



SUPPORTING INFORMATION

for respective items considered at

Coordination Committee Meeting

25 September 2018

SUPPORTING INFORMATION

Ref: [A17533242](#), [A17533249](#), [A17533252](#), [A17533255](#), [A17533257](#), [A17558655](#), [A17573489](#),
[A17573399](#)

The following list of supporting information is provided for:

ITEM 2.1

PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3

#1 Letter from HWL Ebsworth Lawyers

#2 Grounds of Objection Report 24 May 2018

#3 Grounds of Objection Report 31 January 2018

#4 Judgement of the Planning and Environment Court

#5 Letter of Objection from HWL Ebsworth 7 June 2018

#6 Council's response to the letter dated 7 June 2018

#7 Letter from HWL Ebsworth Lawyers dated 13 September 2018

#8 Council's response to the letter dated 13 September 2018

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

#1 Letter from HWL Ebsworth Lawyers

Scanned By: sharonproctor@MBRCDOM On: 03/04/2018 AM Moreton Bay Regional Council - Caboolture District

Express



HWL EBSWORTH

LAWYERS

Our Ref: PJB:LW:688403
Your Ref: A16215745

29 March 2018

By Urgent Courier

Mr Daryl Hitzman
Moreton Bay Regional Council
PO Box 159
CABOOLTURE QLD 4510

Moreton Bay Regional Council
RECORDS MANAGEMENT

03 APR 2018

OBJ ID: _____



Email: daryl.hitzman@moretonbay.qld.gov.au

CC: mmarshall@tglaw.com.au

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Dear Sir

Proposed Resumption of Part of Land for Drainage Purposes Part of Lot 5 on RP88015 (134 Morayfield Road, Caboolture)

We refer to:

1. the Amended Notice of Intention to Resume dated 20 February 2018 (**Amended NIR**); and
2. our correspondence to Moreton Bay Regional Council dated 21 February 2018 giving notice that our client intends to exercise its rights of objection pursuant to the Amended NIR.

The **enclosed** document (**Notice of Objection**) sets out our client's grounds of objection and the facts and circumstances in support of those grounds.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
PO Box 703, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

ABN 37 246 549 189

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

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Yours faithfully



Peter Bittner
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au

Luke Walker
Associate
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

cc Mr Michael Marshall
Partner, Thomson Geer

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

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Grounds of Objection to Notice of Intention to Resume dated 20 February 2018

134-140 Morayfield Road, CABOOLTURE SOUTH QLD 4510

GENAMSON HOLDINGS PTY LTD ACN 053 174 271 (**Genamson**), the owner of Land located at 134-140 Morayfield Road, CABOOLTURE SOUTH in the State of Queensland, more particularly described as Lot 5 on RP88015 (**Land**), objects to the taking of part of the Land for drainage purposes (**drainage purposes**) as set out in the Moreton Bay Regional Council's (**Council**) Notice of Intention to Resume dated 20 February 2018 (**Amended NIR**), on the following grounds:-

1. a reasonable apprehension of bias arises from the Council's appointment of Mr Michael Marshall as its delegate to hear objections in response to the Amended NIR;
2. the Council has not accorded Genamson procedural fairness nor complied with the rules of natural justice in issuing the Amended NIR;
3. the Council has failed to demonstrate that the drainage purposes cannot be better located elsewhere;
4. the Council has failed to demonstrate that the drainage purposes cannot be adequately accommodated on the Land without taking part of the Land;
5. the Council's intention to take part of the Land is, and would be, unreasonable;
6. the Council have failed to provide the delegate with logically probative material supporting the Amended NIR;
7. the Council relied upon outdated and incomplete material in issuing the Amended NIR;
8. the Council's failure to demonstrate that the taking of the Land is required for drainage purposes.
9. the Council's non-compliance with *Guidelines for Local Government - Compulsory Acquisition of Land (Guideline)*; and
10. the Council's failure to consider the financial impact of taking the Land.

