council garbage trucks to enter the site for the collection of residential waste must be designed to accommodate on-site truck movement.

Requirements regarding vehicle turning circles and driveway width/gradient are contained in *Australian Standard 2890.2 2002/Planning Facilities — off street commercial vehicles*.

It is recommended that an applicant speak with Council's Waste Management Unit in regards to the design of development proposals that involve garbage trucks entering the site. Services will not be provided where there are undue risks.

Typical Side Lift Council Garbage Truck used for Domestic Waste Collection (Wheelie Bin Service Truck)	
Length overall	9.5 metres
Width overall	2.5 metres
Operational height	4.3 metres
Travel height	4.3 metres
Weight (vehicle and load)	22.5 tonnes
Weight (vehicle only)	12.6 tonnes
Turning Circle	21.5 metres



Source of diagram: *Better Practice Guide for Waste Management in Multi-Unit Dwellings*, DECC 2008.

Urliup Road is also serviced by a school bus.

Provided the applicant's vehicles servicing the water extraction facility remains under 2.5m in width, there is no issue with the proposed 6.0m trucks or a truck slightly longer due to additions like a bull-bar or toe-ball. The increase in turning template of a truck with a bull-bar and/or toe-ball is minimal and would still fall well under the turning template produced from the garbage truck (and most likely the bus) that regularly service Urliup Road.

As such, further Traffic Studies are unwarranted for the facility to continue to be serviced by the existing 6.0m vehicles (or a slight increase in length).

It is also noted that the access driveway has been constructed to accommodate the proposed vehicle.

There are no traffic objections to the application.

#### A11-Public Notification of Development Proposals

DA18/0910 was widely notified with an additional ad placed in a public paper to alert anyone in the Shire with an interest in the matter to make a submission between Wednesday 7 November 2018 and Wednesday 21 November 2018.

A site notice was definitely placed at the site by 5 November 2018 by Council's Rangers. Council received complaints that there was no sign at the site and therefore an extension to the submission period should be granted.

Council was receiving many submissions to the proposal so it was evident people knew of the application and accordingly the complainant was advised that an extension to the notification period is not required and the assessment will proceed.

Another site notice was prepared and placed at the site on Wednesday 21 November 2018.

During the notification period 32 submissions objecting the development application were received.

The details of the submissions are outlined in a later section of this report.

#### **(a) (iia) Any planning agreement or any draft planning agreement under section 7.4**

The development is not accompanied or affected by any planning agreement or any draft planning agreement under Section 7.4.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises of a land use which is permissible in the zone. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

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

Not applicable as the development does not propose any demolition.

##### Clause 93 Fire Safety Considerations



The proposed land use does not include any building works which would be subject to fire safety provisions under the BCA or Clause 93 of the Regulation.

Clause 94 Buildings to be upgraded

The proposed development does require the upgrade of buildings pursuant to Clause 94 of the Regulation as no works are proposed on the site.

- (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 approx. 13.8km from the coastal foreshore and is not affected by coastal hazards. As such the proposed development does not contradict the objectives of the plan.

**Tweed Coast Estuaries Management Plan 2004**

Not applicable as the site is not located within the area to which this plan applies.

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

Not applicable as the site is not located within the area to which this plan applies.

- (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 a rural landscape area and therefore benefits from small to large lot rural lands which contain a range of land uses that are conducive to the built and natural rural environment.

Having regard to the rural context and setting, it is considered that the proposed truck sizes (approx. 6m – 7.3m), truck numbers (6 loads a day) and hours of operation hours (which are within EPA's "daylight" hours of 7.00am to 7.00pm Mondays to Saturdays and 8.00am to 6.00pm Sundays) are all acceptable.

These type of ruck movements have been occurring for many years and whilst objections have been received over the years such objections have been around non compliances with these parameters. The applicant is now more aware of their statutory obligations and intends to comply with the parameters of any consent issued.

This DA provides an opportunity to Council to better regulate the site with stronger conditions which are more easily enforceable.

The application is considered suitable given the context and setting of the site.

Ecological Impacts



The proposed development does not propose any works and is not a noise generating development. Having regard to the groundwater assessment the development is unlikely to result in adverse impact to threatened species, waterways and ecological processes.

Bushfire

The subject site is partially mapped as bushfire land.



The existing structures are non-habitable and are not subject to 4.14 of the EP& A Act 1979 given their distance from the primary dwelling on the site.

Amenity

The water extraction operation has been occurring at the site since 2003 under Development Consent DA03/0445. There is a history of compliance issues, substantial community objection and modification applications associated with the water extraction activities at the site.

No works are proposed as part of the application.

Potential noise generating equipment associated with the DA includes water extraction pumps. However, these pumps are located below ground and are subject to hours of operation which were placed upon the operation in previous DA consent for 7am-6pm Mon-Fri, 8am-6pm Sat-Sun. Conditions are recommended to be applied to manage potential impacts to amenity and to maintain consistency with previous DA consent and modifications for water extraction activities at the site.

### Traffic Noise

The use of existing infrastructure for the extraction of 28.5 ML of water per year would involve 12 movements (six deliveries) of water trucks per day. Truck movements have the potential to impact on the amenity of surrounding land users, however vehicles are permitted to travel on this road unlimited. Delivery trucks associated with the extraction of water at the site have already been operating for a number of years under the operation's modified approval allowing 12 movements (6 metre trucks, 13,000 litres each) per day between the hours of 7am-6pm Mon-Fri, 8am-6pm Sat-Sun. This application does not propose to change or increase the number of trips, relative size of trucks or hours of operation. Six deliveries per day (13,000 litres per truck) over the duration of a year provides 27.8 mega litres of extracted water.

Consideration was given to requiring a noise impact assessment in previous assessments of water extraction operations at the site, however the 12 truck movements per day associated with the operation were not considered intrusive – six trucks per day will enter the site, be filled with water and leave. Except for engine noise the activity is considered passive. As this application does not propose to alter the number of trips, relative size of trucks or hours of operation, it is considered that a noise impact assessment is not required, and that potential impacts to amenity could be managed through conditions consistent with previous DA consent and modifications for the site in relation to hours of operation and allowable truck movements.

The operation has a history of operating beyond consent conditions, triggering notification and concern from the community. It is considered prudent to include non-standard conditions requiring measures such as logbooks for delivery drivers to record trip numbers, dates and times, volume of water taken etc, which would enable appropriate compliance monitoring and enforcement if required.

### Acid Sulfate Soils

Acid sulfate soil Planning Maps prepared by the Department of Infrastructure, Planning and Natural Resources (1997) show that the subject site resides within Class 5 land area. The Tweed LEP 2014 makes reference to works within 500m of

adjacent Class 1,2,3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.

No works are proposed as part of this application. Acid Sulfate Soil is not considered a constraint for the proposal.

#### Contaminated Land

No works are proposed as part of the application. Approval for extraction of water already exists.

#### Food Premises

The handling/bottling of extracted water occurs in Qld. Previous comments from DA03/0445.03 &.04 state that “the water has been subjected historically to extensive water quality testing”, and was conditioned accordingly. The application should be conditioned to provide consistency with previous management measures in DA consent/modifications for water extraction activities at the site.

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

#### Surrounding Land uses/Development

As mentioned previously in the report, the subject site is located within a rural setting and the provision of water extraction if conditioned and managed appropriate is considered permissible with consent and justified on merit.

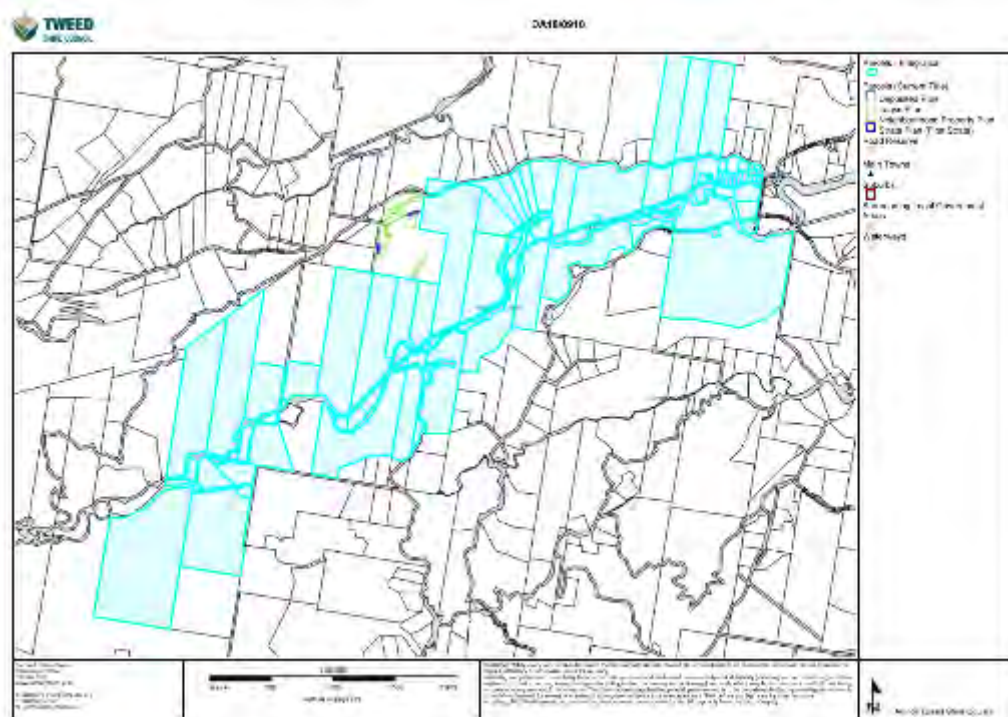
Therefore, having regard to the permissibility of the development in the zone combined with the limited trips, small truck size, hours of operation and recommended conditions of consent to further regulate the manner in which the water extraction is monitored it is considered that the site is suitable for the proposed development.

#### Flora and Fauna

The subject site contains vegetation that is likely to form a habitat for native flora and fauna. However, the area of land which accommodate the water extraction activities is clear of vegetation and the activities (trucks arriving and leaving) would not encroach upon the vegetation, Furthermore, the applicants ground water assessment concluded that there is no connection between the aquifer and the local Bilambil Creek thus not affecting local habitat relying on that water source. .

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

DA18/0910 was widely notified based on the below map.



Additionally an ad was placed in a public paper to alert anyone in the Shire with an interest in the matter to make a submission between Wednesday 7 November 2018 and Wednesday 21 November 2018.

A site notice was placed at the site by 5 November 2018 as follows:



Council received complaints that no sign was at the site and therefore an extension to the submission period should be granted.

Council was receiving many submissions to the proposal so it was evident people knew of the application and accordingly the complainant was advised that an extension to the notification period is not required and the assessment will proceed.

However, another site notice was prepared and placed at the site on Wednesday 21 November 2018.





During the notification period 30 submitters contributed 34 submissions objecting the development application were received.

The details of the submissions are below.

Issue	Specific Issue	Comment	Response
Existing unlawful infrastructure	Lack of addressing existing unapproved structures.	Structures may not be of Council standards. Lack of Bushfire Assessment for existing structures.	The existing structures are non-habitable and are not subject to 4.14 of the EP& A Act 1979 given their distance from the primary dwelling on the site.
Water Extraction	Amount proposed 'unacceptable increase'.	Old hydrology report based no previous DA modification – a new report should be provided for newly proposed mega litre.	The Groundwater Assessment considered the impact of extraction on groundwater dependent ecosystems, groundwater users and surface water systems and concluded that the potential impacts of extraction up to 98 megalitres was either very low or negligible. The proposed 28.5ML is therefore also very low or negligible. No further report is considered necessary.



Issue	Specific Issue	Comment	Response
Land & Environment Court Decision	References made to decision and quoted in multiple submissions.	Non-compliance with the Water Management Act. Unauthorised infrastructure should not be approved.	<p>This application follows the ruling of the Land &amp; Environment Court to allow a lawful path forward.</p> <p>The application has been assessed on its merits and is deemed acceptable.</p>
Loss of amenity	Impact on local amenity	<p>Concern for rural ambience.</p> <p>Trucks and water mining degrades the rural amenity.</p> <p>Concerns that the peaceful and rural characteristics of the area will disappear.</p>	<p>The conditions of consent recommended will limit the nature of the development to protect residential amenity and offer a strong basis for any future compliance action if necessary.</p> <p>The operations are for daylight hours only utilising a standard vehicle (6 – 7m truck) which is permissible on the road.</p>
Traffic	Trucks too large	<p>Trucks are too heavy for the current road conditions.</p> <p>Trucks will destroy road surface.</p> <p>Lack of turning points along Uriup Road.</p>	<p>It is difficult to determine or attribute road maintenance costs to the proposed development. The 6m -7.3m vehicles are comparable to garbage trucks. The major determinant of the maintenance regime to roads is the volume of heavy vehicles as a percentage of total traffic. Whilst this development would attribute 42 laden trips a week to the road network it should be noted that this activity has occurred for many years and is consistent with permissible users on the road.</p>

Issue	Specific Issue	Comment	Response
	Increase in truck movement	Increase will impact road movement and amenities. Trucks 7 days/week (intensity of trucks) not equivalent to other rural industries	The site already has approval for activity 7 days a week. These hours meet the EPA daylight hours provisions and are considered acceptable on merit.
	Hours of operation	Trucks waking up adjoining properties. 7 days/week is too many. Concerned for further breaches on hours of operation.	The site already has approval for activity 7 days a week. These hours meet the EPA daylight hours provisions and are considered acceptable on merit.
	Road Safety	Dangerous for pedestrians and for riding horses along the road. Previous accidents along Urliup Road, including school bus Waste Collection truck already an issue Urliup Rd high risk of accidents. Bridge infrastructure not designed for proposed truck sizes.	The proposed vehicle type is a small 6m truck. These vehicles are permissible on the road and are considered acceptable on merit under the circumstances.
	Speed Limit	Trucks are driving too fast along Urliup Rd.	This is a matter for the NSW Police Force.
	Current road condition	Tight curves, poor vision, subject to land slip, corrugations and flooding. Referring to landslips and fallen trees and roadside guide posts being knocked down by large vehicles. Road not made to accommodate proposed truck size. Referring to Council Warning sign that road is not suitable for heavy vehicles. Road must be upgraded to safely accommodate the trucks (size and weight).	It is noted that Urliup Road is narrow and windy and is sign posted to warn it's users as such, but as a public road it still does not exclude the use of large vehicles i.e. a truck delivery of bricks, etc., but the responsibility is on the driver knowing that he/she can safely gain access to and return from the job site.  Council's Garbage Contractors (solo) service Urliup Road with a 9.5m long (2.5m wide) standard garbage truck (details provided below).  A school bus services the road.  The proposed vehicles up to

Issue	Specific Issue	Comment	Response
			approximately 6m - 7.3m in length are considered comparable to other permissible regular road users in the area.
	Nearby school	Concerns about pre-school and before/after school care service on Bilambil Road.	All drivers are to adhere to the road rules.
	Noise	From truck movement due to increased traffic. Trucks moving up- and downhill will create noise.	Consideration was given to requiring a noise impact assessment in previous assessments of water extraction operations at the site, however the 12 truck movements per day associated with the operation were not considered intrusive – six trucks per day will enter the site, be filled with water and leave. Except for engine noise the activity is considered passive. Suitable conditions of consent are recommended.
Environmental Effects	Impact on natural water system	Bilambil creek showing signs of water depletion Possible sustainability of underground aquifers and impact of extraction to creeks, river, flora & fauna. Effect on larger waterways (Tweed River). Significant reduction on spring water availability after water extraction started operating. Possible contamination of waterways. Further hydrology testing should be conditioned. Long- and short term effects should be considered. Reference made to comments from Ian Acworth (UNSW)	The groundwater assessment indicates that there is unlikely to be a hydraulic connection between groundwater within the Neranleigh-Fernvale Beds and Bilambil Creek. Abstraction of groundwater from the Neranleigh-Fernvale Beds is not considered likely to have an impact on this surface water system. A water extraction management plan is recommended to be conditioned to monitor the extraction activities for the life of the extraction operations.

Issue	Specific Issue	Comment	Response
		regarding hydraulic connection between aquifer and creek.	
	Impact on water table	Unknown impacts should be studied further.	See above.
	Impact on flora and fauna	Removal of vegetation required to accommodate trucks are of concern. Effect of HCV (high conservation value) areas. Concerns for the rich biodiversity.	No roadworks are proposed. No impact on flora or fauna.
	Plastic Pollution	Landfill DCP A15 not covering water mining – plastic bottles end up in land fill.	The use is permissible within the zone and the matters this development is assessed against are limited to those prescribed within the Environmental Planning and Assessment Act 1979 and the Tweed Local Environmental Plan 2014.
Public Interest		References made to SEPP (Rural Lands) 2008 as not being met (specifically Clause 7). Not in public interest.	The Rural SEPP has been considered and is considered satisfied as detailed in the above report.  The application will create a commercial operation for a local resident and employ a trucking company. This will add money to the local economy.  The land use is permissible and it is in the public interest to uphold the LEP 2014 if applications can be justified on merit.
Sustainability		Non-ethical business	The application itself does not approve the end use of the water. This application is for the trucking of bulk water off the site for commercial purposes (likely using plastic bottles). The proposed use is permissible.

Issue	Specific Issue	Comment	Response
Licences	No monitoring of water being extracted	Amount of water should be monitored on a local scale.	Suitable conditions have been recommended.
	Commercial Use	Licences should not be permitted on rural land for commercial use. Licences should only be provided for domestic-, stock- and local agricultural use.	This statement is contrary to current State and Local Planning laws regarding water extraction.
Financial impact	Increased rates	Concern for increased rates for future road repairs.	This is not a matter for consideration as part of this development application.
	Decrease in tourism	Increased traffic has potential to impact tourism.	There is no evidence to suggest that 6 trucks seven days will reduce tourism to the area.
Current application	<p>Criticism of TSC approval from Land &amp; Environment court.</p> <p>Application insufficiently address hydrological impacts, bushfire assessment and public interest.</p> <p>Illegal infrastructure should be removed/undone.</p> <p>Approval for operations/structures outside original approval should not be supported.</p> <p>Fines should apply to illegal structures.</p> <p>Application showing private landowner (Larry Karlos) and the company Eniflat – community wondering which legal entity is responsible.</p> <p>Application not meeting objectives of the RU2 zone.</p> <p>Earthworks required for illegal infrastructure must be re-considered.</p> <p>References made to request from regional water minister Niall Blair to require review of impacts of water bottling facilities (media). New DA should be suspended until further review is complete.</p> <p>Health and safety concerns regarding pipes (plastic) transporting water from bores.</p> <p>The DA description should not include 'water bottling facility' as this is a misleading definition for the community.</p> <p>Application should refer to completed works (illegal structures) and be assessed as proposed works.</p> <p>No value has been given to existing infrastructure.</p> <p>Right for retrospective approval may cause other businesses to complete illegal structures.</p> <p>Traffic safety report should be included in DA.</p> <p>Previous DAs should not be addressed in current assessment.</p> <p>Conditions of consent is difficult to enforce for proposed development.</p>	<p>The above report and/or the recommended conditions of consent discusses many of these issues.</p> <p>Historical compliance matters are being handled separately in regards to this matter.</p> <p>This report is a merit assessment of DA18/0910.</p>	

Issue	Specific Issue	Comment	Response
	Risk Assessment Plan should be provided with current DA.	Request for current DA to justify increased extraction and truck movement and not to seek approval for non-compliant operations.	

Having regard to the various issues raised through the submission period and addressed above, it is not considered that these would warrant refusal of the application.

**(e) Public interest**

If a development is deemed to result in unacceptable amenity or environmental impacts it could be regarded as not being in the public interest. Despite the public receiving minimal direct benefit from this development, and members of the locality not supporting the concept of water harvesting, the development is considered acceptable based on the applicable legislation applying to this type of business. It is considered in the broader public interest to uphold the planning controls that apply under the Tweed LEP 2014 where water extraction is a permissible use by virtue of Clause 7.15. The above report addresses the relevant provisions and concludes that a recommendation for approval is justified in this instance. The public interest is not considered to be compromised by the use and therefore the application is supported.

**OPTIONS:**

1. Approve the development application and building certificate subject to the recommended conditions of consent.
2. Approve the development application and building certificate with amended conditions.
3. Refuse the development application and building certificate with specified reasons and commence appropriate legal action to have the activity stop.

Council officers recommend Option 1.

**CONCLUSION:**

Water extraction in the Tweed has become a very topical and sensitive matter with large numbers of the community philosophically opposed to the practice. Concerns have been raised in regard to the sustainability of using aquifer water for water bottling operations.

Whilst Tweed Shire Council has resolved to amend the Tweed LEP 2014 to prohibit the use, the subject application must be assessed against the current relevant provisions of the Environmental Planning and Assessment Act 1979, the relevant SEPPs applying to the land and the Tweed Local Environment Plan 2000 and 2014.

While water extraction licences have been issued by Water NSW for the extraction of up to 60ML per annum under the Water Management Act 2000, Council must independently determine that it is satisfied that the development 28.5ML /year does not have an adverse impact on natural water systems or the potential agricultural use of the land.



The documentation submitted in support of the application demonstrates that the proposal will not have an adverse impact on natural water systems or the potential agricultural use of the land. It is also demonstrated that access of Uriup Road is acceptable.

Based on the merits of the proposal, the application is considered worthy of support and recommended for approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Nil Applicable

**c. Legal:**

The applicant has right to appeal to the NSW Land and Environment Court in respect to any Council determination of this application..

