

## **5.4. MATERIAL CHANGE OF USE FOR A DWELLING HOUSE FOR LAND ADJACENT TO 9R TOLL GATE ROAD OAK BEACH**

<b>REPORT AUTHOR(S)</b>	Jenny Elphinstone, Senior Planning Officer
<b>GENERAL MANAGER</b>	Michael Kriedemann, Acting General Manager Operations
<b>DEPARTMENT</b>	Development Assessment and Coordination
<b>PROPOSAL</b>	Material change of use for a dwelling house on additional land neighbouring 9R Toll Gate Road, Oak Beach
<b>APPLICANT</b>	Sandra Dibbs and Mark Hogan 9 Toll Gate Rd Oak Beach Qld 4877
<b>LOCATION OF SITE</b>	9R Toll Gate Road, Oak Beach and Lot A on Drawing CNS 15/002.
<b>PROPERTY</b>	Lot 140 on RP454 and part of the adjoining road (Lot A on Drawing CNS 15/002).

### **LOCALITY PLAN**



**Figure 1 - Locality Plan**

<b>PLANNING SCHEME</b>	2018 Douglas Shire Planning Scheme .
<b>LOCAL PLAN</b>	None applicable.
<b>ZONE</b>	9R Toll Gate – Low Density Residential. Road Lot A – Conservation
<b>REFERRAL AGENCIES</b>	Not applicable.
<b>NUMBER OF SUBMITTERS</b>	None.
<b>STATUTORY ASSESSMENT DEADLINE</b>	14 August 2018
<b>APPLICATION DATE</b>	9 May 2018

### **RECOMMENDATION**

That Council approves the development application to extend the use of the existing Dwelling House and infrastructure over the land described as Lot 140 on SR454 and road being Lot A on Drawing CNS 15/002, located at 9R Toll Gate Road Oak Beach and part of the adjoining road, subject to the following:

#### **A. APPROVED DRAWING(S) AND / OR DOCUMENT(S)**

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

<b>Drawing or Document</b>	<b>Reference</b>	<b>Date</b>
<b>Site Plans</b>	<b>Applicant’s plans as per Council electronic document 855716.</b>	<b>9 May 2018</b>

#### **B. ASSESSMENT MANAGER CONDITIONS AND ADVICES**

The approval is subject to the following conditions and advices

##### **Assessment Manager Conditions**

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.

### Lawful Point of Discharge

3. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

### Proposed Shed

4. The proposed shed is to be located generally as per the submitted plans and setback at least 10m from the road, 6m from the side boundary and 6m from the top of bank. The shed may have a height of not more than 8.5m high. The exterior finishes and colours are to be non-reflective and are to be moderately dark to darker shades of grey, green, blue and brown. Any plumbing in the shed is to utilise the onsite waste water system associated with the existing House on Lot 140 on SR454.

### Conservation Area

5. The conservation area, as marked on the plans, is to be planted only with endemic species to the locality and no buildings or structures are to be constructed in this area. No vegetation damage is to occur in this area other than the removal of weed species.

### Advices

1. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. For information relating to the *Planning Act 2016* log on to [www.dsdmip.qld.gov.au](http://www.dsdmip.qld.gov.au) . To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).

### LAND USE DEFINITIONS\*

In accordance with the *2018 Douglas Shire Planning Scheme* the approved land use is defined as follows.

Column 1 Use	Column 2 Definition	Column 3 Examples	Column 4 Does not include the include following examples
Dwelling House	A residential use of premises for one household that contains a single dwelling.		Caretaker's accommodation, dual occupancy, hostel, short-term

Column 1 Use	Column 2 Definition	Column 3 Examples	Column 4 Does not include the include following examples
	The use includes domestic outbuildings and works normally associated with a dwelling and may include a secondary dwelling.		accommodation, student accommodation, multiple dwelling.

\*This definition is provided for convenience only. This Development Permit is limited to the specifications, facts and circumstances as set out in the application submitted to Council and is subject to the abovementioned conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

### C. Further Permits

1. The following Development Permits are required to be obtained before the development can be carried out:
  - a. Development Permit for Building Work for the future Shed.

