

COUNCIL BRIEFING & ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-386 – DA22/0793.02
ORIGINAL PROPOSAL	Construction of a Council works depot (including depot fuel station), a Public Administration Building, two (2) large General Industrial buildings, external hardstand storage areas and ancillary development including parking, landscaping, and signage on Proposed Lots 703 and 711 created from subdivision of Lot 604 DP 1244954
AMENDED PROPOSAL	Section 4.55(2) modification proposing to delete Condition Number 20 relating to peak stormwater discharge
ADDRESS	Lot 604 DP 1244954, 208 Lundberg Drive South Murwillumbah
APPLICANT	Zone Planning Group
OWNER	Tweed Shire Council
CURRENT DA LODGEMENT DATE	25 October 2024
APPLICATION TYPE	Section 4.55(2) Modification Application
REGIONALLY SIGNIFICANT CRITERIA	<p>The original application was determined pursuant to Section 2.19, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i>: Council related development that has a capital investment value of more than \$5 million.</p> <p>The proposed modification seeks deletion of a condition, pursuant to Clause 275(2) of the <i>Environmental Planning & Assessment Regulation 2021</i> (previously Clause 123BA(2) of the <i>Environmental Planning and Assessment Regulation 2000</i>), and subsequent Sydney District & Regional Planning Panels Operational Procedures, the Planning Panel is the determination authority for applications made under Section 4.55(2) of the Act, that meet the criteria relating to conflict of interest, as landowner is Council.</p>
CIV	\$38,800,000.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil - consent already granted for variation to the height of building development standard to the extent of 5.05%.
KEY SEPPs/LEP	<ul style="list-style-type: none"> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>

	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Industry and Employment) 2021</i> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Tweed Local Environmental Plan 2014</i> • <i>Tweed Development Control Plan 2008:</i> <ul style="list-style-type: none"> ○ <i>Section A2 - Site Access and Parking Code</i> ○ <i>Section A3 – Development of Flood Liable Land</i> ○ <i>Section A4 – Advertising Signs</i> ○ <i>Section A15 – Waste Minimisation and management</i> ○ <i>Section A16 – Preservation of Trees or Vegetation</i> ○ <i>Section A17 – Business, enterprise corridor and general industrial zone</i>
AGENCY REFERRALS	None
TOTAL & UNIQUE SUBMISSION/S	One (1) submission
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • S4.55 Modification Report with following appendices: <ul style="list-style-type: none"> ○ Attachment 1 - Development Consent (DA22/0793) ○ Attachment 2 - Approved Architectural Plans (DA22/0793) ○ Attachment 3 - Hydraulic Assessment ○ Attachment 4 - Stormwater Quality Management Plan (DA22/0793) ○ Attachment 5 - Stormwater Advice (DA22/0793) ○ Attachment 6 - Owners consent ○ Attachment 7 – Civil Engineering Plans (DA22/0793) • Approved Site Plan (DA22/0793) • Response to Submission
KEY ISSUES	Merit assessment of stormwater management and flooding impacts
PREVIOUS BRIEFINGS	Nil
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Nil
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	12 February 2025

PLAN VERSION	Same as original
PREPARED BY	Pooja Chugh
DATE OF REPORT	7 February 2025

EXECUTIVE SUMMARY

The Section 4.55(2) modification seeks consent to modify the original approval (DA22/0793) for a Depot and Public Administration Building and associated signage at No. 208 Lundberg Drive South Murwillumbah. The approved development extended over two (2) proposed lots, being Proposed Lots 711 and 703, as follows:

Proposed Lot 711:

- Construction and use of two (2) large industrial buildings to be used as a workshop and storage buildings (Depot) and one (1) public administration building;
- Provision of external hard stand storage areas for plant, equipment and vehicle parking;
- Installation of a Depot Fuel Station comprising of underground fuel storage tanks for 2 x Diesel Pumps (58,000L) and 2 x petrol pumps (34,000L) for Council fleet vehicles;
- Admin Staff parking (82 carparking spaces), Depot Staff Parking (48 carparking spaces) and temporary loading zones (overnight parking of Council fleet vehicles) and; and
- Associated landscape embellishment, bin storage area, vehicular and pedestrian accessways and stormwater infrastructure.

Proposed Lot 703:

- Construction and use of external storage bunkers for bulk landscape materials;
- Installation and use of emulsion tank (45,000L annually or 15.89 tonnes) to receive and store premixed materials;
- Construction of two driveways with a single lane access throughout the site;
- The provision of a bus parking bay & SES storage laydown yard; and
- Associated landscaping and Stormwater infrastructure.

The proposed modification seeks to delete Condition No. 20 which relates to limiting the peak stormwater discharge, reads as follows:

20. Peak stormwater discharge (post-development) shall be limited to the pre-development flow rates. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the 1% AEP design storm shall be limited to the pre-development flow rates. Details are to be submitted with the S68 stormwater application to the satisfaction of Council's General Manager or his delegate.

The proposed modification does not seek any other design changes or amendments to the remaining conditions, as contained in the original approval.

At present, a Construction Certificate has not been issued and therefore works in accordance with the original approval have not commenced as such.

Background to Inclusion of Condition No. 20 (DA22/0793):

The subject site (Lot 604 DP 1244954) is affected by the 1% Annual Exceedance Probability (AEP) flood event and therefore it is considered to be within the flood planning area pursuant to Clause 5.21 of the *Tweed Local Environmental Plan (TLEP) 2014* (and the Floodplain Development Manual). Nonetheless, it should be noted that the approved development footprint on the subject lots (Proposed Lots 711 & 703), is located outside of the Design Flood Inundation Area.

As part of the assessment of the original application, a revised Stormwater Plan (prepared by ADG dated 8 September 2023), was submitted. It stated that when comparing the site's three (3) drainage catchments from pre-development to post-development, there would be an increase in peak discharge from the pre to post development flows under the proposal. To mitigate this increase in peak discharge, the applicant demonstrated that on-site detention (OSD) could be provided which was shown to mitigate peak discharge to below pre-development levels.

The assessment timeframes did not permit further comprehensive analysis of the broader local catchment prior to the determination of the original application. Such analysis would also have assisted in addressing the issues of concerns raised in the public submission.

The draft wording of a condition relating to post-development flows from the site was discussed with the applicant. It was agreed that the subject condition would not specifically require OSD, but rather require that the post-development flows were to be limited to the pre-development flows up to the 1% AEP design storm. This would allow the applicant some flexibility to consider further options to address the requirements of the subject condition.

In absence of a comprehensive analysis, it was considered that the imposition of a condition requiring to limit the peak discharge from the site for the post-development flows to match the pre-development flows, was the most appropriate way to meet the jurisdiction pre-condition contained in Clause 5.21(2) of the *TLEP 2014* and to address the issues raised in the submission.

Hydraulic Assessment (DA22/0793.02):

The current application is accompanied by a Hydraulic Assessment (HA), as prepared by Catchment Simulation Solutions to support deletion of the subject condition. The HA analyses the hydrology and hydraulics of the entire local catchment, it is not limited to the subject development site. For the purpose of the proposed modification, the key analyses are the approved development 'with' and 'without' an OSD system.

It is noteworthy that Condition No. 20 does not specify provision of an OSD system. However, typically, OSD is adopted as the primary method to achieve compliance with such requirements.

The HA predicts that the stormwater impact of the approved development, without OSD, would be generally limited to the industrial subdivision drains. Whilst there are marginal, minor affluxes predicted in the downstream basin, upon interrogation these are considered negligible and non-actionable.

With respect to the inclusion of OSD, the HA predicts that this will have some minor impacts on stormwater conditions in the downstream South Murwillumbah basin, particularly in more frequent events (e.g. 20% AEP). Whilst the afflux predicted is considered minor, it is of a magnitude that cannot be ignored or considered "non-actionable" at this scale/context.

Overall, conclusion drawn from the HA is that to proceed with the approved development and to make provision of OSD as a means to address Condition No. 20, is likely to result in some minor but significant negative stormwater impacts in the downstream South Murwillumbah basin. Whereas, not limiting the post-development flow rates to the pre-development flow rates (deletion of Condition No. 20) is likely to result in a negligible impact on stormwater conditions in the downstream South Murwillumbah basin, which is a better outcome and generally in accordance with Council's policies.

Detailed discussion with respect to the application of Clause 5.21 – Flood Planning, and other relevant clauses of the *TLEP 2014* is provided later within this report.

The proposal was notified in accordance with the Tweed Shire Council's *Community Participation Plan* from 6 November 2024 until 4 December 2024. During this time one (1) submission was received. The key concern relates to the stormwater flows to the surrounding cane land and union drains and increased flooding. Detail of the issues raised, and Council officers' assessment of these issues is contained later in this report.

It is noteworthy that an independent hydraulic consultant was engaged to conduct a peer review the Hydraulic Assessment (HA), as prepared by Catchment Simulation Solutions in the context of the current application (deletion of Condition No. 20). The submitter's team including their technical consultant was given the opportunity to discuss the issues of concern raised in the submission with the independent hydraulic consultant and Council staff. In this regard, the virtual meeting took place on 16 January 2025.

Further to this meeting with the submitters team and Council staff, an independent report was prepared by the hydraulic consultant. The key part of the conclusion within this report is as follows:

The HA shows that there is a large upstream catchment area draining to the main drainage channel that passes the submitter's property, with a total area of about 850 hectares. By comparison, the Industry Central area draining to the southern outlet is about 20 hectares, and the depot site is 4 hectares, representing about 2.4% and 0.5% of the total catchment area, respectively. Therefore, the contribution of runoff from Industry Central is a relatively small portion of the total flow arriving at the submitter's property from the upstream catchment.

The HA shows that development across Industry Central (without Council OSD) is not expected to generate flood level increases of greater than 10 mm across the South Murwillumbah basin, aside from during the 20% AEP event for the ultimate development scenario, in which case flood levels would be increased by between 10 and 20 mm at the eastern part of the basin. Some small, isolated increases are expected around the perimeter of the basin, which are considered to be the result of the relatively minor additional volume of runoff entering the South Murwillumbah basin. The impacts across the downstream floodplain during the 20%, 5% and 1% AEP events are considered to be negligible or within the tolerances of flood modelling, and therefore, non-actionable by Council.

