



Land and Environment Court New South Wales

Case Name:	Pocket Herbs and Produce Pty Ltd v Tweed Shire Council
Medium Neutral Citation:	[2021] NSWLEC 1253
Hearing Date(s):	28, 29 and 30 April 2021
Date of Orders:	17 May 2021
Date of Decision:	17 May 2021
Jurisdiction:	Class 1
Before:	Clay AC
Decision:	<p>The Court orders that:</p> <ol style="list-style-type: none">(1) The appeal is upheld;(2) Development consent DA13/0712 dated 1 April 2014 for a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks at Lot 3 in Deposited Plan 1191598 known as 67 Howards Road, Burringbar is modified by the addition of the conditions in Annexure A.(3) Development consent DA13/0712 as modified in accordance with order (2) is Annexure B.(4) The exhibits be returned other than exhibits A, B, D and 1.
Catchwords:	MODIFICATION APPLICATION – rural industry – micro herb production facility and production and processing of edible flowers – substantially the same development – stormwater management – acoustic impacts – plan of management – concerns of residents
Legislation Cited:	Civil Procedure Act 2005, s 56 Environmental Planning and Assessment Act 1979, ss 4.55, 8.9 Land and Environment Court Act 1979, s 34 Tweed Local Environmental Plan 2014, cl 2.3

Cases Cited: Renaldo Plus 3 Pty Ltd v Hurstville City Council [2005] NSWLEC 315
Amazonia Hotels Pty Ltd v Council of the City of Sydney [2014] NSWLEC 1247

Texts Cited: NSW Environmental Protection Authority, Noise Policy for Industry, October 2017

Category: Principal judgment

Parties: Pocket Herbs and Produce Pty Ltd (Applicant)
Tweed Shire Council (Respondent)

Representation: Counsel:
J Reid (Applicant)
A Seton (Solicitor) (Respondent)

Solicitors:
Parker & Kissane Ballina (Applicant)
Marsdens Law Group (Respondent)

File Number(s): 2019/404139

Publication Restriction: Nil

JUDGMENT

Introduction

- 1 Burringbar is a small town in the hinterland of the Northern Rivers region of New South Wales. It enjoys a rural and bushland character, with farming, orchards and other rural activities interspersed by large lot residential living.
- 2 For several years the Applicant has conducted a rural industry comprised initially by a micro herb production facility and more recently adding edible production and processing a little less than 2 kilometres to the north west of the small commercial and retail centre of Burringbar. It is common ground that the Applicant's activities have been unreasonably noisy from time to time causing not insignificant disturbance to its neighbours in an otherwise peaceful rural environment.
- 3 The Applicant seeks to modify one of the two consents of which it has the benefit, giving rise to stormwater management and, more importantly, acoustic issues. During the course of the hearing all issues between the parties were resolved, proposed modified conditions were agreed, as were the terms of a plan of management for the activities.
- 4 The Council accepted that the modification could be approved and made no submission in opposition. The Court must, however, be satisfied on the evidence that it is appropriate to grant the modification application. For the reasons which follow, I am satisfied that the modification application should be approved with conditions.

The Site and surrounds

- 5 The site is Lot 3 in Deposited Plan 1191598 known as 67 Howards Road, Burringbar (site). It is of an irregular generally rectangular shape oriented east/west with a frontage to Howards Road of 80m and an area of 2.27ha.
- 6 A perennial unnamed watercourse (stream) meanders through the rear (western) portion of the site. The land is relatively flat east of the stream but

rises up beyond the stream to the west. A bridge is constructed over the stream which provides access to the site of an approved dwelling house, as yet not constructed. The rural industry is conducted east of the stream on the relatively flat part of the site.

- 7 The eastern (front), northern and southern (sides) boundaries of the flat part of the site are generally heavily landscaped with bamboo and similar vegetation. There is also significant landscaping on the neighbouring properties on the side boundaries.
- 8 The site is within a rural area of undulating hills and low order streams. The lower land is generally cleared farm land and there is bushland on the higher elevations. There are some agricultural activities on small to medium size lots as well as rural residential lots in the area.
- 9 Immediately to the north of the site the use is primarily a rural residential use whilst to the south there is some cattle grazing in conjunction with a rural residential use. Across Howards Road to the east are orchards and rural residential dwellings.

The existing consents and the modification application

- 10 Development consent DA13/0712 was issued by the Council on 1 April 2014 (the First Consent) and authorised a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks. The two greenhouses approved under the First Consent are known as Greenhouse 1 (to the south) and Greenhouse 2 (to the north).
- 11 Development consent DA 17/0347 was issued by Council on 22 February 2018 (the Second Consent) and authorised the installation of a plant shelter and the production and processing of edible flowers in conjunction with an existing rural industry on the Land. The plant shelter is known as Greenhouse 3.

- 12 On 3 April 2018 the Applicant made the present modification application of the First Consent pursuant to s 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and on 11 December 2019 the Council approved the modification application in part, but the Applicant was dissatisfied with the decision. This is an appeal pursuant to s 8.9 of the EP&A Act.
- 13 The modification application seeks to modify the First Consent to authorise:
- (1) Construction of a bioretention basin, new spillway and grass swales identified in the Stormwater Management Plan prepared by Floodworks Lismore NSW, reference FW00025, revision E dated 15 April 2021 (Annexure A to EXH D);
 - (2) Construction of a (min) 20mm thick lapped and capped timber acoustic barrier with (min) 50mm thick timber sleepers at the base to the north and south boundaries as detailed on drawing no 22196 sheets 1 - 4, revision K dated 30 April 2021 prepared by B&P Surveys;
 - (3) Use of the existing domestic and stock bore in Greenhouse 2 for commercial irrigation purposes (to a total limit of 5ML per annum and for non-potable uses, noting that the existing dwelling on the Land will continue to have access for domestic and stock purposes);
 - (4) The already constructed, and marked pink on drawing no 22196 sheet 1 of 4, revision K dated 30 April 2021 prepared by B&P Surveys:
 - (a) compost toilet;
 - (b) generator shed;
 - (c) staff canteen with adjoining concrete slab and awning;
 - (d) concrete pad and awning – growing media bays;

- (e) shipping container for storage;
- (f) fridge unit;
- (g) raised grow beds and grow pods adjacent greenhouse 3;
- (h) 6 x 22,000 litre water tanks;
- (i) 1 x 212,000 litre water tank and pump houses; and
- (j) 3 x concrete bays for compost storage.

- 14 It should be observed at this point that, although no issue was taken by the Council, in order to grant the modification application, the Court needs to be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted (s 4.55(2)(a) of the EP&A Act).
- 15 In both qualitative and quantitative terms, the development will remain a micro herb production facility, as was approved, with some additional growing facilities, ancillary buildings and activities and additional environmental controls. I am satisfied that the development as proposed to be modified is substantially the same as that for which development consent was originally granted.

Statutory and planning framework

- 16 Section 4.55(2)(d) of the EP&A Act requires the Court to consider any submissions made after notification and s 4.55(3) provides:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

- 17 The site is zoned RU2 Rural Landscape pursuant to Tweed Local Environmental Plan 2014 (TLEP 2014). Development for the purposes of “Rural industries” is permitted with development consent.
- 18 The objectives of the RU2 zone which must be considered (cl 2.3 TLEP 2014) are:
- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
 - To maintain the rural landscape character of the land.
 - To provide for a range of compatible land uses, including extensive agriculture.
 - To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.
- 19 In the consideration of the acoustic issues it is to be noted that the third objective is that the zone is intended to provide for land uses which are compatible. One of the questions for the Court is whether the development as proposed is compatible with the adjacent rural residential uses having regard to its noise impacts.

The course of the proceedings

- 20 On 2 September 2020 a conciliation took place pursuant to s 34 of the *Land and Environment Court Act 1979* (Court Act). The matter was not resolved, and the conciliation was terminated.
- 21 On 21 October 2020 the Registrar listed the matter for hearing to commence on site on 28 April 2021, continuing in Court in Mullumbimby on that day and in Sydney by MS Teams for the two subsequent days. Directions were made for expert evidence to be filed by 26 February 2021. That direction was not complied with.
- 22 On 19 March 2021 the Applicant filed a Notice of Motion seeking to rely on an acoustic report by Mr S Gauld and a stormwater report by Mr M Bayley. The

Applicant was providing new and additional information in order to address the contentions which the Council had hitherto raised.

23 On 25 March 2021 the Registrar granted leave to the Applicant to rely on the expert reports and directed that:

- (1) The Applicant file and serve its amended Statement of Facts and Contentions (ASOFC) by 30 March 2021;
- (2) The Council file and serve its amended Statement of Facts and Contentions in Reply (ASOFCR) by 6 April 2021;
- (3) The Experts' joint reports (stormwater and acoustics) be filed by 16 April 2021.

24 The Applicant filed its ASOFC on 1 April 2021. It was the Council's reply which determinates the issues in the proceedings, but the ASOFCR was not filed until 20 April 2021.

25 The issues articulated by the Council were that the arrangements for the collection and disposal of stormwater were unsatisfactory, and that the acoustic impacts of the development were unreasonable.