### D. Currency period for the approval

Under section 85(1)(a)(i) of the *Planning Act 2016*, the relevant period for the Preliminary Approval is to be six (6) years starting from the day the approval takes effect.

### E. Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
  - a. the approved plan(s) and document(s) as per A above;
  - b. the Conditions and Advices as per B above;
  - c. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme; and
  - d. 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 on 9 May 2018 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
  - b. the application was properly notified;
  - c. the development application contained information from the applicant which Council reviewed together with Council's own investigation of

**assessment against the State Planning Policy and the 2018 Douglas Shire Planning Scheme 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 Conservation Zone Code;**
  - 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 requirements.**

## **EXECUTIVE SUMMARY**

The applicants seek to utilise part of the adjacent road area as an extension to their house block at 9R Toll Gate Road, Oak Beach. A portion of the land is to be conserved and it is the land owner's intention that vegetation in this area will be supplemented with local endemic species. The current Planning Scheme has included the road, part of which is to be closed, in the Conservation Zone. The applicant intends to place a shed setback from the front of the property, and water tanks on the land, in existing cleared areas. Public notification of the development was undertaken as part of the Road closure process. Notification was also undertaken under the *Planning Act 2016* and no submissions were received. The proposal does not create an additional lot and the area of valued landscape will be conserved. It is recommended that the application be supported subject to conditions.

## **TOWN PLANNING CONSIDERATIONS**

### **Background**

Number 9R Toll Gate Road is part of a small, suburban-type subdivision at Oak Beach. The lot has a site area of 675m<sup>2</sup> and has been developed with a single storey dwelling that was constructed in 1988.

On the 6 March 2015 the Department of Natural Resources and Mines provided Council with the public notice for display and comment under the Land Act for the proposed permanent road closure over part of the unnamed road adjoining Lot 140 on SR454. A copy of this plan is included in Attachment 2. At the Closed Session of the Ordinary Meeting held on 14 August 2015 Council considered the matter and resolved as follows.

*"That Council*

- 1) Advises the Department of Natural Resources and Mines that it has no objection to the application for permanent road closure over part of unnamed road*



*adjoining Lot 140 on SR454, (identified as Lot A on drawing CNS 15/002P) Toll Gate Road Oak Beach, subject to the following:*

- *prior to the formal closure of the road, the applicant obtain a Development Permit for a Material Change of Use and Reconfiguring a Lot that provides approval for the extension of residential uses on Lot 140 on SR454 over that area of road reserve subject of the road closure application. The reconfiguration of a lot component of the approval will need to realign the existing allotment boundary of Lot 40 on SR454 to include the area of road to be closed.*
- 2) *delegates authority to the Mayor and Chief Executive Officer in accordance with section 257 of the Local Government Act 2009 to finalise all matters associated with the application.”*

Subsequently, successful application was made by the adjacent land owner to acquire part of the road adjacent to the south, Lot A on Drawing CNS 15/002. Lot A is undeveloped with the exception of a vehicle crossing to this area off Toll Gate Road.

While the original application was lodged for a Combined development (reconfiguration of a lot and a material change of use), the Department has since advised Council that no planning approval from Council is necessary for this “new lot” as the amalgamation is undertaken under the *Land Act 1994*, not the *Land Title Act 1994*. Once the land use planning approval has been achieved, the Department of Natural Resources and Mines will approve a new lot plan, as shown in Attachment 1.

The large extent of road area was initially created off the Captain Cook Highway as there was an original toll gate at this location. The subdivision for the residential lots was created in 1968, by the State Government, to better utilise the land.

## **Proposal**

Application has been made for a material change of use to extend the use of the Dwelling House, at 9R Toll Gate Road, over the adjacent site affected by the road closure. The plans submitted with the application nominate the intended future development of a shed, water tank storage and an orchard on the additional area. The future shed is to be constructed in an area of the site that is partly cleared and diseased trees in this area will be removed. Another part of the site will be conserved and the applicants are agreeable that only endemic plants will be established in this conservation area. Details of the site plan are included in Attachment 1.

