

17 October 2025

Email: [enquiries@douglas.qld.gov.au](mailto:enquiries@douglas.qld.gov.au)

Attention:

The Assessment Manager  
Douglas Shire Council  
PO Box 723  
Mossman QLD 4873

## NORTON ROSE FULBRIGHT

Norton Rose Fulbright Australia  
ABN 32 720 868 049  
Level 21, ONE ONE ONE  
111 Eagle Street  
BRISBANE QLD 4000  
AUSTRALIA

Tel +61 7 3414 2888  
Fax +61 7 3414 2999  
GPO Box 407, Brisbane QLD 4001  
DX 114 Brisbane  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Direct line

Email

Your reference:  
MCUI 2024\_5682/1

Our reference:  
4079032

Dear Assessment Manager

Further Submission from [REDACTED] against Development  
Application for Material Change of Use for Extractive Industry (30,000 tonnes per year) over Lot 1 on  
RP893855 – Development Application No. MCUI 2024\_5682/1 (Development Application)

### 1 Preliminary

1.1 We act for [REDACTED] and refer to:

- (1) [REDACTED] submission dated 16 December 2024 opposing the Development Application; and
- (2) our further submission letter dated 15 April 2025 (**April Submission**).

1.2 We understand the decision period for the Development Application has been extended to 28 November 2025.

1.3 The purpose of this further submission letter is to provide [REDACTED] response to the Applicant's response dated 12 September 2025 (**Response Letter**). The Response Letter was responding to Council's further issues letter dated 14 February 2025 (**Council's Further Issues Letter**).

1.4 The Response Letter, amongst other things, includes a response to the Department of Environment, Tourism, Science and Innovation (**DETSI Response**) and an engineering letter and report from Civil Walker dated 22 September 2025 (**Engineering Report**).

1.5 Given [REDACTED] (and the broader community's) interest in the Development Application, we urge the Council to carefully consider the Response Letter and this further submission in deciding the Development Application.

1.6 We urge the Council to consider and give significant weight to the contents of this further submission, as part of the "common material" to the Development Application pursuant to s.45(5)(a)(ii) of the *Planning Act 2016* (Qld) (**Planning Act**) and s.31(1)(g) and Schedule 24 of the *Planning Regulation 2017* (Qld).

APAC-#313733672-v1

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## 2 Executive Summary

- 2.1 Whilst we appreciate that the Applicant has provided the Response Letter which includes improvements and seeks to address the outstanding issues, consistent with our April Submission and as further explained in this submission:
- (1) the fact remains that the Development Application does not, and cannot be conditioned to comply with, the assessment benchmarks in the *Douglas Shire Planning Scheme 2018 (v.1.0) (Planning Scheme)* and there are no "relevant matters" in the public interest that warrant approval of the Development Application; and
  - (2) in the circumstances, the Council must refuse the Development Application.
- 2.2 In summary, the Response Letter and the design changes are positive. However, there remain **significant deficiencies** in the Development Application and the Council cannot be satisfied that it satisfies the assessment benchmarks in the Planning Scheme. In particular:
- (1) The proposed use has not been demonstrated to be a 'small-scale' extractive industry use as required under the Strategic Framework.
  - (2) There are significant inconsistencies and uncertainty in the Response Letter that need to be addressed to properly understand the extractive industry use. These relate to critical issues such as the extraction level, sediment basin and rehabilitation. All these matters have flow-on impacts that are highly relevant to the assessment.
  - (3) The Response Letter and DETSI Response do not provide any technical reports from professionally qualified experts about noise, dust, surface water, groundwater or aquatic ecological impacts which, at a minimum, would be required to determine whether compliance with the Planning Scheme can be achieved.
  - (4) There is no need assessment report for the resource, and in the circumstances, there is no clear community benefit or relevant matters that warrant an approval.
- 2.3 [REDACTED] remains concerned about the high ecological significance of the wetlands (**HES Wetlands**) and the mangroves to the east. The inconsistencies in the material, combined with the lack of technical reporting about critical matters, provides [REDACTED] with zero to low confidence that the use is, or will be, carried out in an environmentally sensitive manner that protects the HES Wetlands and the coastal area.