The facts and circumstances in support of the above grounds are as follows:-

1. In relation to ground 1:
 - (a) The Delegate appointed to act as the Council's delegate in respect of the hearing of any objections relating to the amended Notice of Intention to Resume dated 20 February 2018 (**Amended NIR**) is a partner of Thomson Geer Lawyers, Mr Michael Marshall.
 - (b) Mr Marshall was previously appointed to act as the Council's delegate in respect of the hearing of any objections relating to the Notice of Intention to Resume dated 11 August 2016.
 - (c) On 31 January 2018, the Mr Marshall made findings that concluded:

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- (i) the grounds of objection did not provide sufficient reasons to discontinue with the resumption; and
 - (ii) that the Council should proceed with the resumption.
 - (d) Mr Marshall made findings of fact based on inferences he drew on the basis of certain matters he held to be "self-evident". Otherwise, no logically probative evidence was before Mr Marshall that would have justified his decision.
 - (e) On 20 February 2018, the Council issued an Amended NIR.
 - (f) On 5 March 2018, Genamson advised the Council that, in light of the recommendation made by Mr Marshall in his report dated 31 January 2018, a fair-minded lay observer might reasonably apprehend that Mr Marshall may not bring an impartial mind to the resolution of the question that he is required to decide. On 9 March 2018, the Council responded and confirmed Mr Marshall's appointment.
 - (g) On 15 March 2018, Mr Marshall confirmed his appointment.
 - (h) Mr Marshall has previously made a decision favourable to the Council. He, therefore, has a continued association with the Council and a fair-minded lay person may presume an apprehension of pre-judgment could be derived from his experience and contact with the Council.
 - (i) The Council has not afforded Genamson the opportunity for fair and neutral proceedings.
 - (i) It is clear that:
 - (A) Mr Marshall's previous interaction with the matter;
 - (B) his previous findings in favour of the Council;
 - (C) ongoing connection with the Council; and
 - (D) regard to all facts and circumstances contemplated prior to the initial Delegate Report being made;
- would, from the perspective of a fair-minded lay observer, create the impression of apprehended bias.
2. In relation to ground 2:
- (a) the Council has not afforded procedural fairness to Genamson as the Council has not, within a reasonable time or at all, provided Genamson with all relevant material relating to the Council's decision to issue the Amended NIR, including (but not limited to):
 - (i) the real property description and address sufficient to readily identify every piece of Land considered by the Council as a viable alternative site to the subject Land; and

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- (ii) all relevant selection criteria documents in existence for choice of location of sites for the drainage purposes and purposes incidental to carrying out the drainage purposes.
- (b) any evidence whatsoever that the Council has considered the matters outlined in the Guideline
- (c) the Council has not complied with the Guidelines for Local Governments - *Compulsory Acquisition of Land*;
- (d) Pursuant to the principles outlined in *Little v Minister for Land Management* (1995) 1 Qd R 190, Genamson is entitled to natural justice/procedural fairness in respect of the taking of the Land for drainage purposes outlined in the Amended NIR.
- (e) The material put before the Delegate by the Council invites the Delegate into error as it:
 - (i) contains irrelevant information; and
 - (ii) fails to include relevant information, in particular material relating to the decision of his Honour Judge Rackemann in *Genamson Holdings Pty Ltd v Moreton Bay Regional Council* [2017] QPEC 056 (**PEC Appeal**).
- (f) In particular, the information put before the Delegate by the Council includes:
 - (i) a report entitled "Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009" (**2009 Report**); and
 - (ii) an undated and incomplete report entitled "Investigation Report: Morayfield, 134 Morayfield Road Feasibility Study Regional Detention Basin (SSC_DB_3)" (**Feasibility Study**).
- (g) The 2009 Report has largely been overtaken by events and provides no justification for the proposed detention basin on the Land, as Rackemann DCJ noted in the PEC Appeal:

[79] Dr Johnson also pointed out that the justification for, or benefits of, a detention basin with the particular volume of 21,000m³ are unknown. The 2009 report (which was withheld from Dr Johnson for some time) referred to a figure of 21,000m³, but is dated and, in his view, unsubstantiated at this time. Mr Clark's evidence was to the effect that there is the potential for the increase in upstream intensification of development to produce significant increases in inflows in Sheepstation Creek and a detention basin is needed, but the council did not rely on his evidence to justify a particularly sizing. The figure of 21,000m³ was not picked up in any of the infrastructure charging resolutions or in the PIP and the planned detention basin has not been the subject of detailed design. The sizing was referred to in an investigation report which became an exhibit, but that was admitted into evidence on the basis that it was not evidence of the truth of its contents. It remains the case however, that a regional detention basin is a longstanding component of the council's infrastructure planning for the benefit of the community.