## **Relevant Matters**

### **State Planning Benchmarks Applying To This Development and Referral**

The residential lots at Toll Gate Road and Oak Beach Road are included in the Regional Landscape and Rural Productive Area of the *2009-2031 Far North Queensland Regional Plan*. Given the small scale of the proposal, the extension of the existing use is not considered detrimental to the environmental quality of the land.

The land includes a small gully and is not identified as agricultural land. The “Category A or B area containing of concern regional vegetation” is contained on that part of the site, nominated to be conserved. The conditions of the approval protect this part of the land and the vegetation thereon.

A small part of the site is mapped as a coastal erosion prone area. This consideration has been incorporated into the current 2018 Planning Scheme and is assessed below.

### 2018 Douglas Shire Planning Scheme Assessment

The State land, including road, surrounding these lots, is included in the Conservation Zone. The use is impact assessable development and assessment is against the whole of the Planning Scheme. The assessment against the Strategic Framework is tabled as follows.

**Table 1.**

Benchmark Description	Benchmark Reference	Compliance
Settlement Pattern	The coastal settlements are not intended to grow over and above the existing zoned land or increase in density. Development does not unduly burden disaster management response.	The extension of the land use is over road, not land. There is no increase in the number of lots in this local area. The development is consistent with benchmark.
Environment and Landscape Values	Protection of environmental values including Aboriginal and Torres Strait Islander heritage. Considerations of biodiversity, coastal zones and scenic amenity.	Conditions of the approval address the conservation of part of the land. The development is consistent with the benchmark and values are protected.
Natural Resource Management	Considerations of land and catchment management, primary production, forestry and fisheries, resource extraction.	The proposed development does not impact on these values.
Strong Communities and Identity	Considerations for social planning and infrastructure, active communities, sense of place, community and identity, housing choice and affordability, arts and culture, cultural and landscape heritage, strengthening indigenous communities.	The proposed development does not impact on these values.
Economy	Considerations of economic growth and diversification, tourism and primary production.	The proposed development does not impact on these considerations.

Benchmark Description	Benchmark Reference	Compliance
Infrastructure and Transport	Considerations of energy, water and waste management and information technology.	The proposed development does not impact on these considerations.

The following table details compliance aspects for the proposed site, Lot A, against the relevant Planning Scheme Codes for a material change of use.

**Table 2.**

Benchmark Description	Benchmark Reference	Compliance
Conservation Zone Code	Code purpose	The development meets the code purpose.
	AO1 Inconsistent uses are not established.	The use is impact assessable.
	AO2 Buildings and structures are not more than 8.5m high.	The applicant has advised the shed will be single storey. A condition of the approval limits the shed height to meet the benchmark.
	AO3 Buildings are setback 20m from the road and 10 m from the side and rear boundaries.	The existing house is setback 12 m from the road boundary. The shed will have a similar setback.
	AO4 Development is sited in an existing cleared area.	The future shed is an area previously cleared and currently containing diseased trees. The development satisfactorily meets the benchmark.
	PO5 Development is consistent with the overall outcomes for the zone.	The development seeks to maintain and conserve biodiversity. The private use of the land does not detrimentally affect the land or the surrounding area.
	AO6 Exterior finishes and colours	This is sufficiently addressed in the proposed conditions.



Benchmark Description	Benchmark Reference	Compliance
	AO7-8 & PO9-12 consideration of environmental matters with the balance of site conserved and planted with endemic species	This is the applicant's intention and is addressed in the conditions of the approval.
	PO13 New lots have a minimum size of 200 hectares unless no additional lots (e.g., boundary realignment).	The proposal realigns the road boundary. No additional lots area created.
Bushfire Overlay Code	Code purpose	The development meets the code purpose.
	AO1 Vulnerable and emergency services are not established in the overlay area. Hazardous materials are not stored.	The proposed use is neither a vulnerable use, an emergency service or involves hazardous materials.
	AO10-11 Buildings are separated from hazardous materials.	The future shed will be constructed in a cleared area and will be subject to considerations of bushfire at the certification stage.
	AO13 Water tanks	The existing tank needs replacement and additional water tanks are to be provided.
	AO14-15 Vegetation and bushfire risk	Endemic species are required. A small clearing will be provided around the future shed. The conservation values of the area will be retained.
Coastal Environment Overlay Code	Code Purpose	The development is considered to meet the code purpose.
	AO1-4 Development in coastal area and the erosion prone zone.	The future shed is not located in the mapped erosion prone zone. The development complies with the benchmarks.
	PO13-14 Coastal landscapes, settlements, views and vistas.	The development is infill development and does not affect vistas and views.