26 It appears that a draft ASOFCR was provided to the stormwater experts prior to 20 April 2021 because their joint report was filed on 16 April 2021.

27 A joint report of the acoustic consultants was not filed prior to the commencement of the hearing on 28 April 2021. It is not appropriate to attribute specific blame for that timing, but the following observations are made.

28 In this case the acoustic evidence was critical, not just for an assessment of whether or not there was compliance with the relevant acoustic standards. The acoustic evidence would determine the permissible loudness, duration and location of the various noise sources forming part of the activities of the

Applicant. That is, the Applicant was required to modify its activities in order to achieve the relevant acoustic goals. Further, there was intended to be an acoustic barrier along the substantial part of the side boundaries, and its design, including precise location and height were to be determined by the acoustic experts.

- 29 It was entirely unsatisfactory that when the hearing began such matters had not been finalised. The resident objectors did not have that final detail to consider when they gave their evidence. A redeeming factor is that the objectors' submissions did not have to go to the precise detail of the proposal but went more broadly to the acoustic impacts of the development for the most part.
- 30 The acoustic experts attended on site at the commencement of the hearing but spent the next few hours conferring at the site and preparing their joint report.
- 31 The hearing commenced with the evidence from the objectors which is summarised below. I then inspected the site and the operations. A demonstration of the mobile "mister" was given. I attended the properties to the north and east, and observed the side boundaries of the site from both sides. At about 12.30pm the acoustic experts informed the Court and the parties that they had completed their joint report, that there was agreement that the acoustic goals could be met and that the report itself would be available very shortly. The Court was shown an area of the site where an additional acoustic wall was to be built to allow the use of a water pressure cleaner.
- 32 At the end of the site inspection it was clear that the Applicant needed to amend its plans and its operational management plan, and that the Applicant and Council needed to confer and prepare updated draft conditions. It was the case that there was general agreement between the parties, but that certain detail needed to be settled.

- 33 In the circumstances I considered it appropriate to allow the parties some time to prepare their documents and adjourned the hearing to commence in Sydney by MS Teams at 3pm on the following day 29 April 2021.
- 34 When the hearing resumed on 29 April 2021, I was informed that the documents had not yet been finalised and an application was made to adjourn to the following day. I acceded to that application, but some Court time was taken with the tender of documents before the matter was adjourned.
- 35 On 30 April 2021 the hearing was adjourned for short periods until the parties were ready to tender what were amended plans, plan of management and agreed conditions. The acoustic consultants gave evidence, the parties made submissions, and the decision was reserved.
- 36 It is entirely regrettable that, for whatever reason, a significant portion of available Court time allocated to this matter was wasted. There is no reason why the directions made by the Registrar on 25 March 2021 could not have been complied with. There is also no apparent reason why the Applicant could not have provided its additional stormwater and acoustic material well before it did so in March this year.
- 37 The Court has an obligation to give effect to the overriding purpose of the *Civil Procedure Act 2005* to facilitate the just, quick and cheap resolution of the real issues in the proceedings (s 56(1)). So too “a party to civil proceedings is under a duty to assist the court to further the overriding purpose and, to that effect, to participate in the processes of the court and to comply with directions and orders of the court” (s 56(3)). Whilst in the circumstances which were presented to the Court it was appropriate to permit the relatively short adjournments, and the matter was still completed in the allocated time, it cannot necessarily be said that the parties did all they could to facilitate the just, quick and cheap disposition of the proceedings.

The objectors' evidence

38 A number of written submissions were lodged with the Council. The issues raised were:

- Insufficient information
- Unsightly structures
- Noise impacts
- Not substantially the same
- Not compliant with Department of Primary Industry framework for intensive horticulture
- Proximity to adjoining properties
- Not compatible with zone objectives
- Overdevelopment of the site
- Impacts on the environment
- Unfavourable precedent

39 At the hearing evidence was given by:

- Mr D Hills of 47 Howards Road
- Ms D Minto of 74 Howards Road
- Ms K Paszkowski of 75 Howards Road

- 40 Mr Hills owns and lives in the property immediately to the south of the site and the dwelling is in the order of 50m from the side boundary. Mr Hills' concern was that the proposed acoustic wall or barrier should not be visible from his property and that it should not interfere with the vegetation which is on his property. His vegetation is in the order of 4m in height and will effectively hide the acoustic wall and therefore must not be disturbed.
- 41 Ms Minto gave evidence on her own behalf and on behalf of her sister. Their property is on the other side of Howards Road and slightly to the east. The home is elevated, and Ms Minto considered there were visual and noise impacts from the existing development and as proposed. Ms Minto was disappointed with the intensification of the business over the years and the conduct of the Applicant.
- 42 Ms Paszkowski lives with her husband at the property immediately to the north of the site. The dwelling is about 30m from the boundary. Ms Paszkowski has a small office towards the rear of the property from which she conducts a home business. Ms Paszkowski said she has suffered noise impacts for 5 years. The noise is variously from the Applicant's generator, fogging machines, fans and other machinery. She has no objection in principle to the acoustic wall but wants to ensure that it is done properly. She says that at times the noise reverberates through her house. Ms Paszkowski keeps a noise diary and showed the Court two short videos which demonstrated the noise she gets at her home.
- 43 Ms Paszkowski also expressed the frustration she has being the "noise police" and wants to ensure that all conditions are enforceable and that the Applicant complies with conditions of operation.

Expert evidence - stormwater

- 44 A joint report was prepared by Dr M Bayley retained by the Applicant and Dr D Martens retained by the Council. They were not required to give oral evidence.

45 An amended Surface Water Management Plan (SWMP) was prepared by Dr Bayley during the conferencing process. As a consequence, the experts agreed that the SWMP was acceptable, and agreed on the conditions of development consent to reflect that agreement.

46 In summary, the SWMP provides for:

- The collection of stormwater from hard surfaces and roofs;
- The construction and use of the bioretention basin;
- The reuse of roof water in irrigation;
- Sediment and erosion control measures;
- Stabilisation of the banks of the stream with vegetation and rocks;
- Water quality management and monitoring.

Expert evidence - acoustics

47 Written and oral evidence was given by Mr S Gauld retained by the Applicant and Mr S Cooper retained by the Council.

48 A summary of their common evidence is:

- The acoustic engineering work carried out prior to the involvement of Mr Gauld was unsatisfactory;
- The activities at the site have caused unreasonable noise in the past;
- They have considered the submissions from neighbours;
- Whereas the modification application is limited to certain parts of the site, for the purposes of acoustic assessment it is the cumulative

impact of all noise generating activities on the site which needs to be assessed;

- The noise goal to be achieved is that in the NSW Environmental Protection Authority Noise Policy for Industry (Policy). The goal is best stated as the level of noise from the source measured over a 15 minute period (LAeq 15 min) does not exceed the background noise level by more than 5 dB;
- Compliance with Operational Noise Management Plan (ONM Plan) will mean that the noise levels will meet the goal of the Policy after construction of the proposed acoustic barriers;
- That conclusion is reached by making assumptions about the timing, location, use and power setting of the various plant and machinery used in the Applicant's operation and then determining the noise level at the nearest affected residences by use of an acoustic model;
- The ONM Plan provides for the timing, location, use and power setting of various plant and machinery which was assumed for the purposes of the acoustic analysis;
- The ONM Plan is capable of being observed in practice.

49 In response to questions from the Court the acoustic experts agreed that compliance testing was appropriate and should be included as a condition of the modified consent.

Consideration

50 Whilst the Council does not oppose the granting of the modification application, the Court must nevertheless be satisfied that it is appropriate so to do. In this regard I have been assisted by the evidence of the objectors to focus on the real issues of concern and which must be considered.

- 51 In relation to stormwater impacts, I have considered the SWMP and the Stormwater Management Plan annexed to it. In its terms it deals comprehensively with the potential environmental impacts of stormwater and pollutants at the site which is a sensitive environmental location in dealing with the subject matters set out at [46] above. There is no basis to reject the conclusions expressed by Dr Bayley, and I accept the evidence of Dr Bayley and Dr Martens for the reasons articulated by them and set out in the SWMP.
- 52 I accept without hesitation the evidence of the neighbours that the noise from the site has been unacceptable in the past. It appears that hitherto there has been little control or attempt to mitigate the noise from the site and the harm thereby caused by the excessive noise.
- 53 It should be observed of course that a use such as a rural industry which is permissible in a rural zone will cause some noise; it will rarely be incapable of being heard by its neighbours when in operation. Even in a rural zone such as the RU2 zone here, there is no entitlement of any resident to the inaudibility of an adjacent lawful use of land.
- 54 The acoustic experts have identified that the noise emitted however should comply with the acoustic goal in the Policy of being not more than 5dB above background when measured as an LAeq over 15 minutes. I accept that that is the proper approach, and no other approach has been suggested. The Policy is designed to balance the ability of industry to operate, but without causing undue interference to the amenity of nearby residents. If the noise from the site meets the standard in the Policy, then it can be said that the use is compatible with the adjoining and nearby land uses in the zone.
- 55 The evidence is clear that by a combination of factors the Applicant's activities will not exceed that criterion. As indicated above the factors in general are:
- The construction of acoustic barriers on the side boundaries;

- The construction of an internal acoustic barrier within which high pressure washing can take place (and nowhere else can it take place);
- The limit on the speed/power at which the mister can be used;
- The limitation on the hours of operation of certain plant and machinery such as the water tank pumps;
- The limitation on the speed/power of fans in the greenhouses;
- Limiting the hours of operation and the location of operation of mobile plant such as forklift and electric wheel loader.