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**7 [PR-PC] Development Application DA18/0685 for a Concept Application for the New Tweed Valley Hospital and Stage 1 Works (NSW Planning & Environment Application No. SSD 9575) and SEPP to amend Tweed Local Environmental Plan 2014 at Lot 11 DP 1246853 No. 77**

**SUBMITTED BY: Development Assessment and Compliance**

mhm

---



Making decisions with you  
*We're in this together*

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

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE: Provider**

---

**SUMMARY OF REPORT:**

On Monday 29 October 2018 Council received a request from the NSW Department of Planning & Environment seeking Council's input to the Tweed Valley Hospital (SSD9575) State Significant Development comprising:

1. Concept Development:
  - a. a maximum building envelope for a nine-storey hospital with basement, rooftop helipad and plant;
  - b. rooms;
  - c. a maximum building envelope for a building accommodating supporting services;
  - d. a maximum floor area of approximately 65,000m<sup>2</sup>;
  - e. the site layout, internal road layout, site access arrangements and car parking areas; and
  - f. a landscape master plan identifying open areas and concept public domain treatments.
2. Concurrent Stage 1 works:
  - a. identification of the construction compound;
  - b. augmentation and connection of permanent services for the future hospital;
  - c. tree removal within the footprint of the construction works;
  - d. bulk earthworks and recycling of materials to establish the site levels;
  - e. piling and associated works;

- f. stormwater infrastructure and associated retaining walls;
  - g. rehabilitation and revegetation of part of the wetland area; and
  - h. construction of temporary internal roads for use during construction.
3. A proposed State Environmental Planning Policy (SEPP) to amend Tweed Local Environmental Plan 2014 by re-zoning part of 771 Cudgen Road, Cudgen from RU1 Primary production and Zone R1 General residential to Zone SP2 Infrastructure (Health Service Facility). These amendments propose to remove the current maximum height of buildings, minimum lot size, and floor space ratio controls.

Comments were due back to the Department on Thursday 29 November 2018. The purpose of this report is to provide the elected body with an opportunity to review edit and endorse a submission to the NSW Department of Planning. The draft version of the Council letter of submission is provided at Attachment 1. Annexure 1 to that letter is Council commentary on the project. Whilst the submission contains some possible recommended conditions of consent should the NSW Department of Planning & Environment determine to approve the application a full suite of possible conditions could be provided to the Department of Planning & Environment upon request.

Annexure 1 to Attachment 1 contains Council's commentary on the proposal and it primarily focuses on the following areas:

1. Water & Sewer Infrastructure Arrangements – an agreement regarding the connection obligations should be reached between HI and Tweed Shire Council before any approvals are issued;
2. Road Connections – A Section 138 Application will need to be lodged with Council and discussion between HI and Council needs to continue to ensure any hospital is serviced by a suitable road network with an urban kerb and gutter format suitable for accessible public access opportunities via public transport and good pedestrian paths;
3. Urban Design – The Master Plan process should adopt the provisions of the State Design Review Panel having regard to the character of the area;
4. Scenic Landscape – The site is highly visible and needs a broader assessment. Council can assist with GIS data;
5. Agricultural Value – additional information is needed on soil classification;
6. Sustainable Agriculture – Council is requesting that the state government develop and fund an agricultural support program to offset the impacts of the development including the loss of 14ha of State Significant Farmland and the associated socio-economic impacts. The support program could identify current farming issues that impact on viability and help local farmers to overcome existing production and market access issues, create pathways for farmers to supply the new hospital with fresh food, and support the use of currently underutilised state significant farmland using mechanisms not limited to incentives, education and technical support.
7. Community Services – The application is lacking in detail in regards to accessibility, transport, public safety, onsite linkages, external, accommodation and housing, the relationship with other ancillary social service providers in the area and whether existing State social providers will relocate from Council's assets.
8. Ecology – the current proposal indicates three large sediment basins hard up against the significant land to the north. A 50m buffer is normally required with the outer edge having some infrastructure.
9. Aboriginal Heritage – The application incorporates referencing of some outdated plans and does not take a wide enough view of the landscape (1km required)
10. European Heritage – A more technical evaluation of the area is required

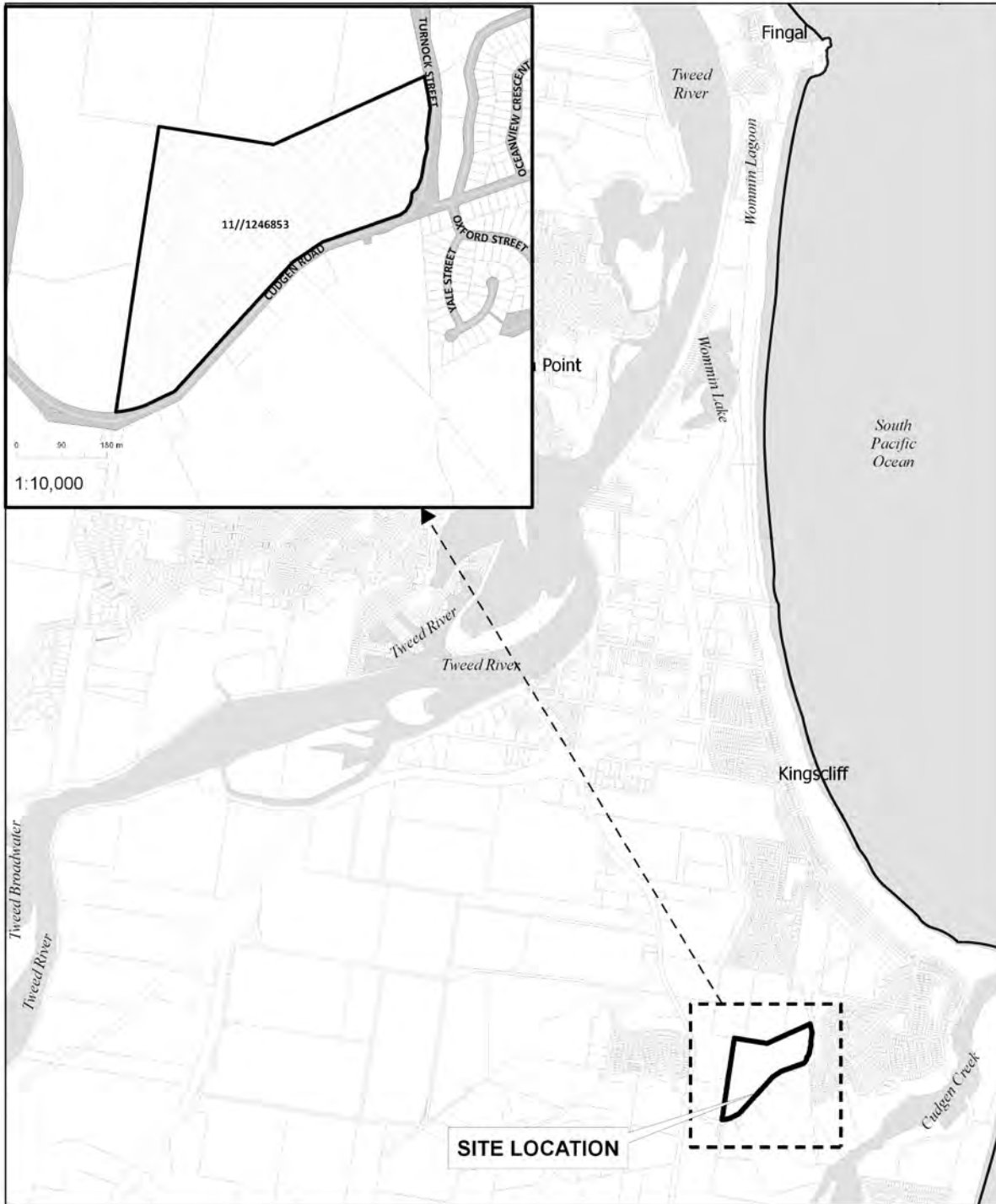
11. Site Contamination – Additional work required to confirm the site is suitable for the intended purpose as required by legislation.
12. General Engineering Matters – more detail is needed on the sedimentation pond design and the lawful point of discharge for the development.
13. Other Miscellaneous – additional items for consideration

The following report is a brief summary of the SSD application and brief summary of the submission points (in the form of dot point recommendations) for Council's convenience.

**RECOMMENDATION:**

**That Council in regard to Development Application DA18/0685 for a concept application for new Tweed Valley Hospital and Stage 1 works (NSW Planning & Environment Application No. SSD 9575) and proposed State Environmental Planning Policy to amend Tweed Local Environmental Plan 20114 at Lot 11 DP 1246853 No. 771 Cudgen Road, Cudgen endorse the Draft Council Submission at Attachment 1.**

**REPORT:  
SITE LOCALITY PLAN:**



**Site Plan**

Lot 11 DP 1246853  
No. 771 Cudgen Road, Cudgen

0 0.4 0.8 Km

1:35,000



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 disclaim 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 supply.



Coordinate System - MGA Zone 56  
Datum - GDA 94

Cadastre: 27/11/2018  
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Civic and Cultural Centre  
3 Yumbigum Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484

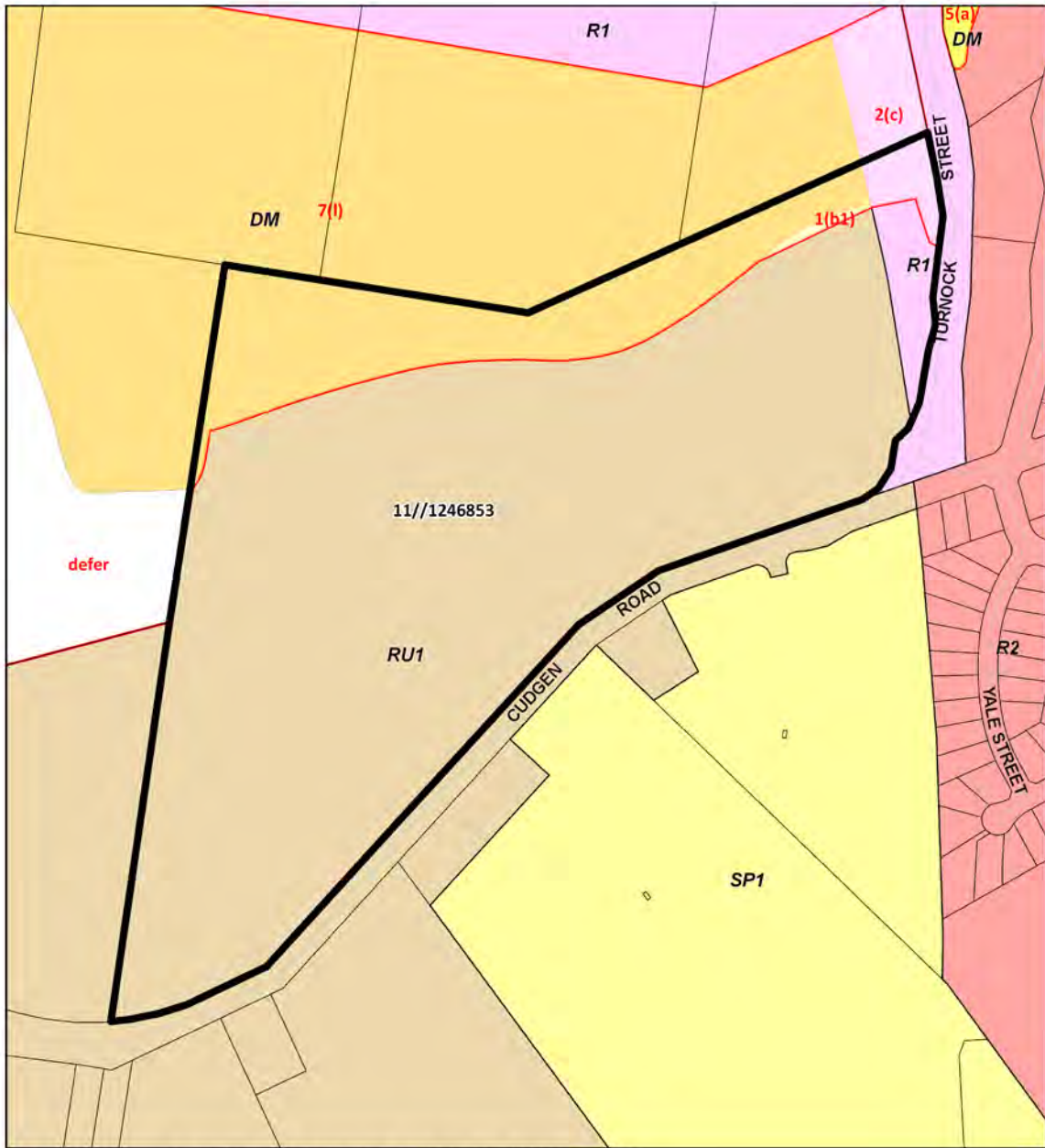
T: (02) 6670 2400 / 1300 292 872  
F: (02) 6670 2483  
W: www.tweed.nsw.gov.au  
E: planning@tweed.nsw.gov.au



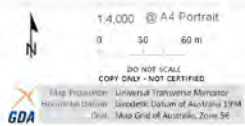
**TWEED  
SHIRE COUNCIL**

Date Printed: 27 November, 2018

**CURRENT ZONING**



Subject Land	Tweed Local Environmental Plan 2014	LEP 2000 (as at 2014)
	R1 General Residential	1(b1) Agricultural Protection
	R2 Low Density Residential	2(c) Urban Expansion
	RU1 Primary Production	5(a) Special Uses
	SP1 Special Activities	7(l) Environmental Protection (Habitat)
	DM, Deferred Matter	
	defer	



**Site Plan - Local Environmental Plan**

Lot 11 DP 1246853  
No. 771 Cudgen Road, Cudgen

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**Applicant:** Health Infrastructure  
**Owner:** Health Administration Corporation  
**Location:** Lot 11 DP 1246853 No. 771 Cudgen Road, Cudgen  
**Zoning:** R1 - General Residential, RU1 - Primary Production, 1(b1) Agricultural Protection, 2(c) Urban Expansion, 7(l) Environmental Protection (Habitat)  
**Cost:** \$534 million (total project budget allocation)

**SUMMARY PROPOSAL (as per the applicant's EIS):**

The application seeks approval of a Concept Development Application (Concept Proposal) for the Tweed Valley Hospital. The ultimate development of the Tweed Valley Hospital will be informed by service planning to 2031/32 and has an expected gross floor area in the range of 55,000m<sup>2</sup> to 65,000m<sup>2</sup> (note for comparison purposes that The Tweed Hospital TTH has a GFA of 25,000m<sup>2</sup>). At this stage, the hospital is expected to include the following components and services:

- A main entry and retail area
- Acute and Sub-Acute In-Patient Units
- Administration Services
- Ambulatory Services
- Back of House Services
- Cancer Services including Day Oncology and Radiation Oncology (new service)
- Car Parking
- Close Observation Unit
- Emergency Department
- Future-proofing and expansion
- Integrated Interventional Services including Interventional Cardiology (new service)
- Intensive Care Unit
- Maternity Unit
- Medical Imaging
- Mental Health Services
- Mortuary
- Paediatrics
- Pathology
- Pharmacy
- Renal Dialysis.

**Preliminary Works that are Exempt and Complying Development would generally comprise:**

- Site establishment including fencing of Project Site
- Set-up temporary accommodation and amenities to service the Preliminary Works
- Temporary construction car parking
- Temporary stormwater drainage (for site compound)
- Temporary site electricity supply
- Demolition of existing onsite buildings and structures including remediation of contaminated land.

These Preliminary Works do not form part of the SSD application for the Project and will be undertaken under the exempt development provisions of ISEPP, the exempt and complying

development provisions of SEPP (Exempt and Complying Development Codes) 2008 and as Development Without Consent under ISEPP and Part 5 of the EP&A Act as set out below.

**Preliminary Works undertaken in accordance with Part 5 of the EP&A Act and the provisions of ISEPP**

- Soil and water management works including sediment basins and associated works to mitigate potential impacts of stormwater runoff from the unimproved site
- New site access point from Cudgen Road at south-western site boundary
- New site access point from Turnock Street roundabout, including intersection improvement works,
- electrical connections for street lighting and a new water main connection beneath the road/ intersection
- Upgrading the Tweed Coast Road/ Cudgen Road intersection to provide a better level of service.

The application states that:

Health Infrastructure will coordinate these Preliminary Works in consultation with the relevant authorities/ utility owners (as required) and the Tweed Shire Council. The Preliminary Works have been identified to be progressed once the Project Site is transferred to Health Administration Corporation's (HAC) ownership and in advance of construction of the Stage 1 SSD works. The likely impacts of applicable Preliminary Works would be assessed in the form of a Review of Environmental Factors (REF), prepared in accordance with Part 5 of the EP&A Act and the provisions of the ISEPP.

Therefore there are three main components to the current SSD application:

**1. Concept Development:**

- a. a maximum building envelope for a nine-storey hospital with basement, rooftop helipad and plantrooms;
- b. a maximum building envelope for a building accommodating supporting services;
- c. a maximum floor area of approximately 65,000sqm;
- d. the site layout, internal road layout, site access arrangements and car parking areas; and
- e. a landscape master plan identifying open areas and concept public domain treatments.

**2. Concurrent Stage 1 works:**

- a. identification of the construction compound;
- b. augmentation and connection of permanent services for the future hospital;
- c. tree removal within the footprint of the construction works;
- d. bulk earthworks and recycling of materials to establish the site levels;
- e. piling and associated works;
- f. stormwater infrastructure and associated retaining walls;
- g. rehabilitation and revegetation of part of the wetland area; and
- h. construction of temporary internal roads for use during construction.

**3. A proposed State Environmental Planning Policy (SEPP) to amend Tweed Local Environmental Plan 2014 by:**

---



- a. rezoning part of 771 Cudgen Road, Cudgen from RU1 Primary production and Zone R1 General residential to Zone SP2 Infrastructure (Health Service Facility). These amendments propose to remove the current maximum height of buildings, minimum lot size, and floor space ratio controls.

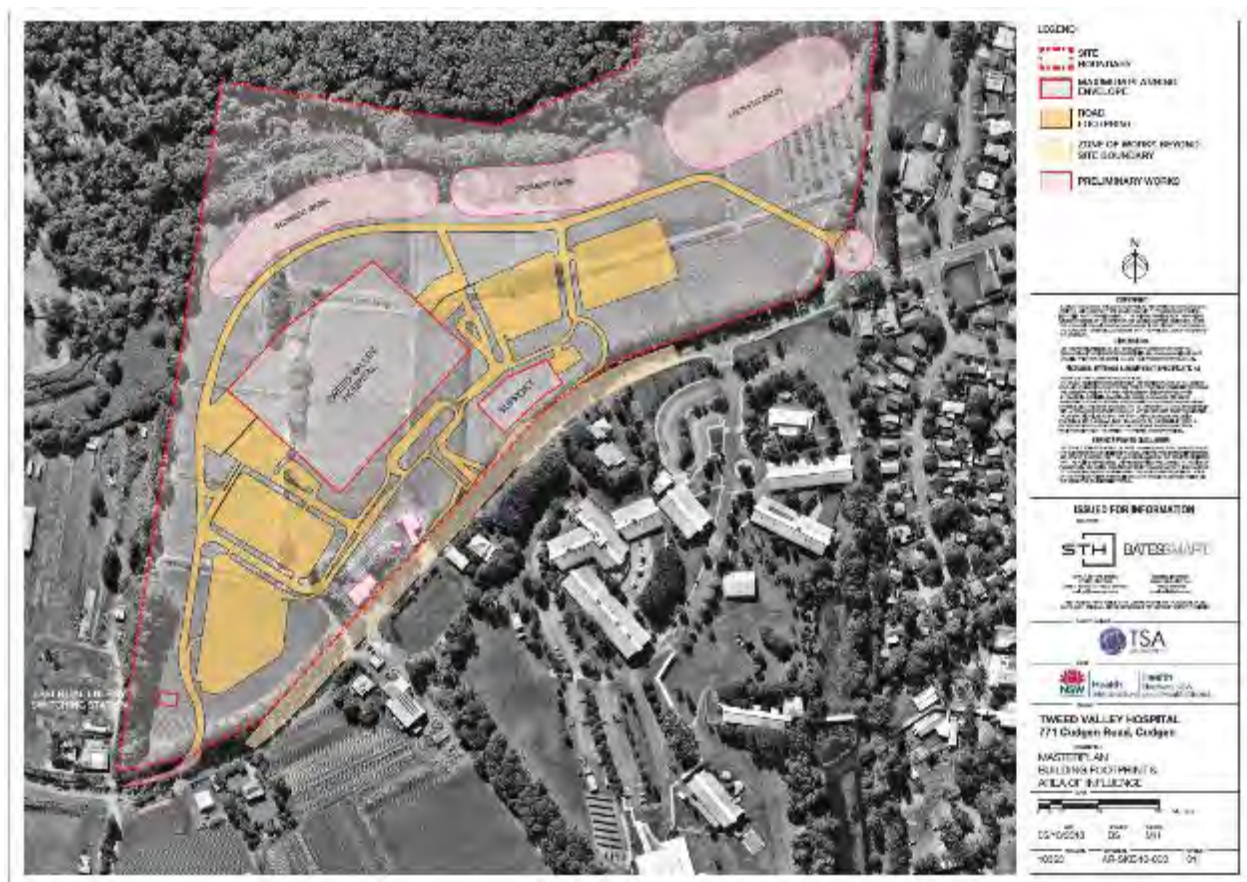
These will each be very briefly summarised below:

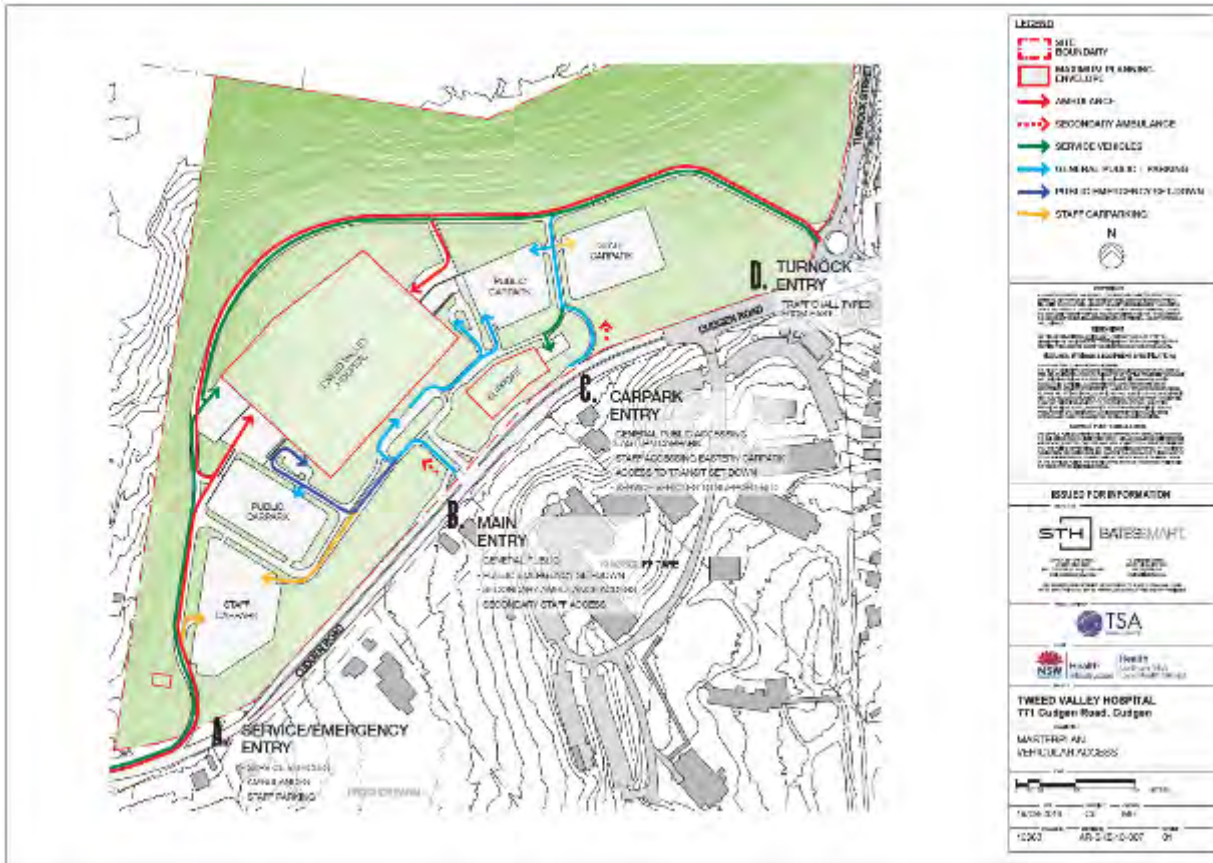
### 1. Concept Approval

Concept approval is being sought for the following:

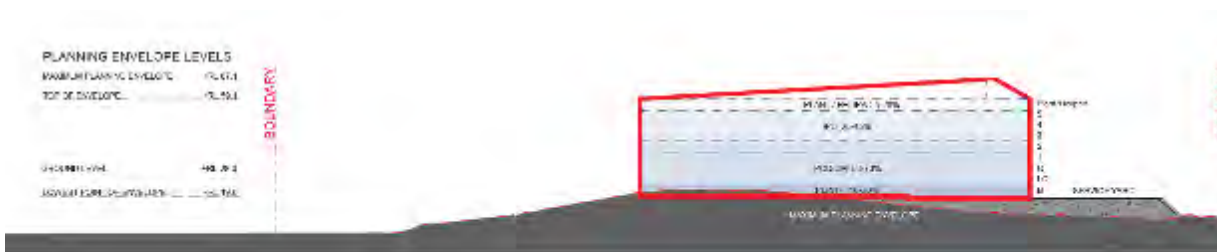
- Maximum planning envelope for the Tweed Valley Hospital main building
- Maximum planning envelope for a support building
- General internal road network and site access points.