## 3 Strategic Framework Provisions & 'Small-scale' Extractive Industry Use

- 3.1 The key provisions for the extractive industry use in the Planning Scheme were set out in our April Submission. These are in the 'higher order' Strategic Framework provisions and specific to extractive industries. These are extracted below:
- (1) *Section 3.6.4(1) – Douglas Shire is not, and is not likely to be, a major resource extraction area. However, where extraction does occur, it is small-scale, visually unobtrusive and managed in an environmentally responsive manner. All land disturbed by mining and extractive industries is appropriately rehabilitated.*
  - (2) *Section 3.6.4.1(2) – Other extractive industries do not detrimentally impact on community well-being or the Shire's ecological, landscape, scenic amenity and rural production values, and in particular the sugar industry.*
  - (3) *Section 3.6.4.1(3) – Extractive industries are either progressively rehabilitated to a natural state, or are rehabilitated upon completion of extractive industries, with all buildings, machinery and other associated infrastructure being removed.*

3.2 The provision requires consideration of whether the extractive industry:

- (1) is 'small-scale';
- (2) is visually unobtrusive;
- (3) is managed in an environmentally responsible manner;
- (4) is appropriately rehabilitated upon completion of extractive industries; and
- (5) detrimentally impacts on community well-being, landscape and scenic amenity values and rural production values.

3.3 The concept of 'small-scale' has been considered in various Court decisions,<sup>1</sup> which requires careful consideration of:

- (1) the operating parameters of the use;
- (2) the scale, intensity and impacts of the use; and
- (3) the Planning Scheme context of the land and the locality.

3.4 Whilst the Applicant advances the proposed use is 'small-scale' in context to the output and impacts of other larger scale quarries in the New South Wales, respectfully, this is not the correct legal test.

3.5 In context of the caselaw and Planning Scheme provisions above, we note that:

- (1) The extractive industry use covers almost 50% of the Land's area (19.21ha) and compared to the surrounding agricultural uses and lots, is a substantial area.
- (2) Whilst this substantial area will be progressively extracted in a north to south direction in circa 1-2ha intervals, the use (on the Applicant's generous estimate)<sup>2</sup> requires:
  - (a) 10 to 12 haulage vehicle movements and 8 to 10 light vehicle movements per working day;
  - (b) an on-site excavator/ loader operator, an assistant and two separate visitors;
  - (c) extensive upgrades to the local road network (including road widening and intersection and infrastructure upgrades) to mitigate the traffic engineering impacts of having large haul vehicles on local rural roads.
- (3) This use, in comparison to cane farming and agricultural uses that currently occur (or would ordinarily occur) in this area and the Rural zone, is not small-scale given the large disturbance area, the intensity of the vehicle movements and the required infrastructure upgrades.
- (4) The progressive rehabilitation and stockpiling of topsoil and resource, remains unclear in the Response Letter and no accurate description or proposed plan has been provided.
- (5) In terms of considering the extent of the impacts as to whether the use is 'small-scale', managed in an environmentally responsible manner or detrimentally impacts the community well-being, for the reasons set out in Section 4 below, these are yet to be properly demonstrated or considered by the Applicant.

<sup>1</sup> *Griffith Capital Pty Ltd v Redland City Council* [2022] QPEC 21; *Trinity Park Investments Pty Ltd v Cairns Regional Council & Ors* [2021] QCA 95; *Parmac Investments Pty Ltd v Brisbane City Council & Ors* [2018] QPEC 32.

<sup>2</sup> This fails to consider vehicles and machinery required for rehabilitation, dust suppression and potential other associated ancillary activity.

- 3.6 Consequently, in our respectful view, the Council cannot determine whether the use is a 'small-scale' extractive industry use or complies with the fundamental Planning Scheme provisions in paragraph 3.1 and must refuse the Development Application.

#### 4 Outstanding Deficiencies in Response Letter and Development Application

- 4.1 Whilst we appreciate the Applicant seeks to address these through the Response Letter, in summary:

- (1) There remains inconsistencies and uncertainty within the Response Letter material that need to be resolved to properly understand the extraction and the impacts.
- (2) The supporting evidence routinely demonstrated by reports prepared by an appropriately qualified professional during the application process is severely lacking.
- (3) Combined with the inconsistencies and uncertainty, this means the impacts of the use remain uncertain and cannot be properly considered by the Council and the community.