56 The measures are set out in the ONM Plan. A proposed condition of consent requires compliance with the ONM Plan and the principal control measures are themselves proposed to be conditions of the modified development consent. There is a condition that the overall acoustic goal be met – regardless of compliance or otherwise with the ONM Plan the proposed conditions require that the Applicant's operation not exceed the acoustic goal of 5dB above the background level.

57 The ONM Plan also has provision for notice to neighbours of any atypical activities or changes to the standard operational timetable. There is a complaint management system to be commenced.

58 Subject to one matter, I accept the experts' evidence that with the measures in place the acoustic impacts will be acceptable, because the noise will not exceed the adopted standard. The conclusion also means that the relevant zone objective of compatibility of land use is met.

59 The reservation is that to some extent the success of the regime depends upon human behaviour, and more specifically, the Applicant and its employees complying with the terms of the ONM Plan in relation to the use of plant and machinery. In a perfect world the design of a development will

satisfactorily contain the impacts of the development without the need for human intervention. That however is frequently not the case. There are many examples where the satisfactory operation of a development is dependent upon operators and their employees complying with a plan of management, such as child care centres and hotels to name but two.

- 60 It is important to be satisfied that a plan of management is reasonably capable of being observed. In this case that is so. There is no requirement or measure which is tinged with absurdity or is unrealistic. There are standard limitations within the ordinary scope of the Applicant's operation. The ONM Plan does not require people to act in a manner that would be unlikely or unreasonable.
- 61 Nevertheless in circumstances where the predicted outcome is based upon theoretical modelling (about which there is no criticism) and expected human behaviour, in my opinion it is important that there be a method for compliance testing when the acoustic measures have been undertaken and the Applicant is conducting its usual activities. The compliance testing must be undertaken without the knowledge of the Applicant and with the cooperation of at least the nearest affected neighbour. I accept Mr Cooper's evidence that compliance testing may be difficult, in that an outcome of that testing may not be definitive for all circumstances. But in my opinion, there must be compliance testing to achieve a reasonable level of satisfaction that the acoustic measures have been successful in achieving the acoustic goal. A condition of consent has been included in the draft conditions at my request.
- 62 The Court's planning principle in *Renaldo Plus 3 Pty Ltd v Hurstville City Council* [2005] NSWLEC 315 at [53]-[55] (as modified in *Amazonia Hotels Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1247 at [72]) poses the following questions:

- "1. Do the requirements in the Management Plan relate to the proposed use and complement any conditions of approval?
2. Do the requirements in the Management Plan require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case?
3. Can the source of any breaches of the Management Plan be readily

identified to allow for any enforcement action?

4. Do the requirements in the Management Plan require absolute compliance to achieve an acceptable outcome?

5. Can the people the subject of the Management Plan be reasonably expected to know of its requirements?

6. Is the Management Plan incorporated in the conditions of consent, and to be enforced as a condition of consent?

7. Does the Management Plan contain complaint management procedures?

8. Is there a procedure for updating and changing the Management Plan, including the advertising of any changes?"

63 To the extent that it assists, I observe that the answers to the questions posed are:

- The requirements of the ONM Plan relate to the proposed use and are intertwined with the proposed conditions of consent;
- The ONM plan does not require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case;
- The source of breaches can be identified because the noise source is apparent by its nature and location;
- The requirements in the ONM Plan do not require absolute compliance to achieve an acceptable outcome because generally the noise goal is achieved with some margin and the prospect of the operation of all relevant noise emitting sources at once is remote;
- The Applicant and all its employees will be made aware of the terms of the ONM Plan;
- The ONM Plan is incorporated in the conditions of consent, and can be enforced as a condition of consent;
- The ONM Plan has a complaint management procedure;
- There is provision for review of the ONM Plan.

- 64 For the preceding reasons, in my opinion the ONM Plan is satisfactory.
- 65 The plans of the proposed modification now show clearly the location of the acoustic barrier adjacent to the side boundaries. There is no interference with the neighbouring vegetation, save for some minor pruning of overhanging branches in a few locations. The adjoining vegetation will remain as a substantial visual barrier to the acoustic barrier on the site.
- 66 Further, the substantial vegetation on the site itself remains largely intact. There is only a small reduction at 3 “pinch points” which will have no material bearing on the overall presentation to the neighbouring properties.
- 67 I am satisfied that the landscape context of the acoustic fence, and indeed of the site is appropriate and that the fence will be largely obscured when viewed from the neighbouring properties.

Conclusion

- 68 It is clear from the expert evidence and for the reasons articulated above that the modification application is worthy of approval. The acoustic impacts which have been suffered by neighbours for some time will be ameliorated to such an extent to be reasonable having regard to the relevant standard.
- 69 The compliance test is important and should in due course provide a degree of comfort to the neighbours who will by then be enjoying a significant improvement in their amenity and acoustic environment.
- 70 A final observation. Ms Paszkowski quite understandably complained of the need of her and potentially other neighbours to “police” the activities of the Applicant to ensure compliance and to inform the Council of a potential breach when necessary. The difficulty is that Councils rely upon complaints from members of the public to inform them of issues which require the Council’s intervention. It will always be the case that neighbours of developments will have to observe and report if there are breaches of conditions of development consent so that a council can take any necessary

action. It can be said, however, that the Applicant is undoubtedly now well aware of the consequences of a breach of the conditions of development consent.

71 I make the following orders:

- (1) The appeal is upheld;
- (2) Development consent DA13/0712 dated 1 April 2014 for a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks at Lot 3 in Deposited Plan 1191598 known as 67 Howards Road, Burringbar is modified by the addition of the conditions in Annexure A.
- (3) Development consent DA13/0712 as modified in accordance with order (2) is Annexure B.
- (4) The exhibits be returned other than exhibits A, B, D and 1.

I certify that this and the preceding 17 pages are a true copy of my reasons for judgment.

A handwritten signature in dark ink, appearing to read 'P Clay', is written over a horizontal dotted line.

P Clay

Acting Commissioner of the Court

Annexure "A"**DETERMINATION OF APPLICATION FOR MODIFICATION OF
DEVELOPMENT CONSENT**

Modification Application No:	DA13/0712.01
Development Consent modified:	DA13/0712
Description of development to be carried out under the consent (as previously modified):	Micro herb production facility
Address and particulars of title of land on which development to be carried out:	Lot 3 DP 1191598 67 Howards Road, Burringbar
Description of modification to the development consent:	Use of two soil bays, pump houses, 6x 22,000L water tanks, staff canteen, generator shed, shipping container, insulated container, composting toilet, and hardstand areas, and construction of a 30m ² bioretention basin, sediment forebay, lined channel and grassed swales, vegetated riparian zone, 2x acoustic fences and landscaping.

Determination: The development consent is modified as follows:

Insert the following conditions

1A. *Prior to the commencement of construction of the bioretention basin, new spillway and grass swales required by conditions 9.2C and 9.2D the following documentation is to be submitted to the Council and Council's written approval is obtained to confirm the documentation satisfies the requirements of this condition:*

- (a) *Detailed construction plans for the bioretention basin, new spillway and grass swales shall be prepared by a registered civil engineer in accordance with the specifications detailed in Parts 3.1 and 3.3 of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 (located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E).*

The construction plans must be accompanied by certification provided by a registered civil engineer to confirm that the plans have been prepared in accordance with the specifications of the Stormwater Management Plan.

- (b) *A detailed planting plan for the bioretention system shall be prepared which complements the broader landscaping on the site, and which incorporates the following:*

- i. A filter media area planted with native sedges, rushes and grasses with approximately 10 plants per square metre.
- ii. If earth bunds are utilised in the design, the lower portion of the batters shall be planted with vegetation that can tolerate inundation.

The planting plan must be accompanied by certification provided by a qualified landscape architect that the proposed planting will tolerate the expected depths of water.

- (c) A riparian works plan for the revegetated riparian zone shall be prepared by qualified landscape architect, in accordance with the specifications detailed in Part 3.2 of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 (located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E).