The HA results also show that implementation of OSD at the proposed Council depot has the potential to result in additional areas of flood level increases across the South Murwillumbah basin in the range of 10 to 25 mm when compared to development scenarios without OSD (refer Appendix A).

This is not an unexpected result, given the delayed release of stormwater associated with a detention system means that discharges from the depot are more likely to coincide with the arrival of runoff from the upper catchment. It is not uncommon for the merit of OSD to be assessed in detail for developments adjacent to the floodplain, or in the lower reaches of a catchment, the results of which can be grounds for omitting OSD for a particular development.

The results of the HA also show that inclusion of OSD at the depot would likely render the development non-compliant with the various planning controls and policies that require no adverse downstream impacts on flooding. Accordingly, it is recommended that the Council depot development not include any OSD.

The entirety of the report prepared by the independent hydraulic consultant is provided at **Attachment A**.

Following consideration of the matters for consideration under Section 4.55(2) and where relevant, Section 4.15(1) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, the proposed modification is considered to be worthy of support and the application is recommended for approval.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is located within the Industry Central master planned Industrial Estate. This estate was created under a previous consent DA02/1685 for a fifty-six (56) Lot Torrens Title Subdivision and bulk earthworks over eight (8) stages.

The parent development application (DA02/1685) was modified (7 April 2021) to create 11 industrial lots as part of the Tweed Industry Central Land Swap project. The civil works for the modified subdivision have been completed. As part of these civil works, the Thornbill Drive has been extended to provide access through the site and connecting to Lundberg Drive. At this stage, the approved lots are awaiting registration.

The existing site (Lot 604 DP 1244954 - "parent lot") is currently vacant with minimal vegetation (except for a 25m wide landscape batter which occurs along the northern boundary of the site, adjacent to Wardrop Valley Road). The existing site features a total land area of 14.02 ha with primary frontage to Lundberg Drive. The land is relatively flat as a result of previous filling of the land to achieve RL 6.7m AHD.

Proposed Lots 703 and 711 feature a land area of 1.559 ha and 3.536 ha respectively (total land area of 5.095 ha). The subject lots are irregular in geometry and feature a primary frontage to Thornbill Drive.

Proposed Lot 703 features a 14.8m road frontage to Thornbill Drive and Proposed Lot 711 is a corner lot and features a total road frontage of 258.68m to Thornbill Drive (162.265m to the north and 96.415m to the west).

Proposed Lot 711 is vacant with no vegetation and proposed Lot 703 also has minimal vegetation except the 25m landscape buffer located along the northern boundary. The proposal represents the first use of the land.

The site is mapped as Regionally Significant Farmland, bushfire prone and predictive for Aboriginal Cultural Heritage.

The land contains Class 3 and Class 5 Acid Sulfate Soils and has some flood affectation. That is, affected by a Probably Maximum Flood (PMF) of RL 10.9m AHD. However, except for a small portion of the land along the southern boundary which is affected by 'low flow' 1% AEP flood, the rest of the land is above the 1% AEP of RL 5.5m AHD.

The land is also mapped to contain a first order watercourse which no longer exists. The site is located within an area affected by management principles in the Tweed Shire Councils Scenic Landscape Strategy.

Figure 1: Locality Plan

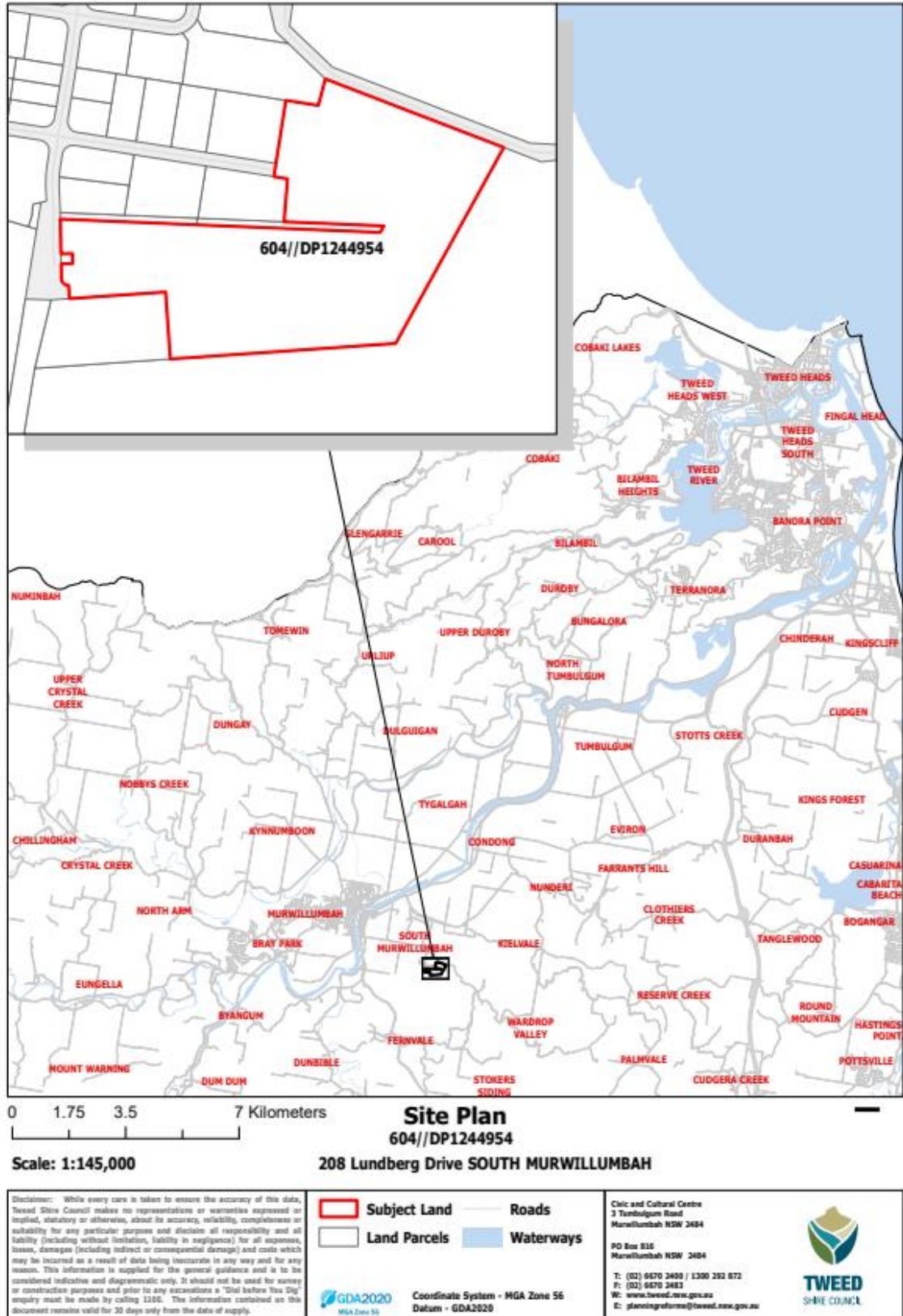


Figure 2: Aerial Imagery (Parent lot prior to completion of civil works)



Figure 3: Current Aerial Imagery (Parent lot with completion of civil works):