#### Inconsistencies in Material

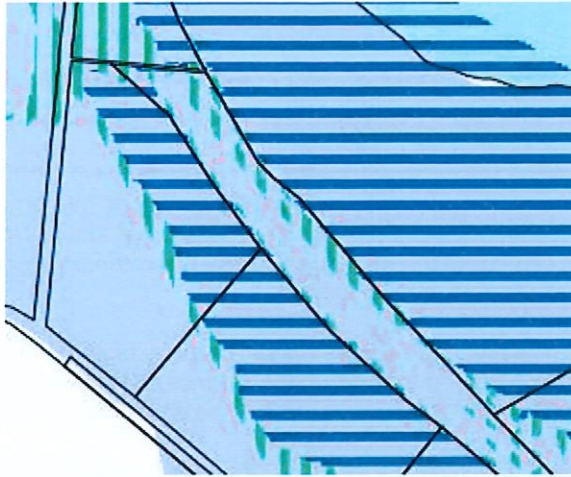
- 4.2 The below table summarises the inconsistencies in the Response Letter and how this is associated with the impacts of the use:

| No. | Response Letter                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Impacts & Issues                                                                                                                                                                           |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | <p><b>Inconsistent and Uncertain Extraction Levels and Base of Cut</b></p> <p>The Applicant provides an explanation for the extraction levels and a Figure 1 – Concept Design of Proposed Sand Extraction (<b>Sand Extraction Figure</b>). This shows a 30cm topsoil extraction, the retention of a 10m buffer on the eastern lot boundary and an extraction limit for RL3.0AHD. It is said that the extraction is not intended to create a depression on the site.</p> <p><b>However</b>, this is inconsistent with the Engineering Report and the earthworks drawings enclosed in Attachment 3 – General Drawings. In particular, these drawings (Drawing No. 102-008-SK17 and 102-00-SK18) (<b>Earthworks Drawings</b>) show a 1m offset along the eastern and western lot boundaries and the associated sections show a large depression for the cut (extraction) that has a base of RL1.05m.</p> <p>If the intent was for extraction only to the natural ground level aligning with the adjoining boundaries, then this should be clear on the Earthworks Drawings. The Earthworks Drawings in fact show a large depression being created, particularly in comparison to the adjoining eastern and western lot boundaries and the existing LiDAR surface levels. The Sand Extraction Figure also will result in a depression, having regard to the extraction limit and the adjoining boundaries. The two inconsistent drawings are shown in <b>Appendix A</b>.</p> <p>Furthermore, the borehole testing results in the DETSI Response indicate there are clay, mud and water levels between 2.5m to 4m in depth. It is unclear if there are groundwater impacts if there is an extraction limit of RL3.0m AHD in the Sand Extraction Figure or RL1.05m in the Earthworks Drawings, as both extraction limits/ base cut figures appear to potentially interact with the clay, mud and groundwater levels in the borehole testing.</p> | <p>This inconsistency is significant. This issue relates specifically to surface water, ground water, aquatic ecology and agricultural impacts that are yet to be properly considered.</p> |

