

3.3. REQUEST FOR NEGOTIATED DECISION NOTICE FOR DAINTREE WATER BOTTLING FACILITY

REPORT AUTHOR	Daniel Lamond - Planning Officer
MANAGER	Paul Hoyer, Manager Environment & Planning
DEPARTMENT	Environment & Planning
APPLICATION NO	MCUI 2019_3302
PROPOSAL	Change Representations for a Material Change of Use (Impact Assessment)- Medium Impact Industry (Water Bottling Facility)
APPLICANT	V E Noli & J P Noli C/- Brazier Motti Pty Ltd PO Box 1185 CAIRNS QLD 4870
LOCATION	Upper Daintree Road, Upper Daintree
PROPERTY	LOT: 10 SP: 304851 PARCEL 157960
PLANNING SCHEME	2018 Douglas Shire Council Planning Scheme Version 1.0
ZONING	Rural Zone
LEVEL OF ASSESSMENT	Impact
PROPERLY MADE DATE	10 June 2020
STATUTORY ASSESSMENT DEADLINE	Not applicable
REFERRAL AGENCIES	Not applicable
LOCALITY	



Figure 1 – Locality Plan

RECOMMENDATION

That Council issue a Negotiated Decision Notice for the material change of use development approval for medium impact industry (water bottling facility) over land described as LOT: 10 SP: 304851, subject to the following:

APPROVED DRAWING(S) AND / OR DOCUMENT(S)

Approved Drawing(s) and/or Document(s)

The term 'approved drawing(s) and/or document(s) or other similar expressions means:

Drawing or Document	Reference	Date
Access Road and Building Pad concept Arrangement	Plan Prepared by Civil Walker Consulting Engineers, Drawing No. 106-002-C01	28 November 2019
Part Site Plan	Plan prepared by Greg Skyring Design and Drafting Pty Ltd, Plan No. 101-19	3 September 2019
Floor Plan	Plan prepared by Greg Skyring Design and Drafting Pty Ltd, Plan No. 101-19	3 September 2019
Elevations	Plan prepared by Greg Skyring Design and Drafting Pty Ltd, Plan No. 101-19	3 September 2019
FNQROC Regional Development Manual Standard Drawing/s for Vehicle Access		
Rural Allotment Access	Standard Drawing S1105 Issue E	26 November 2014

ASSESSMENT MANAGER CONDITIONS & ADVICES

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
 - (a). The specifications, facts and circumstances as set out in the application submitted to Council; and
 - (b). The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

Building Colours

- 3. The exterior finishes and colours of the facility must be non-reflective and must blend with the natural colours of the surrounding environment. Colours must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.**

Landscaping Plan

- 4. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must detail the following:**
 - (a). A ten (10) metre wide planting buffer separating the bottling facility and the common boundary to Lot 180 on C157273 having regard to Planning Scheme Policy SC6.7- Landscaping;**
 - (b). planting of setback areas immediately in front of the facility on the hillslope separating the facility and Upper Daintree Road;**
 - (c). A species list detailing all proposed vegetation types to be used.**

One A3 copy of the landscape plan must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer.

Acoustic Report / Attenuation Measures

- 5. The development application material advised that the proposed use can utilise acoustic, noise attenuated building design measures to mitigate noise produced by plant. A noise impact assessment report must be prepared to demonstrate the effect of reasonable and practicable measures proposed to be implemented to minimise the impact of noise on the existing acoustic environment of the surrounding dwelling houses. Provide a report prepared by a suitably qualified and experienced acoustic engineer which identifies measures to be built into the building to attenuate noise and identify other noise management initiatives specifically for the operation of the facility at the site. The acoustic report must;**
 - (a). investigate potential noise impacts on sensitive land uses external to the site, namely the dwelling houses neighbouring the site;**
 - (b). establish the noise profile of the locality;**
 - (c). the generation of noise associated with all noise emitting plant to be used;**
 - (d). detail proposed attenuation treatments to the building;**
 - (e). any other matters considered relevant by the acoustic engineer to ensure the proposed development does not unduly impact on neighbouring or surrounding properties.**

The acoustic report must be submitted and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