Source: Google maps, accessed on 5 February 2025

Figure 4: Approved Plan of Subdivision to create Proposed Lots 703 and 711

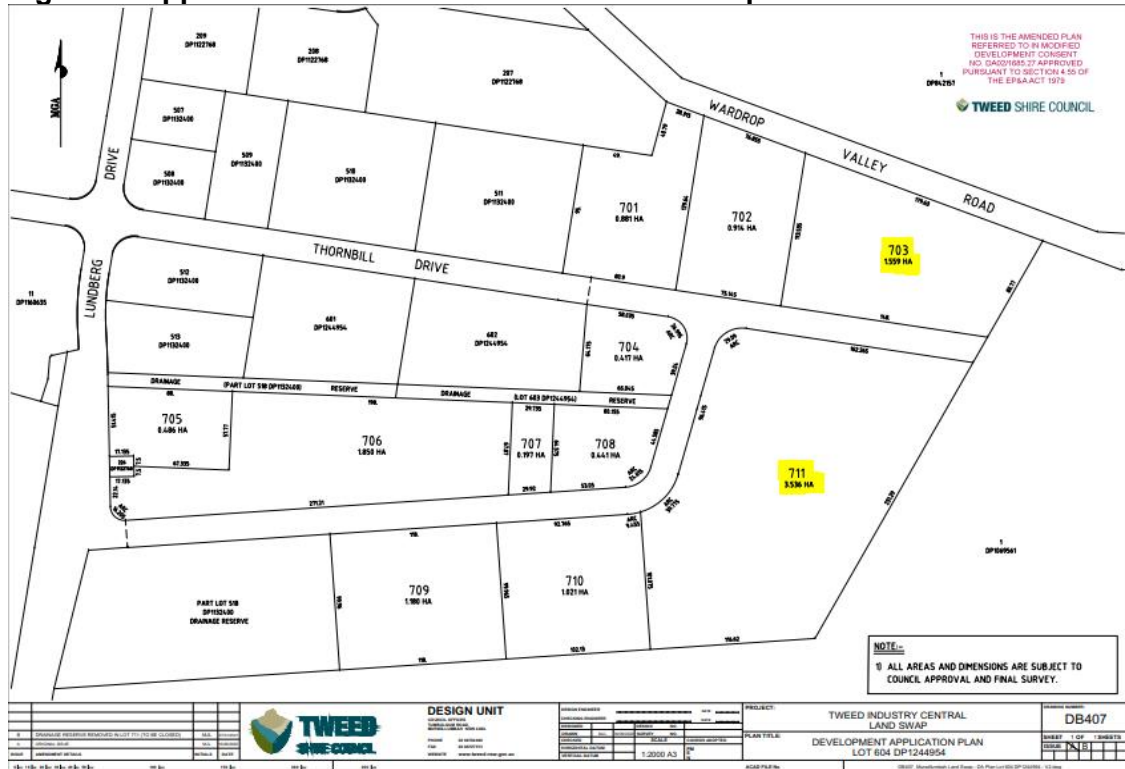
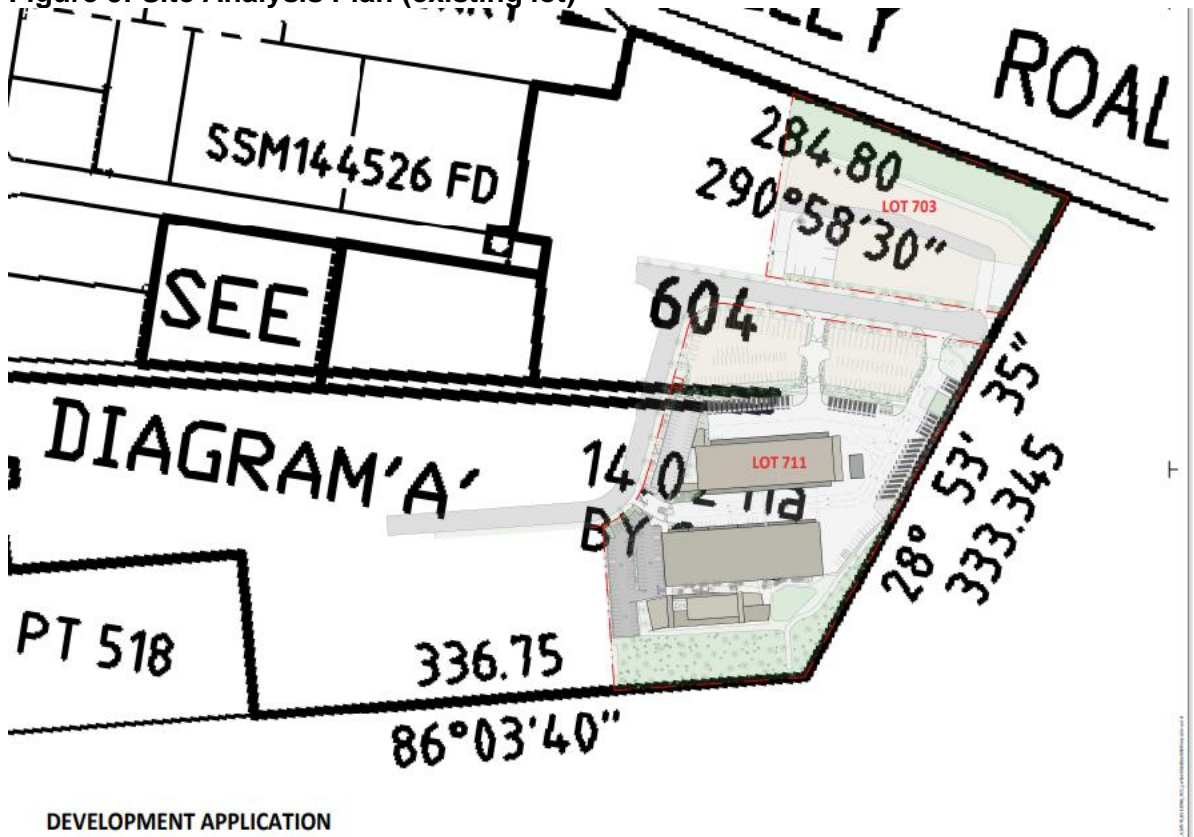


Figure 5: Site Analysis Plan (existing lot)



1.2 The Locality

The subject site is located to the south-eastern portion of a recently established Industrial Estate zoned E4 General Industrial. Land Uses within the vicinity of the site include industrial buildings that have been established with such uses of the buildings including Stone & Wood Brewery northwest of the subject site, a warehouse comprising of four (4) units and an existing office and other manufacturing uses. Southwest of the site is various storage facilities containing individual storage units. There is a recent approval for an artisan food and drink industry, located northwest of the subject site, at the entry of the industrial estate along Lundberg Drive.

Land immediately south of the subject land (Proposed Lot 711) comprises of land zoned RU2 – Rural Landscape. North of the subject site (Proposed Lot 703) is Wardrop Valley Way which is a 20m wide carriageway. Further north of Wardrop Valley Way are two large parcels of land zoned RU2 - Rural Landscape and beyond that, land zoned RU1 Primary Production in which rural agricultural pursuits occur (mostly sugar cane farming).

The closest residential zoned land within the vicinity of the site is a pocket of land located to the northeast, which is RU5 - Rural Village zone. This pocket of land is located approximately 1.2km northeast of the site. Notwithstanding it is worthy to note that a dwelling house is located on 311 Wardrop Valley Road, Murwillumbah which is 653m from the subject site in a north-easterly direction.

2. THE PROPOSAL AND BACKGROUND

2.1 The Original Proposal (DA22/0793)

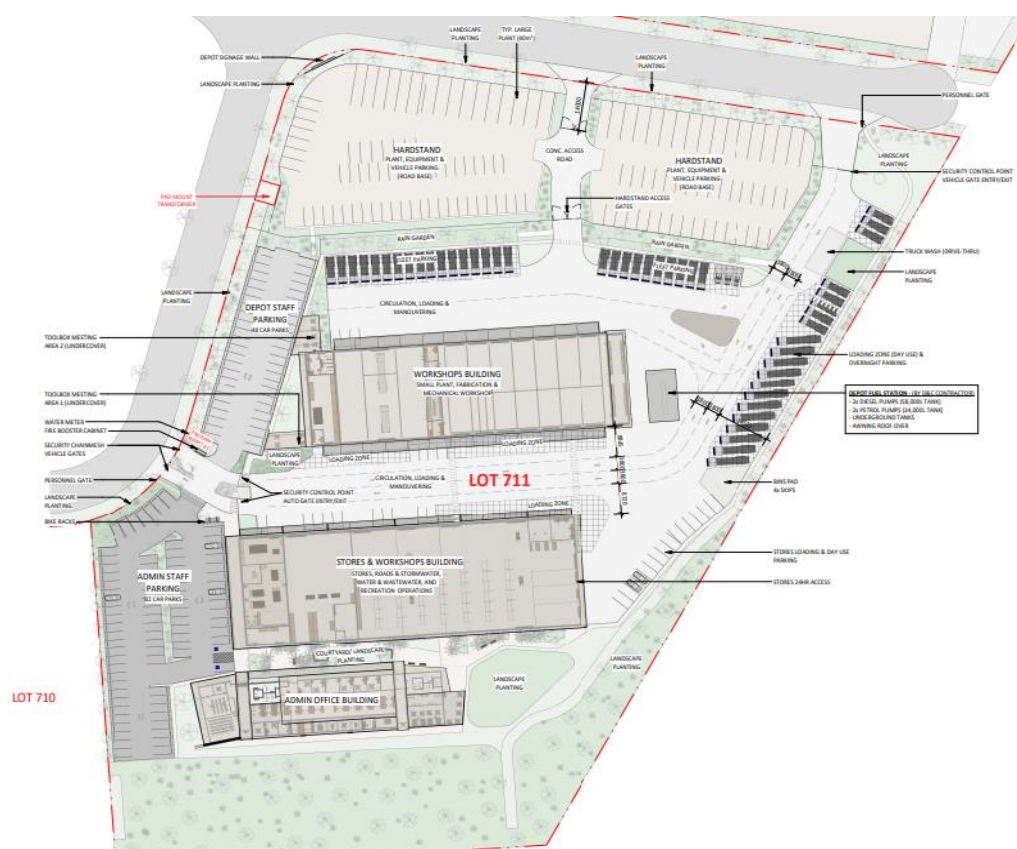
The original application approved a Depot and Public Administration Building and associated signage on Proposed Lot 703 and 711 at No. 208 Lundberg Drive, South Murwillumbah.

Specifically, the proposal involved the following:

Proposed Lot 711:

- Construction and use of two (2) large industrial buildings as a workshop and storage buildings (Depot) and one (1) public administration building;
- Provision of external hard stand storage areas for plant, equipment and vehicle parking;
- Installation of a Depot Fuel Station comprising of underground fuel storage tanks for 2 x Diesel Pumps (58,000L) and 2 x petrol pumps (34,000L) for Council fleet vehicles;
- Admin Staff parking (82 carparking spaces), Depot Staff Parking (48 carparking spaces) and temporary loading zones (overnight parking of Council fleet vehicles) and; and
- Associated landscape embellishment, bin storage area, vehicular and pedestrian accessways and stormwater infrastructure.

Figure 6: Approved Site Plan – Proposed Lot 711



Proposed Lot 703:

- Construction and use of external storage bunkers for bulk landscape materials;

Murwillumbah basin. Whereas, not limiting the post-development flow rates to the pre-development flow rates (deletion of Condition No. 20) is likely to result in a negligible impact on stormwater conditions in the downstream South Murwillumbah basin, which is a better outcome and generally in accordance with Council's policies. Detailed discussion with respect to this is provided later within this report.

The proposal was notified in accordance with the Tweed Shire Council's *Community Participation Plan* from 6 November 2024 until 4 December 2024. During this time one (1) submission was received. The key concern relates to the stormwater flows to the surrounding cane land and union drains and increased flooding. Detail of the issues raised, and Council officers' assessment of these issues is contained later in this report.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the Modification Application is not considered to be:

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided

Note: The original application was submitted as an Integrated Development pursuant to *Water Management Act 2000* (s91 Controlled Activity Approval). In this regard, DPE – Water issued an exemption under cl 41 of *Water Management (General) Regulation 2018* as works were proposed to be undertaken by a Public Authority (Council).

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the *Regulation* are considered below.

(a) Section 4.55(2) Modifications of consent - generally

Section 4.55(2) of the Act provides:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is 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 and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1) and (1A) do not apply to such a modification.*

Pursuant to Section 4.55(2)(a) the consent authority must be satisfied that the development proposed in the modification application is essentially or materially the same as the currently approved development. It is important to note that to satisfy Section 4.55(2)(a), it is a question of fact and not a merit based assessment. The merits based assessment is undertaken under Section 4.15 of the Act and is addressed later in this report.

Having regard to ‘substantially the same’ test, some caselaw is relied upon to determine the nature in which a modification application is to be considered. Firstly, in establishing the function and nature of modification applications generally, *North Sydney Council v Michael Standley & Associates Pty Limited [1998]* is drawn upon to establish that a modification provision as “beneficial and facultative”. It is designed to assist the modification process rather than to act as an impediment to it; “*It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision*”. Therefore, Councils need to exercise caution in demanding that a full DA be lodged – the modification power is there for a reason – namely, to avoid the full DA process that is always otherwise available.