Benchmark Description	Benchmark Reference	Compliance
Landscape Values Overlay Code	Code Purpose	The development meets the code purpose.
	AO1 Development in a high landscape value area	Development achieves the acceptable outcomes, or these are achieved through the proposed conditions.
	AO3 Development in the scenic route buffer	Development achieves the acceptable outcomes, or these are achieved through the proposed conditions.
Natural Areas Overlay Code	Code Purpose	The development meets the code purpose.
	AO1-5 Avoid significant impact on relevant environmental values	The area of significant value is to be conserved.
	AO6-7 Ecological connectivity and vegetation conservation	Ecological corridors are maintained.
	AO9 Development does not occur in waterway corridors.	The future shed is setback from the drain/gully on the land.
Transport Noise Corridor Overlay Code	Code Purpose	The development meets the code purpose.
	AO1-5 Development is compatible with the road network.	The future shed is not impacted by the road corridor to warrant noise attenuation.
Dwelling House Code	Code Purpose	The development meets the code purpose.
	AO3 Building height meets the zone code.	This is addressed through the conditions of the approval.
Vegetation Management Code	Code Purpose	The development meets the code purpose.
	A01 Vegetation damage only as	Vegetation damage is

Benchmark Description	Benchmark Reference	Compliance
	necessary for approved structures.	limited to the removal of diseased trees and development is to occur in this area which is partly cleared.

### Non-Compliance with Benchmarks

Table 3.

Benchmark reference	Reasons for the approval or approval subject to conditions despite non-compliance with any of the benchmark.
<b>Conservation Zone – Building Setbacks</b> PO3 Development is setback from the site boundaries so they are screened from view from the boundaries of the adjoining properties and adjoining roads to maintain the scenic values of the area.	The condition of the approval requires a 10m setback for the proposed future shed and a 6m setback to the side boundary / top of bank. These reduced setbacks are considered appropriate having regard to the lot size and configuration and physical attributes.

### Public Notification

Public notification of the application was undertaken in accordance with the Development Assessment Rules. No submissions were received.

### ADOPTED INFRASTRUCTURE CHARGES

The proposed development does not trigger Adopted 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.