Acoustic Report / Noise Emissions

- 6. Average maximum noise level (L_{max,T}) of plant must not exceed at an affected building:**
 - **Day (7am to 6pm): Background noise level L_{90,T} + 5 dBA (with the exemption of reverse signals from machinery and plant).**
 - **Night (6pm to 7am): No audible noise.**

Attenuation Measures for Machinery and Service Truck

- 7. Machinery and trucks used at the facility which are required to be fitted with reversing signal equipment must be fitted with a directional broadband noise emitter or another non-auditory alarm signal rather than a tonal reversing beeper, to the satisfaction of the Chief Executive Officer.**

Hours of Operation

- 8. Hours of operation are limited to between 7am and 6pm daily.**

Rate of Production

- ~~**9. No more than 200 tonnes per annum of beverage can be produced at the facility.**~~

Vehicle Parking and Access

- 10. A minimum of three (3) car parking spaces must be provided at the facility. The car parking layout must comply with the Australian Standard AS2890.1 2004 Parking Facilities – off-street car parking and Australian Standard AS2890.6. In addition, all parking and vehicular maneuvering areas must be imperviously sealed, drained and line marked. The parking area must be provided prior to the issue of a Certificate of Classification or commencement of use, whichever occurs first. The access driveway can be constructed with a finished treatment of gravel but must not cause a dust nuisance to surrounding properties.**

Erosion and Sediment Control

- 11. All earthworks must be carried out in accordance with section CP1.13 and D5 of the FNQROC Development Manual and must comply with the following:**
 - (a). Measures nominated in the ESCP must be implemented prior to commencement of any earthworks.**
 - (b). The ESC Plan must address the Institution of Engineers' Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water) Policy and Clauses CP1.06, CP1.13 and D5.10 of Council's FNQROC Development Manual.**

Emissions

- 12. Dust emissions or other air pollutants, including odours, must not extend beyond the boundary of the site and cause a nuisance to surrounding properties.**

Refuse Storage

13. Refuse storage is required to service the site in accordance with Council requirements.

Operational Works

14. The construction of the facility triggers the requirement for a Development Permit for Operational Works given the earthwork required to establish a pad for the facility. Obtain a development permit for Operational Works for earthworks prior to the issue of a Development Permit for Building Work.

Raw Water Purchase Agreement

15. Enter into a commercial agreement with Council for the purchase of up to 10,000 litres per day of raw water from the Daintree water intake. The agreement must bind the applicant to pay a rate for raw water to be used as part of the operation of the water bottling facility and must allow the Chief Executive Officer the discretion to ultimately regulate the applicant's access to the raw water main during times of water restriction.

Access Crossover

16. Provide an access crossover in accordance with standard drawing S1105D from the FNQROC Development Manual.

Heavy Vehicle Movements

17. No more than ~~one~~ ten (10) body truck or heavy vehicle movements to and from the facility is permitted per day week.

Changes to conditions are to be renumbered accordingly.

Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
 - a) to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - b) to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a) the development application was properly lodged to the Douglas Shire Council 30 September 2019 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
 - b) the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a) the development triggered assessable development under the Assessment Table associated with the Rural zone;

- b) Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c) the applicant's reasons have been considered and the following findings are made:
 - i) Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.
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EXECUTIVE SUMMARY

Proposal

Council is in receipt of a request for a Negotiated Decision Notice for the development approval for a Material Change of Use for Medium Impact Industry (Water Bottling Facility) on land located at Upper Daintree Road, Upper Daintree and properly described as Lot 10 on SP304851.

The approval was granted at the 26 May 2020 Ordinary Council Meeting and included a number of conditions. The applicant has made representations relating to two of the conditions imposed with the approval.

The applicant proposes to have condition 9 deleted and change condition 17.

Condition 9 limits the production of bottled water to a maximum of 200 tonnes per year. At the rate of initially proposed production being 10,000 litres per day, this only allows 20 days of operation per year, which is not feasible for the applicant.

The applicant proposes to have the condition deleted in its entirety and allow operation with a total production capacity not limited by the condition, but by the hours of operation condition and by the heavy vehicle movement condition as their intention is to have the ability to produce packaged water cartons from the 10,000 litre water allocation from Councils intake and utilise an unspecified amount of ground water from a bore.