Revegetation of the riparian zone shall comprise 100% local native riparian species. Local native species are to comprise appropriate species selected from the Tweed Shire Native Species Planting Guide available online at: <http://www.tweed.nsw.gov.au/Controls/NativeSpeciesPlanting/Landing.aspx>

- 1B.** The structures and items described below in the locations shown on Drawing No 22196 Sheet 1 of 4 Revision K dated 30/4/21 prepared by B&P Surveys and shown in Plans SG-01, SG-02, SG-03, SG-04 and SG-05 and the document titled "Photographs 14 March 2018 DA13/0712- Modification Application March 2018" may be used for the purpose of the approved development:

- Compost toilet
- Generator Shed
- Staff canteen with adjoining concrete slab and awning
- Concrete Pad and Awning – growing media bays adjoining the aluminium shed that has a floor level RL 28.56 AHD
- Shipping container
- Fridge unit
- Raised grow beds
- Grow pods
- 6 x 22,000 litre water tanks
- 1 x 212,000 litre water tank
- 3 x Concrete Bays

- 3.1.** A Building Information Certificate is to be obtained for the following structures as indicated on the document titled "Photographs 14 March 2018 DA13/0712- Modification Application March 2018":

- Block work soil bays (item 1);
- Pump houses (item 2);
- 6 x 22,000 litre water tanks (item 3);
- Staff canteen (item 4);
- Generator shed (item 5);
- Shipping container (item 6);
- Insulated container (item 7);
- Hardstand area and soil bay (item 8) ;
- Composting toilet (item 9).

- 9.2A.** *Prior to the issue of any Construction Certificate for works approved pursuant to Modification Application No. DA13/0712.01, a further application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the installation of any stormwater quality control devices or erosion and sediment control works.*
- 9.2B** *A Controlled Activity Approval under the Water Management Act 2000 is required prior to the commencement of any works on water front land including, but not limited to, the approved 30m² Bioretention Basin, dam and acoustic wall. Evidence of the Controlled Activity Approval being obtained must be provided to the appointed Principal Certifier prior to the issue of a Construction Certificate of any works approved pursuant to Modification Application No. DA13/0712.01.*
- 9.2C** *A 30m² bio retention basin (including sediment forebay and grassed swales) shall be constructed in accordance with the recommendations of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 (located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E), and in the location identified on Operational Control Plan SK-03, Version A prepared by Floodworks dated 17 April 2020 and Operational Control Typical Details Plan SK-04 version A dated 17 April 2020.*
- 9.2D** *Development on the site shall be carried out in accordance with the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated March 2021, including the general ongoing maintenance of infrastructure set out in Part 3.4 of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E.*
- 9.2E** *The stormwater management system shall be operated, maintained and monitored in accordance with the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E2021.*
- 9.2F** *All landscaping approved pursuant to Modification Application No. DA13/0712.01, shall be completed in accordance with the approved detailed planting plan and riparian works plan prior to the issue of any occupation certificate or use of the approved works (whichever is earlier) to the satisfaction of Council's General Manager or delegate. Landscaping must be maintained at all times during the operational phase of the development to the satisfaction of Council's General Manager or delegate.*
- 9.3.** *Within 30 days of the date of issue of this amended development consent, a drinking water quality management plan or drinking water quality assurance program prepared in accordance with the Private Water Supply Guidelines NSW Health 2016 and the Public Health Regulation 2012 shall be prepared and maintained on site. All activities shall comply with the adopted assurance program and the program shall be made available to Council's Authorised Officer upon request.*
- 12.1** *The existing stock and domestic bore is approved for commercial irrigation purposes subject to the relevant approvals being obtained for the pump work (a Work approval) and for an associated Commercial water access license (WAL) from Water NSW, and copies of those approvals and license being provided to the Council.*

Any groundwater abstraction is to be for use on the site only, is limited to a total of 5ML per year and can only be undertaken for non-potable purposes (for the commercial use).

- 54.** *Acoustic barriers are to be constructed within the site adjacent to the northern and southern boundaries in the location and to the Reduced Level (RL) heights shown on Drawing No 22196 Sheet 1 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 2 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 3 of 4 Revision K dated 30/4/21 and Drawing No 22196 Sheet 4 of 4 Revision K dated 30/4/21 all prepared by B & P Surveys. The acoustic barriers must be constructed of lapped timber palings that are a minimum of 20mm in thickness and there must be no gaps in the barriers. Prior to commencing the construction of the barriers and the issuing of a construction certificate a copy of the engineering specifications for the acoustic barriers dealing with structural adequacy and wind loads (prepared by a qualified structural engineer) must be provided to the Council and such specifications are to be incorporated into the design and construction of the barriers. The acoustic barriers must be maintained in a good state of repair for the life of the development.*
- 54.1** *To ensure the acoustic barriers are correctly installed on the site, a report prepared by a registered surveyor is to be submitted to the Council and the principal certifier at footings stage and at completion of the barriers confirming that the barriers have been constructed in the position and to the height shown on Drawing No 22196 Sheet 1 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 2 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 3 of 4 Revision K dated 30/4/21 and Drawing No 22196 Sheet 4 of 4 Revision K dated 30/4/21 all prepared by B & P Surveys.*
- 54.2** *On completion of the acoustic barriers a structural engineers certification of structural adequacy is to be submitted to the Council and the Principal Certifier.*
- 54.3** *The acoustic barriers must comply with the provisions of Planning for Bushfire Protection 2019.*
- 54.4** *The acoustic barriers must be clear of power poles and other electricity infrastructure, in particular poles 29905 and 29904, which are located very close to boundary lines. It should also be noted that the aforementioned poles have ground stays which also need to be considered for safety clearances and unimpeded access for inspection and maintenance. A minimum separation of 1.5m is required between fence and pole(s).*
- 54.5** *Prior to the issue of any occupation certificate in relation to the acoustic barriers constructed in accordance with Condition 54, attended acoustic compliance testing to determine the acoustic contribution from the various activities on the site shall be carried out by a suitably qualified acoustic consultant/engineer (being a person having attained Member grade of the Australian Acoustical Society or an employee from a member company of the Australasian Association of Acoustic Consultants acceptable to Council).*

A minimum of two locations shall be selected for compliance testing and must include the most affected location on 75 Howards Road, Burringbar and on the northern boundary of 74 Howards Road, Burringbar.

Four modes of operation shall be measured, at the measurement locations for at least 15 minutes each mode, as follows:

- 1. All fixed plant operating in daytime mode;*
- 2. All fixed plant operating in daytime mode plus the high pressure water cleaner;*
- 3. All fixed plant operating in daytime mode plus the electric wheel loader; and*
- 4. All fixed plant operating in daytime mode plus the small forklift.*

The applicant is to be involved in the coordination of equipment used on site during testing.

The data is to be analysed and the allowable modes of operation determined, as a result of the testing, be presented in a report to be submitted to Council.

If further rectification works are required to meet the noise criteria, or alterations to the Noise Management Plans (to achieve acoustic compliance), recommendations shall be made in the report.

- 55.** *Despite any other condition in the conditions imposed on the development consent, noise emitted from the premises when assessed at any point within 30m of a dwelling, or on the boundary of a property (if the dwelling is less than 30m from the boundary) must not exceed:*

- 40 dB(A) LAeq, 15 minutes during the Day (7am to 6pm)*
- 35 dB(A) LAeq, 15 minutes during the Evening (6pm to 10pm)*
- 35 dB(A) LAeq, 15 minutes during the Night (10pm to 7am the following day, except for Sundays and Public Holidays where the night period is extended to 8am).*

Where the noise contains audible characteristics the derived noise contributions from the site shall be adjusted in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).

- 55.1** *After 2 months but no later than 6 months after the installation of the acoustic fences, attended measurements and unattended noise logging shall be carried out without the knowledge of the applicant or operator of the premises, at the two specific locations identified in Condition 54.5 to determine acoustic compliance with the noise criteria given in Condition 55. Access for the monitoring is to be arranged in conjunction with Council and be undertaken by a suitably qualified acoustic consultant/engineer (being a person having attained Member grade of the Australian Acoustical Society or an employee from a member company of the Australasian Association of Acoustic Consultants acceptable to Council).*

The unattended logging is to occur for not less than 7 days. The acoustic consultant/engineer shall undertake the necessary analysis to determine acoustic compliance.

The data is to be analysed and presented in a report to be submitted to Council within 21 days of the completion of the testing.

If there is identification of non-compliance the basis of the non-compliance and the required rectification works are to be included in the report submitted to

Council. Following implementation of the required controls (to address the issue of non-compliance) there shall be a repeat of the compliance test and preparation of a report.

The cost of the After OC testing is to be borne by the Applicant.

56. In carrying out the development on the premises:

- (a) The Operational Noise Management Plan dated 30 April 2021, which may be amended from time to time with Council's consent is to be complied with at all times provided that if there is any inconsistency between the requirements of the said Plan and the requirements of the following paragraphs the following paragraphs shall prevail.

The Operational Noise Management Plan dated 30 April 2021 is to be updated to include the Horizontal Air Flow Fan speeds in the day and the night that correspond with the percentages set out in condition 56(g).