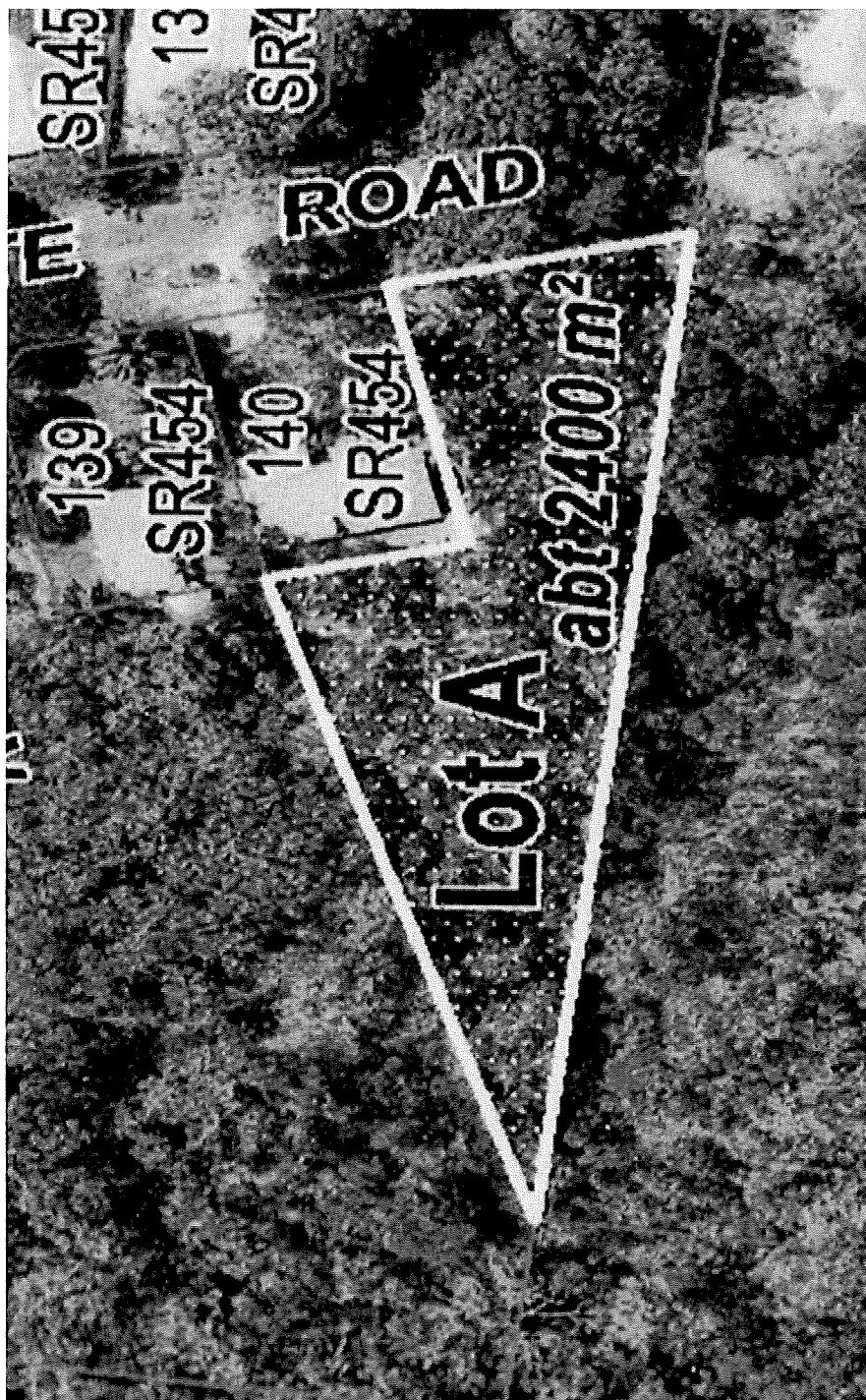
The following area outlines where Council has a clear responsibility to act:

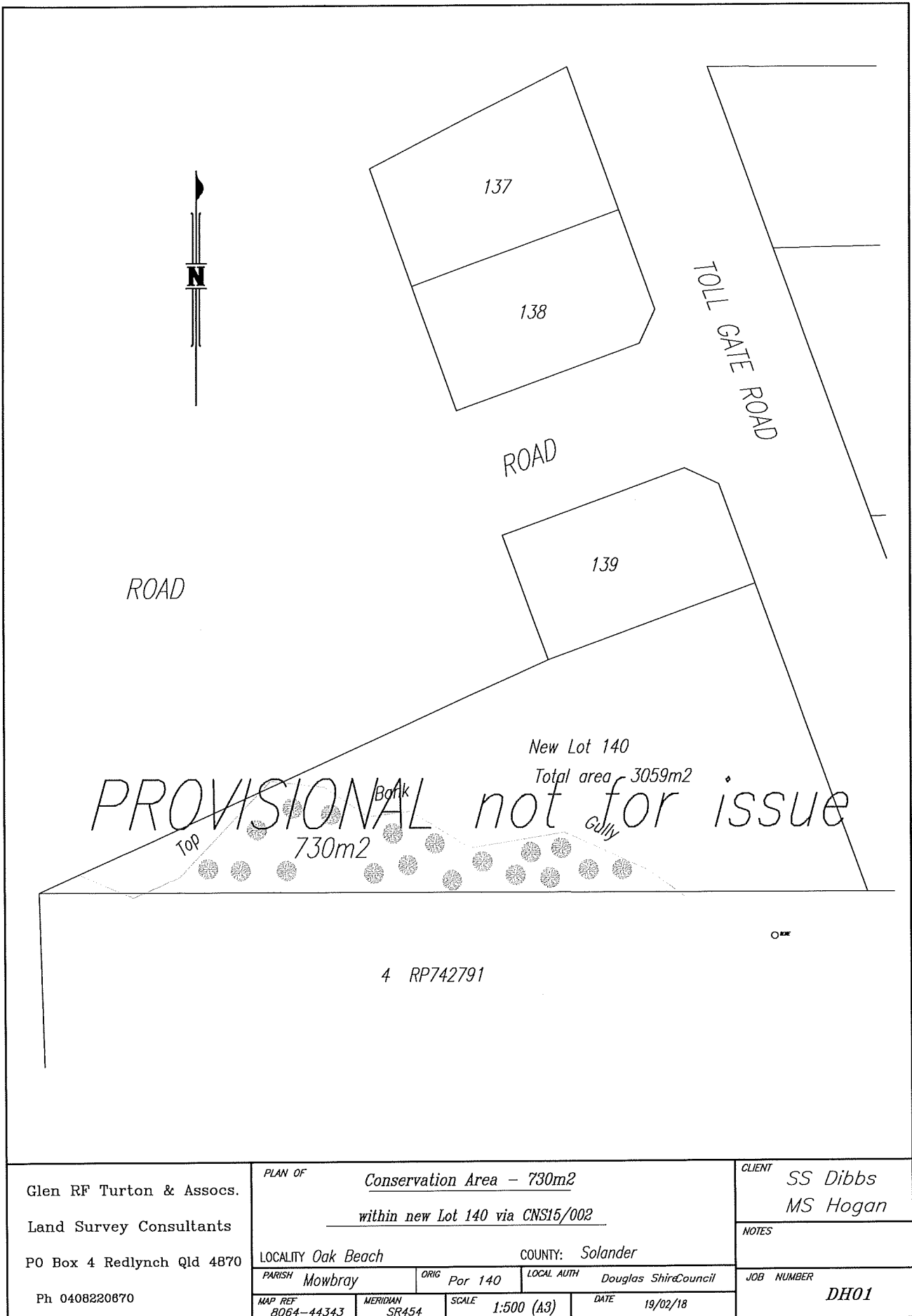
**Regulator:** Meeting the responsibilities associated with regulating activities through legislation or local law.