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- (h) Accordingly, the 2009 Report is irrelevant and ought not be considered by the Delegate.
- (i) In respect of the Feasibility Study, we note that:
 - (i) The Feasibility Study is not in final form. Accordingly, the Delegate cannot rely on this incomplete and draft study in considering Genamson's objections.
 - (ii) It would be both unreasonable and a denial of natural justice that, prior to the complete feasibility study about the regional detention basin being finalised, the Council's delegate would proceed to make any recommendations in respect of Genamson's objections.
 - (iii) It is inappropriate for the Land to be acquired until the feasibility study has been completed. The Council (and the Delegate) are unable to properly consider the matter until a correct and complete feasibility study is undertaken. Genamson should also be provided with the ability to comment on that complete study.
 - (iv) The Feasibility Study is not soundly based. Examples of this include:
 - (A) of the 13 sections included in the Feasibility Study, 6 sections are presently not completed;
 - (B) section 5 of the Feasibility Study simply makes bare assertions, not supported by any factual or evidentiary matters; and
 - (v) the Feasibility Study ought to be read in conjunction with the hydrological studies that have been undertaken by consultants engaged by Genamson. Those complete and rigorous studies concluded that the findings of the Council's Feasibility Study are simply wrong.
- (j) In respect of each of those documents, we note that Rackemann DCJ was somewhat critical of the Council for not calling Mr Charteris to justify the size of the detention basin during the following exchange with Genamson's Hydraulic Expert Dr Johnson:

HIS HONOUR: *So far as you can see, any suggestion of a requirement of 21,000 is not soundly based?*

DR JOHNSON: *No. It's – in my opinion, it's based solely on work done in 2009 that wasn't even detailed at that stage. Mr Charteris agreed with my - - -*

HIS HONOUR: *Is Mr Charteris still at the council?*

DR JOHNSON: *Yes, your Honour. He agreed with my Mr Della that no detailed modelling of the basin - - -*

HIS HONOUR: *I wonder why he's not giving evidence. Anyway...*

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DR JOHNSON: *Sorry. He was – he's agreed that no detailed modelling of the basin has taken place, according to that email.*

HIS HONOUR: *Anyway, he's the person who's in charge of all this, isn't he?*

DR JOHNSON: *Yes, your Honour. He's the engineer making the final call as to whether the basin is needed or not.⁷*

- (k) Further, the Council has chosen only to put reports supporting the resumption of the Land before the Delegate. In this respect, we note that the Council is in possession of the following documents that militate against the resumption:
- (i) Morayfield Flood Study dated 20 March 2015 (prepared by Cardno);
 - (ii) Report of BAAM Ecological Consultants dated 13 September 2017;
 - (iii) Information Request Response dated 16 December 2015; and
 - (iv) the PEC Appeal.
- (l) Further, the Council has not provided any logically probative evidence that the matters outlined above were considered by the Council.

3. In relation to ground 3:

- (a) the Council has failed to adequately consider the suitability of other sites for the drainage purposes or whether any land is required for the drainage purposes. In particular;
- (i) the proposed drainage infrastructure could be located in the Kate McGrath Koala Park (along with the treatment infrastructure proposed for that location), amongst other locations;
 - (ii) the proposed drainage infrastructure is unnecessary if appropriate discharge controls are imposed on other nearby properties;
 - (iii) the proposed drainage infrastructure is not required for approximately ten (10) years or more, if at all; and
 - (iv) the Council has failed to demonstrate that the quantity of detention to be provided by the taking of part of the Land (being 21,000m³) is in fact required;
- (b) the Council has failed to adequately consider the suitability of other sites for the location of the drainage infrastructure for the drainage purposes. In particular:
- (i) a number of other drainage solutions are available to the Council in the area that would better serve the drainage needs of the catchment;

⁷ T2-81, L5-20.