| No. | Response Letter                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Impacts & Issues                                                                                                                                                                                                                                                                                                                                                                               |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2   | <p><b>New Unexplained Vegetated Mound</b></p> <p>The Earthworks Drawings show a large 'proposed vegetated mound' which is unexplained in the Response Letter. The purpose, height and dimensions remain unclear. Based on the sections, the height appears higher than the existing LiDAR surface level of the sand mounds on the site.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>This new change potentially results in increased impacts relating to surface water. However, while it could be an improvement, its purpose remains unclear.</p>                                                                                                                                                                                                                             |
| 3   | <p><b>Uncertain Staging, Stockpiling &amp; Rehabilitation</b></p> <p>The DETSI Response and the staging plan (Drawing AU015874-3) (<b>Staging Plan</b>) are inconsistent. The DETSI Response provides that the staging and disturbance area will be 1ha, whereas the Staging Plan shows a 2ha disturbance area.</p> <p>While the Response Letter says the topsoil will be retained on-site for progressive rehabilitation at the end of each stage, it is unclear how and where the topsoil and resource will be stockpiled for each stage. Given the Strategic Framework provisions specifically require rehabilitation, it would be reasonably expected that a proper rehabilitation management plan prepared by an appropriately qualified expert is provided during the assessment process.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>The uncertainty of the staging and extraction areas specifically relate to the 'small-scale' issue and the rehabilitation and visual amenity expectations under the Strategic Framework. There are also flow-on surface water impacts with the uncertainty of the stockpiling and rehabilitation particularly given the detention basin has been sized based on a 1ha disturbance area.</p> |
| 4   | <p><b>Uncertain Stormwater Sediment Basin</b></p> <p>The Staging Plan shows a detention basin in the north-west corner of the first stage (see <b>Appendix B</b>). However, its operation, dimensions, depth and whether this will be replicated for each stage or is intended to remain in this location, is unclear and unexplained as there is no supporting stormwater management plan. This is important because the staging direction progressively moves closer to the HES Wetland and the other watercourse in the extraction area.</p> <p>This stormwater detention basin is also inconsistent with the Earthworks Drawings given the extent of the extraction/cut. It is unclear whether this stormwater sediment basin will be located at a lower level than the base level of the extraction. In the most recent iteration of the site extraction plan, the extraction area and stormwater basin are in the proposed 200m buffer location.</p> <p>The potential ecological and groundwater impacts are of significant concern to [REDACTED] in terms of how this can be achieved. The overall stormwater, water quality and surface water outcomes remain unclear as there has been no stormwater engineering or flooding report prepared for the Development Application.</p> | <p>This relates to both surface water, agriculture and aquatic ecology impacts.</p>                                                                                                                                                                                                                                                                                                            |
| 5   | <p><b>Uncertain Screening of Extracted Sand</b></p> <p>The environmental authority included in the Response Letter (P-EA-100750656) permits extraction and screening of the material. The original planning report states that screening is not intended to occur on-site. However, it is inconsistent with the environmental authority. Furthermore, no details have been provided in the Development Application material, to date, about screening. If screening is not intended to occur, that needs to be clear.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>This relates to noise, dust and operational impacts that flow from the screening.</p>                                                                                                                                                                                                                                                                                                       |

### Insufficient Evidence and Reports for Impacts & Code Assessment

- 4.3 The Response Letter defers critical consideration of amenity (noise and dust), surface water and groundwater impacts by relying on the DETSI Response and compliance with AO4 of the Extractive Industry Code by providing a 200m buffer.
- 4.4 As a starting point, DETSI is responsible for the grant of the environmental authority under the *Environmental Protection Act 1994* (Qld), which is separate to, and distinct, from the development approval required under the Planning Act and the assessment under the Planning Scheme. The assessment and criteria between the grant of an environmental authority and the development approval are different and separate. In the circumstances, it is not appropriate to derogate responsibility of the assessment to the environmental authority process.
- 4.5 Concerningly, there are no supporting technical reports contained in the DETSI Response or Response Letter that address noise (i.e. a noise impact assessment report), dust (i.e. air quality assessment report), stormwater (i.e. a stormwater management report), flooding (i.e. a flooding impact assessment report), aquatic ecology (i.e. an aquatic ecology report) or groundwater (i.e. a groundwater assessment report). Like all development applications, these technical reports need to assess the pre-development scenario and the post-development (or the use's) impacts. However, this has not occurred in both responses.
- 4.6 Whilst AO4 of the Extractive Industry Code can be achieved by providing a 200m buffer from the extraction area, this does not mean automatic compliance with the provisions in the Strategic Framework, which require consideration of environmental impacts, amenity impacts and agricultural impacts.
- 4.7 As the Council is aware, an extractive industry use is commonly one of the highest impact uses. The potential for consequential amenity, environmental and stormwater impacts cannot be underestimated. For example:
  - (1) The uncertainty involved with the extraction levels in the Earthworks Drawings and the stormwater sediment basin have the potential to create significant surface water, groundwater, aquatic ecology and agriculture production impacts, if not properly addressed.
  - (2) There are also unassessed impacts relating to noise and dust which can impact the nearby dwelling house and its resident, including the haul vehicle noise which will be passing in very close proximity to the house (with up to 12 haul vehicle movements per day).
- 4.8 The Strategic Framework acknowledges the potential for extractive industry uses to create substantial impacts. That is why it sets out specific criteria. Given the importance of the Strategic Framework provisions, there is a minimum expectation from the community that these impacts are properly considered by professionally qualified experts through reports (rather than simply a town planning letter in the form of the DETSI Response).
- 4.9 At this stage, it is very difficult, if not impossible, for [REDACTED], the community and the Council to properly assess the impacts of the proposal given the inconsistent material and the lack of technical reports about the matters canvassed above.
- 4.10 Furthermore, the code assessment prepared as part of the Response Letter provides a response to the codes. However, in some cases, it is simply wrong or does not have the supporting material that underpins the statement of compliance. For example:
  - (1) The Applicant states that AO5.3 of the Flood and Storm Tide Hazard Overlay Code does not apply as the proposed area of extraction is located outside of the designated storm tide hazard area. However, based on the Overlay mapping, the Medium Storm Tide Hazard Area does apply to the Land and is within the extraction area, particularly along the eastern boundary (as shown below). AO5.3 requires a hydraulic report to be prepared to demonstrate various matters, which has not been complied with. It is incorrect to state that this is complied with.