The applicant also proposes to have condition 17 amended to allow for up to 10 heavy vehicle trips to and from the site per week, rather than one heavy vehicle movement to and from the site per day. The proposed increase will allow for up to six additional heavy vehicle trips per week.

The proposed changes are recommended for approval. In addition to the proposed changes by the applicant, officers have amended condition 15 to further increase water security measures for Council during times of water restriction where the applicant is accessing water from Councils raw water intake.

As a result of the change representations that were considered at the 28 July 2020 Ordinary Council Meeting, the decision for the request for a Negotiated Decision Notice was deferred due to outstanding questions raised by the Councillors. The questions have been addressed in the discussion section of this report.

ASSESSMENT PROVISIONS

Definition

The approved use is defined as Medium Impact Industry in the Douglas Shire Planning Scheme 2018, as follows:

“Premises used for industrial activities that include the manufacturing, producing, processing, repairing, altering, recycling, storing, distributing, transferring or treating of products and have one or more of the following attributes:

potential for noticeable impacts on sensitive land uses due to offsite emissions including aerosol, fume, particle, smoke, odour and noise; potential for noticeable offsite impacts in the event of fire, explosion or toxic release; generates high traffic flows in the context of the locality or the road network; generates an elevated demand on the local infrastructure network; onsite controls are required for emissions and dangerous goods risks; the use is primarily undertaken indoors; evening or night activities are undertaken indoors and not outdoors.”

Discussion

Proposed Removal of Condition 9

Rate of Production

9. *No more than 200 tonnes per annum of beverage can be produced at the facility.*

The applicant proposes to have condition 9 removed in its entirety as the condition renders the operation infeasible by only allowing the bottling of 200 tonnes of water per.

The land use as applied for under the original application was Medium Impact Industry. To facilitate in determining industrial land use definitions and differentiating between different industrial uses, the Planning Scheme includes a *Table of Industry Thresholds*. Within this table, the Medium Impact Industry land use allows for the bottling of beverages of up to 200 tonnes per annum. Officers took this as an absolute threshold and previously advised that in the event that production was to increase above this threshold, then the industry land use occurring would constitute the High Impact Industry land use and a new development application would be triggered.

Upon review of the High Impact Industry land use definition, the approved land use with the removal of condition 9 is not expected to create the impacts that are listed within its land use definition. See the High Impact Industry land use definition below:

High Impact Industry

A premises used for industrial activities that include manufacturing, producing, processing, repairing, altering, recycling, storing, distributing transferring or treating products and have one or more of the following attributes:

- *Potential for significant impacts on sensitive land uses due to offsite emissions including aerosol, fume, particle, smoke, odour and noise;*

- *Potential for significant offsite impact in the event of fire, explosion, toxic release, generates high traffic flows in the context of the locality or the road network;*
- *Generates a significant demand on the local infrastructure network;*
- *The use may involve night time and outdoor activities;*
- *Onsite controls are required for emissions and dangerous goods risks.*

Officers concur with the applicants advise that the water bottling facility does not represent any of the attributes of a High Impact Industry and in particular does not create the potential for significant offsite impacts in the event of fire, explosion, toxic release, does not generate high traffic flow and significant demands on the local infrastructure network nor involve night time and outdoor activities. The proposed use cannot be regarded as High Impact Industry with the proposed removal of the condition limiting production to 200 tonnes per annum.

Further, officers have reviewed Medium Impact Industry water bottling approvals and application material from other local government areas and it is evident that the changes can be supported and the use can still be defined within the bounds of Medium Impact Industry as the *Table of Industry Thresholds* from the Planning scheme can be used as a guide instead of being taken literally.

On this basis it is appropriate to remove the 200 tonne per annum limit by deleting condition 9. However, it must be noted that the applicant has not specified the actual intent for overall production capacity. The development application states that with the 10,000 litre per day water allocation from Council, the intended output from the water bottling facility may be in the order of 20,000 500ml cartons of water per day. After further discussions it has become evident that with the additional use of a groundwater bore, there will be possibility for significantly more output. This is not a particular issue, it just needs to be mentioned for transparency. The size of the facility, limited hours of operation per day and limited heavy vehicle movements will adequately regulate impacts to amenity for the area.