- (b) No petrol or diesel powered sprayer or mister machine is permitted to be used on the premises.
- (c) Only one sprayer or mister machine is permitted to be used on the premises at any one time.
- (d) If the Birchmeier A1200 sprayer mister is used on the premises it may only be operated using settings 1, 2 & 3 and is not permitted to operate using settings 4 or 5.
- (e) Any sprayer or mister machine used on the premises (other than the Birchmeier A1200 sprayer mister) is to have a maximum sound power level when used not exceeding 87 dB(A) including any adjustment for audible characteristics in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).
- (f) No machinery or equipment other than the Horizontal Air Flow Fans and the boiler shall be operated or used during the night period (defined as 10pm to 7am the following day except for Sundays and Public Holidays where the night period is extended to 8am)
- (g) The Horizontal Air Flow Fans in the greenhouses when operational are not to exceed the following speed settings on the automatic control system:
- Greenhouse 1 (GH1) - 55% during the day and 20% at night
- Greenhouse GH2 – 60% during the day and 20% at night
- (h) The use of any high pressure water washing machine must only occur in the designated area shown on sheet 1 of 4 on revision K dated 30/4/21 of plan prepared by B & P Surveys. A 1.5m high acoustic barrier with a 1.5 m high sliding gate is to be erected around that area in the location shown

on the said plan constructed from hollow concrete blocks with a surface density no less than 12kg/m². The inside of the barrier must be lined with a sound absorptive material such as Pyrotek "Reapor" to reduce the reflected acoustic energy off the wall of the adjoining aluminium shed. The gate must be closed when the high pressure water washing machine is in use. Any high pressure water washing machine that is used must have a sound power level not exceeding 98 dB(A). Only one high pressure water washing machine is permitted to be used on the premises at any time.

- (i) The transport of any material to the soil compost bay must be carried out by a machine that has a sound power level not exceeding 91 dB(A) and must not be used for a period of more than seven (7) minutes in any fifteen (15) minute period unless certified to operate at a sound level of 88dBA or less in which event this limitation does not apply.*
- (j) The use of any high pressure water washing machine must not occur at the same time as the operation of any forklift, electric wheel loader or excavator machine.*
- (k) The sound power level of any forklift, electric wheel loader or excavator machine used on the premises must not exceed 91 dB(A). and must not be used for a period of more than seven (7) minutes in any fifteen (15) minute period unless certified to operate at a sound level of 88dBA or less in which event this limitation does not apply. In determining whether the sound power level is not exceeded the operation of any reversing alarm of any such machine must be adjusted in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).*

Annexure "B"**DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF
CONSENT**

Development Application No: DA13/0712

Development: Micro herb production facility

Site: Lot 3 DP 1191598
67 Howards Road, Burringbar

Schedule of Modifications:

Date approved	Modification Application Number	Decision maker (Land and Environment Court or relevant council)	Proceedings Name and Number (if applicable)
	DA13/0712.01	Land and Environment Court	2019/404139

Date of determination: 1 April 2014

Date from which consent takes effect: [Date the consent is registered on the NSW Planning Portal]

CONDITIONS OF CONSENT

APPLICANT Pocket Herbs and Produce Pty Ltd (ACN 123380610)

OWNER: Hydrogarden Australia Pty Ltd ACN 111 032 681
And
Lloyd Alwyn Warren and Wendy Ann Warren

PROPERTY: Lot 3 DP 1191598
67 Howards Road, Burringbar

DEVELOPMENT: Micro herb production facility

ENDORSED DATE OF CONSENT: 1 April 2014

CONDITIONS OF CONSENT

The Development Application has been determined by the granting of consent subject to the conditions described below:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans:
 - Access Driveway Site Plan (Drawing No. A3-9110-D01), prepared by Tweed Coast Consulting Engineers Pty Ltd and dated August 2013;
 - Main Shed/ Office Plan (Sheet 1 of 4), prepared by the applicant and dated March 2014, as amended in red;
 - Main Shed/ Office East Elevation (Sheet 2 of 4), prepared by the applicant and dated March 2014, as amended in red;
 - Main Shed/ Office West Elevation (Sheet 3 of 4), prepared by the applicant and dated March 2014, as amended in red;
 - Main Shed/ Office North & South Elevation (Sheet 4 of 4), prepared by the applicant and dated March 2014, as amended in red;
 - Pump Shed (10m x 6m) Plan (Sheet 1 of 2), prepared by the applicant and dated March 2014, as amended in red;
 - Pump Shed (10m x 6m) Elevations (Sheet 2 of 2), prepared by the applicant and dated March 2014, as amended in red;
 - Pump/ Storage Shed (11m x 10m) Plan (Sheet 1 of 3), prepared by the applicant and dated March 2014, as amended in red;
 - Pump/ Storage Shed (11m x 10m) South, East & West Elevation (Sheet 2 of 3), prepared by the applicant and dated March 2014, as amended in red;
 - Pump/ Storage Shed (11m x 10m) North Elevation (Sheet 3 of 3), prepared by the applicant and dated March 2014, as amended in red,

except where varied by the conditions of this consent.

- 1A. Prior to the commencement of construction of the bioretention basin, new spillway and grass swales required by conditions 9.2C and 9.2D the following documentation is to be submitted to the Council and Council's written approval is obtained to confirm the documentation satisfies the requirements of this condition:

- (a) Detailed construction plans for the bioretention basin, new spillway and grass swales shall be prepared by a registered civil engineer in accordance with the specifications detailed in Parts 3.1 and 3.3 of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 (located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E).

The construction plans must be accompanied by certification provided by a registered civil engineer to confirm that the plans have been prepared in accordance with the specifications of the Stormwater Management Plan.

- (b) A detailed planting plan for the bioretention system shall be prepared which complements the broader landscaping on the site, and which incorporates the following:
 - i. A filter media area planted with native sedges, rushes and grasses with approximately 10 plants per square metre.
 - ii. If earth bunds are utilised in the design, the lower portion of the batters shall be planted with vegetation that can tolerate inundation.

The planting plan must be accompanied by certification provided by a qualified landscape architect that the proposed planting will tolerate the expected depths of water.

- (c) A riparian works plan for the revegetated riparian zone shall be prepared by qualified landscape architect, in accordance with the specifications detailed in Part 3.2 of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 (located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E).

Revegetation of the riparian zone shall comprise 100% local native riparian species. Local native species are to comprise appropriate species selected from the Tweed Shire Native Species Planting Guide available online at: <http://www.tweed.nsw.gov.au/Controls/NativeSpeciesPlanting/Landing.aspx>

- 1B.** The structures and items described below in the locations shown on Drawing No 22196 Sheet 1 of 4 Revision K dated 30/4/21 prepared by B&P Surveys and shown in Plans SG-01, SG-02, SG-03, SG-04 and SG-05 and the document titled "Photographs 14 March 2018 DA13/0712- Modification Application March 2018" may be used for the purpose of the approved development:

- Compost toilet
- Generator Shed
- Staff canteen with adjoining concrete slab and awning
- Concrete Pad and Awning – growing media bays adjoining the aluminium shed that has a floor level RL 28.56 AHD
- Shipping container
- Fridge unit
- Raised grow beds
- Grow pods
- 6 x 22,000 litre water tanks
- 1 x 212,000 litre water tank
- 3 x Concrete Bays

2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).

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

[GEN0065]

- 3.1. A Building Information Certificate is to be obtained for the following structures as indicated on the document titled "Photographs 14 March 2018 DA13/0712- Modification Application March 2018":

[GEN0115]

- Block work soil bays (item 1);
- Pump houses (item 2);
- 6 x 22,000 litre water tanks (item 3);
- Staff canteen (item 4);
- Generator shed (item 5);
- Shipping container (item 6);
- Insulated container (item 7);
- Hardstand area and soil bay (item 8) ;
- Composting toilet (item 9).

4. The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.
5. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan (report no. 2013.052 WMP) prepared by HMC Environmental Consulting Pty Ltd, dated August 2013. [GEN0290]
6. The proposed development is to be undertaken in accordance with the recommendations contained within the Bushfire Threat Assessment Report, prepared by Peter Thornton and dated 10 February 2014.
7. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided. [GENNS01]
8. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: [PCC0285]
 - (a) Vehicular access

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following:

 - Road works/furnishings
 - Stormwater drainage
 - Water and sewerage works
 - Sediment and erosion control plans
 - Location of all services/conduits
 - Traffic control plan
9. Permanent stormwater quality treatment shall be provided in accordance with the following: [PCC0895]
 - (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
 - (c) Specific Requirements to be detailed within the Construction Certificate application include:

- (i) Runoff from all hardstand areas, (including driveway and hardstand parking areas and excluding roof areas) must be treated to remove oils, sediments and gross pollutants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.

[PCC1105]

- 9.2A.** Prior to the issue of any Construction Certificate for works approved pursuant to Modification Application No. DA13/0712.01, a further application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the installation of any stormwater quality control devices or erosion and sediment control works.
- 9.2B** A Controlled Activity Approval under the Water Management Act 2000 is required prior to the commencement of any works on water front land including, but not limited to, the approved 30m² Bioretention Basin, dam and acoustic wall. Evidence of the Controlled Activity Approval being obtained must be provided to the appointed Principal Certifier prior to the issue of a Construction Certificate of any works approved pursuant to Modification Application No. DA13/0712.01.
- 9.2C** A 30m² bio retention basin (including sediment forebay and grassed swales) shall be constructed in accordance with the recommendations of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 (located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E), and in the location identified on Operational Control Plan SK-03, Version A prepared by Floodworks dated 17 April 2020 and Operational Control Typical Details Plan SK-04 version A dated 17 April 2020.
- 9.2D** Development on the site shall be carried out in accordance with the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated March 2021, including the general ongoing maintenance of infrastructure set out in Part 3.4 of the Stormwater Management Plan prepared by Floodworks dated 24 April 2020 located at Appendix A of the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E.
- 9.2E** The stormwater management system shall be operated, maintained and monitored in accordance with the Surface Water Management Plan prepared by Australian Wetlands Consulting Pty Ltd dated 15 April 2021, Revision E2021.
- 9.2F** All landscaping approved pursuant to Modification Application No. DA13/0712.01, shall be completed in accordance with the approved detailed planting plan and riparian works plan prior to the issue of any occupation certificate or use of the approved works (whichever is earlier) to the satisfaction of Council's General Manager or delegate. Landscaping must be maintained at all times during the operational phase of the development to the satisfaction of Council's General Manager or delegate.
- 9.3.** Within 30 days of the date of issue of this amended development consent, a drinking water quality management plan or drinking water quality assurance program prepared in accordance with the Private Water Supply Guidelines NSW Health 2016 and the Public Health Regulation 2012 shall be prepared and maintained on site. All activities

shall comply with the adopted assurance program and the program shall be made available to Council's Authorised Officer upon request.