These are shown in the plans at Appendix B some of which are duplicated below:



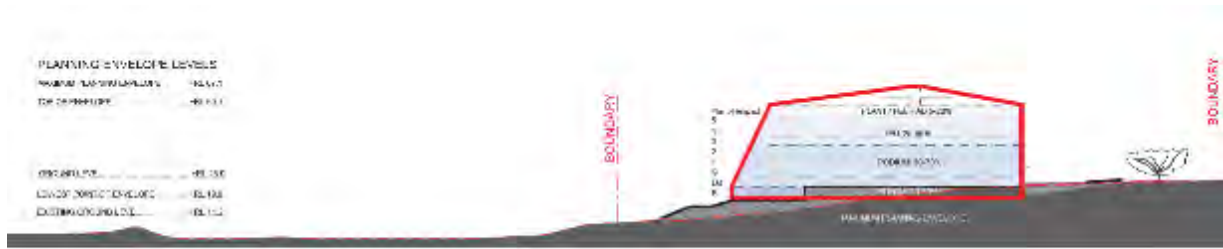


**SOUTH EAST ELEVATION**



**NORTH WEST ELEVATION**





**SOUTH WEST ELEVATION**



**NORTH EAST ELEVATION**

<p><b>VIEW 1: McNeil Avenue</b> Ground RL: +38.114 AHD Camera Height RL: +192.114 AHD Distance to Project Title Boundary: 220m</p>	<p><b>VIEW 1a: Operative Context</b> Ground RL: +35.511 AHD Camera Height RL: +137.114 AHD Distance to Project Title Boundary: 185m</p>	<p><b>LEGEND</b></p> <p>Red outline: BOUNDARY OF PLANNING ENVELOPE</p> <p>N</p> <p><b>NOTES</b></p> <p>1. THIS DOCUMENT IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION OR AS A BASIS FOR ANY OTHER DOCUMENTATION WITHOUT THE WRITTEN APPROVAL OF THE ARCHITECT.</p> <p>2. THE ARCHITECT HAS CONDUCTED VISUAL ANALYSIS OF THE PROPOSED DEVELOPMENT AND HAS FOUND THAT THE PROPOSED DEVELOPMENT IS VISUALLY COMPATIBLE WITH THE SURROUNDING ENVIRONMENT.</p> <p>3. THE ARCHITECT HAS CONDUCTED VISUAL ANALYSIS OF THE PROPOSED DEVELOPMENT AND HAS FOUND THAT THE PROPOSED DEVELOPMENT IS VISUALLY COMPATIBLE WITH THE SURROUNDING ENVIRONMENT.</p> <p>4. THE ARCHITECT HAS CONDUCTED VISUAL ANALYSIS OF THE PROPOSED DEVELOPMENT AND HAS FOUND THAT THE PROPOSED DEVELOPMENT IS VISUALLY COMPATIBLE WITH THE SURROUNDING ENVIRONMENT.</p> <p>5. THE ARCHITECT HAS CONDUCTED VISUAL ANALYSIS OF THE PROPOSED DEVELOPMENT AND HAS FOUND THAT THE PROPOSED DEVELOPMENT IS VISUALLY COMPATIBLE WITH THE SURROUNDING ENVIRONMENT.</p>								
<p><b>VIEW 2: Dickey Street</b> Ground RL: +44.310 AHD Camera Height RL: +65.720 AHD Distance to Project Title Boundary: 260m</p>	<p><b>VIEW 3: Cullifole Place</b> Ground RL: +15.323 AHD Camera Height RL: +16.753 AHD Distance to Project Title Boundary: 188m</p>	<p><b>ISSUES FOR INFORMATION</b></p> <p>STH BATESWORTH</p> <p>TS&amp;A</p> <p>TYNDAL VALLEY HOSPITAL 777 Cudgen Road, Cudgen</p> <p>VIEWPOINT ANALYSIS SITE 1: WERS II OF 3</p>								
<p>1/1/18</p> <table border="1"> <tr> <td>NO</td> <td>REV</td> <td>DATE</td> <td>BY</td> </tr> <tr> <td>1</td> <td>1</td> <td>1/1/18</td> <td>STH</td> </tr> </table> <p>1200 18/05/2018 20</p>			NO	REV	DATE	BY	1	1	1/1/18	STH
NO	REV	DATE	BY							
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		<p><b>LEGEND</b></p> <p><span style="border: 1px solid red; display: inline-block; width: 10px; height: 10px;"></span> MAXIMUM PLANNING DEVELOPE</p> <p><b>1:10000</b></p> <p><b>DATE:</b> 01/08/2018  <b>Camera:</b> Canon EOS 80D  <b>Ground RL:</b> +26.460 AHD  <b>Camera Height RL:</b> +27.805 AHD  <b>Distance to Project Title Boundary:</b> 647m</p> <p><b>1:10000</b></p> <p><b>DATE:</b> 01/08/2018  <b>Camera:</b> Canon EOS 80D  <b>Ground RL:</b> +1.2987 AHD  <b>Camera Height RL:</b> +4.8747 AHD  <b>Distance to Project Title Boundary:</b> 231m  <b>Note:</b> Twedd Hospital entirely obscured behind the environmental area beyond management process.</p>
		<p><b>BASED FOR INFORMATION</b></p> <p><b>STH BATESWART</b></p> <p><b>TSA</b></p> <p><b>TWEDD VALLEY HOSPITAL</b>          771 Cudgen Road, Cudgen</p> <p><b>VIEWPOINT ANALYSIS</b>          STREET VIEWS (2 of 2)</p> <p><b>NS</b></p> <p><b>DATE:</b> 01/08/2018  <b>Camera:</b> Canon EOS 80D  <b>Ground RL:</b> +1.856 AHD  <b>Camera Height RL:</b> +4.856 AHD  <b>Distance to Project Title Boundary:</b> 411m</p> <p><b>1:10000</b></p> <p><b>DATE:</b> 01/08/2018  <b>Camera:</b> Canon EOS 80D  <b>Ground RL:</b> +15.345 AHD  <b>Camera Height RL:</b> +16.864 AHD  <b>Distance to Project Title Boundary:</b> 200m</p>

		<p><b>LEGEND</b></p> <p><span style="border: 1px solid red; display: inline-block; width: 10px; height: 10px;"></span> MAXIMUM PLANNING DEVELOPE</p> <p><b>1:10000</b></p> <p><b>DATE:</b> 01/08/2018  <b>Camera:</b> Canon EOS 80D  <b>Ground RL:</b> +26.2893 AHD  <b>Camera Height RL:</b> +27.803 AHD  <b>Distance to Project Title Boundary:</b> 181m</p> <p><b>1:10000</b></p> <p><b>DATE:</b> 01/08/2018  <b>Camera:</b> Canon EOS 80D  <b>Ground RL:</b> +23.7586 AHD  <b>Camera Height RL:</b> +25.1286 AHD  <b>Distance to Project Title Boundary:</b> 311m</p>
		<p><b>BASED FOR INFORMATION</b></p> <p><b>STH BATESWART</b></p> <p><b>TSA</b></p> <p><b>TWEDD VALLEY HOSPITAL</b>          771 Cudgen Road, Cudgen</p> <p><b>VIEWPOINT ANALYSIS</b>          STREET VIEWS (2 of 2)</p> <p><b>NS</b></p> <p><b>DATE:</b> 01/08/2018  <b>Camera:</b> Canon EOS 80D  <b>Ground RL:</b> +26.2893 AHD  <b>Camera Height RL:</b> +27.803 AHD  <b>Distance to Project Title Boundary:</b> 181m</p>

**2. Concurrent Stage 1 works:**

In addition to the Concept Proposal described above, Health Infrastructure seeks approval for Stage 1 Early and Enabling Works (Stage 1 works) to establish the Project Site for future development.

Specifically, the Stage 1 works comprise:

- Construction compound for Stage 1 works;
- Augmentation and connection of permanent services for the new facility (water, sewer, electricity, telecommunications);
- General clearance of site vegetation within the footprint of construction works, including tree stumps;
- Chipping of cleared vegetation (excluding weed species) to use on-site for ground stabilisation/erosion control, or off-site disposal (as required);
- Bulk earthworks and recycling of materials to establish the required site levels and create a stable landform in preparation for hospital construction;
- Piling and associated works;
- Stormwater and drainage infrastructure for the new facility;
- Rehabilitation and revegetation of part of the wetland area;
- Construction of temporary internal road ways for use during construction and in preparation for final road formations in Stage 2; and
- Retaining walls.

**LANDSCAPE PROPOSAL**

**LANDSCAPE ZONAL PLAN**

- KEY**
- AW - Asset Protection Zone
  - RWF - Riparian Wetland Buffer
  - FDZ - Future Development Zone
  - 1 Native undisturbed forest
  - 2 Landscaped embankment. Degrade, bio-retention & detention and road corridor in all weathers
  - 3 Park Hospital landscape zone. Seed stockpiles (chinese cork oak, tree fern, grasses, fern, park trees, landscape species)
  - 4 South Hospital landscape zone. Palaeogeography (open lawn, grasses, plants & trees native)
  - 5 Native existing tree free orchard
  - 6 WMB (wetland) (native tree and planting in the park)
  - 7 WMB (wetland) and park (native tree and planting in the park)
  - 8 Empty landscape. Programmed parking space open only, low vegetation (max 0.5m high to maintain sight lines to hospital and entry coaches). Trees located where they have established (native trees to 10m high)
  - 9 Open road planting (max 10m high) 50m wide vegetated buffer to adjacent agricultural land
  - 10 10m wide vegetated buffer. Trees and a grass to dry brushy vegetation (selective removal of natives and grasses and soft lines). Ground replacement (tree holes and understorey with native species)
  - 11 Landscaped compound with hospital envelope
- Note: All areas vegetated in accordance with Asset Protection Zone (AW) guidelines where located close to South's Coasters Kiosk area.



20 APPENDIX - LANDSCAPE ZONAL PLAN  
 18/11/18 11:54 AM  
 1/1/2018 11:54 AM

Prepared for: HIA Health Infrastructure  
 Prepared by: T&C Capital Design  
 Date: 08/12/2018  
 Project: HIA Health Infrastructure



- NOTE**
- VOLUMES ARE APPROXIMATE ONLY, WHICH ARE IN PLACE AND DO NOT INCORPORATE BULKING FACTORS AND OVER EXCAVATION
  - LEVELS PROVIDED ARE PRELIMINARY AND MIGHT CHANGE AS DESIGN PROGRESSES.
  - GROUND WATER SEEPAGE MAY OCCUR IN EXCAVATED AREAS. DE-WATERING MAY BE REQUIRED IN THIS INSTANCE.
  - RE USE OF THE EXCAVATED ROCK FOR ROAD BASE AND OTHER PURPOSES

**EARTHWORKS QUANTITIES**  
**BASINS**  
 CUT VOLUME = 28,451m<sup>3</sup>  
 FILL VOLUME = 8,450m<sup>3</sup>  
 NET (CUT) = 20,001m<sup>3</sup>

**EARTHWORKS QUANTITIES**  
**REMAINDER OF WORKS**  
 CUT VOLUME = 111,361m<sup>3</sup>  
 FILL VOLUME = 110,203m<sup>3</sup>  
 NET (CUT) = 1,158m<sup>3</sup>

**EARTHWORKS QUANTITIES**  
**TOTAL**  
 CUT VOLUME = 139,812m<sup>3</sup>  
 FILL VOLUME = 118,653m<sup>3</sup>  
 NET (CUT) = 21,159m<sup>3</sup>



**3. A proposed State Environmental Planning Policy (SEPP) to amend Tweed Local Environmental Plan 2014 by:**

- a. rezoning part of 771 Cudgen Road, Cudgen from RU1 Primary production and Zone R1 General residential to Zone SP2 Infrastructure (Health Service Facility). These amendments propose to remove the current maximum height of buildings, minimum lot size, and floor space ratio controls.

The applicant summarises the process as follows:

*To enable the determination of this SSD application, it is understood that DPE will concurrently prepare a new SEPP, pursuant to Divisions 3.2 and 3.3 of the EP&A Act that amends TLEP 2014 by rezoning part of the Project Site to SP2 Infrastructure (which is currently zoned RU1 Primary Production and R1 General Residential), and **removing any building height, FSR and minimum lot size controls to be consistent with other hospital sites**. It is proposed that the SEPP would be repealed after TLEP 2014 has been amended.*

*It is proposed that the draft SEPP and SSD application be considered and determined in accordance with Division 3.5 and Clause 4.38 (5) of the EP&A Act. These provisions allow a SSD application, involving development that is wholly or partly prohibited, to be considered in conjunction with a proposed environmental planning instrument (in this case a site-specific SEPP) which proposes to permit the carrying out of the wholly or partly prohibited development on the subject land Pursuant to Clause 3.40 of the EP&A Act, it is understood that the SSD application and proposed SEPP would be publicly exhibited at the same time.*

*On that basis, the SSD application would be determined using the new planning controls facilitated by the site-specific SEPP that amends the LEP that include:*

- *Rezoning of the majority of the Project Site to SP2 Infrastructure*
- *No change to other zonings on the overall site, with the environmental protection zones to remain in place. These areas (including Deferred Matters of the TLEP 2014) are not proposed to change*
- *No provision of prescriptive building height, FSR or minimum lot size would apply to the portion of land to be rezoned SP2 Infrastructure. Any such current controls would be removed.*

*Illustration 5.1 current and proposed land use zones for the Project Site. Such planning controls are consistent with the LEP Standard Instrument and the typical approach for health facility/ hospital sites.*

*The objectives of the SP2 Infrastructure zone (as per the TLEP 2014) are:*

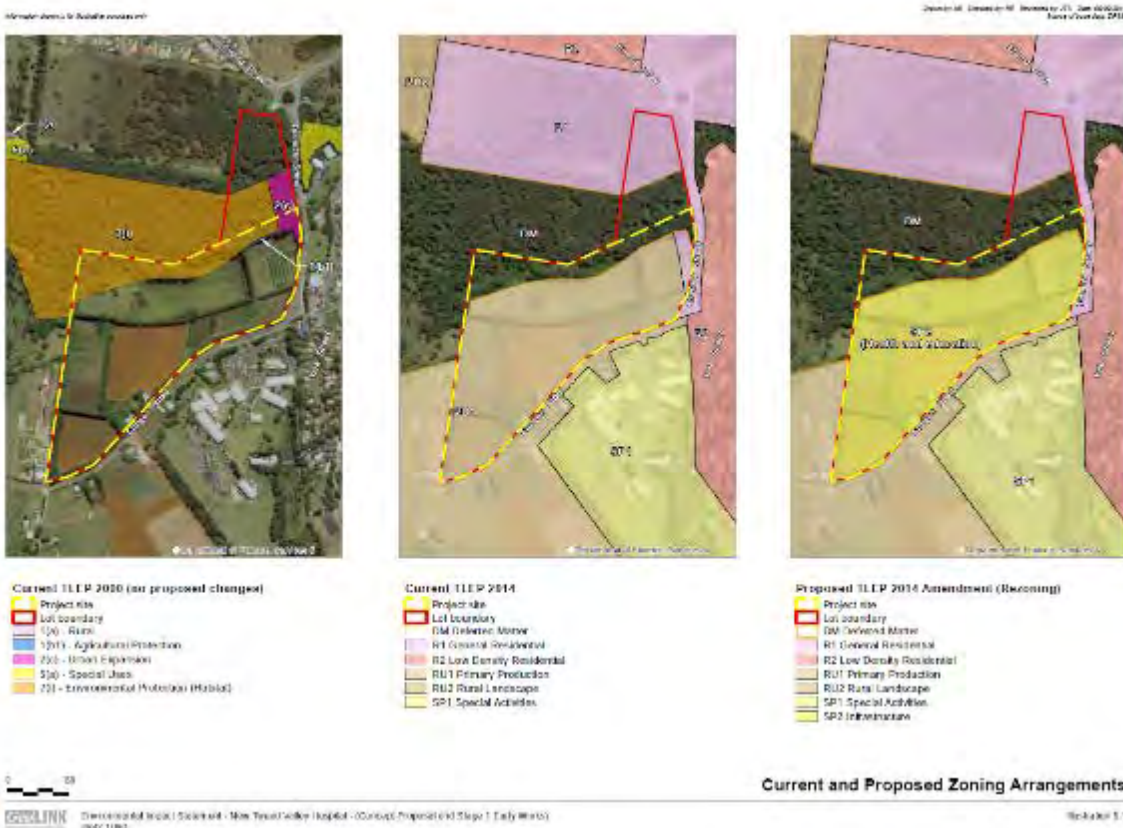
**SP2 Infrastructure Zone**

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

*The Project would be consistent with these objectives. No development is proposed within the Deferred Matter areas (including environmental zone of the TLEP 2000) of the*

*TLEP 2014 and therefore there are no other relevant consent triggers. The Tweed Valley Hospital would be accommodated fully within the proposed SP2 Infrastructure Zone (Health and Education) that would allow health services facilities with consent, including any development that is ordinarily incidental or ancillary to that purpose.*

*On this basis, the SSD application is to be determined using these amended controls, that would be inserted into the TLEP 2014 via a site-specific SEPP, and therefore the Tweed Valley Hospital would be permissible, and consent can be given.*



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**MATTERS FOR CONSIDERATION BY THE DETERMINING AUTHORITY IN THE FORM OF RECOMMENDATIONS:**

1. **Water & Sewer Infrastructure Arrangements** – an agreement regarding the connection obligations should be reached between HI and Tweed Shire Council before any approvals are issued:
  - A. An agreement regarding water and sewer headworks financial contributions should be reached between HI and Tweed Shire Council before any water and sewer related approvals are issued;
  - B. A certificate of compliance under Chapter 6, Part 2, Division 5 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.
  - C. An application will need to be lodged with Council for any works required to connect to Council's water and sewerage systems (as the Water Authority), or where development is likely to disturb or impact upon existing water or sewer infrastructure.
  - D. An application will need to be lodged with Council (as the Water Authority) for a bulk water meter.
  - E. An application will need to be lodged with Council (as the Water Authority) will need to be lodged with Council to install/operate an onsite sewerage management system (private pump station). A condition of the application would include a requirement for pumps to be limited to a maximum discharge of 36 L/s to Council's sewerage system.
  - F. An application will need to be lodged with Council (as the Water Authority) for approval to discharge Liquid Trade Waste to Council's sewerage system.
  