A proposal can only be regarded a modification if it involves “alteration without radical transformation” (*Sydney City Council v Ilenace Pty Ltd [1984]*) and therefore if the proposed changes result in a “radical transformation”, they will need to be dealt with as a new development application, rather than a modification application.

If the proposed modification is doing more than simply correcting minor errors (which is the case for this application), the consent authority must also be “satisfied” that the modified development will be “substantially the same development” as authorised by the original development consent. This means that, among other things, a comparative study of the

proposed modified development against the development as it was originally approved is to be undertaken.

In a 1999 case, *Moto Projects (No 2) Pty Ltd v North Sydney Council*, the Land and Environment Court gave some additional guidance that any comparison involves consideration of quantitative and qualitative elements of the development. In practical terms then, these principles mean that one should:

- Consider the numerical differences in all key aspects of the development;
- Consider non-numerical factors (e.g. in visual impact, traffic impacts or changed land uses);
- Consider any changes relating to a material and essential feature of the approved development. These decisions may not be black-and-white and will often involve some degree of subjectivity. Furthermore, while there are a wealth of cases applying the “substantially the same” test each case is only useful for illustrating how these rules have been applied. As each case turns on its own facts, consent authorities and courts are not necessarily obliged to take the same approach even when confronted with apparently similar factual situations.

In accordance with the *Moto Projects (No 2) Pty Ltd v North Sydney Council* caselaw, in order to consider the qualitative and quantitative elements of the development in the context of the original development, the following is surmised:

The original development incorporates construction of two (2) large industrial buildings as a workshop and storage buildings (Depot), one (1) public administration building; depot fuel station, external hard stand storage areas for plant, equipment; external storage bunkers for bulk landscape materials; emulsion tank to store premixed material, SES storage laydown yard; and associated landscaping, stormwater infrastructure, and parking. The approved development included a maximum building height of 10.505m, gross floor area of 5821.69sqm and floor space ratio (FSR) of 0.11:1. The approved development contravened development standards in relation to maximum permitted height.

The proposed modified development incorporates the same land use (a *depot, General Industry, Public Administration Building and Signage*), number of buildings and height. The location, bulk and scale of each building, parking, landscape areas remain unchanged as a result of the proposed modification.

The proponent has provided the following comments in support of the modified development being substantially the same development as that originally approved:

- The modified proposal to DA22/0793 will not change the land use of Depot, General Industry and Public Administration Building and Signage.
- The amended development will not alter the approved building height, floor space ratio, building footprint and generally site arrangement, as originally approved (**Attachment 2**).
- No additional non-compliances arise with the relevant planning benchmarks are proposed.
- The appearance of the building as viewed from the adjoining streets of Lundberg Drive and Thornbill Drive will be unaltered despite changes to how the development is constructed, managed and maintained.
- No new or additional demands, impacts or changes in characteristics are generated with respect to traffic, noise and visual impacts.
- Overall, the development retains the same essence of use, scale and character.

It is concluded that despite the proposed modification sought, the development will remain substantially the same development as the development for which consent was originally granted.

Council officers concur that the proposed modification is ‘substantially the same’, as it is quantitatively and qualitatively the same development by virtue of the modified development fundamentally retaining the same characteristics and outcomes.

The Modification Application was not required to be referred to any public authority or approval body pursuant to Section 4.55(2)(b).

Section 4.55(2)(c) - The proposal was notified in accordance with the Tweed Shire Council’s *Community Participation Plan* from 6 November 2024 until 4 December 2024. During this time one (1) submission was received.

Section 4.55(2)(d) - The key concern relates to the stormwater flows to the surrounding cane land and union drains and increased flooding. Detail of the issues raised, and Council officers’ assessment of these issues is contained later in this report.

(b) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*;
- *State Environmental Planning Policy (Industry and Employment) 2021*;
- *State Environmental Planning Policy (Planning Systems) 2021*;
- *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*; and
- *Tweed Local Environmental Plan 2014*.

A summary of the key matters for consideration arising from the above-mentioned State Environmental Planning Policies are outlined in **Table 1** and considered in more detail below.

Table 1: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Original DA Comply (Y/N/NA)	Modified Proposal Comply (Y/N/NA)
<i>State Environmental Planning Policy (Biodiversity & Conservation) 2021</i>	Chapter 2: Vegetation in non-rural areas The proposed modification does not include removal of any additional vegetation, beyond what was originally approved.	Y	Y
<i>State Environmental Planning Policy (Industry and Employment) 2021</i>	Chapter 3: Advertising and Signage The proposed modification does not include any additional signage, beyond two (2) business identification signs as originally approved.	Y	Y
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	Chapter 2: State and Regional Development • Section 2.19(1) declared the development as regionally significant development pursuant to Clause 3 of Schedule 6 as it comprised Council	Y	Y

	<p>related development with a capital value of over more than \$5 million.</p> <p>This aspect of the original proposal remains unchanged as a result of the modification.</p>		
<i>SEPP (Resilience & Hazards)</i>	<p>Chapter 3: Hazardous and Offensive Development</p> <p>The original assessment concluded that the proposal was not potentially hazardous or offensive development.</p> <p>Chapter 4: Remediation of Land</p> <p>Section 4.6 - Contamination and remediation were addressed in the original DA.</p> <p>This aspect of the original proposal and the site remains unchanged as a result of the modification</p>	<p>NA</p> <p>Y</p>	<p>NA</p> <p>Y</p>
<i>Tweed Local Environmental Plan 2014</i>	• Clause 1.2 – Aims of the Plan	Y	Y
	• Clause 2.3 – Zone objectives and Land Use Table	Y	Y
	• Clause 4.3 – Height of buildings	N	N (no change)
	• Clause 4.4- Floor Space Ratio	NA	NA
	• Clause 4.6 – Exceptions to development standards	Y	NA*
	• Clause 5.21 – Flood Planning	Y	Y
	• Clause 6.10 – Flood Planning	Y	Y
	• Clause 7.1- Acid Sulfate Soils	Y	Y
	• Clause 7.2 – Earthworks	Y	Y
	• Clause 7.6- Stormwater Management	Y	Y
	• Clause 7.8A – Airspace Operations – Murwillumbah Airfield	Y	Y
	• Clause 7.10 – Essential Services	Y	Y
<i>Tweed Development Control Plan 2008</i>	• Section A2 – Site Access and Parking Code	Y	Y
	• Section A3 – Development of Flood Liable Land	Y	Y**
<i>Tweed Development Control Plan 2008 (continued)</i>	• Section A4 – Advertising Signs Code	Y	Y
	• Section A15 – Waste Minimisation and Management	Y	Y

	<ul style="list-style-type: none"> Section A16 – Preservation of Trees or Vegetation 	Y	Y
	<ul style="list-style-type: none"> Section A17 – Business Enterprise Corridor and General Industrial 	Y	Y
	<ul style="list-style-type: none"> Section A19 – Biodiversity and Habitat Management 	Y	Y

**Consent pursuant to Clause 4.6 of TLEP 2014 has been granted under the original DA and therefore further assessment under this Clause is not warranted under a modification application. Rather an assessment against Section 4.55(2) of the Act (substantially the same development test)*

***Review of the DCP indicates that the proposal continues to comply with development controls under Section A3. Further discussion of this is contained later in this report.*

Consideration of the relevant *SEPPs* is outlined below.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3: Advertising and Signage

This chapter applies to advertising and Signage.

Clause 3.1 outlines the following aims:

- (i) Compatible with the desired amenity and visual character of the area;
- (ii) Provide effective communication in suitable locations;
- (iii) Signage should be of high quality design and finish.

The proposal included the provision of two (2) main building identification signs as part of the development application. One sign was provided on the corner of the local roads to identify the building. The second signage was provided on the western façade of the 'stores & workshop building', which is located adjacent to the entrance of the facility. This sign on the western façade created an 'entrance presence' and also demarcated the entrance to ensure it was clear and legible.

In addition to these two (2) main signage, the proposal included building signage on the western elevation of the 'workshops building' and numbering on the roller doors of this building. Similarly, the 'stores & workshops' building included signs on the roller doors which provided information. All signs were non-illuminated.

The signs were considered compatible with the desired amenity, and did not adversely impact the visual character of the locality. The signage was considered to provide effective communication in suitable locations. The signs were considered suitable for the location and character of the area and were not considered to impact the safety of road users.

The signage was assessed to be generally consistent with the intent and objectives of Schedule 5 – Assessment Criteria of the *SEPP*.

The Modification Application does not propose any new signage or changes to the approved signage. The consent authority can therefore be satisfied that the subject modification application remains consistent with the intent and objectives of Schedule 5 – Assessment Criteria of the *SEPP*.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The original proposal was deemed *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 3 of Schedule 6 of the *Planning Systems SEPP* as the proposal was development for Council related development over \$5 million. Accordingly, the Northern Regional Planning Panel (NRPP) was the consent authority for the application.

The original proposal included a Clause 4.6 variation request for variation to the height of building development standard. The submitted Clause 4.6 variation request was considered to be satisfactory. It adequately demonstrated that, despite the numerical non-compliance, the proposed development was in the public interest as it was considered consistent with the objectives of the height of building development standard and the objectives for development within the E4 General Industrial zone.

Given the proposal forms regionally significant development and was originally consented to pursuant to Clause 275(2) of the *Environmental Planning & Assessment Regulation 2021*, the “*Instruction on functions exercisable by Council on behalf of Sydney District or Regional Planning Panels – applications to modify development consents*” sets out the following in terms of Instructions when a Council is not to determine an application under Section 4.55(2) of the Act (**emphasis added**):

- *proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or*
- *proposes amendments to a condition of development consent that was not included in the council assessment report, but which was added by the panel, or*
- ***meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.***

Pursuant to Item 1 of Schedule 1, development for which the applicant or landowner is Council, cannot be determined by Council. The land owner of the subject site remains Council (Tweed Shire Council). The proposed modification is therefore required to be determined by NRPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3: Hazardous and Offensive Development

The Statement of Environmental Effects (SEE) for the original application included a preliminary assessment of the proposal having regard to the definitions of potentially hazardous and potentially offensive industry. The submitted SEE outlined the developments performance against the matters for consideration under this Chapter of the *SEPP*.