10. A construction certificate application for works that involve any of the following:

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

11. Erosion and Sediment Control shall be provided in accordance with the following: [PCC1145]

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

12. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval. [PCC1155]

Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the amended On-Site Sewage Management report, prepared by HMC Environmental Consulting and dated July 2013 including all recommendations of that report and any addendum to the report or to the satisfaction of Council's General Manager or his delegate.

12.1 The existing stock and domestic bore is approved for commercial irrigation purposes subject to the relevant approvals being obtained for the pump work (a Work approval) and for an associated Commercial water access license (WAL) from Water NSW, and copies of those approvals and license being provided to the Council. [PCC1285]

Any groundwater abstraction is to be for use on the site only, is limited to a total of 5ML per year and can only be undertaken for non-potable purposes (for the commercial use).

PRIOR TO COMMENCEMENT OF WORK

13. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
14. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing. [PCW0215]
15. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. [PCW0225]
- Each toilet provided must be:
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council
16. **Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000**, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out: [PCW0245]
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and

- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

17. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

DURING CONSTRUCTION

18. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.

[DUR0005]

19. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

20. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

21. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

22. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

23. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]
24. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]
25. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]
26. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.

[DUR1705]
27. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]
28. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]
29. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]
30. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

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

[DUR2485]
31. Plumbing
(a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
(b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

- [DUR2495]
32. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
- [DUR2535]
33. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR2545]
34. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - 50°C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.
- [DUR2555]
35. An On-site Sewage Management System shall be installed in accordance with an Approval to Install an On-site Sewage Management System under Section 68 of the Local Government Act 1993.

[DUR2775]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

36. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
- [POC0205]
37. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.
- [POC0225]
38. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).
- [POC0355]
39. Section 94 Contributions Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

(a) Tweed Road Contribution Plan:

18 Trips @ \$1296 per Trips \$13,996.80

(\$1,252 base rate + \$44 indexation)

(\$9,331.20 subtracted from total for commercial job creating developments)

S94 Plan No. 4

Sector11_4

40. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority if applicable prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124. [POC0395]

41. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure. [POC0625]

42. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility. [POC0805]

- USE** [POC1035]
43. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

44. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises. [USE0125]

45. All externally mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all mechanical plant and or equipment is to be acoustically treated or shielded where [USE0145]

considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

46. Hours of operation of the business are restricted to the following hours:

- 7:00am to 5:00pm Monday to Sunday.
- All deliveries and pickups relating to the business are to occur within the approved hours

[USE0185]

47. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

48. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

49. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

50. All loading/unloading to take place within the boundary of the subject property.

[USE0525]

51. The premises shall be maintained in a clean and tidy manner.

[USE0965]

52. The discharge of waste water from the facility to the surrounding environment is not permitted.

[USE0501]

53. The sale of items, or the exposure or offer for sale of items to the public by retail from the subject site is not permitted.

[USE0502]

54. Acoustic barriers are to be constructed within the site adjacent to the northern and southern boundaries in the location and to the Reduced Level (RL) heights shown on Drawing No 22196 Sheet 1 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 2 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 3 of 4 Revision K dated 30/4/21 and Drawing No 22196 Sheet 4 of 4 Revision K dated 30/4/21 all prepared by B & P Surveys. The acoustic barriers must be constructed of lapped timber palings that are a minimum of 20mm in thickness and there must be no gaps in the barriers. Prior to commencing the construction of the barriers and the issuing of a construction certificate a copy of the engineering specifications for the acoustic barriers dealing with structural adequacy and wind loads (prepared by a qualified structural engineer) must be provided to the Council and such specifications are to be incorporated into the design and construction of the barriers. The acoustic barriers must be maintained in a good state of repair for the life of the development.

- 54.1** To ensure the acoustic barriers are correctly installed on the site, a report prepared by a registered surveyor is to be submitted to the Council and the principal certifier at footings stage and at completion of the barriers confirming that the barriers have been constructed in the position and to the height shown on Drawing No 22196 Sheet 1 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 2 of 4 Revision K dated 30/4/21, Drawing No 22196 Sheet 3 of 4 Revision K dated 30/4/21 and Drawing No 22196 Sheet 4 of 4 Revision K dated 30/4/21 all prepared by B & P Surveys.
- 54.2** On completion of the acoustic barriers a structural engineers certification of structural adequacy is to be submitted to the Council and the Principal Certifier.
- 54.3** The acoustic barriers must comply with the provisions of Planning for Bushfire Protection 2019.
- 54.4** The acoustic barriers must be clear of power poles and other electricity infrastructure, in particular poles 29905 and 29904, which are located very close to boundary lines. It should also be noted that the aforementioned poles have ground stays which also need to be considered for safety clearances and unimpeded access for inspection and maintenance. A minimum separation of 1.5m is required between fence and pole(s).
- 54.5** Prior to the issue of any occupation certificate in relation to the acoustic barriers constructed in accordance with Condition 54, attended acoustic compliance testing to determine the acoustic contribution from the various activities on the site shall be carried out by a suitably qualified acoustic consultant/engineer (being a person having attained Member grade of the Australian Acoustical Society or an employee from a member company of the Australasian Association of Acoustic Consultants acceptable to Council).

A minimum of two locations shall be selected for compliance testing and must include the most affected location on 75 Howards Road, Burringbar and on the northern boundary of 74 Howards Road, Burringbar.

Four modes of operation shall be measured, at the measurement locations for at least 15 minutes each mode, as follows:

1. All fixed plant operating in daytime mode;
2. All fixed plant operating in daytime mode plus the high pressure water cleaner;
3. All fixed plant operating in daytime mode plus the electric wheel loader; and
4. All fixed plant operating in daytime mode plus the small forklift.

The applicant is to be involved in the coordination of equipment used on site during testing.

The data is to be analysed and the allowable modes of operation determined, as a result of the testing, be presented in a report to be submitted to Council.

If further rectification works are required to meet the noise criteria, or alterations to the Noise Management Plans (to achieve acoustic compliance), recommendations shall be made in the report.

- 55.** Despite any other condition in the conditions imposed on the development consent, noise emitted from the premises when assessed at any point within 30m of a dwelling, or on the boundary of a property (if the dwelling is less than 30m from the boundary) must not exceed:

- 40 dB(A) LAeq, 15 minutes during the Day (7am to 6pm)
- 35 dB(A) LAeq, 15 minutes during the Evening (6pm to 10pm)
- 35 dB(A) LAeq, 15 minutes during the Night (10pm to 7am the following day, except for Sundays and Public Holidays where the night period is extended to 8am).

Where the noise contains audible characteristics the derived noise contributions from the site shall be adjusted in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).

- 55.1** After 2 months but no later than 6 months after the installation of the acoustic fences, attended measurements and unattended noise logging shall be carried out without the knowledge of the applicant or operator of the premises, at the two specific locations identified in Condition 54.5 to determine acoustic compliance with the noise criteria given in Condition 55. Access for the monitoring is to be arranged in conjunction with Council and be undertaken by a suitably qualified acoustic consultant/engineer (being a person having attained Member grade of the Australian Acoustical Society or an employee from a member company of the Australasian Association of Acoustic Consultants acceptable to Council).

The unattended logging is to occur for not less than 7 days. The acoustic consultant/engineer shall undertake the necessary analysis to determine acoustic compliance.

The data is to be analysed and presented in a report to be submitted to Council within 21 days of the completion of the testing.

If there is identification of non-compliance the basis of the non-compliance and the required rectification works are to be included in the report submitted to Council. Following implementation of the required controls (to address the issue of non-compliance) there shall be a repeat of the compliance test and preparation of a report.

The cost of the After OC testing is to be borne by the Applicant.

- 56.** In carrying out the development on the premises:

- (a) The Operational Noise Management Plan dated 30 April 2021, which may be amended from time to time with Council's consent is to be complied with at all times provided that if there is any inconsistency between the requirements of the said Plan and the requirements of the following paragraphs the following paragraphs shall prevail.

The Operational Noise Management Plan dated 30 April 2021 is to be updated to include the Horizontal Air Flow Fan speeds in the day and the night that correspond with the percentages set out in condition 56(g).