Proposed Amendment to Condition 17

Condition 17 regulates the amount of heavy vehicle movements to and from the site. The heavy vehicle involved is essentially one truck which brings empty cartons to the site and takes full cartons from the site once on a daily basis. This amounts to seven heavy vehicle movements to and from the site per week. The applicant has requested that this limit be increased to allow up to 10 heavy vehicle movements to and from the site per week, resulting in just six additional trips per week. This facilitates business continuity for plant breakdown, maintenance, wastewater removal and reasonable productivity increase. The proposed increase of six heavy vehicle trips per week does not make the use become High Impact Industry. It is considered that the proposed increase in heavy vehicle movements will not detrimentally affect the amenity of the area and is recommended for approval.

Questions Raised by Councillors

Questions raised by Councillors at the 28 July 2020 Ordinary Council Meeting have been paraphrased and addressed below.

- 1) How will waste water be managed at the site as a result of necessary treatment and filtering processes?

- a) The applicant has advised that they have not confirmed their water treatment process as they do not have water quality results to inform a design from the groundwater bore or the raw water intake. The applicant has advised that the treatment process is likely to be via the same process as Council where a combination of suspended solids filters and chlorine are used. Any wastewater generated via treatment or filter washing which does not meet requirements for discharge onto ground will be stored in tanks on site and transported to the Port Douglas wastewater treatment plant.

It must also be noted that Council does not need to impose further conditions on the approval to regulate discharge or environmental impacts because the applicant, as well as any other operator in Queensland, is bound by the general environmental duty to prevent environmental harm under the Environmental Protection Act 1994. The nature of a water bottling facility lends its self to being operated and designed in accordance with a number a varying factors so it would be impractical and may be counterproductive to condition its operation at the outset. Further, the facility is within a large cattle grazing property so the likelihood of any considerable environmental impacts on the surrounding waterways or ecosystems is minimal. Council is a regulatory authority under the Environmental Protection Act 1994 and penalties apply in the event that the applicant's general environmental duty is not complied with. In addition, the business requires an annual approval to operate under the Food Act 2006 and will be subject to regular inspections by Council's Environmental Health Officers. During these inspections any issues with waste management and the operation of the plant will be identified.

- 2) What requirements do the Department of Natural Resources, Mines and Energy have regarding extraction of ground water for this use and will the extraction be metered?

- a) The subject land is located within the Wet Tropics Water Plan Area. As the Daintree locality is not located within a Groundwater Management Area, taking of groundwater is not monitored by DNRME. The volumes extracted by the facility are not expected to detrimentally affect groundwater supply.

- 3) What options are available for the water carton packaging?

- a) The packaging presently available is around 85% biodegradable and is aluminum lined. The applicant is currently in contact with a number of suppliers to source the most environmentally friendly packaging for the product. A likely candidate is an American supplier with claims of being close to 100% biodegradable. As technology improves, the applicant will continue to investigate and source the most environmental friendly packaging available at the time. It must also be noted that the proposed packaging types are not recyclable in North and Far North Queensland and would end up in landfill. Alternative beverage containers of PET plastic and aluminium, containing a significant recycled component are much more sustainable, have good market value, are light and are readily recycled. It is not reasonable for Council to condition such a requirement, however, it is commercially in the applicant's best interest for them to utilize the most sustainable packaging.

REFERRALS

External Referrals

The application did not require referral to the State Assessment and Referral Agency.

ADOPTED INFRASTRUCTURE CHARGES

The development does not trigger Infrastructure Charges.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

Regulator Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

CONSULTATION

External

The Negotiated Design Notice process does not require the applicant to undertake additional public notification. Public notification was carried out for the original application and was carried out in accordance with section 53 of the Planning Act 2016 for the approved development.

On 25 May 2020, being the day before the approval was considered at the 26 May 2020 Ordinary Council Meeting, Council received a submission against the proposal from a member of the public. In summary the submission made objection to the proposal on two grounds being that single use water bottles are a major source of unnecessary waste and that water bottling companies have been known to destroy local water resources. This submission is not properly made and does not give the submitter appeal rights under the Planning Act 2016, however, the contents should still be considered as the concerns are valid.

