

11 August 2020

**Enquiries:** Daniel Lamond  
**Our Ref:** MCUI 2019\_3302/1 (965630)  
**Your Ref:**

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

V E Noli & J P Noli  
C/- Brazier Motti Pty Ltd  
PO Box 1185  
CAIRNS QLD 4870

**Email:** cairns@braziermotti.com.au or

Dear Sir/Madam

**Negotiated Decision Notice**  
**Development Application for Medium Impact Industry (Water Bottling Facility)**  
**At Upper Daintree Road, Upper Daintree**  
**On Land Described as LOT: 10 SP: 304851**

Please find attached the Negotiated Decision Notice for the above-mentioned development application.

Please quote Council's application number: ROL 2019\_3302/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully



**For**  
**Paul Hoyer**  
**Manager Environment & Planning**

encl.

- Negotiated Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Reasons for Decision
- Advice For Making Representations and Appeals (Negotiated Decision Notice)



## Decision Notice

### Approval (with conditions)

*Given under section 63 of the Planning Act 2016*

#### Applicant Details

**Name:** V E Noli & J P Noli  
**Postal Address:** C/- Brazier Motti Pty Ltd  
PO Box 1185  
CAIRNS QLD 4870  
**Email:** cairns@braziermotti.com.au or

#### Property Details

**Street Address:** Upper Daintree Road, Upper Daintree  
**Real Property Description:** LOT: 10 SP: 304851  
**Local Government Area:** Douglas Shire Council

#### Details of Proposed Development

Development Permit- Material Change of Use for Medium Impact Industry (Water Bottling Facility).

#### Submissions

There was 1 submission made for this development application. However, it was not properly made in accordance with the definition of a 'properly made submission' under the Planning Act 2016.

Submitter	Residential or Business Address	Electronic Address
Peta Campbell	Port Douglas	<a href="mailto:peta.l.campbell@gmail.com">peta.l.campbell@gmail.com</a>

#### Decision

**Date of Decision:** 10 August 2020  
**Decision Details:** Approved (subject to conditions)

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

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Copies of the following plans, specifications and/or drawings are enclosed.

Drawing	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

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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 prepared by a suitably qualified and experienced acoustic engineer must be prepared to demonstrate the affect 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 and demonstrate compliance with condition 6 below. 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) detail the generation of noise associated with all noise emitting plant to be used;
- (d) detail proposed attenuation treatments to the building with building plans;
- (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<sub>max,T</sub>) of plant must not exceed at an affected building:
- Day (7am to 6pm): Background noise level L<sub>90,T</sub> + 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**

9. 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**

10. 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**

11. 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**

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

## **Operational Works**

13. 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**

14. 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**

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

## **Heavy Vehicle Movements**

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

## **Further Development Permits**

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Please be advised that the following development permits are required to be obtained before the development can be carried out:

- Operational Work
- Building Work

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2018*.

## **Currency Period for the Approval**

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This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