- (b) No petrol or diesel powered sprayer or mister machine is permitted to be used on the premises.
- (c) Only one sprayer or mister machine is permitted to be used on the premises at any one time.

- (d) If the Birchmeier A1200 sprayer mister is used on the premises it may only be operated using settings 1, 2 & 3 and is not permitted to operate using settings 4 or 5.
- (e) Any sprayer or mister machine used on the premises (other than the Birchmeier A1200 sprayer mister) is to have a maximum sound power level when used not exceeding 87 dB(A) including any adjustment for audible characteristics in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).
- (f) No machinery or equipment other than the Horizontal Air Flow Fans and the boiler shall be operated or used during the night period (defined as 10pm to 7am the following day except for Sundays and Public Holidays where the night period is extended to 8am)
- (g) The Horizontal Air Flow Fans in the greenhouses when operational are not to exceed the following speed settings on the automatic control system:

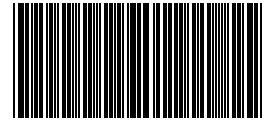
Greenhouse 1 (GH1) - 55% during the day and 20% at night

Greenhouse GH2 – 60% during the day and 20% at night
- (h) The use of any high pressure water washing machine must only occur in the designated area shown on sheet 1 of 4 on revision K dated 30/4/21 of plan prepared by B & P Surveys. A 1.5m high acoustic barrier with a 1.5 m high sliding gate is to be erected around that area in the location shown on the said plan constructed from hollow concrete blocks with a surface density no less than 12kg/m². The inside of the barrier must be lined with a sound absorptive material such as Pyrotek "Reapor" to reduce the reflected acoustic energy off the wall of the adjoining aluminium shed. The gate must be closed when the high pressure water washing machine is in use. Any high pressure water washing machine that is used must have a sound power level not exceeding 98 dB(A). Only one high pressure water washing machine is permitted to be used on the premises at any time.
- (i) The transport of any material to the soil compost bay must be carried out by a machine that has a sound power level not exceeding 91 dB(A) and must not be used for a period of more than seven (7) minutes in any fifteen (15) minute period unless certified to operate at a sound level of 88dBA or less in which event this limitation does not apply.
- (j) The use of any high pressure water washing machine must not occur at the same time as the operation of any forklift, electric wheel loader or excavator machine.
- (k) The sound power level of any forklift, electric wheel loader or excavator machine used on the premises must not exceed 91 dB(A). and must not be used for a period of more than seven (7) minutes in any fifteen (15) minute period unless certified to operate at a sound level of 88dBA or less in which event this

limitation does not apply. In determining whether the sound power level is not exceeded the operation of any reversing alarm of any such machine must be adjusted in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).



Filed: 12 May 2021 12:02 PM



D0001EZHVG

Plans

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2019/00404139

TITLE OF PROCEEDINGS

First Applicant	Pocket Herbs and Produce Pty Ltd
First Respondent	Tweed Shire Council ABN 90178732496

FILING DETAILS

Filed for	Pocket Herbs and Produce Pty Ltd, Applicant 1
Legal representative	Clarissa Huegill
Legal representative reference	02 6681 4155
Telephone	

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Plans (Pocket Herbs Noise Management Plan 30_4_2021 final.pdf)

[attach.]



Pocket Herbs & Produce Pty Ltd 67 Howards Road, Burringbar

(Lot 3 on DP1191595)

OPERATIONAL NOISE MANAGEMENT PLAN

No table of contents entries found.

To the extent this plan is inconsistent with any condition of the development consent granted to DA 13/0712 as modified from time to time, the conditions of the consent shall prevail.

Aim of Plan

To control noise being emitted from the approved development on the premises during the day, evening and night periods.

Overall Performance requirement

Noise emitted from the premises when assessed at any point within 30m of a dwelling, or on the boundary of a property (if the dwelling is less than 30m from the boundary) must not exceed:

- 40 dB(A) LAeq, 15 minutes during the Day (7am to 6pm)
- 35 dB(A) LAeq, 15 minutes during the Evening (6pm to 10pm)
- 35 dB(A) LAeq, 15 minutes during the Night (10pm to 7am the following day, except for Sundays and Public Holidays where the night period is extended to 8am).

Where the noise contains audible characteristics the derived noise contributions from the site shall be adjusted in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).

Noise levels are to be assessed at the reasonably most-affected point on or within the residential property boundary or, if that is more than 30 metres from the residence, at the reasonably most affected point within 30 metres of the residence, but not closer than 3 metres to a reflective surface and at a height of between 1.2– 1.5 metres above ground level.

Greenhouse Fans:

Aim:

To control noise from fan operation during the day/night period.

Purpose:

The purpose of these fans is to maintain minimum airflow and not control temperature or humidity, the VSD has been set and does not get modified due to temperature/humidity changes. The VSD (fan speed controller) cannot be changed externally.

Tasks / Actions:

The fans to be controlled as listed below:

Fixed HAF Fans Greenhouse 1 - Main Area

Description -	15 HAF Fans Controlled by VSD Fan Controller and AutoGrow.
Operation -	7 days a week.
	Speed 55%: 7am to 5pm, corresponding to a fan speed of xx rpm
	Speed 20%: 5pm to 7am, , corresponding to a fan speed of yy rpm

Other Fans Greenhouse 1 - Main Area

Description -	4 Fixed Pedestal Fans for disease susceptible varieties.
Operation -	Low Speed from 7am to 5pm. Off 5pm to 7am. 7 days a week.

Description -	3 Personal Pedestal Fans for Staff Comfort/Safety.
Operation -	Low/Medium Speed: 7.30am to 4pm. Off: 4pm to 7.30am. 7 days a week.

Fixed HAF Fans Greenhouse 1 - Hardening Off Area

Description -	2 HAF Fans Controlled by VSD Fan Controller.
Operation -	7 days a week. Speed 55%: 7am to 5pm, corresponding to a fan speed of xx rpm Off 5pm to 7am.

Greenhouse 2 – HAF Fans and Fan Related Equipment

Fixed HAF Fans Greenhouse 2 - Main Area

Description -	8 HAF Fans Controlled by VSD Fan Controller and AutoGrow.
Operation -	7 days a week. Speed 3 (60%): 7am to 5pm, corresponding to a fan speed of ww rpm Speed 1 (20%): 5pm to 7am, , corresponding to a fan speed of zz rpm.

Note: GH2 HAF fans are hard wired and cannot be adjusted, except by a licensed electrician.

Glossary of Acronyms

HAF = Horizontal Air Flow

VSD = Variable Speed Drive

Contingency Management

In the event of a site power failure the generator will start automatically, and the Autogrow System will operate as normal.

Main Water Tank Pumps: Water tank pump operation be limited to 7am to 7pm.

Aim:

To control noise from main pressure pump operation during the night period.

Purpose:

This pump is used to pressurize the farm water system and is only needed between the hours of 7am and 7pm.

Tasks / Actions:

The pumps be controlled via an automatic timer. The timer operational controls must be only accessible by Management of the facility.

Roof Opening Mechanisms: Any roof opening mechanisms be maintained to ensure noise is not generated from faulty equipment.

Aim:

To minimise noise from roof opening operations.

Tasks / Actions:

Staff of the facility undertake regular inspections of roof opening mechanisms.

If the mechanism changes in sound level or character, Staff immediately notify Management to investigate cause and remediation or repairs if required.

Emergency Electrical Generator: Emergency electrical generator be controlled such that usage is minimised.

Aim:

To minimise noise from emergency electrical generator operation.

Performance Indicator:

Emergency electrical generator operation occurs for the minimum amount of time required.

Tasks / Actions:

Staff of the facility undertake regular inspections of emergency electrical generator, and generator be kept in good working order.

The Emergency electrical generator be set to automatically activate in the event of a power outage, and automatically shut down once power is restored.

Regular emergency electrical generator operation to check mechanism be limited to the following hours:

- Maximum of once per month; •
Monday – Friday 8am – 5pm;
- No more than ½ hour of
continuous use.

Management keep a permanent record of the nature of the emergency and hours of use of the equipment and make this available to Council upon request.

High Pressure Water Cleaner

The electrically powered High Pressure Water Cleaner will be the primary equipment used on site for cleaning trays.

- 7am – 5pm;
- Only within the area designated for use of the high pressure water cleaner with the gate closed • The high pressure water cleaner must not be used at the same time as the Wheel Loader or forklift.
- Only one powered high pressure water cleaner is to be used on the premises at any time.

Aim:

To manage noise associated with use of the high pressure water cleaners impacting noise sensitive receivers.