The applicant did not wish to respond to the submission, however, upon discussion with the applicant regarding the 'paperboard' packaging that was originally referenced, the applicant has advised that they are still exploring the market for the most environmentally friendly packaging and that the majority of suppliers that they are in discussions with use an aluminium based internal coating to make the cardboard waterproof.

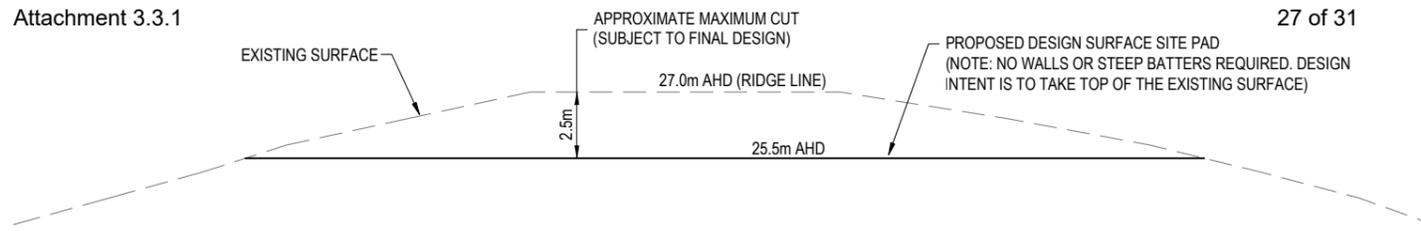
The applicant advised that most packaging products are around 85% biodegradable, but they are in discussions with an American supplier who claims to not use plastic and achieve up to 97% biodegradable cartons.

Council cannot reasonably condition the approval to limit the applicant to certain types of cartons with performance thresholds which are relatively unknown. It is in the applicant's best interest to utilise the most environmentally friendly packaging with the lowest plastic percentage for marketability hence why the applicant is still exploring the market for the best performing packaging.

The other point of concern raised in the submission was the impact of these types of facilities on water security for public supply. As confirmed in the previous report to Council for consideration of the original proposal, Councils Water Department has detailed that drawing 10,000 litres per day, and in particular over a 24 hour period from the Daintree intake does not affect the Daintree water treatment plants water security. It should be noted however, that officers have amended condition 15 to further strengthen Councils ability to limit or cut off the applicant's access to the raw water intake during times of water restriction when supply may decrease.