2. **Road Connections** – A Section 138 Application will need to be lodged with Council and discussion between HI and Council needs to continue to ensure any hospital is serviced by a suitable road network with an urban kerb and gutter format suitable for accessible public access opportunities via public transport and good pedestrian paths;
  - A. Access A off Cudgen Road is to be modified to reflect the requirements of Council's Driveway Access Specifications and connect orthogonal to Cudgen Road in a similar configuration to the Byron Bay Hospital access from Ewingsdale Road.
  - B. Access D - The design is to be updated to show a continuous connecting path of travel for pedestrians at the north/west leg of the roundabout on Cudgen Rd.
  - C. Before opening of the Hospital the intersection of Tweed Coast Road and Cudgen Road needs to be upgraded as follows
    - Addition of a 100m southbound left-turn lane on Tweed Coast Road;
    - Phase sequence change to allow the southbound left-turn to overlap with the westbound right-turn (i.e. possible with the provision of dedicated southbound left-turn lane);



- Lane discipline change for the two approach lanes on the south-eastern approach:
  - Change of the left through lane to a through and right lane;
  - Change of the right through and right lane to a right only lane;
  - Extension of the south-eastern short departure lane from approximately 75m to approximately 150m;
  - Extension of the northbound departure lane from approximately 85m to approximately 200m; and
  - Conversion of the north-western leg departure to a single lane (no physical changes. i.e. through provision of chevron line marking). With the lane discipline changes on the south-eastern approach, there is only one lane travelling through to the north-western departure lane.
  - Extension of the southbound departure lane to approximately 150m
- D. Any works associated with the Tweed Coast Road / Cudgen Road intersection should be commensurate with Council's ultimate plans for Tweed Coast Road
3. **Urban Design** – The Master Plan process should adopt the provisions of the State Design Review Panel having regard to the character of the area;
- A. It is recommended that the findings of the SDRP are considered in the context of the sites master planning and to inform subsequent stages of the hospitals design and procurement.
- B. It is recommended that the master plan respond more closely respond to the locality character and the subtropical climatic context by:
- a. Devising a suite of site specific urban design principles to inform subsequent stages of the hospital and sites design including principles of sustainable design;
  - b. Addressing the sites threshold position between the localities rural hinterland and urban settlement through site landscape, appropriate setbacks, building form, building materiality and visual analysis;
  - c. Address the sites edge fronting Cudgen Road in terms of landscape, pedestrian access and visual amenity;
  - d. Address the building envelope, height, form, mass and scale in the broader topographic context; and
  - e. Address the sites interface with the low density urban interface to the east in terms of land use, site access, building form and visual impact.
- C. It is recommended that the master plan explore additional building envelope typology configurations which represents a stronger landscape / linear rather than compact tower response. This could include distributing the buildings bulk across the site reducing the overall height, mass and scale by stepping the building forms aimed at reducing building height at both the rural (western) and urban (eastern) thresholds and interfaces (see indicative diagrams).
- D. It is recommended that the master plan more clearly articulate internal roads and streets which organise and structure the sites future building envelopes, vehicular circulation, car parking as well as clearly delineated pedestrian (shaded) and cycle movements across the site, open space and public domain areas. Similarly a

location for public transport access (bus stop) should be nominated and relate to the surrounding context (residential and TAFE). It is further noted that the location of the car parking areas, which dominate a substantial portion of the sites area are a substantial uncovered walking distance from the main hospital access points. Given the sites slope, there is good opportunity to locate car parking in building envelopes under croft areas and provide vertical circulation to access different hospital and health services.

- E. It is recommended that the master plan more closely address future stages of the development and recognise the potential for a substantial mix of land uses including health and allied health services as well as a range of retail, community, and public domain which would also be used and relevant to the existing surrounding community.
  - F. It is recommended that consultation on the sites master plan and building envelope / design options be undertaken with the local community prior to the submission of subsequent development applications.
4. **Scenic Landscape** – The site is highly visible and needs a broader assessment. Council can assist with GIS data;
- A. It is recommended that the VIA include impact assessment of affected views from highly trafficked and accessible public viewing locations with more distant, elevated or panoramic views, where the subject site falls within and impacts on the mid-ground or background. TSC can provide GIS mapping information relating to key view sheds.
  - B. It is recommended that as part of the VIA the assessment that there is evidenced engagement with affected viewers of revised viewing locations, to consult on their visual quality values, and identify their preferences for specific visual elements as seen in the existing view and the conceptual view including the proposed development. This should comprise the following matters:
    - a. Information and discussion of the development site / area and the nature of the proposal with affected landholders and community;
    - b. Confirmation of which viewpoints are considered important and validation of their view sheds;
    - c. Capture community values about scenic qualities – that is, the landscape features and visual elements that viewers prefer (like / dislike);
    - d. Provision of photomontages generated from each viewing point to facilitate an understanding and discussion of potential visual impacts of the proposed development; and
    - e. Scope alternative designs and listen to and report on viewers concerns about visual impact and the extent to which they perceive the proposed mitigation measures will achieve their scenic quality objectives.
5. **Agricultural Value** – additional information is needed on soil classification;
- A. It is recommended that a soil assessment including soil samples and classification against a recognised soil classification system to assess the value of soils across the site be required. In addition, any such assessment should validate the

distinction that might exist between the soils on the top of the plateau and those on the surrounding escarpment.

- B. It is recommended that an assessment into appropriate setbacks and buffers between the site and surrounding agricultural uses be undertaken referencing the publication 'Living and Working in Rural Areas' 2007. The Assessment should clearly define setback requirements to ensure that legitimate agricultural activities are not impacted by construction of the hospital or ancillary development on the site, or future expansion of Kingscliff TAFE.
  - C. It is recommended that setbacks be imposed on the site to ensure that adjoining agricultural land will not be impacted by development of the site.
6. **Sustainable Agriculture** – Council is requesting that the state government develop and fund an agricultural support program to offset the impacts of the development including the loss of 14ha of State Significant Farmland and the associated socio-economic impacts. The support program could identify current farming issues that impact on viability and help local farmers to overcome existing production and market access issues, create pathways for farmers to supply the new hospital with fresh food, and support the use of currently underutilised state significant farmland using mechanisms not limited to incentives, education and technical support.
- A. The state government develop and fund an agricultural support program to offset the impacts of the development including the loss of 14ha of State Significant Farmland and the associated socio-economic impacts.
- The support program could identify current farming issues that impact on viability and help local farmers to overcome existing production and market access issues, create pathways for farmers to supply the new hospital with fresh food, and support the use of currently underutilised state significant farmland using mechanisms not limited to incentives, education and technical support.
7. **Community Services** – The application is lacking in detail in regards to accessibility, transport, public safety, onsite linkages, external, accommodation and housing, the relationship with other ancillary social service providers in the area and whether existing State social providers will relocate from Council's assets.
- A. It is recommended that the Department of Planning request additional information to clarify the considerations used in determining the impact as "low" and include demographic considerations, benefits to active and public transport linkages, accessible parking options for people with limited mobility.
  - B. It is recommended that the Department of Planning request additional information to clarify how hospital related violence and anti-social behaviour associated with hospitals will be mitigated in relation to surrounding facilities.
  - C. It is recommended that the Department of Planning request additional information regarding the consideration for accommodation provisions on site or linkages to affordable accommodation options for staff, patients, students and visitors in a high tourism zone.

- D. It is recommended that the Department of Planning request additional information regarding the consideration of ancillary health and social services on site or linkages to these services in the vicinity.
8. **Ecology** – the current proposal indicates three large sediment basins hard up against the significant land to the north. A 50m buffer is normally required with the outer edge having some infrastructure.
- A. It is recommended that further information is requested, or conditions of consent are applied, to achieve consistency with Tweed DCP A19 as follows:
- a. An amended development footprint that achieves a 50m ecological setback, to be managed as an ecological buffer, from the significant vegetation.
- i. Overlap of APZ and sediment basin location with the ecological buffer may be acceptable if it can be demonstrated that the management requirements and design are compatible with ecological buffer management
- ii. No more than the outer half of the ecological buffer is to be used for the above purpose.
- b. Preparation and approval of a Habitat Management Plan for retained vegetation and ecological buffer.
- c. Implementation of the Habitat Management Plan should commence prior to commencement of any physical works on the site.
- B. That the department be satisfied that the information supplied adequately addresses the requirements of development in the Coastal Wetland Proximity Area prior to approval.
- C. That the Biodiversity Management Plan and incorporated Water Quality Management Plan be prepared and approved prior to work commencing on site.
- D. That the proposal seek to zone the area of retained vegetation and ecological buffer to E2 under TLEP 2014.
- E. Restoration under the Habitat Management Plan described above, and landscaping in the vicinity of the wetland should consider incorporating preferred koala food trees where appropriate.
- F. Any fencing should not limit connectivity through and within the site for koala and other fauna.
9. **Aboriginal Heritage** – The application incorporates referencing of some outdated plans and does not take a wide enough view of the landscape (1km required):
- A. It is recommended that the Department of Planning and Environment (DP&E) require that references should be updated to reference Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 guideline rather than the superseded draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation (DEC 2005) within the ACHAR and the assessment report be updated to ensure the current requirements have been met.

- B. It is recommended that the Department of Planning and Environment (DP&E) require that the search area be expanded to a minimum 1km radius from the site.
  - C. It is recommended that the Department of Planning and Environment (DP&E) require that the Section 12.4 be updated to reflect the significance from the perspective of Aboriginal people.
  - D. Possible conditions - Aboriginal Precautionary Approach
    - a. Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer are to be notified (on 07 5536 1763). The find is to be reported to the Office of Environment and Heritage. No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.
    - b. Any actions or recommendations of the Aboriginal cultural heritage assessment undertaken in support of the application are to be followed and implemented.
10. **European Heritage** – A more technical evaluation of the area is required.
- A. It is recommended that the Department of Planning and Environment (DP&E) require that the Historical Heritage Assessment report provide conclusions and recommendations on whether the heritage listing of the identified dry stone walls is appropriate and to be pursued. Should the listing be found to be appropriate, it should be identified as an action within the HHA.
  - B. Possible Condition: Supporting heritage assessment
  - C. Any actions or recommendations of the Historical Heritage assessment (Niche October 2018) undertaken in support of the application are to be followed and implemented.
  - D. Possible Condition: Conservation and protection of dry stone walls
  - E. A Conservation Management Plan be prepared to protect and conserve the dry stone walls identified outside of the area of impact (walls 1, 2 and 5).
  - F. Possible Condition: Archival record:  
  
An archival record, consistent with the Office of Environment and Heritage requirements, is to be undertaken for dry stone walls subject to damage or removal, as identified in the Historical Heritage Assessment (Niche October 2018).
11. **Site Contamination** – Additional work required to confirm the site is suitable for the intended purpose as required by legislation.
- A. The Historical Heritage Assessment (Niche, 2018) identified past land uses for the site and potentially contaminating activities in the vicinity of the farm dump that should be considered in the detailed site contamination investigation.

- B. Some areas in the vicinity of the farm dump were not accessible due to vegetation overgrowth. These areas should be made accessible to enable a thorough assessment and sampling by the environmental consultant and where required, remediation of these areas should be included in any Remediation Action Plan for the site.
  - C. Confirmation that the sampling regime used meets the minimum recommendations of the NSW EPA contaminated land guidelines including NSW EPA Guidelines for Assessing Former Orchards and Market Gardens, Guidelines for Assessing Banana Plantations, and Sampling Design Guidelines.
  - D. Provide the site Remediation Action Plan for review.
  - E. Possible Conditions Contamination:
    - a. All works shall comply with the Remediation Action Plan and the requirements of SEPP 55 – Remediation of Land. Following remediation of the site, a validation report to the satisfaction of NSW Health Infrastructure shall be submitted confirming the subject site is suitable for the proposed use.
    - b. In the event that potentially contaminating material or activities are discovered during demolition, excavation, or construction works, works shall cease immediately and a detailed contaminated site investigation and Remediation Action Plan be carried out by a suitably qualified environmental consultant in accordance with the NSW EPA contaminated land guidelines and the requirements of SEPP 55 – Contamination of Land to the satisfaction of NSW Health Infrastructure.
12. **General Engineering Matters** – more detail is needed on the sedimentation pond design and the lawful point of discharge for the development.
- A. Details of the sediment basins and sizing calculations (drawings C0006 and C0007) are missing from the Civil and Structural Design Report (Appendix X) and should be provided.
  - B. The “Integrated Water Management Plan Report” (Appendix T) section 4.1.3 notes the possibility of including rain water retention tank(s) for irrigation on the site. However, it is not clear if this is to be included in the Hospital design. This should be clarified.
  - C. The proposal has adopted the 200L/s/ha permissible site discharge requirement from Development Design Specification D5 – Stormwater Drainage Design section D5.16. This control is generally only applied to constrained sites where the downstream stormwater infrastructure is under capacity or there is a risk of local stormwater flooding. No objection to adopting the 200L/s/ha target is raised however, in this case, Council Officers would support simply limiting post-development discharge to pre-development levels (note only).
  - D. Council would like to request copies of the applicant’s computer stormwater modelling (DRAINS and MUSIC) for verification of the concept design



- E. Further detail is required of how stormwater is to be physically discharged from the site. No details downstream of the proposed basins has been provided.
  - F. It is unclear if stormwater discharge to the neighbouring private land can be considered a 'lawful point of discharge'. Discussion and justification of the sites Lawful Point of Discharge should be added to the stormwater management plan (or similar document).
  - G. Further assessment of the proposed stormwater management is required from a volumetric perspective to confirm that the post-development flow regime mimics pre-development (i.e. water balance)
  - H. Further detail of the proposed upgrade of Cudgen Road frontage of the site, including storm water infrastructure, is required. This can be made the subject of a future application under section 138 of the Roads Act 1993.
  - I. The geotechnical report by Morrison Geotechnic dated September 2018 indicates that the site may require blasting. Concerns are raised regarding noise and vibration on neighbouring properties and should be addressed.
  - J. The Civil structural report by Bonacci Group (NSW) Pty Ltd specifies that the excavated rock is proposed to be crushed on site. Concerns are raised regarding noise for neighbouring properties and should be addressed.
  - K. The Civil structural report by Bonacci Group (NSW) Pty Ltd specifies that the proposed stormwater drainage system will be designed to mimic natural flows to minimise future impact to the endangered ecological community in the receiving wetland. Concerns are raised that there are no details on the proposed discharge characteristics and supporting confirmation from a qualified ecologist to indicate that there will be no impact on the existing environmental wetland area downstream.
  - L. The Water Sources report by Bonacci Group (NSW) Pty Ltd specifies that to comply with Councils permissible site discharge requirements approximately 6000m<sup>3</sup> of onsite detention will be required. Concerns are raised that discharge from the onsite detention will concentrate stormwater flow and impact on downstream properties, this requires review.
  - M. The Water Sources report by Bonacci Group (NSW) Pty Ltd specifies that the site is transversed by an intermittent watercourse (defined as a wetland area) at the north east portion of the site. It is unclear if stormwater discharge to the neighbouring private land can be considered a lawful point of discharge as it is a wetland rather than a natural water course. NSW Health Infrastructure seek further clarification regarding if in fact this is a lawful point of discharge.
13. **Other Miscellaneous** – additional items for consideration:
- A. Conditions: External Site Landscaping
    - a. Prior to issue of any construction certificate covering the upgrade of Cudgen Road and Turnock Street, a landscape plan covering the road reserves

adjoining the development must be approved by the General Manager, Tweed Shire Council.

- b. Prior to the release of the Subdivision Certificate for the development, the landscape works approved for Cudgen Road and Turnock Street must be completed to the satisfaction of the General Manager, Tweed Shire Council
  - c. A Bond to ensure acceptable Plant Establishment and Landscaping Performance at time of handover to Council shall be lodged by the Developer prior to the issue of any Subdivision Certificate. The bond shall be 20% of the estimated cost of the landscaping. The bond shall be held by Council for a period of 12 months from the date of registration of the subdivision with the Lands and Property Information (NSW).
- B. It is recommended that the Department of Planning and Environment (DP&E) require that the Dust/ Air Quality Management Plan for Stage 1 should consider the impact of localised blasting and heavy ripping that may be required as outlined in the Preliminary Geotechnical Investigation (Morrison Geotechnic, September 2018).
- C. It is recommended that the Department of Planning and Environment (DP&E) require that For the Concept proposal and Stage 2 of the development, where hospital site is smoke free, designated onsite smoking areas shall be identified to prevent second-hand exposure to tobacco smoke and potential pollution of neighbouring properties and public areas.
- D. Conditions: Air Quality & Dust:
- a. Air quality shall be managed in accordance with a comprehensive Dust/ Air Quality Management Plan based on the proposed plant, equipment, and construction methodology and prepared prior to the commencement of any works to the satisfaction of NSW Health Infrastructure. The Plan shall consider the recommendations of the Preliminary Construction Environmental Management Plan for Tweed Valley Hospital Project prepared by TSA Management dated October 2018 (Rev 03) and Preliminary Geotechnical Investigation for Proposed Tweed Valley Hospital prepared by Morrison Geotechnic dated September 2018 (Job No. GE18/144-Rev2).
- E. A Dewatering Management Plan shall be prepared by a suitably qualified environmental consultant where groundwater will or is likely to be intercepted and/or where the discharge of any waters from sediment control basins is proposed.
- F. The plan shall include but is not limited to: specific details regarding water quality, treatment and monitoring regime, a site plan indicating the position of all treatment tanks and basins on the site including the reserve area to be used for such purpose in the event of the need for additional treatment facilities, predicted flow rates, and management of acid sulfate soil.
- G. The detailed groundwater quality assessment shall include results from a NATA accredited laboratory on the following parameters: pH, electrical conductivity, dissolved oxygen, temperature, dissolved iron, suspended solids, turbidity,

chloride, sulfate, chloride:sulfate ratio, dissolved aluminium, and where required TPH, BTEX, PAH, and lead.

- H. Particular consideration shall be given to achieving the necessary detention of waters to enable effective treatment to be carried out prior to discharge in order to achieve the agreed discharge criteria particularly in respect to the management of pH, iron, aluminium and odours. This requirement may cause the need for careful evaluation of existing treatment technologies and consideration of the proposed method of excavation.
- I. The report shall detail the proposed treatment system(s) including its capabilities, how many treatment tanks or basins will be required to satisfy discharge criteria, and include a separate section on dewatering contingencies in the event of adverse impacts to the receiving waters.
- J. Contact should be made with Council's Stormwater Maintenance Engineer regarding Council's stormwater system capacity and current condition where discharge to stormwater is proposed.
- K. Where required, detailed design and measures to ameliorate the potential impact of these species on staff, patients and visitors will be developed as part of the Stage 2 design. This will include considerations of measures to prevent mosquitos entering hospital buildings, minimising mosquito breeding, and awareness of mosquito risks.
- L. The Noise and Vibration Impact Assessment shall be amended to consider the impact of localised blasting and heavy ripping that may be required as outlined in the Preliminary Geotechnical Investigation (Morrison Geotechnic, September 2018).
- M. The construction noise particularly hammering, wood chipping, and rock crushing associated with this proposal is substantial and noise above background levels are likely to create amenity impacts to sensitive receivers particularly along Cudgen Rd and Kingscliff TAFE. Highly noise affected levels or where noise is outside recommended standard hours as per Interim Construction Noise Guideline (DECC, 2009) may cause a strong community reaction to noise and negotiation with affected premises is recommended.
- N. An extension to construction noise is proposed to meet the delivery timeframe. It is noted the Interim Construction Noise Guideline (DECC, 2009) recommends Saturday 8am to 1pm. Given the potential disturbance of noise sensitive receivers it is recommended that Saturday hours are kept consistent with the Guideline and limited to 8am to 1pm on Saturdays.
- O. Provision of dilapidation Reports may be required.
- P. Documentation required to ensure future compliance with AS 1428.1 - 2009 Design for access and mobility, AS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities and the BCA site plans inclusive of future finished ground levels, contours and conceptual details of pedestrian access from Cudgen Road and within the site and all accessible parking spaces over the site to enable entry to all facilities within Tweed Valley Hospital.

- Q. Details to be provided of the location of static water supplies and associated hydraulic services required for future firefighting purposes.

**OPTIONS:**

1. That Council in regard to Development Application DA18/0685 for a concept application for new Tweed Valley Hospital and Stage 1 works (NSW Planning & Environment App No. SSD 9575) and proposed SEPP to amend Tweed LEP 20114 at Lot 102 DP 870722; No. 771 Cudgen Road CUDGEN **endorse** the Draft Council Submission at Attachment 1.
2. That Council in regard to Development Application DA18/0685 for a concept application for new Tweed Valley Hospital and Stage 1 works (NSW Planning & Environment App No. SSD 9575) and proposed SEPP to amend Tweed LEP 20114 at Lot 102 DP 870722; No. 771 Cudgen Road CUDGEN **edit** the Draft Council Submission at Attachment 1.

Option 1 is recommended.

**CONCLUSION:**

This report and Attachment 1 is intended to offer the NSW Department of Planning a brief list of matters that Council believes requires further consideration before a determination of the application is made.

The comments are assessing the subject sites suitability at a technical level and have not considered whether an alternative site would be a better location as there is an obligation to consider the subject application on its own merits.

**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:**

Attachment 1.

TSC Draft Submission to the NSW Department of Planning and Environment on DA18/0685 which relates to the EIS for the Tweed Valley Hospital (ECM 5659115)

**8 [PR-PC] Development Application DA16/0579.01 for an Amendment to Development Consent DA16/0579 for Alterations and Additions to Water Bottling Facility at Lot 1 DP 883113 & Lot 2 DP 883113; No. 2574 Kyogle Road Kunghur**

**SUBMITTED BY: Development Assessment and Compliance**

mhm



Making decisions with you  
*We're in this together*

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

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

Council has received a 4.55 Modification to DA16/0579 (Mount Warning Spring Water) at Kyogle Road Kunghur. This application approved a new shed over Lot 2 to be used in conjunction with water extraction from Lot 1. Lot 2 also proposes to be the site where water trucks collect the water that is extracted from Lot 1 as the site access is better than the existing access on Lot 1.

The Modification seeks to **stage** the DA16/0579 so that water trucks can collect water from Lot 2 without the shed yet being complete.

The application has been lodged to remedy compliance matters at the site as DA16/0579 offers the provisions which the company wish to rely on for water extraction going forward.

A confidential report regarding compliance matters at this site has been separately reported to Council.

This staging would allow the already approved bulk water to occur first (before finalisation of the shed on Lot 2) as Stage 1 and then the remaining shed construction (bottling) would continue as Stage 2.

The existing conditions on DA16/0579 would allow large unlimited truck sizes to undertake 12 trips weekdays and 8 trips weekends between 7am – 7pm seven days a week.

The modification seeks consent to enable the development to be completed in two (2) stages as follows:

- Stage 1 - installation of the water delivery pipe, construction of the driveway and internal truck turnaround area, and the provision of bulk water supplies from Lot 2.
- Stage 2 - construction of the shed and commencement of the water bottling operation.

The proposed modification can be achieved by:

- Altering the development description from "Alterations and Additions to Water Bottling Facility" to "Alterations and Additions to Water Bottling Facility in two (2) Stages". And
- Deleting existing condition1 and Inserting a new Condition 1A to read:

1A The development is to be undertaken in two stages as follows:

- Stage 1 - installation of a water transfer pipe from Lot 1 DP 883113 to Lot 2 DP 883113, construction of a driveway and truck turnaround area, direct filling of water tankers from the water transfer pipe within the truck turnaround area and the export of bulk water supplies by water tanker from the site.
- Stage 2 - Construction of a new shed for water bottling purposes and the completion of all environmental restoration works.

The applicant is not seeking any changes to the nature or scale of the approved development. The overall development remains the same. There will be no change to the final approved development.