The SEE identified that an emulsion tank was included in the proposed development. The tank was proposed to be in the northwest portion of Proposed Lot 703 and included a 15,000 litre (5.3 tonnes) bunded holding tank (not plant) for usage up to 45,000 litres annual (15.89 tonnes). The original application noted that an external contractor would deliver the pre-mixed (produced off site) bitumen via the passenger side of a semi-trailer tanker to the Emulsion tank at Proposed Lot 703.

The premixed material would be placed into the 15,000 litre Emulsion tank. The bitumen would be emptied into Councils patching trucks and then used offsite for construction and/or repair of roads and other Councils assets, as needed. It was noted that the primary function of this tank was to store the premixed bitumen material.

The SEE also nominated 1,000 litre (0.35 tonnes) intermediate bulk container (IBC) was also proposed for the storage of kerosene. The IBC was proposed to be located within the bunded area and utilised by the same patching trucks.

The SEE detailed a multi-level assessment diagram and analysed the various dangerous goods to be stored onsite (pursuant to “*Applying SEPP 33*” Guideline (January 2011) issued by NSW Department of Planning) which confirmed that the original application did not require a Preliminary Hazard Assessment (PHA).

The submitted analysis was based on the location of goods stored on site, type of material, its classification and the quantity of goods being stored (as referred in **Table 2** below for a summary of goods that qualified this conclusion).

Table 2: Summary of goods stored on site

AREA	MATERIAL	DG CLASS	LITRE
1.1	Diesel	C1	58,000 L
1.2	Diesel	C1	58,000 L
2.1	Petrol	3 - II	34,000 L
2.2	Petrol	3 - II	34,000 L
3	Bitumen emulsion	Se below*	45,000 L

*<https://roads-waterways.transport.nsw.gov.au/safety/work-health-safety/documents/procedure-pn066p21.pdf>. The emulsion plant is not located near the UPPS. The separation distance with any other development are significant, therefore this does not made the development hazardous.

The original approval includes conditions of consent to the ensure that the storage of hazardous and/or dangerous goods are appropriately distanced from stormwater drains. Additionally, conditions of consent ensure that the commissioning and use of the Underground Storage Petroleum Systems (UPSS) accord the *Protection of Environmental Operations (Underground Petroleum Storage Systems) Regulation 2014* or any other relevant NSW legislation and guidelines that would apply over time.

The modification application does not propose any changes in this respect. Subject to compliance with recommended conditions of consent, the proposed modification will continue to perform against the aims and objectives of Chapter 3 of the *SEPP*.

Chapter 4: Remediation of Land

Clause 4.6(1) of Chapter 4 (Remediation of Land) outlines that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation), for the purpose for which development is proposed to be carried out. It further states that if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

This matter was considered and addressed in the original application in order for the consent to be granted, the following was noted:

An examination of the available data records and aerial photos for the years 1962, 1970, 1982, 1996 did not reveal any identifiable potentially contaminating activities, or agricultural activities that occurred on the site. Search of Council's records and mapping indicated that

there were no dip-sites in the immediate area or within 200 metres of the development site. The closest dip site was located over 1 kilometre away.

The previous approval for subdivision and bulk earthworks was granted on 3 March 2004 (DA02/1685). This consent (as modified on 29 March 2021) included substantial earthworks in the vicinity of 1.5 million cubic metres of cut and fill with depths up to 10 metres. Any soil disturbance on the site as part of the original consent and any subsequent modifications were appropriately managed in accordance with the approved "*Acid Sulfate Soil and Groundwater Management Plan Proposed Industrial Park Development Lot 31 DP133404 Wardrop Valley Road Wardrop Valley NSW*" dated November 2003, prepared by Maiden Geotechnics (as required by Condition 44 of DA02/1685.27).

A photographic examination confirmed that in 2016, part of the site was used to store gravel for the construction of the road. However, no other activities were undertaken from the site. As such, based on the historic use, previous consent for the industrial subdivision and earthworks for the creation of the proposed lots, the subject site (which was vacant) was considered suitable for the development. Based on this, the original proposal satisfied the Section 4.6(1) of the *Resilience and Hazards SEPP*.

The modification application does not propose any changes in this respect, and therefore further consideration under Clause 4.6(1) is not required.

Tweed Local Environmental Plan 2014

The relevant local environmental plan applying to the site is the *Tweed Local Environmental Plan 2014* ('*TLEP*'). The aims of the *TLEP* include:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) *to encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) *to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*

- (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed modification remains consistent with the aims of the plan as it continues to deliver critical infrastructure for the sustainable management of its local community. The proposed modification continues to secure improved management outcomes for existing Council depot operations and therefore safeguarding the civil functions of its community without compromising principles of ecologically sustainable development or the special protection of habitat for the recovery of the Tweed coastal koala. The proposal provides for a contemporary depot facility that will allow for the future growth and expansion of the region and the service deliverables associated with that growth now and in the future. The overall building design and site planning which incorporates elements capable of being adapted for a sustainable future, remain unchanged.

Zoning and Permissibility (Part 2)

The site is located within the E4 – General Industrial zone pursuant to Clause 2.2 of the *TLEP 2014*.

The proposed modification does not affect the approved land use of the site as a *depot, General Industry, Public Administration Building* and associated *Signage*, which remain permissible uses with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable land uses that provide facilities or services to meet the day to day needs of workers in the area.*

The proposal, as originally approved, continues to be consistent with these zone objectives for the following reasons:

- The land uses remain permissible in the zone and conducive to the range of expected land uses in the E4 zone;
- The proposal, as originally approved, has been designed to cater for future growth of the region and additional employment opportunities at the Council Depot and Public Administration Building and;
- The subject site contains the appropriate infrastructure to support the proposal and minimise impact on other land uses.

Aside from the already approved variation to the height of building (which the amended proposal does not seek to change), the proposed modification is considered to be generally consistent with the *TLEP 2014*.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The *TLEP* 2014 also contains controls relating to development standards, miscellaneous provisions, and local provisions. The controls relevant to the proposal are considered in **Table 3** below.

Table 3: Consideration of the *TLEP* 2014 Controls

Control	Requirement	Original Approval	Proposed Modification	Comply
Height of buildings (CI 4.3(2))	10 metres	10.505m (5% exceedance)	No change to variation approved under this mod	No
FSR (CI 4.4(2))	NIL	0.11:1	No change	Yes
Variation Request (CI 4.6)	Seek variation to Clause 4.3	Written Clause 4.6 request provided	N/A consent granted.	Yes
Heritage (CI 5.10)	Complies with CI 5.10(2) and CI 5.10(3)	The application was referred to Tweed Byron Aboriginal Land Council (TBALC) As such, no objection was raised to the proposed on the grounds of ACH subject to recommended standard conditions of consent in relation to stop work procedure be applied if ACH is encountered during course of the works.	No change	Yes
Flood planning (CI 5.21)	Complies with CI 5.21(2) and CI 5.21(3)	<p>The subject is affected by a Design Flood Level (DFL) of RL 5.5m AHD with a low flow area to the southern extent of Proposed Lot 711.</p> <p>Proposed Lot 711 is affected by a PMF of RL 10.9m AHD. Proposed Lot 703 free of any flood affectation.</p> <p>Site was filled to 6.7m AHD (Subdivision approval DA02/1685.27). Proposed finished floor level (FFL) of RL 9.8m AHD – RL 9.9m AHD well above the 1% AEP.</p>	The site is predicted to experience only shallow flooding, on its southern half, during a Probable Maximum Flood event. Therefore, its exposure to flooding is very low. Flood function is typically considered in the context of the “Designated Flood” or 1% AEP, which in this case does not affect the development site (Proposed Lots 711 & 703). This site is already filled to near PMF level. No significant further filling is proposed.	Yes (refer to further discussion below)

		<p>A laydown area was provided for SES in case of a flooding event.</p> <p>Revised Concept Stormwater Management Plan was acceptable subject to conditions.</p>	<p>Therefore, the proposal will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties.</p>	
Control	Requirement	Original Approval	Proposed Modification	Comply
Acid sulphate soils (ASS) (CI 7.1)	<p>Class 3: Works more than 1 metre below the natural ground surface. Works by which the water table is likely to be lowered more than 1 metre below the natural ground surface.</p> <p>Class 5: Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p>	<p>The Subdivision works (DA02/1685.27), included filling.</p> <p>Excavation to facilitate building footings, establishment of rain gardens, and the installation of fuel tanks (Underground Petroleum Storage System (UPSS)). These excavation works did not extend beyond the filling level and therefore did not require an Acid Sulfate Soil Management Plan.</p>	<p>No change to previously approved excavation works.</p>	Yes
Earthworks (CI 7.2)	Complies with CI 7.2(3)	<p>The proposal included earthworks to facilitate the proposed buildings, excavation for the proposed fuel storage tanks and raingardens/ landscaping works.</p> <p>Earthworks would not intercept Acid Sulfate Soils given the extent of previous filling (capping) of the land (up to 10m).</p> <p>Acceptable impact on the drainage pattern.</p>	<p>No change to previously approved earthworks.</p>	Yes

Control	Requirement	Original Approval	Proposed Modification	Comply
Stormwater Management (CI 7.6)	Complies with CI 7.2(3)	<p>The legal point of discharge for the subject land is via drainage reserve (Lot 518 DP 1132400), located to the south-west of the site. It functions as a stormwater quality treatment basin, operational since 2008.</p> <p>Stormwater connection into the existing road network (Proposed Lot 703) or into drainage reserve (Proposed Lot 711).</p> <p>Water sensitive urban design (WSUD) measures included.</p> <p>Compliance with Councils Specification D7 – Stormwater Quality could be achieved.</p> <p>Conditions of consent included for a detailed Stormwater Plan prior to CC/s68.</p>	<p>Deletion of Condition No. 20 which requires peak stormwater discharge (post-development flows) to be limited pre-development flows rates.</p> <p>No change</p>	Yes (refer to further discussion below)
Airspace Operations – Murwillumbah Airfield (CI 7.8A)	Limitation Surface RL 47m AHD	Maximum RL of 20.4m AHD well below the OLS for the site.	No change	Yes
Essential Services (CI 7.10)	(a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	<p>The site vacant, essential services provided via completion of subdivision works (DA02/1685.27).</p> <p>Condition included (32) that no approved works to commence until all public infrastructure work in accordance with the Subdivision Works Certificate</p>	Subdivision works in accordance with DA02/1685.27 are now completed.	Yes

Clause 5.21 Flood planning

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

(a) to minimise the flood risk to life and property associated with the use of land,

The subject lot is predicted to experience only shallow flooding, on its southern half, during a Probable Maximum Flood event. Therefore, its exposure to flooding is very low. Flood function is typically considered in the context of the “Designated Flood” or 1% AEP, which in this case does not affect the proposed development. Therefore, the proposal is compatible with the flood function and behaviour of the land. Furthermore, the current application proposes deletion of condition 20, which is considered irrelevant to the (riverine) flood function and behaviour on the land.