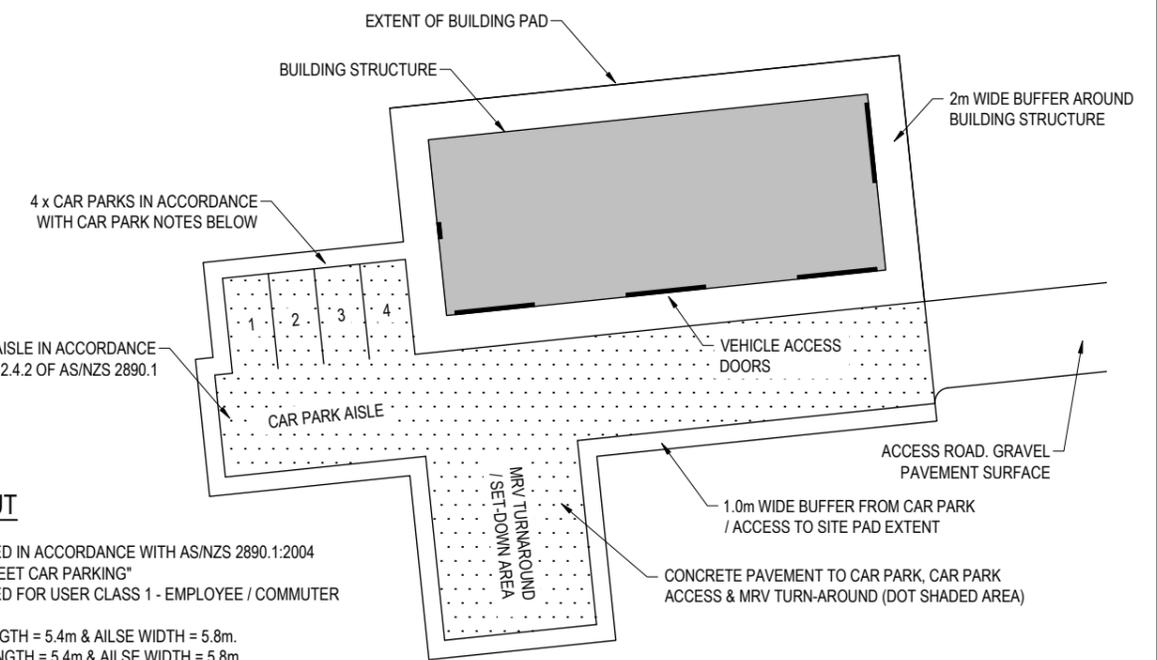
ATTACHMENTS

1. Attachment 1- Approved Plans [3.3.1 - 4 pages]



SECTION 1 - THROUGH BUILDING PAD

SCALE: 1:150 @ A1
1:300 @ A3

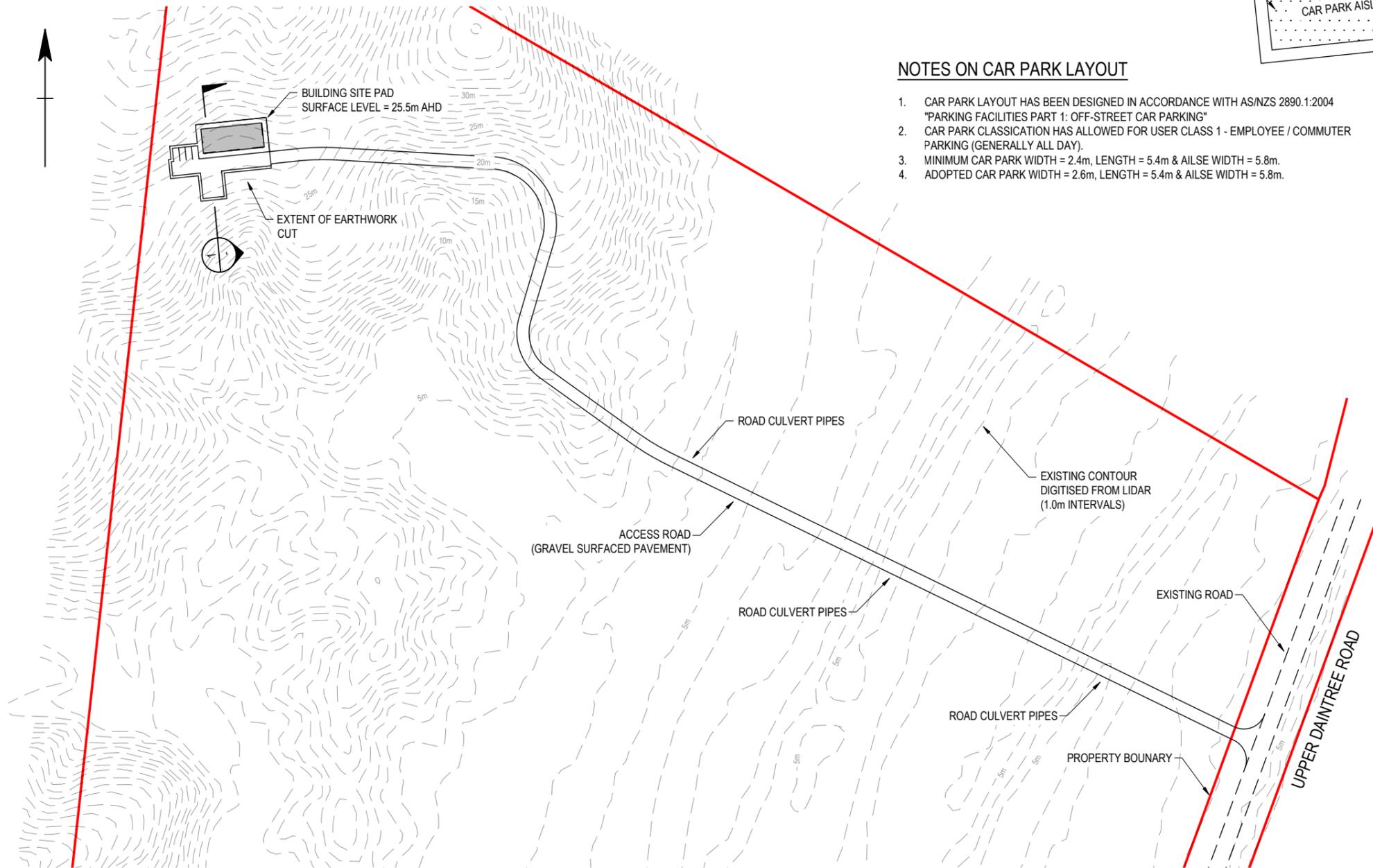


NOTES ON CAR PARK LAYOUT

1. CAR PARK LAYOUT HAS BEEN DESIGNED IN ACCORDANCE WITH AS/NZS 2890.1:2004 "PARKING FACILITIES PART 1: OFF-STREET CAR PARKING"
2. CAR PARK CLASSIFICATION HAS ALLOWED FOR USER CLASS 1 - EMPLOYEE / COMMUTER PARKING (GENERALLY ALL DAY).
3. MINIMUM CAR PARK WIDTH = 2.4m, LENGTH = 5.4m & AISLE WIDTH = 5.8m.