Accordingly this is considered a technical amended and is recommended of approval.

#### **RECOMMENDATION:**

**That Development Application DA16/0579.01 for an amendment to Development Consent DA16/0579 for alterations and additions to water bottling facility at Lot 1 DP 883113 & Lot 2 DP 883113; No. 2574 Kyogle Road Kunghur be approved by**

**A. Altering the development description from "Alterations and Additions to Water Bottling Facility" to "Alterations and Additions to Water Bottling Facility in two (2) Stages". And**

**B. Delete Condition 1 and replace with Condition 1A which reads as follows:**

**1A. The development is to be undertaken in two stages as follows:**

- **Stage 1 - installation of a water transfer pipe from Lot 1 DP 883113 to Lot 2 DP 883113, construction of a driveway and truck turnaround area, direct filling of water tankers from the water transfer pipe within the truck turnaround area and the export of bulk water supplies by water tanker from the site.**
- **Stage 2 - Construction of a new shed for water bottling purposes and the completion of all environmental restoration works.**

[GEN0005]



**REPORT:**

**Applicant:** Mount Warning Springwater Company Pty Ltd  
**Owner:** Mrs Irene L Martin & Mr Shaun J Martin  
**Location:** Lot 1 DP 883113 & Lot 2 DP 883113; No. 2574 Kyogle Road KUNGHUR  
**Zoning:** RU2 - Rural Landscape  
**Cost:** \$Nil Modification only

**Background:**

Council has received a 4.55 Modification to DA16/0579 to stage the application.

Development Consent No. DA 16/0579 was issued by Tweed Shire Council on 18 November 2016 for alterations and additions to a water bottling facility at Lots 1 and 2 DP 883113 Kyogle Road, Kunghur.

Lot 1 DP 883113 currently has an approval for a rural industry for water bottling and bulk water supplies. This has been operating for approximately 13 years and was approved by way of Development Consent No. DA05/0995.

Development Consent No. 16/0579 approved alterations and additions to this facility and key features of the approved development include:

- The construction of a new water bottling shed on the adjacent Lot 2 DP 883113 and the relocation of the water bottling, bulk water supply and storage component of the approved development to the adjacent lot.
- The existing ground water extraction and water filtration within the existing shed will remain on Lot 1.
- A new driveway access will be constructed from Kyogle Road to Lot 2 for the proposal and all delivery trucks associated with the water bottling and bulk water supply will use this access.
- The water will remain being extracted from Lot 1 and filtered in the existing shed and then will be piped via a 75mm food grade poly pipe to the new shed on Lot 2. The pipe will generally follow an existing farm road on Lot 1 and then cross the Tweed River over a farm bridge to Lot 2.

The approved shed is currently under construction and almost at lock up stage. The entire development is expected to be completed in the next 3 to 4 months (depending on weather and supplies).

This staging would allow the already approved bulk water to occur first (before finalisation of the shed on Lot 2) as Stage 1 and then the remaining shed construction (bottling) would continue as Stage 2.

The existing conditions on DA16/0579 would allow large unlimited truck sizes to undertake 12 trips weekdays and 8 trips weekends between 7am – 7pm seven days a week.

It is proposed to amend the consent to enable the development to be completed in two (2) stages as follows:

- Stage 1 - installation of the water delivery pipe, construction of the driveway and internal truck turnaround area, and the provision of bulk water supplies from Lot 2.

- Stage 2 - construction of the shed and commencement of the water bottling operation.

The proposed modification can be achieved by:

Altering the development description from "Alterations and Additions to Water Bottling Facility" to "Alterations and Additions to Water Bottling Facility in two (2) Stages".

Deleting existing condition1 and Inserting a new Condition 1A to read:

1A The development is to be undertaken in two stages as follows:

- Stage 1 - installation of a water transfer pipe from Lot 1 DP 883113 to Lot 2 DP 883113, construction of a driveway and truck turnaround area, direct filling of water tankers from the water transfer pipe within the truck turnaround area and the export of bulk water supplies by water tanker from the site.
- Stage 2 - Construction of a new shed for water bottling purposes and the completion of all environmental restoration works.

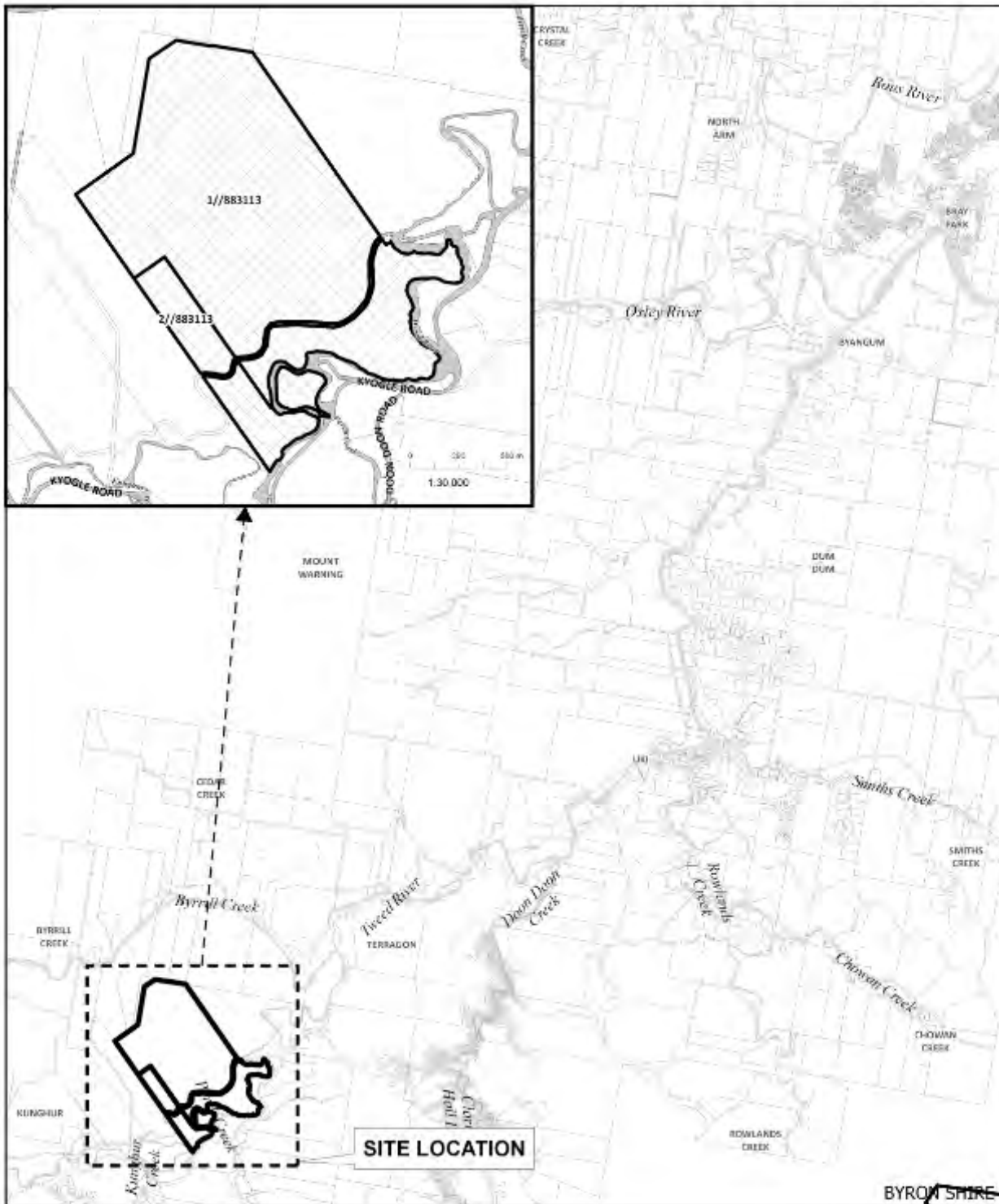
The purpose of the modification is to enable bulk water deliveries to occur from the site as Stage 1, with the construction of the shed and the associated water bottling as Stage 2. This modification is being requested as a result of unexpected delays to the shed construction.

The applicant is not seeking any changes to the nature or scale of the approved development. The overall development remains the same. There will be no change to the final approved development.

Accordingly this is considered a technical amendment and is recommended for approval. Staging an application meets the modification tests and can be statutorily approved.

A confidential report regarding compliance matters at this site has been separately reported to Council.

**SITE DIAGRAM - No. 2574 Kyogle Road, Kunghur (DA05/0995 & DA16/0579)**



**Site Plan**  
 Lots 1 and 2 DP 883113  
 2574 Kyogle Road Kunghur  
 (DA05/0995 & DA16/0579)

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council does not accept any liability for errors or omissions, whether or not caused by negligence, inaccuracy, incompleteness, or suitability for any particular purpose and disclaims all responsibility and all liability (including in those instances, but not by way of limitation, for a negligent, loss, injury, or damage, including consequential damage and loss) which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the purpose of guidance only and is not intended as a contract or any other legal document. It should not be used for survey or construction purposes and prior to any excavation or other before you dig" enquiry must be made by calling 1300 130 130. The information contained on this document remains valid for 30 days only from the date of supply.

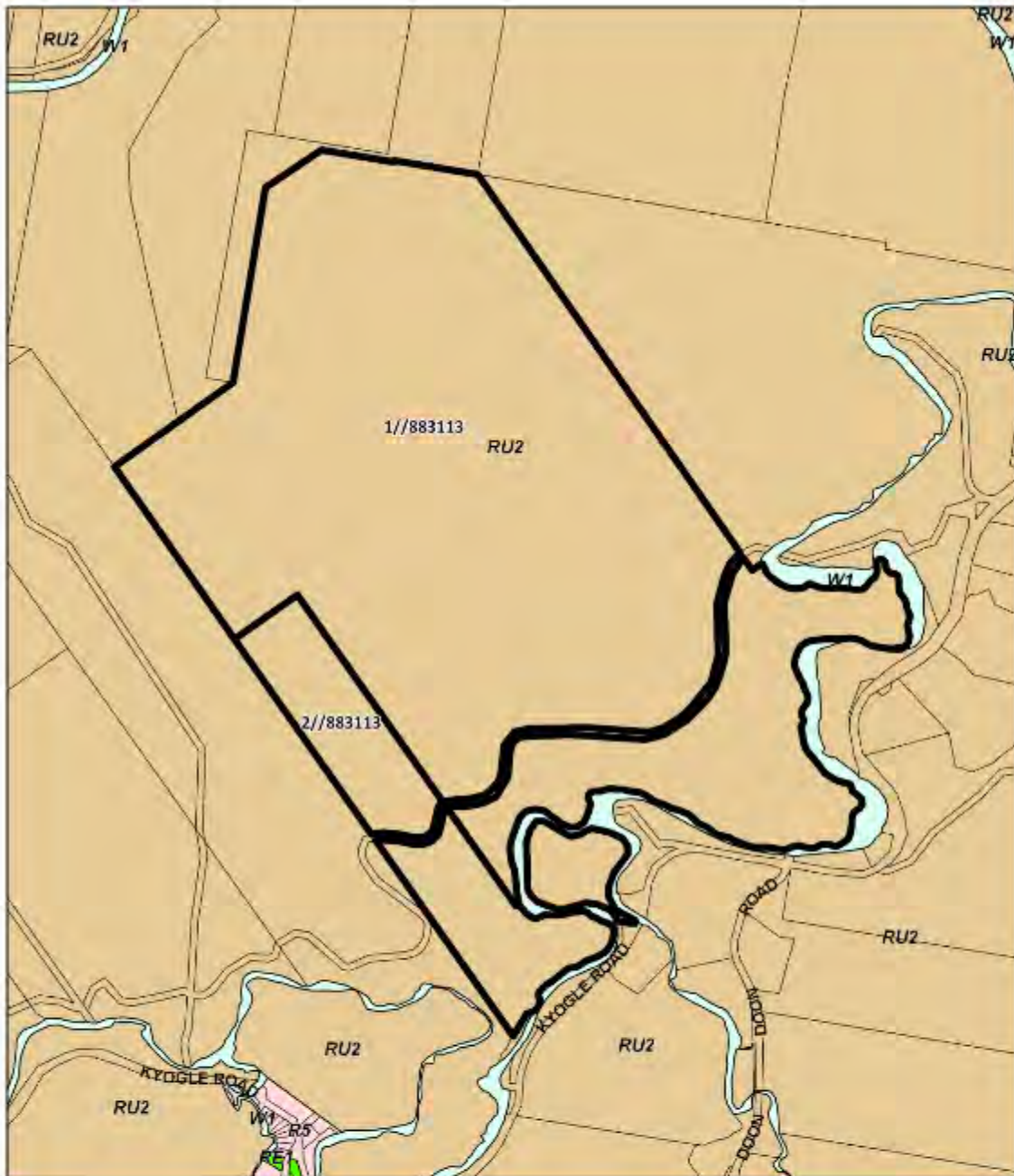
**GDA**  
 Coordinate System - NZG 2000  
 Datum - GDA 94  
 Cadastre: 21/01/2018  
 © NSW LPI & Tweed Shire Council  
 130 130 130  
 130 130 130  
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Civic and Cultural Centre  
 3 Tankerville Road  
 Manildra NSW 2886  
 PO Box 616  
 Manildra NSW 2884  
 T: 021 5570 2403 / 1800 232 872  
 F: 021 5572 2403  
 W: www.tweed.nsw.gov.au  
 E: planning@tweed.nsw.gov.au



Date Printed: 06 April, 2018

ZONING MAP:



Subject Land	<b>Tweed Local Environmental Plan 2014</b>	RE1 Public Recreation
	<b>Zone</b>	RU2 Rural Landscape
R5 Large Lot Residential		W1 Natural Waterways

440000 & A4 Referral  
 0 140 280m  
 GDA  
© Crown Copyright, Geographical Names Authority of New South Wales, Department of Environment and Planning, 2018. All rights reserved. This map is provided as a guide only and does not constitute a contract. The Council is not responsible for any errors or omissions. This map is provided as a guide only and does not constitute a contract. The Council is not responsible for any errors or omissions. This map is provided as a guide only and does not constitute a contract. The Council is not responsible for any errors or omissions.

**Site Plan - Local Environmental Plan**

Lots 1 and 2 DP 883113  
 2574 Kyogle Road Kunghur  
 (DA200695 & DA160579)

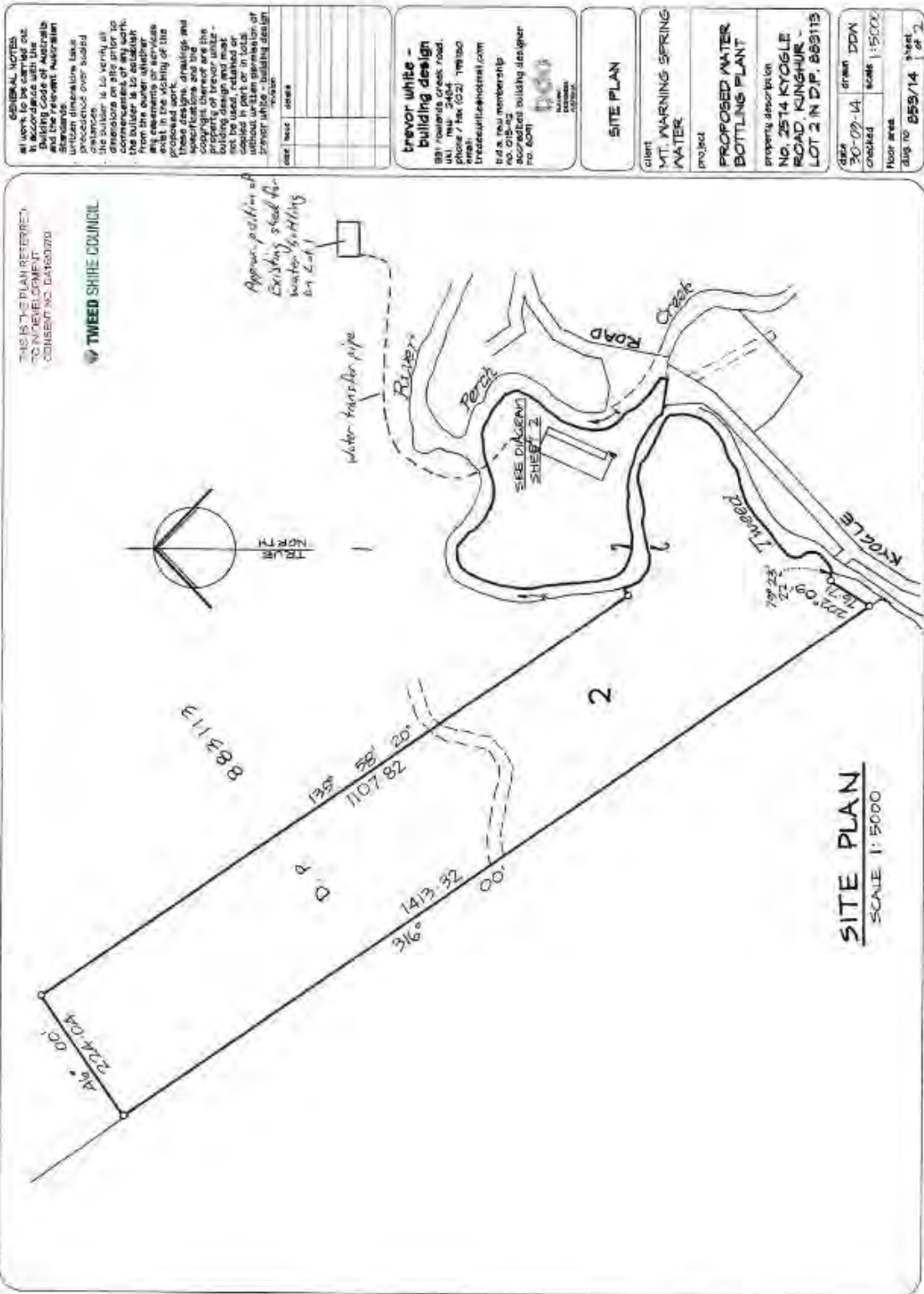
© Land and Property Information (LPI) and Tweed Shire Council

Map Name: 16 April 2018

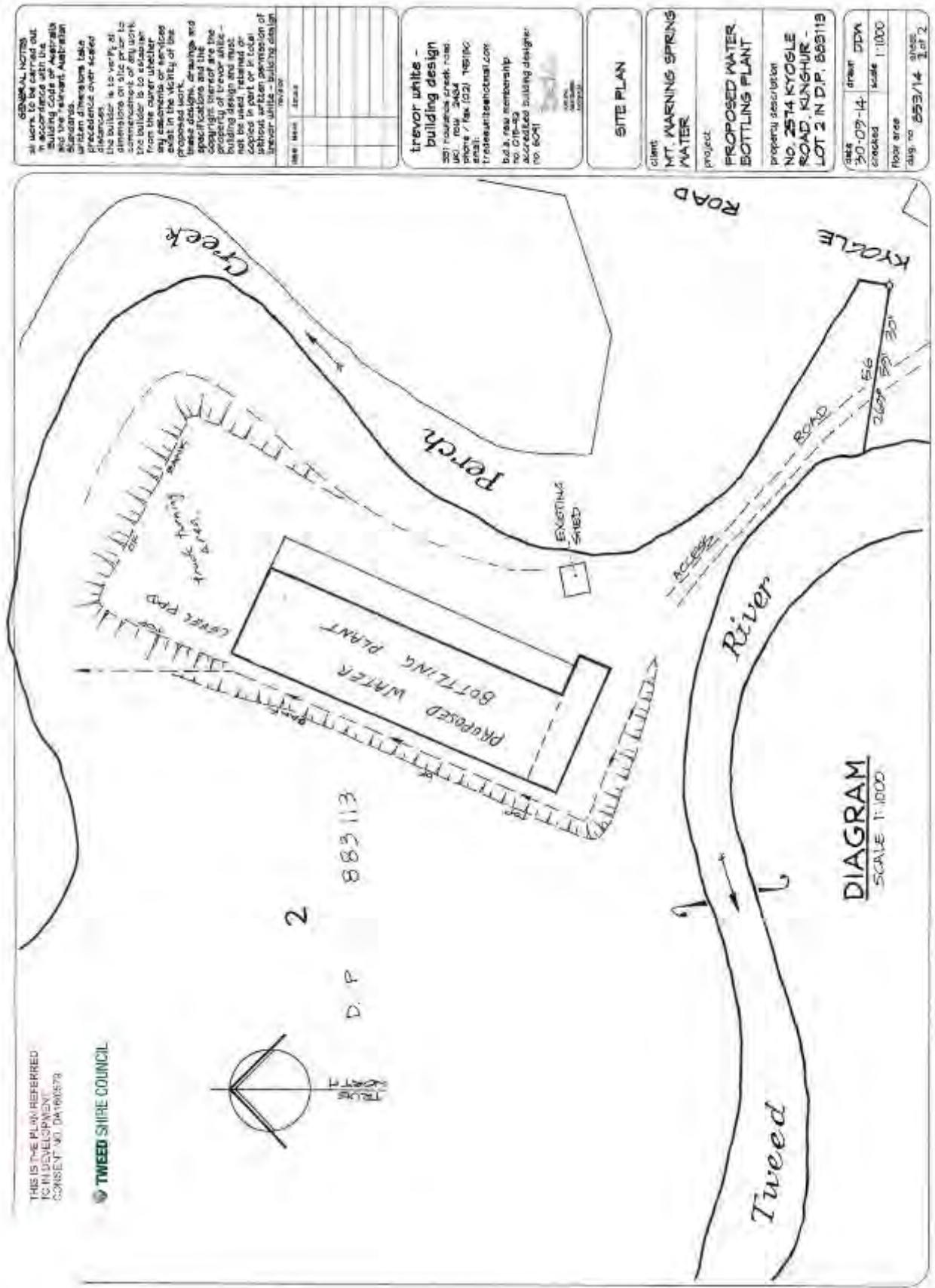




APPROVED PLANS FROM DA16/0579







**Considerations under Section 4.15 & 4.55 of the Environmental Planning and Assessment Act 1979:**

**4.55 Modification of consents—generally**

(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*

The staging as detailed in the background of this report is of minimal environmental impact.

(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*

The development is substantially the same it is now just staged in two stages.