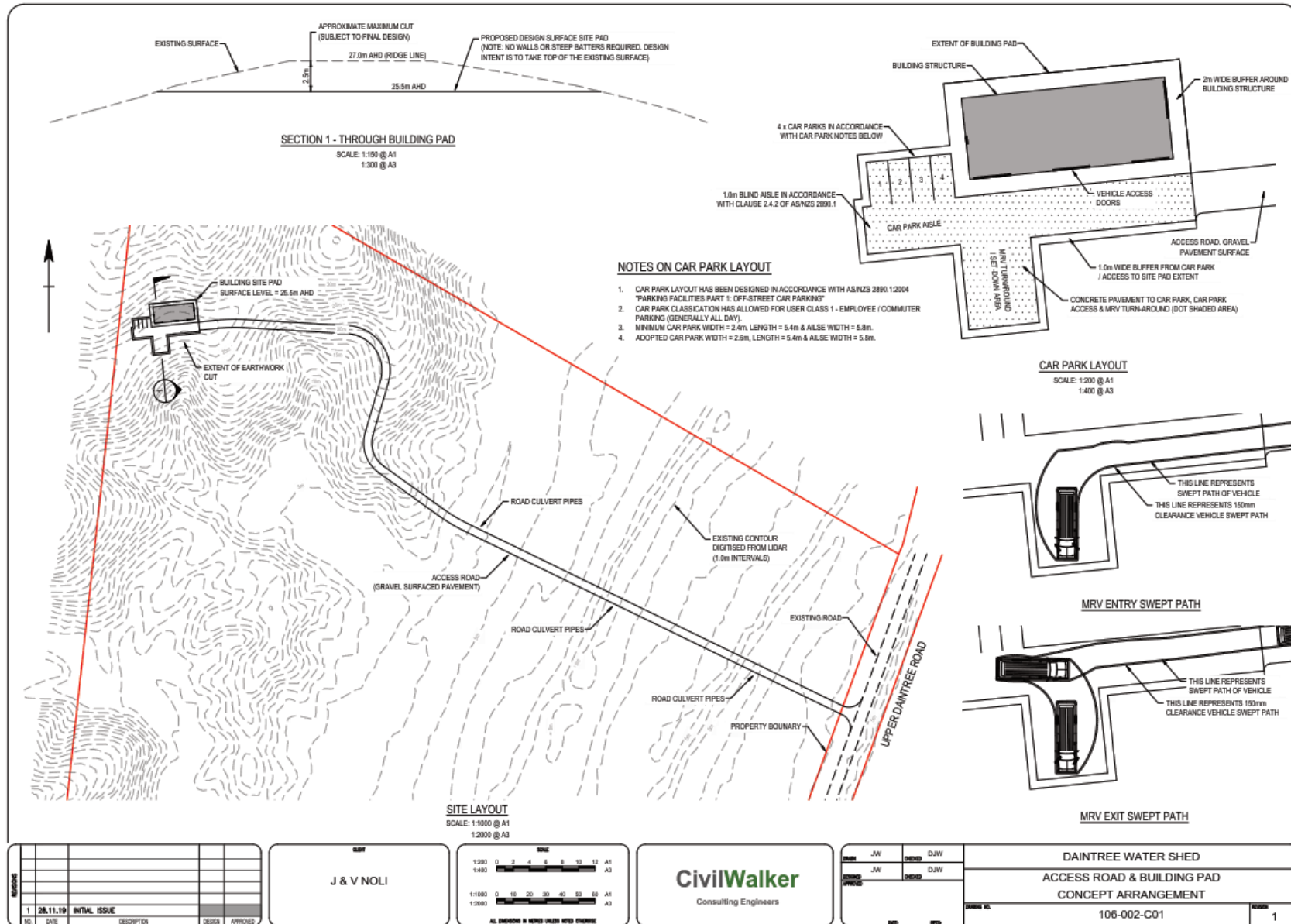
## **Rights to make Representations & Rights of Appeal**

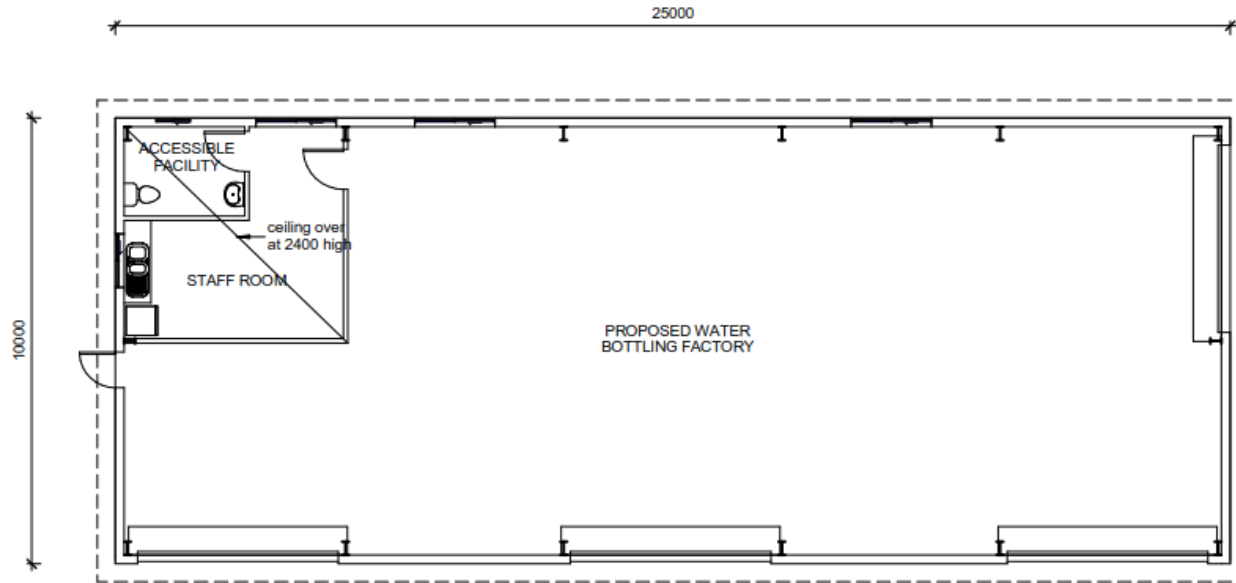
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The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions are attached.