4. ADOPTED CAR PARK WIDTH = 2.6m, LENGTH = 5.4m & AISLE WIDTH = 5.8m.

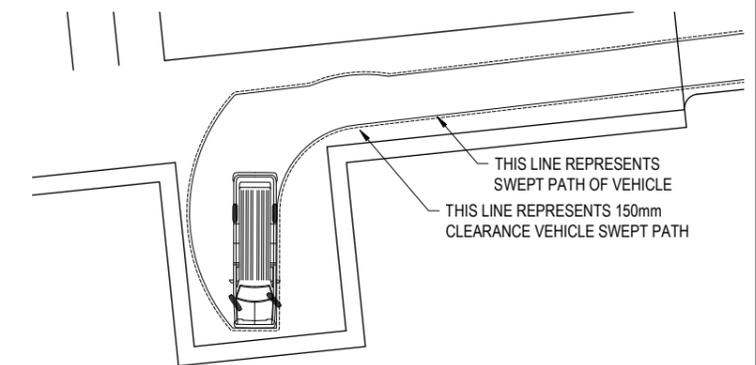
CAR PARK LAYOUT

SCALE: 1:200 @ A1
1:400 @ A3

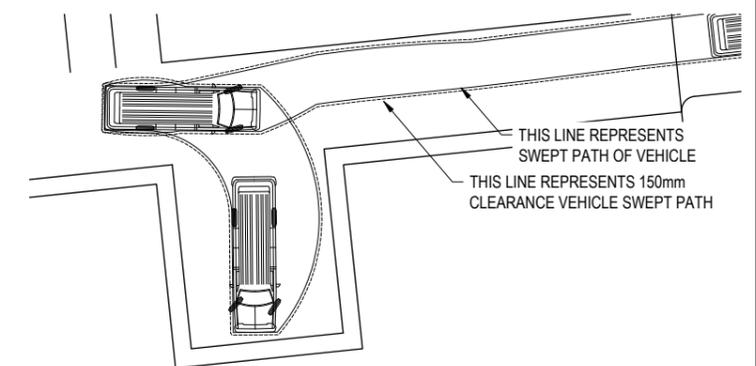


SITE LAYOUT

SCALE: 1:1000 @ A1
1:2000 @ A3



MRV ENTRY SWEEP PATH



MRV EXIT SWEEP PATH

REVISIONS	NO.	DATE	DESCRIPTION	DESIGN	APPROVED
1	28.11.19	INITIAL ISSUE			

CLIENT
J & V NOLI

SCALE
1:200 0 2 4 6 8 10 12 A1
1:400
1:1000 0 10 20 30 40 50 60 A1
1:2000
ALL DIMENSIONS IN METRES UNLESS NOTED OTHERWISE