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

## **ATTACHMENTS**

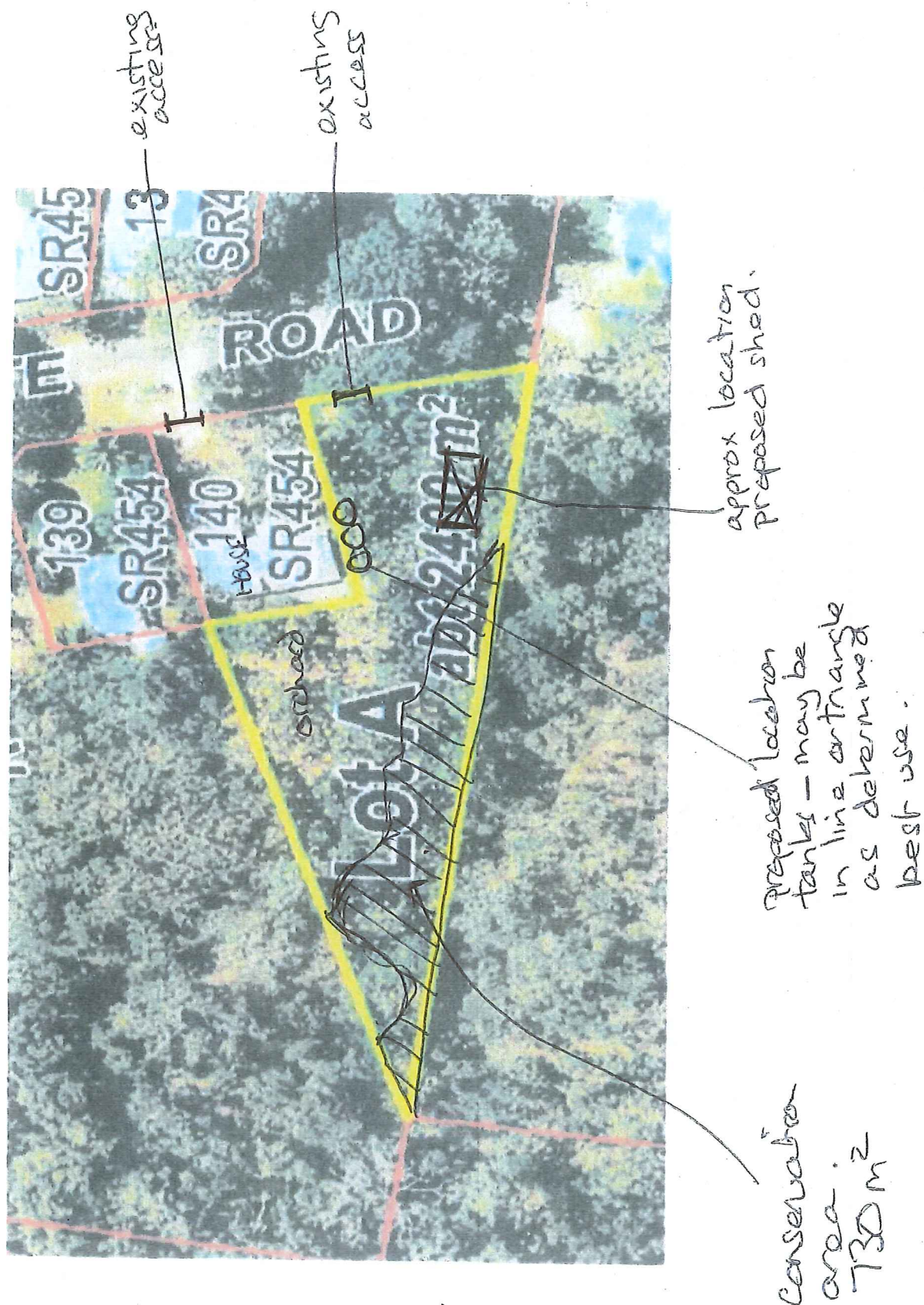
1. 9 R Toll Gate Attachment 1 **[5.4.1]**
2. Lot A 9 Toll Gate Attachment 2 **[5.4.2]**