Purpose:

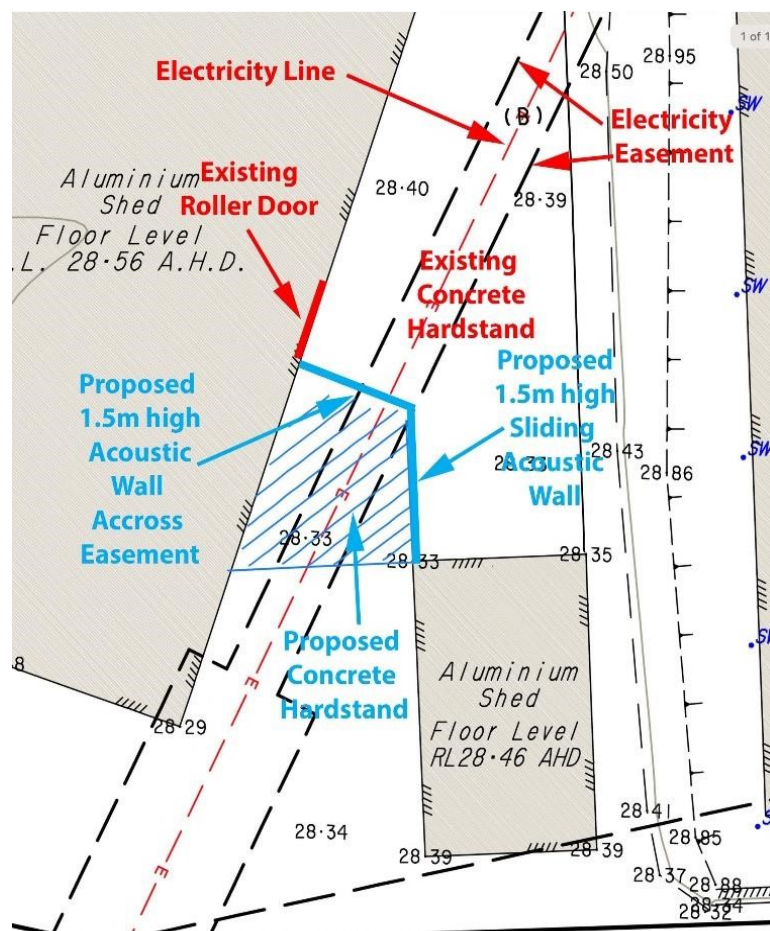
To clean trays and other equipment in order to maintain a clean, safe and healthy growing environment.

Tasks / Actions:

Management ensure that Staff only use the high pressure water cleaner equipment between the prescribed hours and in the prescribed location hatched in Blue on the Plan below..

Emergency Use:

If the high pressure water cleaner breaks down or a service is needed a backup electrical water cleaner will be used.



Electric Powered Mister or Fogger: Use of the Birchmeier A1200 mister (or any alternative mister permitted to be used) is limited to use during the following hours:

- 7am – 5pm
- No operation on Sundays or Public Holidays.

The Birchmeier A1200 mister is not to be operated above level 3.

Aim:

To manage noise associated with use of misters impacting noise sensitive receivers.

Purpose:

To apply foliar feeding and disease prevention/treatment to plants. Needs to be early as possible when hot and may be later in cooler months.

Tasks / Actions:

Management ensure that Staff only use mister equipment between the prescribed hours and keep records of such use which are to be made available to Council upon request.

Emergency Use:

If an alternative mister is required the alternative mister shall have a sound power level no greater than 87dBA.

Any emergency situation must be reviewed by Management to investigate opportunities to avoid a similar event occurring.

Review:

If equipment is altered (e.g. a low noise unit is sourced), operational usage may be altered accordingly, with this plan altered to suit.

A combustion mister shall not be used on the site at any time.

Heating Boiler: Hot Water Boiler used to heat Greenhouse 1 and 2 in winter months only.

Aim:

To minimise noise from water heating boiler operation. Generally only in use from around mid June to mid September, depending upon the weather.

Purpose:

To maintain a minimum night time temperature of 14°C necessary to prevent disease and to enable plant growth.

Tasks / Actions:

Staff of the facility undertake regular inspections of water heating boiler, and water heating boiler to be kept in good working order.

Any maintenance of water heating boiler operation to check mechanism be limited to the following hours:

- Maximum of once per month; •
Monday – Friday 8am – 4pm;
- No more than 1 hour of
continuous use.

Potting Machine and Compressor: Potting Machine and Compressor operation be limited to 7am to 5pm Monday to Friday and 8am to 12pm Saturday.

Aim:

To control noise from Potting Machine and Compressor.

Purpose:

To fill pots with media necessary for the growing of stock.

Tasks / Actions:

Staff of the facility undertake regular inspections of Potting Machine and Compressor and to be kept in good working order.

Mobile Plant & Equipment: Electric Wheel Loader and Fork Lift.

Electric Wheel Loader to be used for general site maintenance (e.g. clearing drains) and managing bulk potting mix stockpile. Wheel Loader usage is typically between 20 minutes to 1 hour every two weeks, with drain clearing 2 to 3 hours every 6 months, depending on weather conditions.

Wheel Loader usage be limited to the following under normal (non-emergency) conditions:

- Monday – Friday 8am – 5pm;
- No operation on Saturdays, Sundays or Public Holidays.
- Within the permitted hours Wheel Loader may only be used for a maximum of seven (7) minutes in any fifteen (15) minute period unless certified to operate at a sound power level of 88dBA or less in which event this limitation does not apply. In determining whether the sound power level is not exceeded the operation of any reversing alarm of any such machine must be adjusted in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).
- The Wheel Loader must not be used at the same time as the high pressure water cleaner or forklift.

Forklift to be used for truck loading, emptying spent media, moving materials around the site (e.g. moving pallets from storage shed to grow sheds or other internal locations). Forklift use is every day, being an average of 30 minutes per day.

Forklift usage be limited to the following:

- Monday - Saturday 8am – 5pm;
- Sunday 9am – 5pm.
- Within the permitted hours Fork Lift may only be used for a maximum of seven (7) minutes in any fifteen (15) minute period unless certified to operate at a sound power level of 88dBA or less in which event this limitation does not apply. In determining whether the sound power level is not exceeded the operation of any reversing alarm of any such machine must be adjusted in accordance with Fact Sheet C: Corrections for annoying noise Characteristics in the NSW Environment Protection Authority (EPA) Noise Policy for Industry dated October 2017 (ISBN 978 1 76039 481 3).
- The Forklift must not be used at the same time as the high pressure water cleaner or wheel loader.

Aim:

To minimise noise from mobile plant.

Tasks / Actions:

Staff of the facility undertake regular inspections of mobile plant and equipment.

If the mobile plant and equipment changes in sound level or character, Staff immediately notify Management to investigate cause and remediation or repairs if required.

Communication with Surrounding Properties

Aim:

To maintain open communication with surrounding property owners and to inform them of any significant changes to operational timetabling, or a typical activity.

Tasks / Actions:

Prior to significant changes to operational timetabling, or planned atypical activity being undertaken, the surrounding noise sensitive receivers should be contacted and informed of the anticipated duration of works.

A text notification be sent to occupants of the following properties (if the occupants are willing to supply a mobile telephone number) advising that an emergency situation has arisen, and use of plant and equipment will be used outside the prescribed hours of use:

- 74 Howards Road, Burringbar (Lot 4 on DP865491);
- 74A Howards Road, Burringbar (Lot 3 on DP865491);
- 76 Howards Road, Burringbar (Lot 2 on DP859749);
- 75 Howards Road, Burringbar (Lot 2 on DP848007);
- 47 Howards Road, Burringbar (Lot 4 on DP1191598);



A complaints specific email address be created and distributed to occupants of the dwellings identified above. This email box must be checked each day by a member of the Senior Management.

Complaint management

In the event of a complaint, the complainant be directed to Management for consultation.

A record be kept of the complaint, and an investigation be undertaken to identify the event, and to introduce any remediation necessary. Refer to the attached Noise Complaint Register to assist in managing and investigating a complaint.

A dedicated email has been set up and linked to the Operations computer as well as Senior Management personal mobile devices. This email: neighbours@pocketherbs.com.au will be used to receive and respond to any issues raised. This change has been made in response to an issue where an email from a neighbour was missed by staff.

Any records of complaints and investigation and remediation undertaken shall be made available to Council upon request.

Responsible Person:

Site Manager is responsible for ensuring notifications are conducted at the appropriate time, and noise complaints are addressed appropriately.

Reporting:

All forms of communications to surrounding residences should be documented as well as any feedback received. Feedback should be reviewed and responded to accordingly.

Review:

Reviewed prior to operational changes, or upon receipt of bona fide complaint or upon request by Tweed Shire Council.

NOISE COMPLAINT REGISTER

Initial Complaint Recording

Date & Time of record: _____

Name of Complainant (if given): _____

Complainant Telephone Number: _____

Address of complainant (if given): _____

Identification and description of noise source (e.g. noisy equipment): _____

Time of day noise is occurring:

Number of days the noise has occurred:

Complaint Investigation & Remediation

Recommended control (e.g. fit new muffler): _____

Verification that noise controls have been implemented: _____

Follow-up Complainant

Contact date: _____

Complainant comment (e.g. is noise still annoying ? – if yes, refer to Note below): _____

NOTE

If complainant is still affected after all reasonable steps have been taken to ameliorate the noise, specialist advice should be sought from a qualified acoustical consultant.

Contacts

PHP: neighbours@pocketherbs.com.au

Minto: debmin4@gmail.com Pasz: katepasz@icloud.com Gumbrel: plumbing@live.com.au Hills: marnionline@gmail.com.au Boys: freds199@outlook.com

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