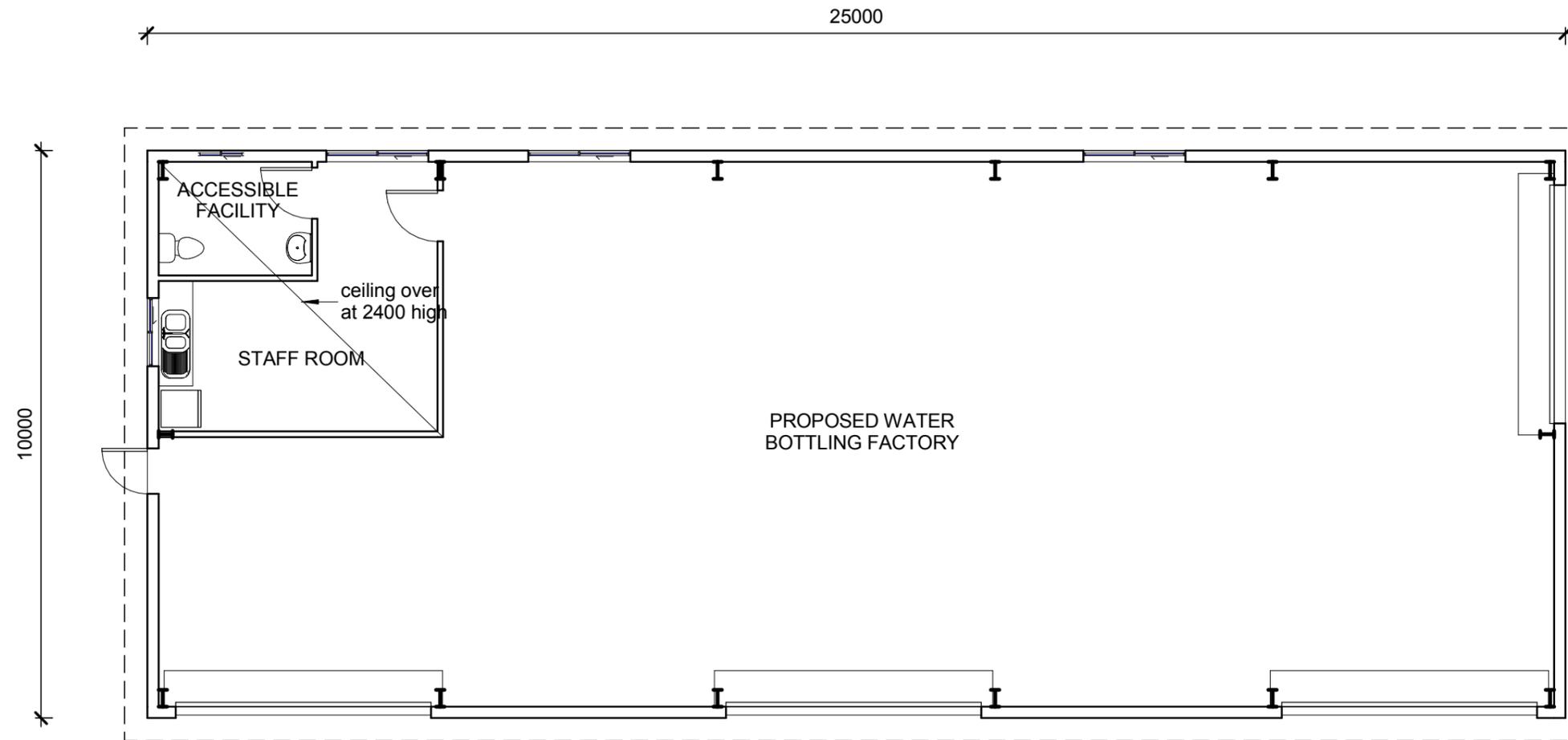
CivilWalker
Consulting Engineers
Special Council Meeting - 10 August 2020

DRAWN	JW	CHECKED	DJW
DESIGNED	JW	CHECKED	DJW
APPROVED			

DATE: RPEC:

DAINTREE WATER SHED
ACCESS ROAD & BUILDING PAD
CONCEPT ARRANGEMENT

DRAWING NO. 106-002-C01 REVISION 1



1 Floor Plan
1 : 100