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

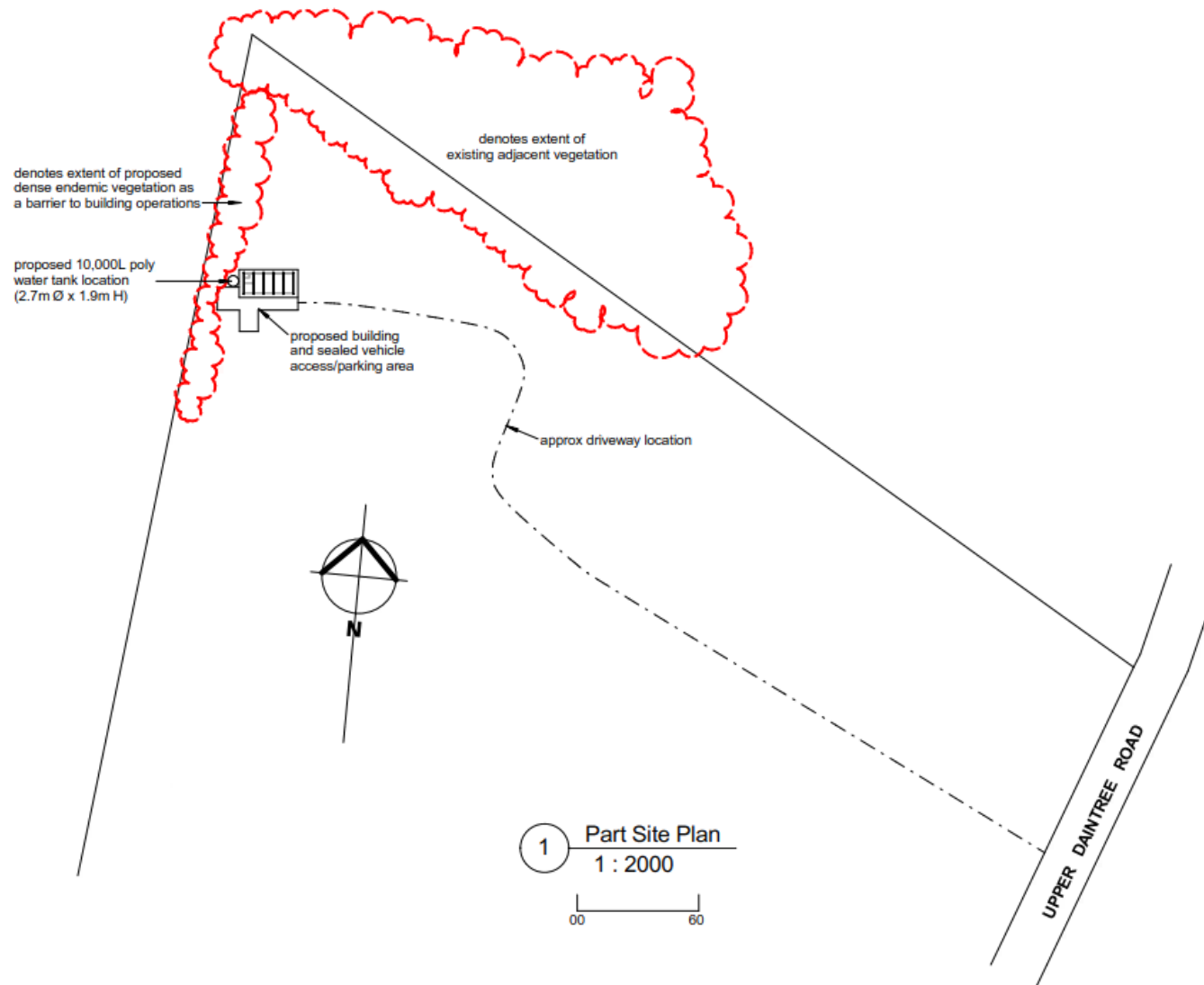




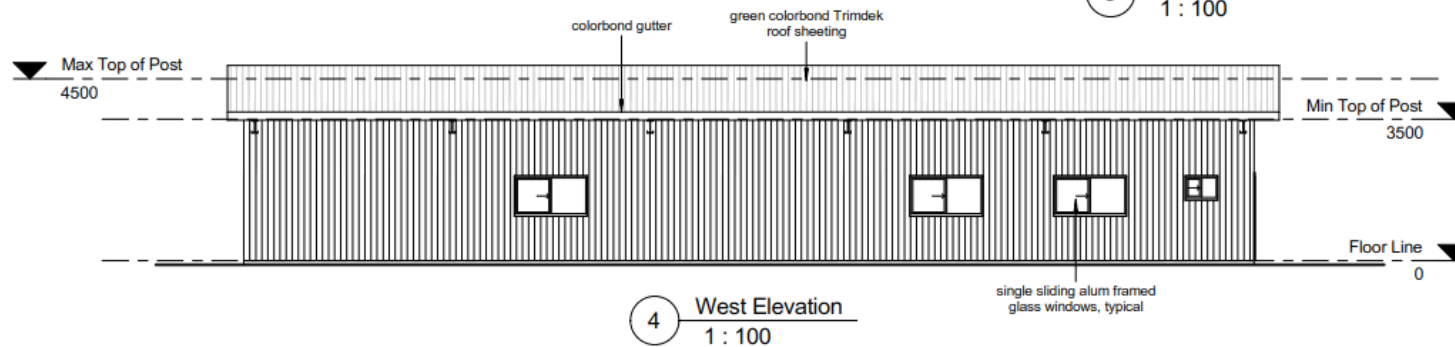