(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*

The application was notified between 14 November and 28 November 2018

(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.*

Council received 14 objections as follows (duplications only shown once):

*I strongly oppose the proposed development application, DA16/0579.01 for Mount Warning Spring Water's effective expansion of its operations. The absence of valid science concerning the water extraction's sustainability, the use of B-Double tankers, their appalling increasing frequency and the stupidity of the bottled water industry combine to form a compelling argument why this development application should be rejected by the Tweed Shire Council. The frequency of water tankers from this operation is already compromising the amenity of Uki and its surrounds. This takes the form of huge trucks rumbling through the village at all hours of the day and night. Uki residents have mounted a vigorous campaign against this, which seems to have fallen in the tin ear of council. The inaction of council officers in relation to these complaints is reprehensible and worthy of reference to the local government ombudsman. The entire water mining industry completely fails the most basic public interest test. It provides no local employment and despite the spin of Yaru Water allegedly mentoring young indigenous people, there appears to*

*be not one job allocated, not one position created. In document DA16/0579.01 - Modification Report - 2574 Kyogle Road Kunghur the applicant states The proposed modification is intended to enable Mount Warning Springwater to commence bulk water supplies from the site before the water bottling shed is completed. The proposal makes no changes to extraction rates, hours of operation, truck movements, shed details or environmental restoration works. I object to the development application because it is demonstrable that Mount Warning Spring Water are extracting far over their allocation. In the absence of any monitoring or regulation of the conditions of the development application by council, this is risible. I urge you to defeat this development application and rid the Tweed Shire of this utterly stupid, unnecessary and unsustainable industry.*

---

*I am against the intensification of operations*

*I am aware that the organisation has been flouting the previous conditions of their existing approval which makes me angry and creates an expectation that if approved this is supporting them in their current illegal activities My main concern is the extension of hours and the increase in the size of trucks being used This is already impacting on the amenity of my neighbours in the village of Uki and the safety of my kids when they visit the village Please reject this application and curtail & enforce the conditions on the previous consent!*

*PS If the application is approved would it be possible to require the org to route their trucks thru Kyogle and the back way to the QLD bottling plant?*

---



*Objection to Development Application DA18/0910 and DA16/0579.01 Development for the purposes of a water bottling facility*

*Attention Mayor Katie Milne and councillors,*

*There is no reason to conclude that the rivers shown in the attached Mt Warning Caldera image, are not carrying the entire amount of water falling in the Mt Warning caldera rim, except for a small amount running off the rim finding its way below the surface. It is this valuable community asset that Mr Karlos feels entitled to sell. By just looking at the topography of the caldera, it is obvious that the water being sold by the bore operators within the Mt Warning Caldera is not magically being replenished from New Guinea as the water miners claim, but with not one shred of evidence to prove it. I would give a million to one odds that it is coming from the same source as the Tweed River and is therefore finite. Would these latest, get-*

*rich-quick schemers be allowed to sell the water out of the Tweed River to Coca Cola? No, I didn't think so, so why are you wasting council money by even contemplating letting them sell it from the seepage pools below, even if it is surplus to our current requirements, but which may take decades to replenish. I believe this whole issue is becoming a national issue, so please seek clarity from the Federal Gov or at least state gov in this matter. These selfish people are literally miners, drilling for the element H<sup>2</sup>O and trying to claim they are primary producing something. We all know that title to your land does not give you ownership of what is below or above your property.*

*The problem of massive trucks on our rural roads will also disappear if you just say no to this and all future development applications, and mean it.*

---

*Hi, I would like to express my concern about the DA which you have received for the increase in water pumping at Kunghur, my concerns are based on the state of the aquifers in terms of the affect of the increasing number of water bottling companies that have recently opened in this area and how that is affecting the aquifers, and secondly, regarding the affect on our roads in terms of the increase in numbers of water tankers on the very dangerous road between Murwillumbah and Kyogle, which, as you would know, has resulted in several deaths even in the past year, some due directly to trucks we believe.*

*Could you please advise if an independent body has undertaken research in to the capacity of the aquifer that is being used for the water bottling plants, and if so, could we access this research?*

---

*I strongly oppose the proposed development application, DA16/0579.01 for Mount Warning Spring Water's effective expansion of its operations. The absence of valid science concerning the water extraction's sustainability, the use of B-Double tankers, their appalling increasing frequency and the stupidity of the bottled water industry combine to form a compelling argument why this development application should be rejected by the Tweed Shire Council. The frequency of water tankers from this operation is already compromising the amenity of Uki and its surrounds. This takes the form of huge trucks rumbling through the village at all hours of the day and night. Uki residents have mounted a vigorous campaign against this, which seems to have fallen in the tin ear of council. The inaction of council officers in relation to these complaints is reprehensible and worthy of reference to the local government ombudsman. The entire water mining industry completely fails the most basic public interest test. It provides no local employment and despite the spin of Yaru Water allegedly mentoring young indigenous people, there appears to be not one job allocated, not one position created. In document DA16/0579.01 - Modification Report - 2574 Kyogle Road Kunghur the applicant states The proposed modification is intended to enable Mount Warning Springwater to commence bulk water supplies from the site before the water bottling shed is completed. The proposal makes no changes to extraction rates, hours of operation, truck movements, shed details or environmental restoration works. I object to the development application because it is demonstrable that Mount Warning Spring Water are extracting far over their allocation. In the absence of any monitoring or regulation of the conditions of the development application by council, this is risible. I urge you to defeat this development application and rid the Tweed Shire of this utterly stupid, unnecessary and unsustainable industry.*

---

*I wish to object to the proposed amendment to this development.*

*Water mining is an unsustainable activity in the Tweed Valley, both environmentally and in relation to road maintenance.*

---

*I strongly oppose the proposed development application, DA16/0579.01 for Mount Warning Spring Water's effective expansion of its operations. Tweed Shire Council is unable to monitor current operations. The tankers continue to remove water after 3pm, even after protests. The owners show no intention to follow the rules of consent, and clearly have no respect for the community in this regard. This behaviour should not be rewarded with approval of this modification. As neighbours of this property we have grave concerns for the springs which likely come from this same aquifer. For the first time ever our spring dried up this winter, requiring us to tank in water. Watching the tanks pass uki-many more than 4 per day, and throughout the weekend tells us that there is no ethics in this practice. The owners feel above the law. If council is unable to monitor then there should be no water mining at all. It has been left up to residents to monitor this ill practice. Should we stop paying our rates as many have suggested? Our primary school is put at risk. Our environment is put at risk. Our personal amenity is being affecting for the profit of one landholder who does not give a damn the impact on the rest. Do not reward this behaviour. In document DA16/0579.01 - Modification Report - 2574 Kyogle Road Kunghur the applicant states The proposed modification is intended to enable Mount Warning Springwater to commence bulk water supplies from the site before the water bottling shed is completed. This proposal makes no changes to extraction rates, hours of operation, truck movements, shed details or environmental restoration works. I object to the development application because it is demonstrable that Mount Warning Spring Water are extracting far over their allocation-which is likely affecting many properties surrounding this one, and possibly a heritage site-Mount Warning (protected Gondwana Rainforests). In the absence of any monitoring or regulation of the conditions of the development application by council, this is appalling, negligent and frightening for the future. This is not a sustainable practice and is not in the community's public interest.*

---

*I want to report (again) that I cannot open the PDF files attached to this D/A. I emailed the TSC but haven't received a reply. This makes it hard to put in a submission against a D/A where I don't have access to the details, but I'll have a go anyway. According to the Tweed Weekly News, the application is for 2 stages:*

*Stage 1 - Installation of the water delivery pipe, construction of the driveway and internal truck turnaround area, and the provision of bulk water supplies from Lot 2. From what I've seen and the photos I've taken, the driveway has been constructed and bitumened . I assume the rest has been done, but can't tell from the road. If this company has gone ahead before any approvals I think they should be made to dismantle any improvements they have done.*

---

*Stage 2 - Construction of the shed and commencement of the water bottling operation. Once again, from the road, it looks like the shed has been constructed. If this is so, this should be dismantled too. I do have photos but can't find anywhere on this submission to attach them.*

*It is my understanding that Mount Warning Springwater is only allowed 4 truckloads per day - M-F, 9am to 3pm - small truck loads only. Who defines what a small truck is? There have been many sightings of more than 4 loads per day starting very early in the morning into the evening. If the Tweed Shire Council doesn't have the manpower to monitor these loads, then the D/As should never be approved.*

*Apart from the damage done to our local roads by trucks registered in Queensland (who pay NO fees towards the upkeep of our roads, "and the noise, lack of water security, etc. we have to consider the ecosystem disturbance, both terrestrial and aquatic. All the fauna and flora in numerous types of ecosystems are dependant on aquifers and groundwater.*

*Some ecosystem are dependent on underground water at different times. Wetlands, soaks, creek and the like, have intricate ecosystems that can be destroyed, or at the very least disrupted by water extraction. A small soak drying up can wipe out a whole ecosystem.*

*In long, dry conditions, like Australia has been experiencing recently, fauna and flora can rely on groundwater as a refuge. Larger members of the fauna and flora families, all too often, grab our attention. We notice when the gum tree dies from lack of water, or when the wallabies disappear, because their soaks have dried up. We notice the water birds disappear when a small wetland dries up, but what about the often unseen (by human) world living in the wetlands and soaks. Dozens of species can rely on a small soak in a forest, or on a creek or a wetland or the aquife itself (largely crustaceans, but also insects, worms, gastropods, mites and fish). There is a whole world in a pond, spare a though for them."*

*Please do not approve the above amendment to the original D/A and if any of those amendments have already been done, please make sure they are dismantled at cost to the Company, because they are just a pack of greedy people who, if they'd stuck to the original approvals, wouldn't be in the situation they are now in.*

---

*I note the approvals contained in DA16/0579 and appreciate the difficulties now faced in light of proposed changes to the Tweed LEP and the enquiries called for into water bottling.*

*The documentation contained on the TSC website for this DA16/0579 contains only the consent and no other information. It would appear then that no EIS or hydrology reports were considered (?).*

*I feel Council should at the very least defer consideration of allowing bulk extraction to commence at this site until full investigations are carried out on the ramifications of such large extractions.*

---



*I am writing to voice my opposition to this DA. MWSW has continually breached DA conditions and should have their license revoked. Water extraction for bottling is a highly polluting and unsustainable industry and I am most pleased that Tweed's LEP is being amended to disallow water mining. The residents of Kunghur and Uki have suffered through MWSW operating at ridiculous hours through night and day and are worried about the water table being diminished and the animals (including us) suffering for it. BAN WATER MINING!*

---

*1. I would like to object strongly to any expansion of this business or changes to this DA due to the fact it is not in the public interest.*

*2. Mt Warning Spring Water has been acting outside of their DA for the last few months blatantly going against their allowed truck movements and travel times. The barricade of two water trucks by the people of Uki was able to prove this point, trapping two water trucks traveling unlawfully on a Saturday morning.*

*This was after the people of Uki were being woken up by trucks traveling illegally night and day. They informed the council, but nothing was done!*

*3. The trucks have also been traveling during school drop off hours which is also against their DA and the public interest.*

*4. The new DA allows for travel 7 days a week from 7 am to 7 pm. This means the small historical village of Uki will be inundated by trucks particularly on the weekends when there is a farmers market and a monthly Sunday market. These both attract a large number of locals and tourists. The quantity of traffic at these times does not mix well with the large tankers which have been recorded as not stopping for people crossing the pedestrian crossing. (Photos available on request).*

*Surely there is no need for trucks to travel on weekends and during school pick up times.*

*4. Do not reward illegal behavior by increasing their hours of operation.*

*5. All additions to any Water Mining DAs should also be put on hold until after the government's research into the effect the Water Mining is having on the local aquifers.*

*6. Even the Tweed Weekly Newspaper was able to find out that none of the water Mining DAs in the Shire are being monitored by reliable tamper-proof meters. How is it possible to allow this industry to continue in the Shire?*

*7. All of the commercial water extractors in the Tweed Shire have been recorded by locals as well as the Tweed Water Alliance as extracting and transporting many megalitres of water above their allowed licenses (signed affidavits available)*

8. *The Tweed/ Brunswick Heads Aquifer is a fractured aquifer with one part of it running under the Tweed Shire and the rest running under the Byron Shire. Byron Shire already has no Commercial Water extraction allowed in its LEP. The very nature of a fractured aquifer means you cannot be sure the commercial water extraction that is happening in the Tweed Shire is not affecting the water levels under neighboring Shires that do not have water extraction in their LEPs. How can this be in the public interest?*

*Mt Warning appears to have already completed much of the work on their property before the proposed DA has even been passed.*

*Once more I would like to encourage council to proceed with caution in allowing any changes to this DA under the condition that they have already shown disregard for councils authority and increased Commercial Water extraction is not in the Public Interest. Also Increased Large Water Truck Movements are not in keeping with the ambiance and safety of the village. Neither is it helpful in promoting tourism and local business.*

---

*I strongly oppose the proposed development application, DA16/0579.01 for Mount Warning Spring Water's effective expansion of its operations.*

*The absence of valid science concerning the water extraction's sustainability, the use of B-Double tankers, their appalling increasing frequency and the unsustainability of the bottled water industry combine to form a compelling argument why this development application should be rejected by the Tweed Shire Council.*

*The frequency of water tankers from this operation is already compromising the amenity of Uki and its surrounds. This takes the form of huge trucks rumbling through the village at all hours of the day and night.*

*Uki residents have mounted a vigorous campaign against this, which seems to have fallen in the tin ear of council. The inaction of council officers in relation to these complaints is reprehensible and worthy of reference to the local government ombudsman.*

*The entire water mining industry completely fails the most basic public interest test. It provides no local employment and despite the spin of Yaru Water allegedly mentoring young indigenous people, there appears to be not one job allocated, not one position created.*

*In document DA16/0579.01 - Modification Report - 2574 Kyogle Road Kunghur the applicant states The proposed modification is intended to enable Mount Warning Springwater to commence bulk water supplies from the site before the water bottling shed is completed. The proposal makes no changes to extraction rates, hours of operation, truck movements, shed details or environmental restoration works.*

*I object to the development application because it is demonstrable that Mount Warning Spring Water are extracting far over their allocation. In the absence of*

*any monitoring or regulation of the conditions of the development application by council, this is risible.*

*I urge you to defeat this development application and rid the Tweed Shire of this utterly stupid, unnecessary and unsustainable industry.*

---

The above submissions are opposed to the general practice of operation of water extraction in the Tweed Shire Council.

The subject application is not seeking approval to undertake any merit type changes to an already approved DA being DA16/0579.

The proposed change is a staging change only and is recommended for approval.

*(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 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The subject application is not seeking approval to undertake any merit type changes to an already approved DA being DA16/0579.

The proposed change is a staging change only and is recommended for approval having regard to all heads of consideration under Section 4.15.

**OPTIONS:**

1. Approve the application as recommended.
2. Refuse the application with reasons

Option 1 is recommended

**CONCLUSION:**

The applicant is not seeking any changes to the nature or scale of the approved development. The overall development remains the same. There will be no change to the final approved development.

Accordingly this is considered a technical amended and is recommended of approval.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Nil Applicable

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**c. Legal:**

The applicant has a right of appeal to the Land and Environment Court in respect of Council determination of this application.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.                      DA16/0579 Consolidated Determination Notice (ECM  
5659437)

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**9 [PR-PC] Planning Proposal PP17/0003 Protection of Airspace Surrounding Bob Whittle Murwillumbah Airfield - Public Exhibition Review**

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

mhm



**Leaving a Legacy**  
*Looking out for future generations*

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

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

**ROLE:** **Leader**

---

**SUMMARY OF REPORT:**

The purpose of this report is to present the outcomes of the public exhibition and agency consultation for Planning Proposal PP17/0003. The purpose of the planning proposal is to assist in protecting the airspace surrounding the airfield through the introduction of additional clause within the *Tweed Local Environmental Plan 2014* to regulate the height of development in the vicinity of the airfield with reference to the Obstacle Limitation Surface (OLS) Plan mapping.

The impact of height restrictions are limited primarily to 8 privately owned properties immediately adjoining the airfield, where the OLS contour is less than the current 10 metre Tweed LEP 2014 maximum building height development standard. The proposed amendment would require proponents for development on these affected sites to submit a report, prepared by a suitably qualified professional, outlining the impact the proposal will have on the airspace surrounding the development. The report would then be forwarded to the Airfield Licensee (Tweed Shire Council Economic Development Unit) for approval and imposition of safety mitigation measures where appropriate.

The draft planning proposal was placed on public exhibition for a period of 28 days from Tuesday 25 September to Friday 26 October 2018.

The public exhibition and consultation attracted seven submissions, all in support of the proposal. Submissions consisted of five from the general public, one from the Licensee of the airfield (Tweed Shire Council Economic Development Unit) and one from the NSW Rural Fire Service. The content of these submissions has been considered within this report and does not necessitate any amendment to the exhibited planning proposal.

The report concludes the draft LEP is suitable to be made and to expedite that process the planning proposal document should be updated to include the proposed amendments to the LEP mapping (OLS mapping), to describe the public exhibition and consideration of issues raised, and be forwarded to the Department of Planning and Environment for Plan making at the earliest time.

**RECOMMENDATION:**

**That Planning Proposal PP17/0003, for the Bob Whittle Murwillumbah Airfield, being Tweed Local Environmental Plan 2014 Amendment No 15, be forwarded to NSW Department of Planning and Environment with a request that the Plan be made under s.3.36 of the *Environmental Planning and Assessment Act 1979*.**



## REPORT:

### Background

At its meeting of 20 July 2017 Council resolved that:

1. *The Planning Proposal for Bob Whittle Murwillumbah Airfield be prepared and submitted to the NSW Department of Planning and Environment for a Gateway Determination, in accordance with s56 of the Environmental Planning and Assessment Act.*
2. *The Minister for Planning and Environment or his Delegate be advised that Tweed Shire Council is not seeking plan making delegations for this planning proposal.*
3. *The Minister for Planning and Environment or his Delegate be advised that public exhibition is not required in this instance.*
4. *On receipt of the Minister's Gateway Determination Notice to proceed, any 'conditional' requirements of the Minister and any other study or work are to be completed, and included within the public exhibition material.*
5. *Following receipt of the Gateway Determination the planning proposal be publicly exhibited in accordance with the Gateway Determination and a further report is to be submitted to Council detailing the content of submissions received and any proposed amendment(s).*

Officers subsequently prepared and submitted Planning Proposal PP17/0003 to the NSW Department of Planning and Environment (DPE) on 2 May 2018.

A Gateway Determination was issued on 27 June 2018, with conditions requiring:

1. The planning proposal be updated prior to community consultation to provide Obstacle Limitation Surface (OLS) and Procedures for Air Navigation Services – Aircraft Operations (PAN OPS) mapping within the planning proposal so the community can understand where this clause applies.
2. Public exhibition under for a minimum of 28 days; and
3. Specific targeted consultation with:
  - NSW Rural Fire Service
  - Licensee of the Airfield (Economic Development – Tweed Shire Council); and
  - Local Aero Club.

During consultation with the Airfield Operator to source data and mapping as required by the Gateway, advice was received indicating there is no current PAN OPS mapping for the Bob Whittle Murwillumbah Airfield. Further its implementation would be a matter for Air Services Australia rather than Council, and it is unlikely that this mapping will be introduced in the near future. Whilst it is possible that PANS-OPS could be introduced in the future, in the short term there will not be a Procedure for Air Navigation Services – Aircraft Operations Map or Plan for the Murwillumbah Airfield due first and foremost to the infrequency of use of the airfield, and secondly due to the cost associated with developing such a system being an overcapitalisation for the current scale of operation of the airfield. DPE were notified and

advised that any reference to PAN-OPS in the Tweed LEP 2014 at this time is neither necessary nor achievable.

An amended Gateway was subsequently issued on 13 August 2018 confirming that no PANS OPS mapping is required.

The draft planning proposal was prepared for exhibition, including an OLS (map) for the affected area surrounding the airfield.

#### Obstacle Limitation Surfaces Map (OLS)

The OLS for an airport or airfield charts the volume and dimensions of operational airspace that should be kept free of obstacles to aircraft operations. The Murwillumbah Airfield OLS mapping is shown in Figure 1 below.

Whilst the OLS mapping covers a relatively large portion of land in the vicinity of the Bob Whittle Murwillumbah airfield, the effective impact of height restrictions on permanent structures as a result of this planning proposal is limited to those areas of land where the height of the OLS contour is below the current Tweed LEP 2014 maximum building height development standard. This constitutes approximately 4 hectares of land across 8 privately owned properties immediately adjoining the airfield. Of this, approximately 2,500 square metres is industrial zoned land to the west of the airstrip, whilst the remaining 3.75 hectares is land currently used for growing sugar cane. Figure 2 below identifies the 8 privately owned allotments that are primarily affected and highlights the area of land within each of those affected allotments that is within the 10m OLS contour.

The proposed amendment would require proponents for development on affected sites, where the proposal includes structures that penetrate the applicable OLS contour, to submit a report prepared by a suitably qualified professional, outlining the impact the proposal will have on the airspace surrounding the development. The report would then be forwarded to the Airfield Licensee (Tweed Shire Council Economic Development Unit) for approval and imposition of safety mitigation measures where appropriate.

The purpose of the amendment is not to unreasonable deny future development upon affected lands, but to ensure due consideration of the impact of that development can be made and where necessary conditioned so as to not cause safety concerns and/or affect the safe and efficient functioning of the airfield.