(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and

This site is already filled to near PMF level. The site does not suffer any through-flow in any modelled design event with only shallow fringe storage in a probable maximum flood. The current application does not propose filling. Therefore, the amended proposal will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties.

Furthermore, the current application proposes the deletion of condition 20, which is considered to be irrelevant to the site landform and structures (Underground OSD tanks likely) which determine the proposal’s effect on flood behaviour.

The potential impact of stormwater runoff from the site, in the local stormwater flood affectation of other development or properties, is considered under Cl. 7.6 – Stormwater Management.

(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

The approved development is not for a habitable purpose and will only be occupied during work hours, providing adequate time for workers to evacuate site. The proposal therefore will not have any impact on the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood. It should also be noted that part of the site, and much of the surrounding area, is above Probable Maximum Flood level and therefore flood free (immune to all flooding)

Furthermore, the current application for the deletion of condition 20 which is not relevant to the safe occupation or efficient evacuation of the wider depot.

(d) incorporates appropriate measures to manage risk to life in the event of a flood, and

The subject development is not for a habitable purpose, it will only be occupied during work hours and therefore does not pose any flood risk to life. As noted above, part of the site, and much of the surrounding area, is above Probable Maximum Flood level and therefore flood free (immune to all flooding)

(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

This site is already filled to near PMF level. The site does not suffer any through-flow in any modelled design event with only shallow fringe storage in a probable maximum flood. Therefore, the current proposal will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

The potential impact of stormwater runoff from the site, in the local stormwater flood affection of other development or properties, is considered under Cl. 7.6 – Stormwater Management.

The proposal remains consistent with the relevant provisions of Clause 5.21, notwithstanding the proposed deletion of Condition No. 20.

Response: Detailed assessment of the current proposal is outlined previously within this report, Clauses 5.21, 5.22 and 6.10 are discussed below:

Clause 7.6 Stormwater management

(2) This clause applies to all land in residential and employment zones.

The subject site is zoned E4 General Industrial (employment), and therefore the clause applies.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

The approved proposal is for a depot and public administration building, which requires extensive impervious roofs, hardstand areas for heavy vehicle movements, and associated activities. The underlying soil material is known to be generally clay-based and of low permeability. Therefore, scope for the use of water permeable surfaces and infiltration is considered limited at this site.

Nevertheless, the concept Stormwater Management Plan (SWMP) incorporates rainwater harvesting, bioretention (raingardens) and wicking beds. The concept SWMP submitted for the original application was considered acceptable. The following condition (condition 18) is included in the original approval (DA22/0793):

18. Permanent stormwater quality treatment shall be provided in accordance with the following to the satisfaction of Council's General Manager or his delegate:
- (a) The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.B2 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with Councils *Development Design Specification D7 - Stormwater Quality*.
 - (c) The stormwater and site works shall incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.
 - (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - i) Bioretention basins/swales/rain gardens shall be designed in accordance with Water by Design's Waterwise Street Trees and Bioretention Technical Design Guidelines.
 - ii) Detailed design of vegetated stormwater treatment devices shall be submitted to Council with a section 68 Stormwater Drainage Works Application
 - iii) The section 68 Stormwater Drainage Works Application shall include a maintenance plan for all vegetated stormwater quality treatment systems.

[PCC1105]

The Modification Application does not seek any amendment to the previously approved water permeable surfaces.

In noting the above, deletion of Condition No. 20 does not negate compliance with the Stormwater Management. A detailed Stormwater Management Plan, prepared in accordance with Councils Design Specification D7 – Stormwater Quality is required to be submitted as part of a Construction Certificate Application.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

The stormwater management plan (as required to be finalised for Construction Certificate) incorporates 10 x 5 KL rainwater harvesting tanks for non-potable reuse.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

For frequent storm events, the proposal will incorporate a stormwater management plan that will comply with Council's Development Design Specification D7 – Stormwater Quality. The proposal is therefore deemed to have minimised and mitigated potential stormwater impacts to an acceptable level.

In addition to this, the Industry Central subdivision is equipped with precinct scale constructed wetlands which further mitigates potential adverse stormwater impacts downstream.

For infrequent events, the Hydraulic Assessment provided has demonstrated, to a sufficient level of certainty, that the proposal will avoid any significant adverse impact on adjoining properties, notwithstanding deletion of Condition No. 20.

Overall, the amended proposal remains generally consistent with the relevant provisions of *TLEP 2014*.

(c) Section 4.15(1)(a)(ii) - Provisions of any Proposed Instruments

There are no draft *SEPP*'s or *LEP*'s that apply to the current proposal.

(d) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following *Development Control Plan* is relevant to this application:

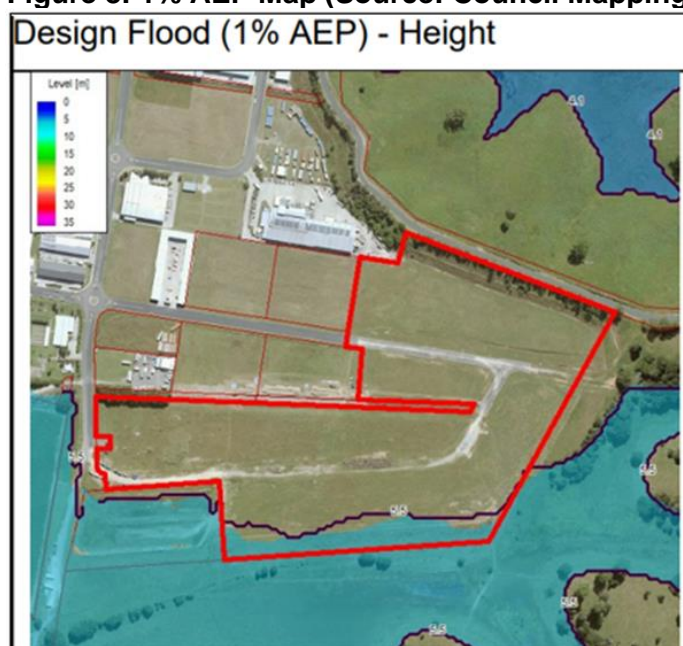
Tweed Development Control Plan 2008 (TDCP) applies to the site.

The assessment of the original application included a comprehensive assessment of the proposal against relevant chapters of the *Tweed DCP*, a brief summary is noted below. It is noteworthy that the proposed modification proposes deletion of Condition No. 20, no other amendments are proposed as such. Accordingly, a detailed assessment under the various Sections of the *TDCP* is not warranted, other than Section A3 of *TDCP*.

Section A3 – Development of Flood Liable Land

A small portion of the land along the southern boundary is affected by 'low flow' 1% AEP flood, the remainder of the land is above the 1% AEP of 5.5 metre AHD, as reflected below:

Figure 8: 1% AEP Map (Source: Council Mapping)



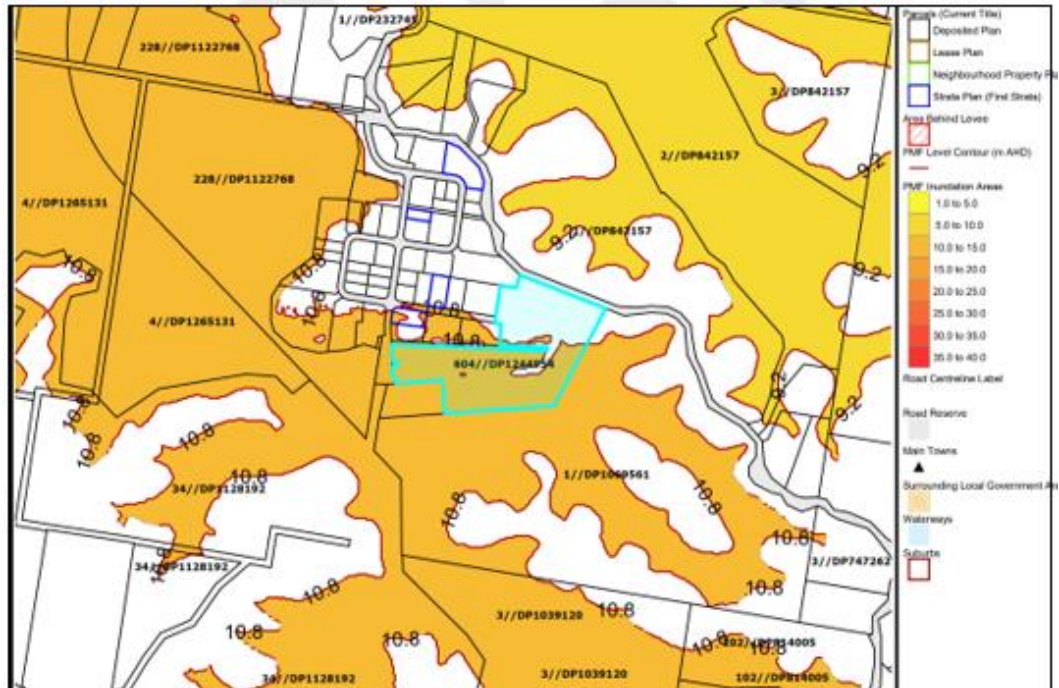
In noting the above, the floor level controls considered were as follows:

- Design Flood Level (DFL)(1 % AEP flood) = 5.5 metre AHD
- Flood Planning Level / Minimum Habitable Floor Level = 6.0 metre AHD
- Probable Maximum Flood (PMF) = 10.9 metre AHD

It was further noted that except for a small portion of the land along the southern boundary which was affected by 'low flow' 1% AEP flood, the remainder of the land was above the 1% AEP of 5.5 metre AHD.