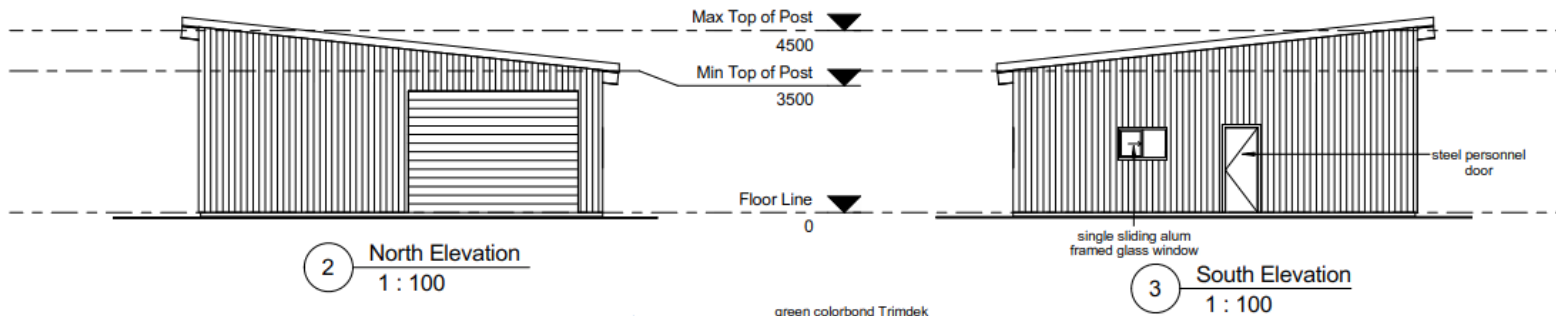
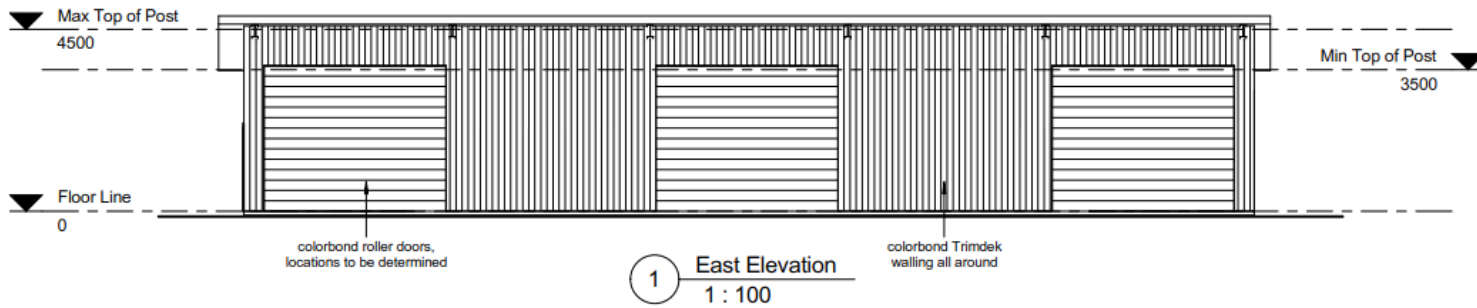
1 Floor Plan  
1 : 100