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- (ii) the Council's Priority Infrastructure Plan (**PIP**) is indicative only and does not require that the drainage infrastructure be constructed on the Land;
 - (iii) the proposed drainage infrastructure could reasonably be co-located in the Kate McGrath Koala Park; and
 - (iv) the proposed drainage infrastructure to be located on the Land is unnecessary if appropriate discharge controls are imposed on other nearby properties.
- (c) there is no logically probative evidence before the Delegate that the Council considered the matters outlined above.
- 4. In relation to ground 4:
 - (a) on 16 December 2015, Genamson provided technical drawings and other material demonstrating that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (b) in the PEC Appeal at [80], Rackemann DCJ found, on the basis of expert evidence, that the drainage purposes could be accommodated on the Land as outlined in the technical drawings without the taking of the Land;
 - (c) the technical drawings and other material provided to the Council on 16 December 2015 are but one way that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (d) in forming the intention to take part of the Land, the Council has failed to consider:
 - (i) the technical drawings and other material provided to it on 16 December 2015;
 - (ii) the expert evidence led at the hearing of, and the judgment in, the PEC Appeal; and
 - (e) despite request, the Council has failed to demonstrate why the drainage purposes cannot be adequately accommodated on the Land without taking the Land.
 - (f) there is no logically probative evidence before the Delegate that the Council has considered the matters above.
- 5. In relation to ground 5:
 - (a) there is no need for part of the Land to be taken for drainage purposes;
 - (b) other land is available and better suited for the drainage purposes;

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- (c) if the Land is, in fact, necessary for the drainage purposes (which is not admitted), there is no need for the Council to take part of the Land as proposed in the Amended NIR because:
 - (i) on 16 December 2015, Genamson provided technical drawings and other material demonstrating that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (ii) in the PEC Appeal at [80], Rackemann DCJ found, on the basis of expert evidence, that the drainage purposes could be accommodated on the Land as outlined in the technical drawings without the taking of the Land;
 - (iii) the technical drawings and other material provided to the Council on 16 December 2015 are but one way that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (iv) in forming the intention to take part of the Land, the Council has failed to consider:
 - (A) the technical drawings and other material provided to it on 16 December 2015;
 - (B) the expert evidence led at the hearing of, and the judgment in, the PEC Appeal; and
 - (v) a smaller portion of the Land could accommodate the drainage infrastructure necessary for the drainage purposes;
 - (d) in deciding to issue the Amended NIR, the Council has taken into account irrelevant considerations and failed to take into account relevant considerations;
 - (e) the Council has not complied with the Guideline;
 - (f) the PIP is indicative only and does not require that the drainage infrastructure be constructed on the Land;
 - (g) the Council has based its decision to issue the Amended NIR on reports and investigations that are wrong; and
 - (h) taking the Land would be premature because it may not be required for drainage purposes for approximately ten (10) years or more, if at all.
 - (i) there is no logically probative evidence before the Delegate that the Council has considered the matters above.
6. In relation to ground 6:
- (a) Pursuant to s8(2)(b) of the *Acquisition of Land Act 1967 (AOLA)*, the Delegate is required to prepare a report to the Council on the matters put forward by Genamson in support of its grounds of objection.