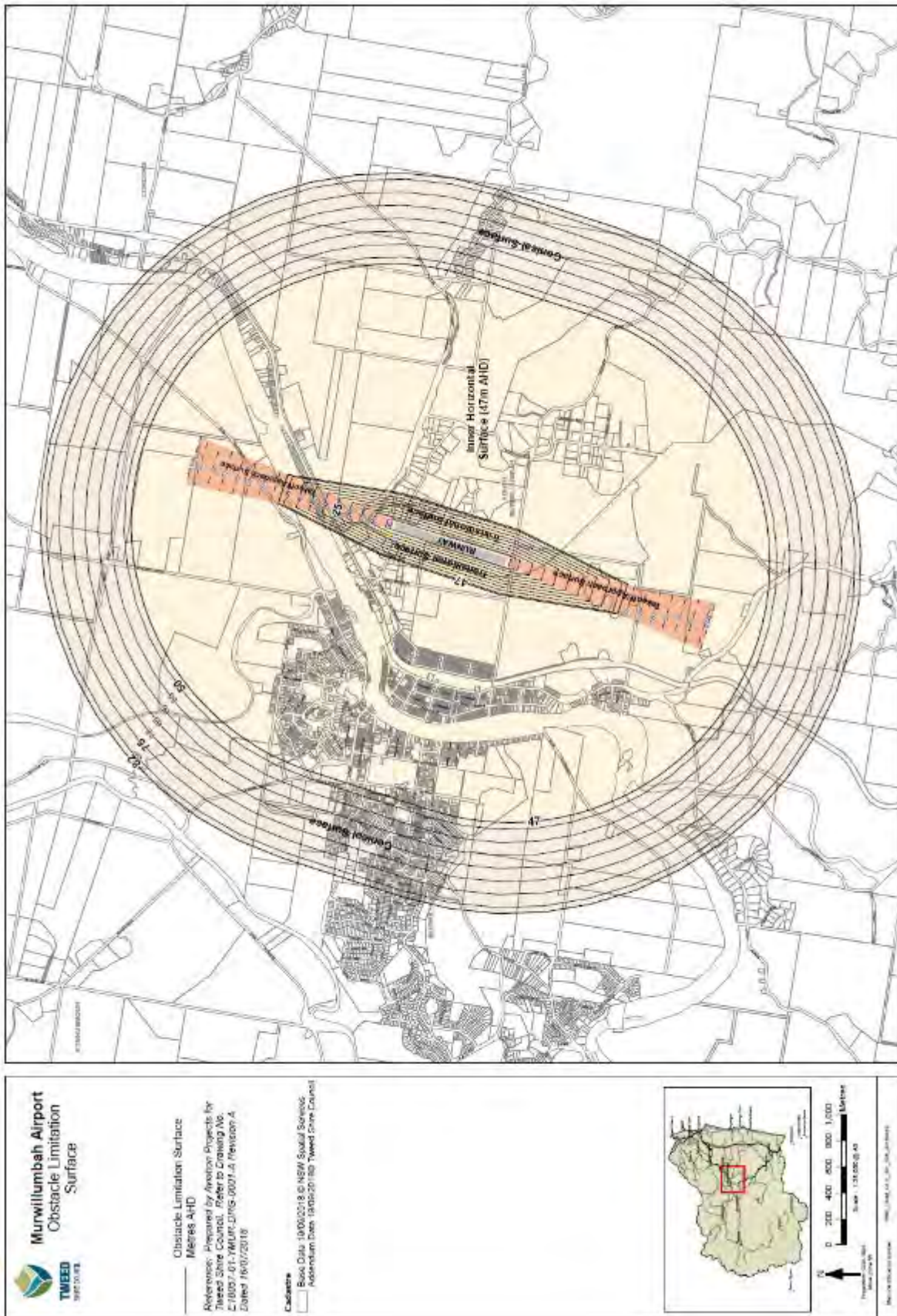


Figure 1: Obstacle Limitation Surface Plan mapping for Bob Whittle Murwillumbah Airfield



## Public Exhibition and Agency Consultation

The draft planning proposal was publicly exhibited from Tuesday 25 September to Friday 26 October 2018.

The public exhibition and community consultation process included all relevant documents being made available in digital format on Council's website and in hard copy at Council's administration offices in Murwillumbah and Tweed Heads. Notification of the planning proposal was made in the Tweed Link on 25 September 2018.

The Gateway determination required specific consultation with the NSW Rural Fire Service, the Licensee of the Murwillumbah Airfield (Tweed Shire Council Economic Development Unit) and the Local Aero Club. All three bodies were provided with a copy of the Planning Proposal and given 21 days to provide comment.

23 surrounding landowners were notified in writing of the planning proposal.

## Submissions

Seven submissions were received. All were in support of the planning proposal as exhibited.

Submissions comprised one from a government agency, one from the Airfield Licensee and five from the general public, with the latter five consisting of one adjoining land owner and four persons associated with the airfield as pilots, hanger owners or members of the aero club.

Advice was received from the NSW Rural Fire Service on 2 November 2018 confirming "no specific recommendations or comment with regards to bushfire protection".

The Murwillumbah Aero Club was notified as required by the Gateway, however no submission was received addressed from the organisation itself.

In principle, all seven submissions were in favour of the proposal and provided support for the amendment to the LEP. However, the four submissions from public users of the airfield all raised similar issues seeking further consideration for the regulation of development and land uses that do not require development consent from Council, such as vegetation and communications structures. As addressed in Table 1 below, the additional issues raised are beyond the scope of this planning proposal given there is no ability for Tweed LEP 2014 to regulate, therefore no major changes to the planning proposal are recommended.

Table 1 Summary of submissions and planning responses

	<b>SUMBITTER</b>	<b>SUBMISSION SUMMARY</b>	<b>PLANNING COMMENT</b>	<b>ACTION</b>
1	Member of public – adjoining land owner	Concerns around the effect of building height restrictions. Requested clarification on the meaning of the OLS and a higher resolution map to determine the OLS applicable to their properties. Also wanted to "confirm that there would be no additional height restrictions or need to obtain external review if the proposed DA is compliant and less than the OLS".	The OLS applicable to the site is higher than the existing maximum building height, therefore the planning proposal would not introduce any additional building height restrictions beyond the current controls. It is possible the situation could arise whereby proposed development requires a crane during construction which, if very tall, could penetrate the OLS. In this instance, whilst the proposed building itself may not	Issue resolved. No further action required.



	SUBBITTER	SUBMISSION SUMMARY	PLANNING COMMENT	ACTION
		<p>Higher resolution map was provided highlighting the applicable OLS for their site. No further concerns were raised, support for the proposal was given.</p>	<p>penetrate the OLS, the Development Application would nonetheless need to be referred to the airstrip operator to ensure appropriate safety measures are put in place during construction.</p>	
2	<p>Member of public – airfield user</p>	<p>Support for proposal based on:                      Airfield at Murwillumbah needs to be as safe as possible. Clearly, limiting the height and proximity of structures on and around the airfield contributes to safer operations; and                      TSC should take steps to ensure public safety in and around the airfield. Again, limiting the height and proximity of structures on and around the airfield contributes to a lower risk to the community than not doing so.                      Wanted consideration of vegetation height and proximity and other structures such as communications antennae being considered and incorporated into the current discussions about OLS, particularly where they exceed 10m building height limit. Additions to buildings within the OLS after construction should be subject to a DA.</p>	<p>Additions to buildings within the OLS will require development consent where triggered under the Tweed LEP 2014 land use tables. There may be circumstances where exempt development could penetrate the OLS. Council does not have jurisdiction to regulate exempt development via the planning proposal process.</p>	<p>Submission in support No further action required for this planning proposal.                       Submissions have been forwarded to the airfield licensee Council's Economic Development Unit, for their information and further action should they deem necessary</p>
3	<p>Member of public – airfield user</p>	<p>I would like to express my strong support for this proposal both on safety grounds, and as key to preserving the amenity of this facility for both its users and the wider Tweed Shire community. Also request Council consider widening the height restrictions to not just be for buildings and developments requiring approvals, but for all obstacles or activities that could infringe on the circuit area and runway approaches, including temporary structures or hazards (including cranes), vegetation management, drone flying, model aircraft lying, parachuting, tethered balloons and advertising structures, power lines and cables and laser light shows. Also urge Council to consider implementing Public Safety Zones at the end of both runway 18 and 36 to further protect non-aviation participants and their property from risk of accident.</p>	<p>The Tweed LEP 2014 has the ability to regulate development that requires consent from Council. Uses and activities that do not require development consent cannot be regulated through the LEP, or Council's planning processes and therefore are not able to be addressed within this or any other planning proposal.                       Implementation of Public Safety Zones (as recommended by the National Airport Safety Framework (NASF) are beyond the scope of this planning proposal. It would require significant consultation and representation by Council to the federal and state governing agencies to determine whether the local government planning framework is a practical or appropriate pathway for implementation.                       Notwithstanding, Tweed Shire Council's Economic Development Unit, being the airfield licensee and operator, has legal obligations</p>	<p>See above.</p>



	SUMBITTER	SUBMISSION SUMMARY	PLANNING COMMENT	ACTION
			under the Civil Aviation Act 1998 and associated regulations that are managed by the federal government body, the Civil Aviation Safety Authority (CASA) and the recommendations under the NASF to maintain an acceptable level of operational safety for the airfield.  See planning comments to Item 1 regarding cranes.	
4	Member of public – airfield user	Submission provides in general support, however raises a question that the amendment as drafted may not provide total protection to the approach and take off paths for aircraft to the extent that it guarantees the level of safety that is considered ‘the norm’ for most airfields. This proposal may not cover other obstructions such as trees, communications masts/towers etc. Some clarification of these concerns to many of us on the airfield would be appreciated.	See above planning comments to items 1-3 above.	See above.
5	Member of public – airfield user	In general support, however seeks proposal to include vegetation and antennas etc.	See above planning comments to items 1-3 above.	See above.
6	Airfield Licensee TSC Economic Development Unit (EDU)	The EDU represents Council as the owner and operator of Murwillumbah Bob Whittle Airfield. They fully endorse the LEP amendment as exhibited – present a sensible measure to prevent intrusions into the airspace surrounding the airfield.	Noted	Submission in support, No action required.
7	NSW Rural Fire Service	No specific recommendations or comments with regards to bushfire protection.	Noted	No action required

## OPTIONS:

1. Proceed with the LEP Amendment as recommended within this report.
2. Defer the matter for further consideration.

Council Staff recommend Option 1.

## CONCLUSION:

The Planning Proposal has been prepared with a view to ensuring the airspace surrounding the Bob Whittle Murwillumbah Airfield is free from obstructions. It is important to have safeguard mechanisms in place to ensure that developments do not encroach into any of the surface slopes associated with the airfield.

The proposed amendment would not unreasonably deny future development upon affected lands, but would ensure due consideration of the impact of future development can be made, and where necessary, appropriate conditions of consent be applied to mitigate any safety concerns regarding the safe and effective operation of the airfield.

This is an appropriate outcome ensuring safeguard mechanisms for the ongoing safe operation of the airfield and use of surrounding land.

The public exhibition and agency consultation period has not identified any required amendments to the planning proposal beyond inclusion of a submissions summary.

The proposed LEP amendment as described in the attached planning proposal (Attachment 1) is considered suitable to be made.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Involve/Collaborate** - We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Draft Planning Proposal PP17/0003 for Bob Whittle  
Murwillumbah Airfield Tweed Local Environmental Plan 2014  
Amendment No 15 (ECM 5652939)

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10 [PR-PC] Short Term Rental Accommodation at No. 13 Aeolus Lane Casuarina

SUBMITTED BY: Development Assessment and Compliance

mhm



People, places and moving around  
*Who we are and how we live*

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

- 3 People, places and moving around
- 3.1 People
- 3.1.4 Compliance Services - To support a safe and healthy built and natural environment through the enforcement of local government rules and regulations.

**ROLE:** Provider

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**SUMMARY OF REPORT:**

On 27 March 2018 (ILL18/0578) and 8 November 2018 (ILL18/1788) Council's Compliance Unit received a complaints from members of the public alleging that an unauthorised short term holiday let (STHL) was taking place at the premises known as No. 13 Aeolus Lane, Casuarina. It was alleged that this activity was generating noise impact and other associated issues for adjacent residential premises.

The subject site is situated within the Zone R2 Low Density Residential and under The Tweed Local Environmental Plan (LEP) 2014 *tourist and visitor accommodation* land use is prohibited.

In terms of Council's most recent approach to STHL complaints, Council resolved the following at the Planning Committee meeting held on 5 April 2018:

*That Council defers taking any widespread action against any unauthorised or non-compliant short term holiday let (STHL) uses, until the release of new, anticipated State Government STHL legislative and planning policy controls, except in those circumstances where it can be demonstrated that such uses are having an unreasonable impact on the amenity of adjoining or surrounding neighbours as determined by Council.*

On that basis, it is recommended that Council endorse that legal advice be sought for options to cease the continued unauthorised used on the subject premises.

**RECOMMENDATION:**

**That:**

- 1. in relation to the unauthorised land use at No. 13 Aeolus Lane Casuarina, legal advice be sought regarding options for action (including but not limited to Orders under NSW Environmental Planning and Assessment Act) to cease the continued unauthorised use and this advice be acted upon.**
  
- 2. ATTACHMENTS 1-3 are 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.**

## REPORT:

On 27 March 2018 Council's Compliance Unit received a complaint (ILL18/0578) from a member of the public alleging that an unauthorised STHL was taking place at the premises known as No. 13 Aeolus Lane, Casuarina. It is alleged that this activity was generating noise impact issues adjacent to residential premises.

### The following investigations and actions were taken in respect of this complaint:

A telephone call was made to the owner of No. 13 Aeolus Lane on 28 March 2018. Council Compliance Officer spoke with the owner at length regarding the STHL issues around the Tweed Shire and the owner was advised that STHL is prohibited under the Zone R2 Low Density Residential which applies to No. 13 Aeolus Lane Casuarina.

Council's Compliance Officer could not contact the complainant for further information as they requested to remain anonymous.

Council's Compliance Officer sent a follow up letter on the same day to the property owner of No.13 Aeolus Lane Casuarina, inclusive of all information regarding STHL. As the property owner confirmed that the property was being utilised for STHL he was directed that the unlawful land use should cease immediately. The owner was further advised that should the property be found to be operating a STHL accommodation arrangement, enforcement action may be taken by the issuing of penalty infringement notices and/or Orders.

On 8 November 2018 Council's Compliance Unit received a complaint (ILL18/1788) from a member of the public alleging that an unauthorised STHL was taking place at the premises known as No. 13 Aeolus Lane, Casuarina. It was alleged that the activity is generating a noise impact and other associated issues adjacent to residential premises.

### The following investigations and actions were taken in respect of this complaint:

A telephone call was made to the complainant to establish what the concerns were regarding the STHL. The complainant advised that he would send a letter addressing his concerns. Furthermore, he advised that he contacted LJ Hooker regarding noise issues as they are the managing agent for No. 13 Aeolus Lane Casuarina, however the complainant advised that calling LJ Hooker were unable to remedy the situation.

Council's Compliance Officer contacted LJ Hooker on 16 November 2018. A representative of the office confirmed that the property was a holiday rental. He was informed that STHL is an ongoing issue and the State Government are in the process of changing the Legislation surrounding STHL. Council's Compliance Officer advised that the new policy has not yet been implemented and until this time the permissibility and operation of STHL remains a statutory compliance obligation of the Local Councils. The Council Officer further advised that Tweed LEP 2014 prohibits *tourist and visitor accommodation* in the Zone R2 Low Density Residential.

Council's Compliance Officer sent correspondence to the property owner advising that Council had received a second complaint regarding the use of the property for STHL. The property owner was advised, that given the lack of satisfactory resolution, this matter is being reported to Council to determine.

The property owner called Council's Compliance Officer and advised that he had received advice from LJ Hooker that the STHL had changed and was under review. Council's

Compliance Officer advised that the new policy has not yet been implemented and until this time the permissibility and operation of STHL remain as a statutory obligation of the Local Councils. Council's Compliance Officer further advised that Tweed LEP 2014 prohibits *tourist and visitor accommodation* in a Zone R2 Low Density Residential.

The property owner sent an email to the Council's Compliance Officer on 20 November 2018 advising that he has contacted LJ Hooker and requested that all advertisements for STHL for the property be removed. A response was sent to the property owner requesting that he confirm that STHL would cease at the property.

A response has not yet been received at the completion of this report.

On 21 November 2018 a desktop analysis was undertaken and it has been confirmed that the property is still currently listed on the following websites:

[https://kingscliff.ljhooker.com.au/house-in-casuarina-nsw-2487-au-201f69#.W\\_QE-9sza70](https://kingscliff.ljhooker.com.au/house-in-casuarina-nsw-2487-au-201f69#.W_QE-9sza70)

<https://www.homely.com.au/homes/13-aeolus-lane-casuarina-nsw-2487/223495>

<http://www.au.open2view.com/properties/172386>



**SITE PLAN:**



**Site Plan**

Lot 44 DP1083567  
13 Aeolus Lane CASUARINA

0 0.5 1 Km  
1:50,000

Disclaimer: While every effort is made to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy of the data. Users of this data are advised to verify the accuracy of the data by independent means. The data is provided for informational purposes only and should not be used for any other purpose. The data is provided as a service to the community and is not intended to be used for any other purpose. The data is provided as a service to the community and is not intended to be used for any other purpose. The data is provided as a service to the community and is not intended to be used for any other purpose.

**GDA** Cadastre: 15/07/2018  
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Coordinate System - MGA Zone 56  
Datum - GDA 94  
Scale: 1:50,000  
Copyright: 1987-2018

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Murrumbidgee NSW 2684  
PO Box 216  
Murrumbidgee NSW 2684  
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E: planning@tweedshire.gov.au



Date Printed: 22 November, 2018

**ZONING MAP:**



**Subject Land**

Subject Land

**Tweed Local Environmental Plan 2014**

R2 Low Density Residential

A north arrow pointing upwards and a scale bar showing 0, 5, and 10 meters. Below the scale bar, there is a small inset map showing the location of the site within the Tweed Shire Council area.

**Site Plan - Local Environmental Plan**

Lot 44 DP1083567  
13 Aeolus Lane CASUARINA

© Land and Property Information (LPI) and Tweed Shire Council



This map is for information only and does not constitute a contract. It is subject to the terms and conditions of the Land and Property Information (LPI) and Tweed Shire Council. The map is provided as a service to the community and is not intended to be used as a basis for any legal or financial decision. The map is provided as a service to the community and is not intended to be used as a basis for any legal or financial decision. The map is provided as a service to the community and is not intended to be used as a basis for any legal or financial decision.

**AERIAL PHOTO:**



Scale: 1:2000  
GDA  
GDA logo and text

City and Regional Water  
Tweed Shire Council  
TWEED logo and contact information

**Aerial Photography April 2018**  
Lot 44 DP1083567  
13 Aeolus Lane CASUARINA

© 2018 Imagery - Tweed Shire Council  
© Cadastre - Tweed Shire Council  
Boundaries shown should be considered approximate only.

Disclaimer: All information is provided as a service to the community. It is not intended to be used as a basis for any legal or financial decision. The information is provided as a service to the community and is not intended to be used as a basis for any legal or financial decision. The information is provided as a service to the community and is not intended to be used as a basis for any legal or financial decision.

**OPTIONS:**

**Option 1**

That in relation to the unauthorised land use at No. 13 Aeolus Lane Casuarina, legal advice be sought regarding options for action (including but not limited to Orders under NSW Environmental Planning and Assessment Act) to cease the continued unauthorised use and this advice be acted upon.

**Option 2**

Take no action.

**Option 1** is recommended.

**CONCLUSION:**

On the basis that ongoing complaints are being received and the subject site is included with the Zone R2 Low Density Residential and a *tourist & visitor accommodation* land use is prohibited, it is recommended that legal advice be sought regarding options for action to seek the current unauthorised use of the site.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Legal expenses may be incurred.

**c. Legal.**

Legal advice is sought regarding options for punitive action against the owners and possible enforcement action under relevant sections of the Environmental Planning and Assessment Act 1979 No. 203.

**d. Communication/Engagement:**

Inform - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- |               |   |
|---------------|---|
| Attachment 1. | Initial email to property owner dated 28 March 2018 (ECM 5658002)       |
| Attachment 2. | Submission from second complainant dated 19 November 2018 (ECM 5658004) |
| Attachment 3. | Submission from property owner dated 20 November 2018 (ECM 5658005)     |
-



11 [PR-PC] Draft Tweed Shire Council Animal Pound - Rehoming and Minimising Euthanasia Policy

SUBMITTED BY: Development Assessment and Compliance

mhm



People, places and moving around  
*Who we are and how we live*

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

- 3 People, places and moving around
- 3.1 People
- 3.1.4 Compliance Services - To support a safe and healthy built and natural environment through the enforcement of local government rules and regulations.

ROLE: **Provider**

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**SUMMARY OF REPORT:**

**Updated Summary since 15 November 2018**

At its meeting on 15 November 2018 Council resolved as follows:

*"that this item be deferred for consideration at the Planning Committee meeting on 6 December 2018."*

This report is again submitted to Council for determination.

In the interim, the Director Planning and Regulation and The Mayor Councillor Milne has met with Ms. Susie Header to seek her views and input on the Draft Policy document. Following this meeting, edits have been made to the Draft Policy document, which have been tracked on a revised document which is an attachment to this report.

**Updated Summary since 25 October 2018**

At its meeting on 25 October 2018 Council resolved as follows:

*"that this item be deferred for consideration at the Council meeting on 15 November 2018."*

This report is again submitted to Council for determination.

**Updated Summary since 6 September 2018**

Council at its Planning Committee meeting held 6 September 2018 resolved as follows:

*"that this item be deferred to be considered at the next meeting of the Council to be held 25 October 2018."*

The report is now referred back to Council for consideration and determination.

**Original Summary of report**

Following earlier enquiries from The Mayor regarding the current rates of euthanasia of companion animals in Council's Animal Impounding Facility (The Pound) at Stotts Creek, the Director Planning and Regulation and Compliance Unit staff have been investigating recent best practice of other councils in terms of strategies to increase opportunities for the rehoming and to minimise the incidence of euthanasia among those impounded animals. This has led to some very productive consultation meetings between Council staff, The Mayor and representatives from the Friends of the Pound (FoP). It has also been positive in terms of reviewing current Pound procedures.

Our research found that Tweed's rate of euthanasia of companion animals rates compares relatively well with other NSW Councils, and across the general industry. However, it was acknowledged that there are a proportion of those euthanised animals which may be able to be saved through a tightening up of Pound procedures and approach, including a more proactive communication with rescue and welfare organisations for those animals who have only failed assessments on the basis of non-life threatening, behavioural conditions.

It is therefore recommended that Council endorse the public exhibition of the attached Draft Tweed Shire Animal Impounding Facility (The Pound) - Rehoming and Minimising Euthanasia Policy.

It is expected that any new Policy can readily be adapted should the proposed new Pound/Rehoming Centre development.