<b>GREG SKYRING</b> <i>Design</i> and DRAFTING Pty. Ltd. <small>Lic Under QBSA Act 1991 - No 1040371</small> <b>11 Noli Close,</b> <b>Mossman Q. 4873</b> <small>Phone/Fax: (07) 40982061          Mobile: 0419212652          Email: greg@skyringdesign.com.au</small>	<small>PROJECT</small> Proposed Water Bottling Plant, L10 SP304851, Upper Daintree Road, UPPER DAINTREE	<small>CLIENT</small> LP & V Noli	<small>WIND CLASS</small> C2	<small>PLAN NUMBER</small> 101-19	<small>SHEET</small> 1 of 2
		<small>SCALES</small> 1 : 100	<small>PLAN TITLE</small> Floor Plan	<small>DATE OF ISSUE</small> 03.09.19	<small>REV</small>





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		<small>SCALES</small> <b>1 : 2000</b>	<small>PLAN TITLE</small> <b>Part Site Plan</b>	<small>DATE OF ISSUE</small> <b>03.09.19</b>	<small>REV</small>



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PROJECT  
Proposed Water Bottling Plant,  
L10 SP304851,  
Upper Daintree Road,  
UPPER DAINTREE

CLIENT  
LP & V Noli

WIND CLASS  
C2

PLAN NUMBER  
101-19

SHEET  
2 of 2

SCALES  
1 : 100

PLAN TITLE  
Elevations

DATE OF ISSUE  
03.09.19

REV

## Reasons for Decision

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:
  - c) the development triggered assessable development under the Assessment Table associated with the Rural zone;
  - d) Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
  - e) the applicant's reasons have been considered and the following findings are made:

Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

## Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016  
Chapter 3 Development assessment

[s 74]

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### Division 2 Changing development approvals

#### Subdivision 1 Changes during appeal period

##### 74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
  - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
  - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
  - (c) as if a reference in section 76 to a development application were a reference to a change application; and
  - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
  - (e) with any other necessary changes.

##### 75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
  - (a) a matter in the development approval, other than—
    - (i) a matter stated because of a referral agency's response; or

- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
  - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
  - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
  - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
    - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
    - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
    - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

## **76 Deciding change representations**

- (1) The assessment manager must assess the change representations against and having regard to the matters that

- must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
    - (a) the applicant; and
    - (b) if the assessment manager agrees with any of the change representations—
      - (i) each principal submitter; and
      - (ii) each referral agency; and
      - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
      - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
      - (v) another person prescribed by regulation.
  - (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
    - (a) state the nature of the change agreed to; and
    - (b) comply with section 63(2) and (3).
  - (4) A negotiated decision notice replaces the decision notice for the development application.
  - (5) Only 1 negotiated decision notice may be given.
  - (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

## Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution

[s 229]

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- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—

**conduct** means an act or omission.

**representative** means—

  - (a) of a corporation—an executive officer, employee or agent of the corporation; or
  - (b) of an individual—an employee or agent of the individual.

**state of mind**, of a person, includes the person's—

  - (a) knowledge, intention, opinion, belief or purpose; and
  - (b) reasons for the intention, opinion, belief or purpose.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
  - (a) matters that may be appealed to—
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) the person—
    - (i) who may appeal a matter (the *appellant*); and
    - (ii) who is a respondent in an appeal of the matter; and

- 
- (iii) who is a co-respondent in an appeal of the matter;  
and
  - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
- (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
    - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
    - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or



(iii) otherwise—20 business days after the day the notice is given; or

- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note—*

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
- (a) the adopted charge itself; or
- (b) for a decision about an offset or refund—
- (i) the establishment cost of trunk infrastructure identified in a LGIP; or
- (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

## **230 Notice of appeal**

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
- (a) is in the approved form; and
- (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—

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- (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
  - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
  - (f) for an appeal to the P&E Court—the chief executive; and
  - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

## 231 Non-appealable decisions and matters

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
- decision** includes—
- (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.

**non-appealable**, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise,

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whether by the Supreme Court, another court, any tribunal or another entity; and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

### **232 Rules of the P&E Court**

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

## **Part 2 Development tribunal**

### **Division 1 General**

#### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - (i) to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.