The majority of the Proposed Lot 711 was noted to be affected by a PMF of 10.9 metre AHD (see below). However, Proposed Lot 703 was noted as free of any flood affectation.

Figure 9: PMF Map (Source: Council Mapping)



The finished floor levels were between 9.8 to 9.9 metre AHD, which were above the minimum design flood level of 6 metre AHD.

The land was noted as not affected by high flow area or high flood hazard areas and therefore Section A3.8 of *TDCP* applied to the proposal. In particular, Section A3.8.4 commercial and industrial development requires to make adequate provision for flood free storage areas for stock and equipment susceptible to water damage. In this instance, such was provided over the entire area of Proposed Lot 703.

Based on the flood affectations of the site, the flooding considerations, and the land uses occurring on the land, the design of the original proposal was considered to be compatible with the flood risk of the land now and in the future (when planning for climate change) and therefore the original development noted to exceed the minimum requirements of Section A3 of the *TDCP 2008*.

The current modification does not seek to change the approved design, land use or finished floor levels. The extent of flood affectation and the floor level controls, as noted in the original assessment remain unchanged. The proposal is therefore considered to remain compatible with the flood risk of the land.

(e) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the *EP&A Act*

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(f) Section 4.15(1)(a)(iv) - Provisions of Regulations

The application to modify the development consent was notified in accordance with the *EP&A Regulation 2021*.

The proposed application seeks deletion of a condition, which is considered to have no material impact on the matters prescribed by the *EP&A Regulation 2021*.

(g) Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the modifications to the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to *SEPPs*, *LEP* and *DCP* controls outlined above.

Environmental Impacts

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The amendment to the proposal satisfies the “substantially the same development” test and for this reason is considered to adequately perform against the original matters for consideration in relation to context and settings.
- Flood Impacts – As discussed previously in this report, part of the subject site is affected by flooding. The proposed modification adequately caters for the land use in terms of its ability to provide appropriate flood refuge for relevant flood events. As such, the consent authority can be satisfied the proposed modification does not pose any additional risk to life of property as a result of flooding impacts.
- Impact on adjoining land – Sugar cane farm is located downstream of the development site, which is part of a previously approved Industrial Estate.

Stormwater from the approved subdivision (DA02/1685) drains into the Lot 518 DP 1132400 drainage reserve, which mainly functions as a stormwater quality treatment basin. The drainage reserve has been operational since 2008. Lot 518 is located to the south-west of the proposed development, as shown below:

Figure 10: Lot 518 DP 1132400 Drainage Reserve



The approved stormwater drainage (Section 68 application SWD05/0112, as approved on 17 March 2005) includes a preliminary pit and pipe system draining to Lot 518 DP 1132400. Additionally, the perimeter and batter drain encapsulate the entire subdivision, as shown below:

During the assessment of the original DA a comprehensive, local catchment scale, hydraulic assessment was not available to demonstrate the potential stormwater impacts on downstream land. Therefore, a condition of consent requiring post development flows to be limited to the pre development flows was included (Condition No. 20).

- the impact of the proposed depot, 'with' and 'without' Onsite detention
- the impact of full development of the "Industry Central" subdivision, with and without onsite detention (with and without conditions similar to condition 20 applied to all future developments)

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The independent assessment undertaken by the hydraulic consultant considers alternatives to OSD to satisfy Condition No. 20 and finds all of these to either unreasonable (e.g. reducing footprint) or redundant with no actual benefit gained.

(h) Section 4.15(1)(c) - Suitability of the site

Having regard to the merit considerations of the proposed change and the developments demonstrated positive performance against relevant development standards, the subject site remains suitable for the development.

The site remains suitable for the development given the approved proposal is for a depot, public administration building and general industrial land use in an existing industrial estate. The site is zoned E4 - General Industrial and has been subsequently subdivided to create additional lots to contemplate uses such as the approved development. The amended proposal continues accords with the relevant objectives of the E4 - General Industrial zone.

The adjoining rural land is mapped as Regionally Significant Farmland. Notwithstanding this, an analysis of historical aerial photography indicates that the land has not supported any higher order cropping or horticultural pursuits. The land has been utilised predominantly for intermittent grazing purposes, which appears to be the case presently. The site therefore is not considered to fragment the surrounding area mapped as Regionally Significant Farmland.

The site remains capable of providing all essential services and associated infrastructure necessary to carry out the development, as originally approved. The site is mapped as bushfire prone land, which was considered by the NSW RFS and was considered satisfactory subject to conditions (DA22/0793).

The site attributes remain conducive to the development as approved, in that the proposal, as amended will provide additional uses and facilities within the existing Industrial Estate. There are not any adjoining uses which are prohibitive of the proposal.

(i) Section 4.15(1)(d) - Public Submissions

The proposal was notified in accordance with the Tweed Shire Council's *Community Participation Plan* from 6 November 2024 until 4 December 2024. During this time one (1) submission was received.

The detail of the issues of concern raised on the submission and Council Officer's response is contained in below:

Issue Raised

Planning controls require Condition 20

The Tweed Local Environmental Plan 2014 (NSW) (Tweed LEP) contains planning controls which apply to the Site and imposes preconditions to the consent authority's ability to grant development consent. In particular, the controls under the Tweed LEP aim to avoid adverse or cumulative impacts on flood behaviour and the environment and to minimise the impacts of urban stormwater on adjoining properties

As such, deletion of Condition 20 would result in the development no longer meeting the objectives of the Tweed LEP, i.e. to avoid adverse or cumulative impacts on flood behaviour and the environment and to minimise the impacts of urban stormwater on adjoining properties

Section 4.55(3) of the EP&A Act provides the relevant matters to be considered by a consent authority during the determination of a modification of a consent: 4.55

Response: Detailed assessment of the current proposal is outlined previously within this report,

Clause 5.21 – refer to assessment under the heading of *TLEP 2014*.

Clause 5.22 Special flood considerations

(2) This clause applies to—

(a) for sensitive and hazardous development—land between the flood planning area and the probable maximum flood, and

The Probable Maximum Flood only predicted to cause shallow inundation of the southern half of the site, therefore entirety of the site is not impacted. The site does not experience through flow in any event and therefore will not adversely affect the environment in the event of a flood. Proposed deletion of condition 20 does not change this.

The subject development is not considered sensitive or hazardous development.

Clause 7.6 Stormwater management - refer to assessment under the heading of *TLEP 2014*.

The approved proposal is for a depot and public administration building, which requires extensive impervious roofs, hardstand areas for heavy vehicle movements, and associated activities. The underlying soil material is known to be generally clay-based and of low permeability. Therefore, scope for the use of water permeable surfaces and infiltration is considered limited at this site.

Nevertheless, the concept Stormwater Management Plan (SWMP) incorporates rainwater harvesting, bioretention (raingardens) and wicking beds. The concept SWMP submitted for the original application was considered acceptable. The following condition (condition 18) is included in the original approval (DA22/0793):

18. Permanent stormwater quality treatment shall be provided in accordance with the following to the satisfaction of Council's General Manager or his delegate:
 - (a) The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.B2 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with Councils *Development Design Specification D7 - Stormwater Quality*.
 - (c) The stormwater and site works shall incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.
 - (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - i) Bioretention basins/swales/rain gardens shall be designed in accordance with Water by Design's *Waterwise Street Trees and Bioretention Technical Design Guidelines*.
 - ii) Detailed design of vegetated stormwater treatment devices shall be submitted to Council with a section 68 Stormwater Drainage Works Application
 - iii) The section 68 Stormwater Drainage Works Application shall include a maintenance plan for all vegetated stormwater quality treatment systems.

[PCC1105]

In noting the above, deletion of condition 20 does not negate compliance with the Stormwater Management. A detailed Stormwater Management Plan, prepared in accordance with Councils *Design Specification D7 – Stormwater Quality* is required to be submitted as part of a Construction Certificate Application.

The stormwater management plan (as required to be finalised for Construction Certificate) incorporates 10 x 5 KL rainwater harvesting tanks for non-potable reuse.

For frequent storm events, the proposal will incorporate a stormwater management plan that will comply with Council's Development Design Specification D7 – Stormwater Quality. The proposal is therefore deemed to have minimised and mitigated potential stormwater impacts to an acceptable level.

In addition to this, the Industry Central subdivision is equipped with precinct scale constructed wetlands which further mitigates potential adverse stormwater impacts downstream.

For infrequent events, the Hydraulic Assessment provided has demonstrated, to a sufficient level of certainty, that the proposal will avoid any significant adverse impact on adjoining properties, notwithstanding deletion of condition 20.

Issue Raised

The development will lead to increases in peak discharge which will impact Fochelong.

Condition 20 was imposed to control stormwater runoff leaving the Site so that there would be no stormwater or flood related impacts on downstream adjoining land, environment and water bodies. The ADG Report and HIA demonstrate that, absent any mitigation measures, there will be an increase in stormwater flows from pre-development flow rates.

Therefore, deletion of Condition 20 is not justified as it has not been demonstrated that there will be 'negligible' downstream impacts as a result of the increased stormwater flows.

Response

Conditions requiring stormwater flow rates to be maintained to pre-development levels are commonly imposed on developments which have the potential to result in adverse downstream impacts due to increases in impervious areas and corresponding increases in runoff rates.

Condition 20 was included in the original approval (DA22/0793) because the stormwater information available at that time was not sufficient to satisfy some of the concerns with respect to impact on downstream land. Therefore, in the absence of a broader and more comprehensive analysis, Condition 20 was included as a way to ensure compliance with Council development stormwater policies.

The Hydraulic Assessment (HA) included with the subject modification application provides a more comprehensive, detailed, analysis of the local catchment stormwater behaviour. The HA demonstrates that to proceed with the currently approved depot (with retention of Condition 20 and use of OSD to satisfy the same) will result in some minor but significant negative stormwater impacts in the downstream South Murwillumbah basin. Whereas deletion of Condition 20 will result in a negligible impact on stormwater conditions in the downstream South Murwillumbah basin. Therefore, the proposed modification is considered to be a better outcome that is compliant with Council's development policies.