**RECOMMENDATION:**

**That:**

- 1. Council endorses the public exhibition of the attached Draft Tweed Shire Animal Impounding Facility (The Pound) Rehoming and Minimising Euthanasia Policy be placed on public exhibition for a period of 28 days, and accepts public submissions for a period of 42 days as per Section 160 of the Local Government Act 1993; and**
- 2. A further report be brought back to Council following the public exhibition.**



**REPORT:**

**BACKGROUND:**

**Initial Enquiries on Companion Animal Euthanasia Rates**

Following earlier enquiries from The Mayor regarding the current rates of euthanasia of companion animals in Council's Animal Impounding Facility (The Pound) at Stotts Creek, the Director Planning and Regulation and Compliance Unit staff have been investigating recent best practice of other councils in terms of strategies to increase opportunities for the rehoming and to minimise the incidence of euthanasia among those impounded animals. This has led to some very productive consultation meetings between Council staff, The Mayor and representatives from the Friends of the Pound. It has also been positive in terms of reviewing current Pound procedures.

Our research found that Tweed's rate of euthanasia of companion animals compare relatively well with other NSW Councils, and across the general industry. However, it was acknowledged that there are a proportion of those euthanised animals which may be able to be saved through a tightening up of Pound procedures and approach, including a more pro-active communication with rescue and welfare organisations for those animals who have only failed assessments on the basis of non-life threatening, behavioural conditions.

**Relevant Legislation**

All NSW Councils are bound to manage the humane treatment of companion animals through several significant forms of legislation.

The first is the Prevention of Cruelty to Animals Act 1979 (POCTA). This Act primarily applies to a broader community obligation to respect the rights and welfare of all animals and to treat them in a humane way. POCTA is generally administered with the highest authority by the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and NSW Police. Councils generally play a support role for these agencies in any complaints or investigations into offences under POCTA, in addition to their general companion animal regulation activity.

The other legislation which affects NSW Councils more directly are the Companion Animals Act 1998, the Companion Animals Regulation 2008, and the Impounding Act 1993. The NSW State Government's Office of Local Government also provides a strong direction to NSW Councils on the implementation of this legislation through a series of regular policy directives and circulars, and the management of a centralised data base for the collection of companion animal activity, registration and performance across all councils.

In terms of the above legislation and policies, the main statutory obligations for Councils to perform are summarised below:

- Provision for an animal holding facility that provides temporary shelter and care for animals seized by Council Rangers or surrendered by members of the public.
- Investigate complaints regarding roaming dogs, cats, livestock and dog attacks. In exercising their powers, Council Rangers either attempt to return the animals to their owners, or impound them.

For those animals that are surrendered or impounded, Councils have an obligation to care for them, and seek to rehome the animals where possible. Unfortunately there will be circumstances where some animals will be unsuitable for rehoming due to being aggressive, significantly injured or feral. The Companion Animals Act prohibits the sale of an animal declared or proposed to be declared a restricted breed or dangerous dog or menacing dog. This prohibition extends to the sale, adoption, rescue or rehoming of these animals.

For those animals assessed as unsuitable for rehoming, the legislation provides Councils with directions on the humane euthanasia of the animals. There are also related veterinary codes and standards of practice that guide these procedures. Both qualified vets and Council officers with appropriate levels of training are prescribed authority to carry out the procedures. The main circumstances and statutory timeframes that provide this option for Councils are as follows:

- A companion animal that is surrendered can be euthanised without any holding period in a Council pound.
- A companion animal which has been microchipped and has been impounded must be held for a minimum period of 14 days before they can be euthanised.
- A companion animal which has not been microchipped and has been impounded must be held for a minimum period of 7 days before they can be euthanised.
- There are instances of extreme injuries or animal conditions which necessitate the emergency euthanasia of animals.

Section 64(2) of the Act outlines that feral and infant companion animals may be destroyed prior to the standard holding period in accordance with any adopted Council policy. Tweed Council currently does not have a separate adopted Feral & Infant Animals Policy.

Feral companion animals are generally received in a poor condition, are difficult to handle and accommodate and are not suitable to be re-homed. Caging feral companion animals causes stress on the animal.

Infant companion animals require vast amounts of resources and time to raise, have a low resistance to diseases and are generally unlikely to survive being impounded.

This Policy authorises the humane euthanasia of feral or infant companion animals prior to the standard holding period if it is based on advice provided by a veterinarian.

In relation to feral animals Section 64 of the Companion Animals Act states:

*"In accordance with any policy that has been adopted by the council in relation to the management of feral or infant companion animals, destroy the seized or surrendered animal concerned before the end of any such period referred to in subsection (1), which relates to the legislative impounding period.*

*Accordingly in accordance with Council policy any feral animal that has been brought to the pound should be euthanised as soon as possible after it has been impounded."*

The legislation also requires Councils to prepare a Companion Animals Management Plan (CAMP) to provide a strategic overview of their roles and responsibilities, as well as to

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establish more proactive measures to promote the responsible and humane care of companion animals, through programs such as microchipping, registration, desexing, environmental protection and community health and wellbeing. Tweed Council first adopted its CAMP in 2010, and subsequent review in 2013.

### **Tweed Council's Companion Animal Regulatory and Care Actions**

Tweed Shire Council has been one of the more proactive of North Coast Councils in recent decades in companion animal promotion and care.

### **Council's Current Animal Impounding Facility (The Pound) Operations**

The subject site has a legal description of Lot 1 DP 590220 Bartletts Road Eviron. The site currently contains a series of single storey, inter-connecting buildings that accommodate the administrative office, stores and animal cage facilities, and animal exercise yards. The Pound is serviced by a formalised, hard stand car park, consisting of approximately 16 spaces.

The site is adjoined by Council's Stotts Island Landfill Facility, a private quarry, and agricultural land.

All available utilities are connected to the site.

The site is relatively low-lying and is subject to flooding in periods of major rain events.

Pound operations for dogs and cats commenced on current site in 1960s.

More substantive building structures and extensions were advanced through DAs in 1989, 2001 and 2005.

The Pound has evolved as both an impounding centre as well as a re-homing centre, in conjunction with the not-for-profit organisation, Friends of the Pound (FoP), who commenced activity at the Pound in July 2000.

FoP has a primary purpose to re-home animals, and provides volunteers to assist Council Pound Attendants in the general care of animals and cleaning of the facility.

It also provides direct services and education of the public in desexing, microchipping and registration of animals.

A good working relationship has been established with Council through a Memorandum of Understanding.

The Pound is open to the public between 10.00am and 4.00pm all days except public holidays.

The Pound is only suitable for the impounding of dogs cats and other small animals abandoned or surrendered in the Tweed Shire.

### **Proposal for a New Pound and Rehoming Centre**

Council staff are currently working on a proposal to relocate Council's existing Animal Pound facilities at Stotts Creek and to develop a new Council Pound and Rehoming Centre on an

alternative site of another nearby Council owned property identified as Lot 1 DP 34555, No. 719 Eviron Road, Eviron.

The opportunity for this proposal has arisen as a result of Council's Waste Unit Masterplan process for the Stotts Creek Resource Recovery Centre (SCRRC) that will provide guidance on future development of the entire site. As part of a program of works identified through the Masterplan process, the relocation of the current Animal Pound facilities is required prior to a significant number of the early works being able to commence.

The property at No. 719 Eviron Road is considered to have a number of significant superior site location advantages when compared to the current Pound site, which is a major safety and liability risk in terms of its deteriorating state of buildings and services, susceptibility to being cut off from access during major weather and flood incidents, as well as its general incompatibility of safety and welfare for both Council staff and volunteers and the impounded animals, as well as poor access and amenity for the public visiting the site.

The new alternative site is located in a much higher position (mostly flood free) and rural setting, and provides a great opportunity to provide a more contemporary and functional facility to accommodate both Council's companion animal regulatory service, as well as an enhanced rehoming centre for Council's not-for-profit partner, Friends of the Pound (FOP), who have provided an important volunteer assistance to the day-to-day running of the existing Pound and care for the animals over several decades.

Council is interested in establishing a co-located Council Pound/FOP Rehoming Centre facility similar to that operated by the Gold Coast City Council and the Australian Welfare League Queensland at Coombabah.

Funding is being sought to cover the full range of approvals, construction and project management to the point of hand over to Council of the new facility.

### **Council's Current Euthanasia Procedures and Recent Rates of Rehoming**

Council has been guided by the broader strategic direction of its Companion Animal Management Plan. The Plan was first adopted by Council on 16 March 2010, and has been the subject of a further adopted update on 20 June 2013.

At an operational level, Council's Compliance Unit has developed a series of internal procedures documents to guide the day-to-day management of its Companion Animal responsibilities and actions.

The main procedure relating to the Unit's rehoming and euthanasia activities is provided in the extract below:

#### ***"6. Euthanasia Procedure***

*Unfortunately any animal that is deemed not suitable to be re-homed for purposes associated with their behaviour and/or the health of an animal will be euthanised. Pound attendants are required to provide information relating to their observations associated with an animal to the senior pound attendant. The final determination on an animal remains the responsibility of the Team Leader Compliance, Senior Ranger, Impounding Officer or Veterinarian.*

*Documents relating to an animals temperament may include statements from the public, investigations and information provided by Rangers or a surrender form submitted by the owner.*

*The euthanasia of animals is to be performed ONLY by authorised officers or veterinarians and the storage, recording and safe keeping of any drugs and chemicals associated with the facility is the responsibility of the Senior Ranger of Impounding Officer.*

**a) Assessment**

*Prior to any animal being made available for sale it is vet checked and temperament assessed. The health assessment is in accordance with Part 5 (c) of this manual. Types of behaviour that Council deem inappropriate by an animal for re-homing are as follows:*

*Dog:*

- *Nuisance behaviours such as:*
  - *continually escaping from a yard that is secure for dogs*
  - *continually barking which effects the amenity of the neighbourhood*
- *The killing of another animal*
- *Aggressive behaviour*
- *An attack/bite on a person*
- *Feral dog*

*Cat:*

- *Feral cat/semi-feral cat*

*The semi-feral cat is a cat that is not owned by any one individual, but is generally friendly to people and may be fed by several households. Feral cats are associated with human habitations and may be fed by people or forage in rubbish, but are wary of human interaction.*

**b) Feral Animals**

*In relation to feral animals Section 64 of the Companion Animals Act states:*

*"In accordance with any policy that has been adopted by the council in relation to the management of feral or infant companion animals, destroy the seized or surrendered animal concerned before the end of any such period referred to in subsection (1), which relates to the legislative impounding period.*

*Accordingly in accordance with Council policy any feral animal that has been brought to the pound should be euthanised as soon as possible after it has been impounded.*

*Council has developed these guidelines and policy to help ensure that only animals deemed suitable by Council officers are released back into the community so that public safety and amenity are maintained."*

In terms of administering these procedures, Council has two contracted local veterinary firms who attend Council's Pound on a weekly basis (alternating weeks) to conduct animal health checks, and perform euthanasia procedures when required.

In terms of accountability of rates of rehoming and euthanasia of impounded animals, NSW Councils must enter details of all animals through the NSW Office of Local Government's Companion Animals Register. Whilst the annual results of all council's performance are published on the Office's web site, there has been very limited analysis of comparative performance or benchmarking.

As part of the consultation on the most recent announcement of the review of the Companion Animals Regulation 2008, the NSW Office of Local Government has included a Regulatory Impact Statement (dated 13 March 2018), which does provide some more up-to-date, state-wide data on the composite activities of NSW Councils for the period of 2008 to 2016, including the number of companion animal rehoming euthanasia activity (dogs and cats), restricted breeds and dangerous dogs, reported dog attacks, and animal registration and microchipping.

Drawing from the tables of rehoming/euthanasia rates in the above RIS document, for the year 2015/16, and as a composite of all NSW Councils, the rates of euthanasia as a proportion of all animals impounded were as follows:

Dogs – 18.79%

And

Cats – 45.36%

From an on-line desktop research, the following other comparative analysis has been undertaken for NSW Councils:

***Getting 2 Zero Web Site – “The Benefits of Council Funding Co-operative Desexing Programs”***

*“In NSW, the only state that has gathered and published its state-wide Council figures, and over 60% of impounded and surrendered cats have been euthanised for many years.*

*However, Gold Coast City Council has more than halved its cat euthanasia rate over the last 10 years to 15% of all incoming cats for the whole city of over half a million people.*

*Desexing is more effective than focussing on registration and microchipping. NSW State Pound data has demonstrated that long term compulsory registration and microchipping alone have not significantly reduced the proportion of cats euthanised in NSW. On average, 64% of cats were euthanised in NSW in 2010/11, a reduction of less than 4% since 2005/06.”*

***Dian Chuw Kim Hoon, School of Veterinary Science, University of Queensland, “The Unwanted Dog and Cat Problem in Australia”:***

*From the NSW Office of Local Government web site reporting, the average rate of euthanasia among all impounded animals in NSW in 2010/11 were: 28.2% for dogs and 64% for cats.*



In benchmarking these statistics, Tweed Council has performed very well in recent years. The contributors to Tweed's favourable results have been the establishment of an excellent Pound facility, the volunteer assistance and rehoming services provided by the Friends of the Pound, and a dedicated and well trained Pound and Ranger staff.

The tables provided below indicate a breakdown of the rehoming and euthanasia activity of Council in since 2010/11 for both dogs and cats.

#### Rehoming and Euthanasia Rates for Impounded Dogs

YEAR	TOTAL	RESTRICTED	DANGEROUS	UNSUITABLE	UNABLE TO REHOME	OWNER REQUEST	ILLNESS/ SICK	FERAL/ INFANT	TOTAL EUTH	TOTAL EUTH %	COUNCIL CONTROLLED EUTH %
2017/18	410	0	0	42	0	22	12	5	71	17.3	10.2
2016/17	571	0	0	101	0	12	1	2	116	20.3	17.0
2015/16	588	0	0	115	0	11	3	2	131	22.2	19.5
2014/15	637	0	0	92	0	21	9	3	125	19.6	14.4
2013/14	635	0	0	88	0	7	2	0	97	15.3	13.8
2012/13	679	3	0	77	0	15	7	0	102	15.0	11.3
2011/12	664	2	2	98	0	31	0	0	133	20.0	14.7
2010/11	504	1	2	74	1	27	1	0	106	21.0	14.6

#### Definition of Titles

**Unsuitable** – temperament - cannot be handled, aggressive, fence jumper, incident at the pound (attack) and not fit for sale (birth defect or sever injury and Friends of the Pound can't rehome or other rescue groups). Decision to euthanise animal is made by Council staff and the veterinarian undertaking vet check, based on criteria within a Council procedure.

**Unable to rehome** - unable to sell or rehome with Friends of the Pound or other rescue groups.

**Owner Request** - Owners tick the "euthanased" box on the Surrender Form (generally as a result of an incident).

Rehoming and Euthanasia Rates for Impounded Cats

YEAR	TOTAL	RESTRICTED	DANGEROUS	UNSUITABLE	UNABLE TO REHOME	OWNER REQUEST	ILLNESS/ SICK	FERAL/ INFANT	TOTAL EUTH	TOTAL EUTH %	COUNCIL CONTROLLED EUTH %
2017/18	291	0	0	25	0	2	21	12	60	20.61	8.59
2016/2017	236	0	0	43	1	2	14	22	82	34.74	18.22
2015/2016	247	0	0	58	0	2	6	20	86	34.81	23.48
2014/2015	204	0	0	20	0	0	17	16	53	25.98	9.80
2013/2014	253	0	0	39	0	3	7	22	71	28.06	15.41
2012/2013	192	0	0	32	0	1	10	20	63	32.81	16.66
2011/2012	223	0	0	80	0	2	not broken down	not broken down	82	36.77	35.87
2010/2011	294	0	0	86	0	8	not broken down	not broken down	94	31.97	29.25

**Definition of Titles**

**Unsuitable** – temperament - cannot be handled, aggressive, incident at the pound (scratching/biting) and not fit for sale (birth defect or severe injury and Friends of the Pound can't rehome). Decision to euthanise animal is made by Council staff and the veterinarian undertaking vet check, based on criteria within a Council procedure.

**Unable to rehome** - unable to sell or rehome with Friends of the Pound.

**Owner Request** - Owners tick the "euthanased" box on the Surrender Form (generally as a result of age or temperament).

**Emerging Policy Trends in the Companion Animals Field**

A number of NSW Councils have begun adopting new policies and practices on emerging international and national policy programs aimed at reducing the rates of euthanasia among impounded animals.

Two are the more prominent movements have been "No Kill" and "Getting 2 Zero".

Camden Council adopted a "No Kill" policy in 2016. In a report to Council, it was stated that:

*"A "No Kill" shelter is defined as an animal shelter that does not kill healthy or treatable animals and where euthanasia is reserved for terminally ill animals or those considered dangerous to public safety.*

*A number of community change movements exist promoting a move to "No Kill" philosophy. An example includes "Getting 2 Zero". The philosophy of "Getting 2 Zero" is that 90% of impounded or surrendered animals are to be rehomed. "Getting 2 Zero" acknowledges that a percentage of animals (up to 10%) are not suitable for rehoming due to illness, behavioural problems and a poor prognosis of rehabilitation.*

*A number of organisations have resolved to become "No Kill" facilities. This commitment is to make every effort to adopt all re-homable animals. Examples of organisations making this commitment include Liverpool Council and the Animal Welfare League of NSW. Other councils working towards this goal include the City of Greater Geelong,*

*Gold Coast City Council, Moorabool Shire Council, Fraser Coast Shire and Greater Shepparton City Council.”*

Camden Council's current responsible pet ownership program initiatives include:

- *“Responsible Pet Ownership program aimed at educating children and residents on the importance of microchipping and name tags on animals;*
- *Independent breed and temperament assessment of impounded animals believed to be dangerous/aggressive/restricted;*
- *Council officers attempt to return stray dogs and cats home if microchipped and registered rather than impounding;*
- *Offer of free name tags for all animals released;*
- *Working with approximately 30 rescue organisations to rehome animals that haven't been adopted;*
- *Subsidised de-sexing program to reduce the number of unwanted animals;*
- *Free microchipping days for dogs and cats;*
- *Bus advertising and regular educational days at schools and local events;*
- *PAWS in the PARK - an annual event raising awareness of responsible pet ownership; and*
- *Development and distribution of information books on responsible pet ownership.”*

The report to Council also states that:

*“In addition to Council's current responsible pet ownership program, additional initiatives being considered or implemented to minimize the number of animals entering the animal holding facility and further increase the re-homing of impounded animals include:*

- *The recent appointment of a dedicated Camden Council Companion Animal Ranger who will work at the Campbelltown Council Animal Care Facility to oversee the re-homing and care of Camden animals and provide enrichment;*
- *Flexible pricing options for impounded animals to encourage adoption, particularly for those animals that have been in the facility for extended periods of time;*
- *Obtaining detailed information from owners wishing to surrender their animal to ensure the animal is adopted out to a suitable family;*
- *Provision of exercise yards that are friendly and stimulating for the animals;*
- *Media releases for animals held longer than the mandatory holding periods;*
- *Creating information packages on adoption of an animals;*
- *Ensuring the provision of sufficient kennels and cattery enclosures to allow suitable animals to be kept an extended period of time until they are rehomed;*
- *Holding impounded animals for extended periods of time until sale or re-homing is achieved (this excludes animals deemed to be unsuitable for re-homing -- eg. dangerous, restricted. aggressive, significantly sick or injured).*

*It is also proposed that Council develop a policy to establish clear guidelines on*

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*whether an animal is suitable for rehoming and to assist in decision making and transparency. The policy would be developed in consultation with Council's Companion Animal Advisory Committee and would require an independent assessment by a suitably qualified assessor to determine the suitability for re-homing of an animal considered aggressive or restricted."*

### **Discussion of Strategies Suited to Tweed Council's Companion Animal Management**

It is important that Tweed Council consider any emerging and innovative companion animal practices with a view towards ensuring that the organisation meets its current regulatory, probity, risk management and industrial relations obligations, as well as having adequate resourcing and expertise to implement these practices.

Prior to further investigating revised practices, further consultation sessions were held with relevant staff, The Mayor and FoP, posing the following range of issues:

- What are the potential range of opportunities and constraints in the new Pound/Rehoming Centre redevelopment proposal?
- What are the opportunities within the proposed expressions of interest process for Council's contracted veterinary services? Is it feasible to extend these services to behavioural assessments?
- What aspects of Council's current Euthanasia Procedure needs to be reviewed? Can this be extended to address those instances of injured animals which are yet to be impounded by Council?
- What elements of proactive action does Council need to take in terms of community education of responsible pet ownership, discount desexing, microchipping and registration?
- Any other ideas?

There was general agreement from these consultations of the scope to reduce current euthanasia rates at Council's Pound, primarily through a review and tightening up of Pound procedures and approach, including a more pro-active communication with rescue and welfare organisations for those animals who have only failed assessments on the basis of non-life threatening, behavioural conditions.

It was also considered that these changed procedures could be best supported and promoted through a new Council Policy, as provided in Attachment 1 of this report.

It is therefore recommended that Council endorse the public exhibition of the attached Draft Tweed Shire Council Impounding Facility (The Pound) Rehoming and Minimising Euthanasia Policy.

It is expected that any new Policy can readily be adapted should the proposed new Pound/Rehoming Centre development proceed.

**OPTIONS:**

1. That Council endorse the public exhibition of the Draft Tweed Shire Council Animal Impounding Facility (The Pound) Rehoming and Minimising Euthanasia Policy; or
2. That the matter be deferred for further information.

Option 1 is recommended.

**CONCLUSION:**

Following a detailed review of contemporary practice, it was found that the rate of euthanasia of companion animals at Council's Animal Pound compared relatively well with other NSW Councils, and across the general industry. However, it was acknowledged that there are a proportion of those euthanised animals which may be able to be saved through a tightening up of Pound procedures and approach, including a more pro-active communication with rescue and welfare organisations for those animals who have only failed assessments on the basis of non-life threatening, behavioural conditions.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

It is proposed that once adopted, this Policy will replace an existing internal procedure document.

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

There are no budgetary impacts anticipated for this process.

**c. Legal:**

The relevant statutory framework for this Draft Policy is:

Prevention of Cruelty to Animals Act 1979 (POCTA). Local Government Act 1993  
Companion Animals Act 1998  
Companion Animals Regulation 2008  
Impounding Act 1993

**d. Communication/Engagement:**

The public exhibition of the draft document will necessitate the following consultation actions under the Community Engagement Strategy:

CONSULT - We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Draft Tweed Shire Council Animal Impounding Facility (The Pound) Rehoming and Minimising Euthanasia Policy Revised (ECM 5650713)

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**12 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**SUBMITTED BY: Director**

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Making decisions with you  
*We're in this together*

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

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE: Provider**

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**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 November 2018 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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