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- (b) Accordingly, the Delegate is required to make findings of fact based on that matters put before him by Genamson (and only the matters put before him by Genamson) and has a duty to act in accordance with the rules of procedural fairness and natural justice.
 - (c) There is no probative material before the Delegate that would justify a finding that the taking of the Land for drainage purposes is required. Indeed, the weight of evidence is overwhelmingly to the contrary.
 - (d) According, the Delegate could not reasonably conclude that the taking of the Land for drainage purposes is required.
7. In relation to ground 7:
- (a) The evidence relied upon by the Council to justify the taking of the Land for drainage purposes consists of:
 - (i) the 2009 Report; and
 - (ii) the Feasibility Study.
 - (b) Paragraphs 2.4 to 2.10 outline why it would be unreasonable for the Delegate to rely upon either the 2009 Report or the Feasibility Study.
 - (c) Further, Genamson has provided a report from Dr Trevor Johnson dated 22 December 2017 that demonstrates that each of those reports is not soundly based and outlines a number of issues that militate against the Taking of the Land for drainage purposes. Importantly, none of the conclusions in Dr Johnson's report have been rebutted by the Council and his evidence was preferred to that of the Council's expert during the PEC Appeal.
 - (d) The only logically probative material before the Delegate is Dr Johnson's report, which concludes that the taking of the Land for drainage purposes is not justified. It is, therefore, not reasonably open to the Delegate to recommend that the taking of the Land for drainage purposes proceed.
 - (e) The alternative is that the Delegate recommend that the Council proceed with the Taking of the Land for drainage purposes on the basis of:
 - (i) the 2009 Report (which has been overtaken by events) and
 - (ii) the Feasibility Study (which is incomplete and in draft).
 - (f) Such a recommendation would completely ignore the comprehensive report of Dr Johnson and would clearly be so unreasonable that no reasonable person could make it.
 - (g) There is no logically probative evidence before the Delegate that the Council has considered the matters above.
8. In relation to ground 8:

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- (a) It is a general principle of resumption law that a constructing authority must not take more Land than is necessary to accomplish the stated purpose.⁸
 - (b) In this respect, the Council cannot reasonably demonstrate the amount of Land necessary to accomplish the drainage purposes as it has not provided any justification for the volume of detention required.
 - (c) It follows that the Council cannot show whether 21,300 m³ (or a greater or lesser amount) of detention is required to accomplish the drainage purposes.
 - (d) In that respect, Dr Johnson's report notes that the Council's current calculations are almost certainly flawed, given that they require the same volume of detention for two wildly different development scenarios in the upstream catchment.⁹ Dr Johnson also notes that the volume of 21,300 m³ cannot be achieved on the Land without a pumped drainage scheme.¹⁰
 - (e) In any event, even if the Land were required to accomplish the drainage purposes, Dr Johnson's report (and the evidence adduced in the PEC Appeal) establishes that this can be done by way of the Council taking a volumetric easement over part of the Land, rather than by taking a freehold interest.¹¹
 - (f) There is no logically probative evidence before the Delegate that the Council has considered the matters above.
9. In relation to ground 9:
- (a) The Minister for Natural Resources and Mines (**Minister**) has promulgated the *Guidelines for Local Governments - Compulsory Acquisition of Land (Guideline)*, the purpose of which is to outline the legal requirements under the AOLA for properly made application to the Minister and demonstrate "best practice" for the compulsory acquisition of land.
 - (b) The Guideline sets out a number of matters that local governments ought to consider and procedures that should be followed when acquiring land under the AOLA.
 - (c) The Council has failed to comply with the Guideline in respect of a number of matters, namely:
 - (i) it has failed to demonstrate that the drainage purposes cannot be accommodated by the expansion of other proposed and/or existing detention basins in the upstream catchment;¹²
 - (ii) it has failed to undertake a detailed assessment to show:
 - (A) that the proposed detention basin is necessary;

⁸ *Minister for Public Works (NSW) v Duggan* (1951) 83 CLR 424; *Thompson v Randwick Corporation* (1950) 81 CLR 87.

⁹ Report of Dr Johnson dated 22 December 2017, 2.

¹⁰ *Ibidem*, 4-5

¹² Guideline, s2.1; Report of Dr Johnson dated 22 December 2017, 4.

¹² Guideline, s2.1; Report of Dr Johnson dated 22 December 2017, 4.