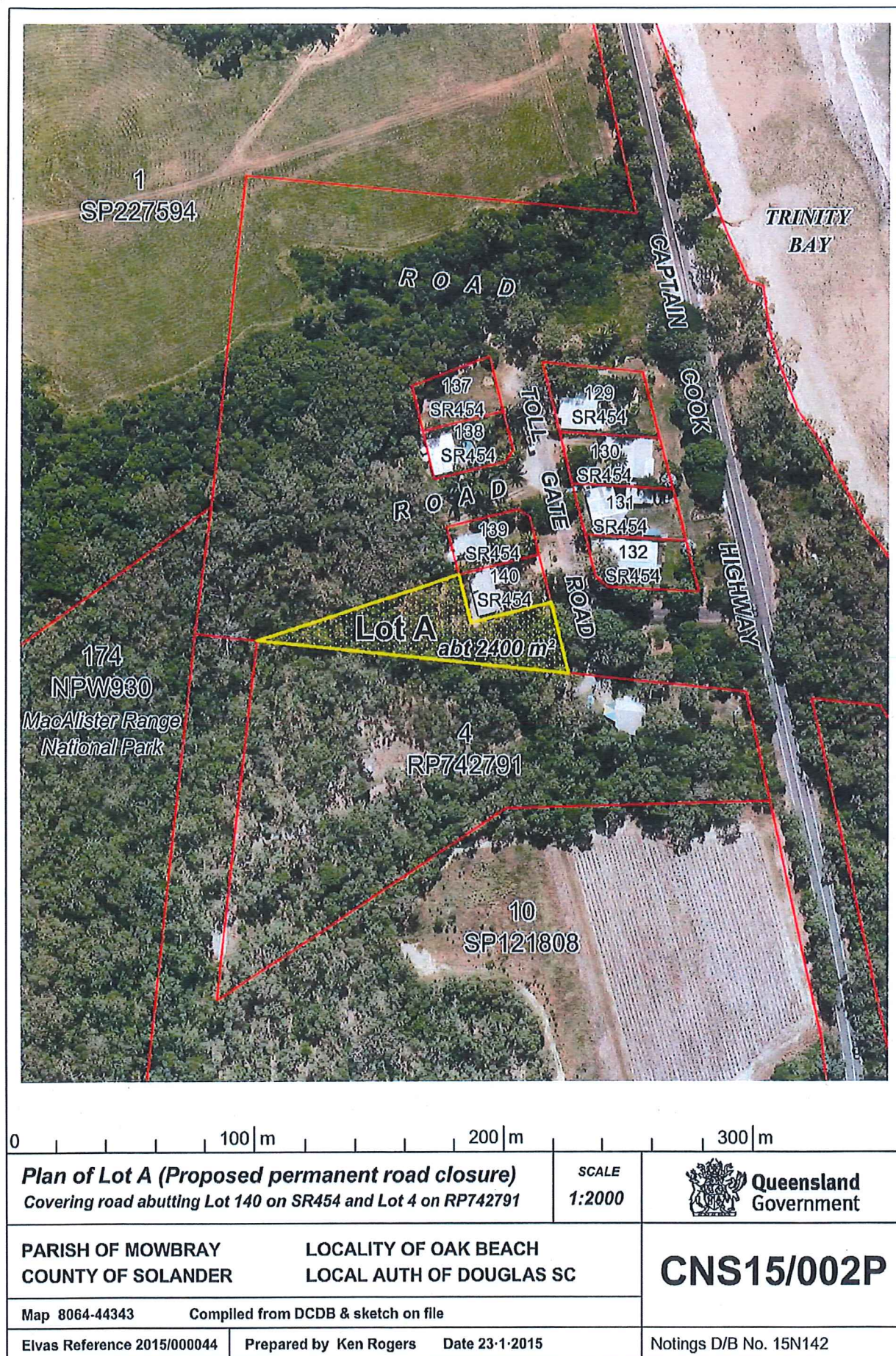




NOTE: OLD AERIAL - NOT REFLECTIVE OF CURRENT VEGETATION










# Application for Closure of Road

6 March 2015

File / Ref number 2015/000044

Notice is given of an application made under section 100 of the *Land Act 1994* for the permanent closure of the road described as:



0		100 m		200 m		300 m	
<b>Plan of Lot A (Proposed permanent road closure)</b> Covering road abutting Lot 140 on SR454 and Lot 4 on RP742791					SCALE 1:2000		 Queensland Government
PARISH OF MOWBRAY		LOCALITY OF OAK BEACH			<b>CNS15/002P</b>		
COUNTY OF SOLANDER		LOCAL AUTH OF DOUGLAS SC					
Map 8064-44343		Compiled from DCDB & sketch on file					
Elvas Reference 2015/000044		Prepared by Ken Rogers			Date 23-1-2015		Notings D/B No. 15N142

## DESCRIPTION OF ROAD

**Description of proposed road closure:** An area of about 2400m<sup>2</sup> being part of unnamed road, Oak Beach, abutting the south west boundary of Lot 140 on SR454 and shown as Lot A on Drawing CNS15/002P.

**Parish:** Mowbray

**Locality:** Oak Beach

**Local Government:** Douglas Shire Council

Any person who may consider their interest affected by the application is required to submit their objections and/or enquires in writing before 16 April 2015 to the Department:

### Postal Address -

DNRM Cairns  
PO Box 5318  
Townsville  
4810 QLD

### Delivery Address -

DNRM Cairns  
L 4, William McCormack Place II  
5b Sheridan Street  
Cairns QLD 4870

**Telephone:** (07) 4222 5427

**Fax:** (07) 4799 7533

**Email:** Townsville.SLAMS@dnrm.qld.gov.au

Any objections received may be viewed by other parties interested in the proposed road closure under the provisions of the *Right to Information Act 2009* (the RTI Act).

If you lodge an objection, please include in your objection letter whether you would like to be consulted if this issue becomes the subject of an access request under the RTI Act.

**LATEST DATE FOR OBJECTIONS – 16 APRIL 2015**