- (2) The Applicant states that AO1.1 and AO2 of the Natural Areas Overlay Code is complied with by simply stating that the proposed development avoids areas of environmental values and no development or extraction would occur within the HES Wetland area. However, the extraction area will directly impact a mapped Regulated Vegetation watercourse on site (as shown below), which directly flows into wetlands and mangroves to the east. To demonstrate compliance with these provisions would require an aquatic ecology report to be prepared. It is incorrect to state that this is complied with.

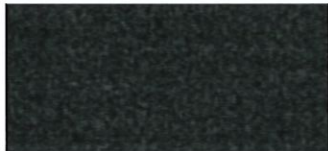


- (3) The Applicant states that PO5, AO5.3, AO5.4 and AO5.5 of the Infrastructure Code relating to stormwater quality is complied with due to stormwater drainage being managed in accordance with the environmental assessment report and the site-based management plan. The statement says "...the development is not anticipated to have an adverse impact on water quality", despite there being no assessment of the actual impacts or mitigation measures. Further, neither the environmental assessment report or the site-based management plan detail the actual stormwater treatment devices and how it will protect water environmental values. These are both surface level documents that are repetitive and unhelpful. It is incorrect to state that this is complied with.
- 4.11 Based on the above and the current material in the Development Application, the Council cannot be satisfied that the Development Application should be approved or can be conditioned.

**5 Council's Decision**

- 5.1 The Applicant has not provided any need assessment report to support the Development Application. Currently, there are no relevant matters or a community benefit that can be properly demonstrated through the Development Application.
- 5.2 As outlined above, the Development Application is **severely deficient**. We urge the Council to refuse the Development Application as it is a significant development that will impact the local community and the traditional owners of the area, particularly given the potential environmental and amenity impacts have not been properly considered.
- 5.3 Consistent with our April Submission, the Planning Scheme sets a 'high bar' for the assessment an extractive industry use and its impacts. At this stage, the Council cannot be satisfied that the 'high bar' has been met, can be conditioned to be met, or should be approved due to relevant matters.
- 5.4 We trust the Council will carefully consider the contents of this further submission and the Response Letter. Please do not hesitate to contact me if you have any questions or queries.