Given the demonstrated absence of adverse impact in infrequent storm events, and compliance with Development Design Specification D7 – Stormwater Quality for more frequent storms, deletion of condition 20 is justified.

Issue Raised

Deletion of Condition 20 is inappropriate regardless of the effectiveness of OSDs

Condition 20 does not require the OSDs to be implemented. The discussion of the rationale for Condition 20 in the Peer Review Report makes clear that Condition 20 does not require the construction of OSDs. Rather, OSDs were considered to be one method of achieving the

outcome under Condition 20, but not the only option to achieve this and as such were not specifically required as a condition of consent.

Condition 20 requires post-development flows to be limited to pre-development levels and does not specify the method by which this is to be achieved.

For example, as outlined in the Martens report, other options for complying with Condition 20 include a reduced development footprint, roughened overland flow paths, additional swales or bioretention systems, on-site infiltration, stormwater harvesting, storage and re-use, and permeable pavements.

A preferred option for managing peak flood levels would be to modify the unnamed watercourse and Condong Creek channel capacity to provide better flow connectivity to the Tweed River.

Response

As noted above, hydraulic assessment was not available prior to determination of the original application. Therefore, a condition of consent requiring no worsening of site hydrology was applied (Condition 20).

The condition was worded to provide flexibility to the applicant as to what measures could be employed to achieve the objective of the condition. However, typically, onsite detention is adopted as the primary method to achieve compliance with such requirements.

The submission is supported by expert peer review prepared by Martens. The peer review outlines concern but disregards the fact that the proposal integrates extensive water sensitive stormwater management measures into the development (in addition to the precinct scale constructed wetlands).

The stormwater management is required to comply with Council's Development Design Specification D7 – Stormwater Quality (Condition 18) and is therefore deemed to minimise and mitigate the potential for adverse downstream stormwater impact to an acceptable level, as required by Clause 7.6 of *Tweed Local Environmental Plan 2014*.

It is generally not possible to completely and absolutely avoid any and all stormwater impact resulting from developments. Council's policy settings are geared towards minimising and mitigating these impacts to an acceptable level (see LEP Clause 7.6). What is considered "acceptable" is defined by Council's DCPs and Development Design Specifications.

Council's policy with respect to acceptable mitigation of the risk of "land erosion, soil water logging, creek erosion, water pollution and damages to crops" due to stormwater is contained in Development Design Specifications D7 – Stormwater Quality and D5 – Stormwater Drainage Design.

The approved development incorporates Water Sensitive Urban Design measures which are outlined in the (preliminary, DA level) Stormwater Management Plan (SWMP) as prepared by E2DesignLab submitted with the original DA and again under this modification application. The SWMP includes 50KLs of roof rainwater harvesting, various raingardens, and a wicking bed. Whilst this SWMP is conceptual at this stage, it is considered to accord with Development Design Specification D7 – Stormwater Quality.

Development Design Specification D7 – Stormwater Quality also contains a "Waterway Stability Objective" (section D7.07A.5) which aims to mitigate the risk of erosion or similar damage to downstream, unlined, channels. Where bioretention (raingardens) are adopted as part of a stormwater treatment train this water quality objective is deemed to be complied with, as recommended by Water by Design Guidelines (Healthy Waterways Qld).

The Industry Central subdivision is also equipped with precinct scale constructed wetlands. These provide an additional layer of stormwater attenuation and treatment prior to discharge downstream and further mitigate the above-mentioned concerns. The general stormwater design

approach at Industry Central has been, to date, to require individual sites to provide hardstand treatment only (e.g. GPT or oil/grit separator for driveways and carparks) as further stormwater treatment is provided at the precinct scale constructed wetlands. The subject development goes beyond this by providing a fully compliant (including tertiary/nutrient treatment and bioretention/wicking bed associated minor detention) stormwater treatment train within the site. In this context it could be considered that the proposal goes over and above Council's requirements for stormwater management.

Sugar cane is primarily damaged by long duration of inundation. Therefore, changes to the time of inundation as a result of upstream developments must be considered (damages to crops). The HA includes a comparative analysis of the time of inundation in the South Murwillumbah basin (part 3.3.1 and appendix D). In all downstream locations sampled (Locations 3, 4 and 5), the HA demonstrates that there is no or negligible change to the time of inundation as a result of the proposal, with and without condition 20.

Importantly for the purposes of this assessment, the HA demonstrates that the stormwater impact of the proposal (without Condition 20) on the downstream South Murwillumbah basin is negligible whereas the impact of the existing approval (with Condition 20 satisfied by way of OSD) is minor yet significant. Therefore, it can be concluded that the concerns outlined above would be further mitigated by the removal of Condition 20.

In conclusion, for frequent storm events a robust stormwater management plan will mitigate these risks to a level that complies with Council policies and is therefore deemed acceptable. For rarer storm events the HA has demonstrated that the impacts would be negligible with deletion of Condition 20 or minor with retention of Condition 20 and its satisfaction by way of OSD.

The deletion of Condition No. 20 is supported by the independent hydraulic consultant engaged to conduct a peer review the Hydraulic Assessment, the report prepared notes follows:

As outlined above and shown in **Appendix A**, the use of OSD to meet the requirements of Condition 20 has the potential to result in additional adverse impacts during flooding of the South Murwillumbah basin. The delayed release of stormwater discharges from an OSD system could result in the flows coinciding with the arrival of runoff from the upper catchment.

In terms of the alternatives to OSD listed by Martens, roughened overland flow paths, additional swales or bioretention systems, on-site infiltration and permeable pavements are typically not designed, nor able, to limit post-development flows to pre-development rates during storms with the rainfall intensity and volume approaching those typical of a 1% AEP design storm event. Accordingly, the implementation of such measures is not expected to achieve compliance with Condition 20.

The residual alternatives are to pursue a reduced development footprint and/or stormwater harvesting, storage and reuse.

It is understood that a reduction in the footprint of the depot development is not an option that can be pursued, given the operational requirements of Council and considering the site area already dedicated to the provision of WSUD measures (refer **Section 4**). A large landscaped area will be retained along the southern boundary of the site. Significant additional site area would need to be effectively "sterilised" or precluded from development in order to provide any notable reduction in peak flow rates during the 1% AEP event.

In lieu of OSD tanks, which offer a delayed release following the peak of a storm, an alternative approach could involve storing the volume at the peak of the storm for an extended period of time, for later reuse at the depot. The rainwater tanks at the three depot buildings are proposed to operate in this manner, however they would not be expected to accommodate the significant volume required during a 1% AEP storm.

Large underground tanks could be employed for this purpose, to store the volume during the peak of the 1% AEP event on a more permanent basis, without immediate release. However, the situation could arise where insufficient stormwater reuse demand at the depot during the following days would mean the tanks are not suitably drained and therefore ready to capture the next storm event.

A regime of gradual release, longer than that provided by OSD, would therefore be required to drain the tanks between storm events. However, such releases could contribute to an extended base flow discharging to the drains through the Focheong property, thereby increasing the potential for soil water logging and associated damages to crops.

In summary, the proposed depot will include several of the alternative measures listed by Martens for managing stormwater runoff from the depot during events up to and including the 3-month ARI storm. This includes stormwater harvesting and re-use via rainwater tanks and raingarden infiltration/bioretention systems. However, none of these measures are expected to materially reduce stormwater flow rates and volume during the 1% AEP storm.

Alternative measures to reduce post-development discharges to pre-development rates during rarer events up to the 1% AEP storm (i.e., to comply with Condition 20) are considered unreasonable, or may result in adverse impacts to downstream properties.

It follows that the only way to reasonably address Condition 20 is to provide OSD at the depot.

(j) Section 4.15(1)(e) - Public Interest

The original application was assessed to have a positive impact in terms of public interest given it provides a purpose-built, flood free workshop, depot and public administration building to allow for provision of services to the community of Tweed Shire local government area.

The development was considered to deliver a safe and flood free storage laydown area that could be used by the State Emergency Service (SES). The development was also considered to result in positive social and economic impacts without impacting the health and safety of the public.

The development was considered to be consistent with the principles of Ecologically sustainable development as it provided suitable landscape areas, rain gardens to capture water runoffs and rainwater tanks to capture water from the rooves and reuse it on site.

The proposed modification remains in the public interest for the reasons previously mentioned. The proposal remains generally consistent with the applicable planning controls as outlined in this report.

Overall, it is considered that the proposed modification is in the public interest.

4. CONCLUSION

This modification application has been considered pursuant to Section 4.55(2) of the *EP&A Act*. The modification is considered to be substantially the same development as that approved and the impact of the proposal (as amended) is considered to be acceptable.

The proposal remains consistent with the objectives for development in the E4 General Industrial zone and the objectives of relevant clauses in *TLEP 2014* in terms of flood planning, flood consideration and stormwater management.

The modified development has been considered in accordance with the requirements of the *EP&A Act* and the *Regulations* as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the modification application is worthy of support.

The approved proposal remains appropriate for the site given its location with the South Murwillumbah Industry Estate - General Industrial Precinct. The modified development remains consistent with the strategic vision for the area. Further, it safeguards Council assets from risk of natural hazards and is designed to facilitate the future sustainable growth and expansion of the shire and therefore it is in the public interest.

The application has been assessed by various internal stakeholders. Additionally, as this Council related application, an independent review of the Hydraulic Assessment, as submitted in support of the current Modification Application has been conducted. This review supports the deletion of Condition No. 20.

Accordingly, it is recommended that the modified consent be granted for the deletion of Condition No. 20.

5. RECOMMENDATION

That the Section 4.55(2) Modification Application DA22/0793.02 for Council Depot and Public Administration Building and ancillary development including General Industrial Buildings, external hardstand storage areas, parking, landscaping and signage at Proposed Lots 703 and 711 created from subdivision of Lot 604 DP 1244954, 208 Lundberg Drive, South Murwillumbah be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979*.

The following attachment is provided:

Attachment A: Independent Review of Hydraulic Assessment