Yours faithfully



Norton Rose Fulbright Australia



## Appendix A – Inconsistent Section Comparison

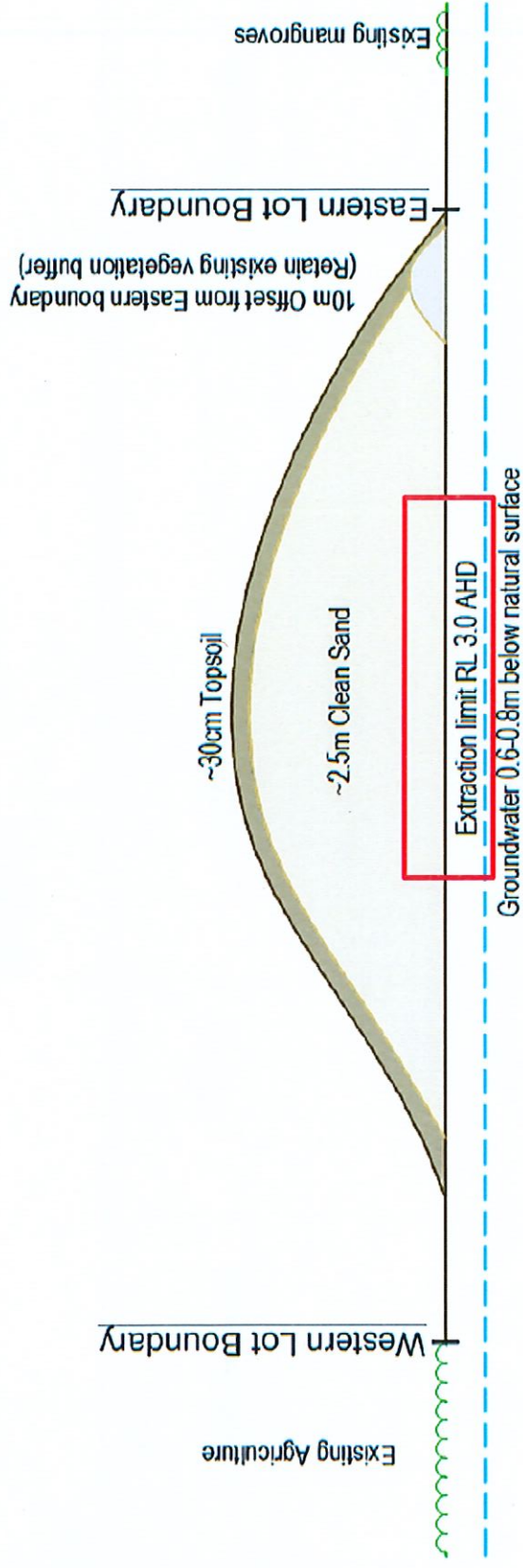
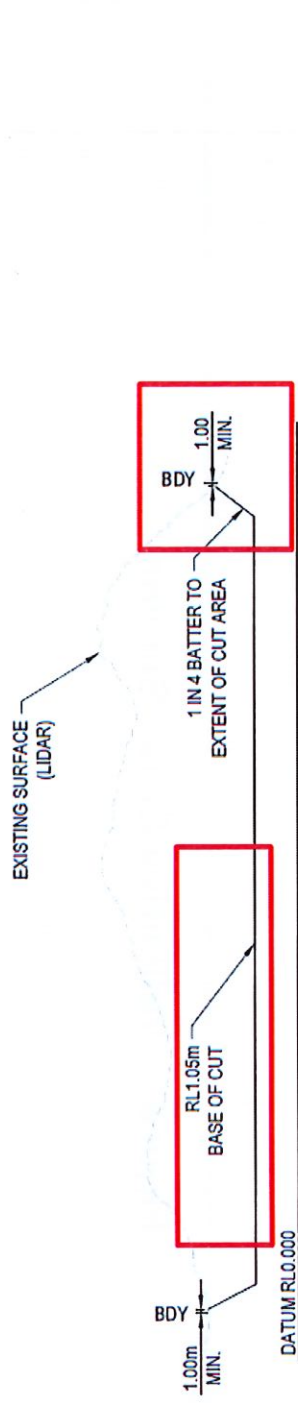


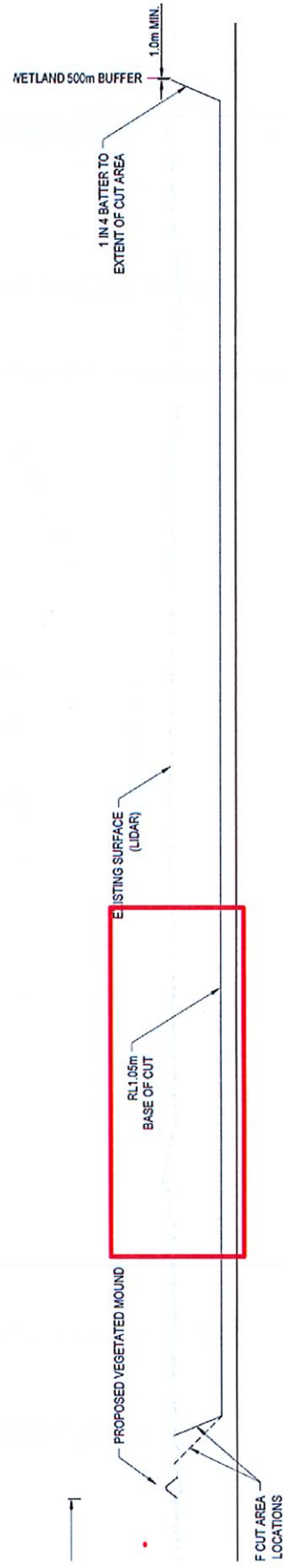
Figure 1: Indicative Cross Section

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SECTION B  
SCALE 1:1000 (H)  
SCALE 1:100 (V)



SECTION A  
SCALE 1:2000 (H)  
SCALE 1:200 (V)

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## Appendix B – Stormwater Sediment Basin