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- (B) that the Land is the most appropriate site; and
 - (C) that broader government objections have been considered.¹³
 - (iii) it has failed to demonstrate that taking the Land maximises and balances the social and economic benefits to the community, in particular, the economic opportunities for the community (such as increased employment) which would accrue as a result of development upon the Land;¹⁴
 - (iv) its site selection process is not well-considered, objective or well-documented;¹⁵
 - (v) it has failed to appropriately undertake a detailed assessment to identify and assess site options before selecting the Land, and in particular has not undertaken detailed engineering or other investigations of other sites;
 - (d) There is no logically probative evidence before the Delegate that the Council has considered the matters above.
10. In relation to ground 10:
- (a) The Council has failed to correctly assess the financial implications of taking the Land.
 - (b) Pursuant to s20 of the AOLA, the Council must pay compensation to Genamson for the taking of the Land based on, *inter alia*, its market value at its highest and best use.
 - (c) The PEC Appeal has granted approval in respect of the Land for a retail shopping centre.
 - (d) Currently, the Council has only \$562,275 in the Local Government Infrastructure Plan of the *Moreton Bay Regional Council Planning Scheme* for the acquisition of the Land, representing a rate of approximately \$48 per square metre.
 - (e) In this respect, Genamson notes that the adjoining shopping centre recently sold for \$22.5 million, being a rate of \$1051.40.
 - (f) There is no logically probative evidence before the Delegate that the Council has considered the matters above.

¹³ Guideline, s2.1.

¹⁴ Guideline, s2.2

¹⁵ Guideline s3.

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HWL Ebsworth Lawyers
Solicitors for the Objector
29 March 2018

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

#2 Grounds of Objection Report 24 May 2018

Second Report by delegate in relation to the hearing of an Objection by Genamson Holdings Pty Ltd in respect of a proposed taking of land by the Moreton Bay Regional Council pursuant to the *Acquisition of Land Act 1967 (Qld)* /

Amended Notice of Intention to Resume dated 20 February 2018

1 Author

- 1.1 This report was prepared by Michael Marshall, delegate appointed by Moreton Bay Regional Council.

2 Distribution

- 2.1 Peter Bittner, Partner HWL Ebsworth, on behalf of Genamson Holdings Pty Ltd.
- 2.2 Luke Walker, Solicitor HWL Ebsworth, on behalf of Genamson Holdings Pty Ltd.
- 2.3 Richard Duhig, Senior Legal Officer Moreton Bay Regional Council.

3 Background Information

Property Address	134-140 Morayfield Road, Caboolture
Property Description	Lot 5 on RP88015 (the Land)
Registered Owner/Objector	Genamson Holdings Pty Ltd (the Owner)
Date of Notice of Intention to Resume	12 October 2017
Date of Amended Notice of Intention to Resume	20 February 2018
Date of Lodgement of Objection to Amended Notice of Intention to Resume	Letter HWL Ebsworth Lawyers (HWLE) dated 29 March 2018 to Moreton Bay Regional Council (MBRC)
Purpose of Resumption	Drainage purposes and purposes incidental to carrying out drainage purposes.

4 Introduction

- 4.1 This second report relates to a hearing in respect of an objection made to the proposed taking of land pursuant to the *Acquisition of Land Act 1967 (Qld)* (**the Act**).
- 4.2 The first report prepared by me was dated 31 January 2018 in respect of an objections hearing conducted on 22 November 2017.
- 4.3 Subsequent to the delivery of the first report, MBRC issued an Amended Notice of Intention to Resume (**Amended NIR**) dated 20 February 2018 which removed the proposed taking of an easement over the Land but maintained the proposed taking of part of the Land for drainage

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

purposes. In simple terms, MBRC still requires part of the Land for drainage purposes for a regional detention basin, but has located an alternative means of connecting the necessary pipes to that basin and therefore no longer proposes to acquire an easement through the car park of the existing shopping centre on the Land fronting Morayfield Road.

- 4.4 Section 7(4AA) of the Act gives the MBRC power to issue an Amended NIR. The Owner is entitled to serve on MBRC an objection to the Amended NIR and did so by letter from its lawyers HWLE dated 29 March 2018 (**NOO**).
- 4.5 By letter dated 23 February 2018 I was requested to act as delegate for the purpose of any objection hearing in the event the Owner desired to be heard in respect of the Amended NIR. By email to the parties dated 24 February 2018 I accepted the delegation.
- 4.6 By letter dated 5 March 2018, it was asserted by HWLE on behalf of the Owner that I should not act as delegate in any objection hearing on the basis of apprehended bias. MBRC responded by letter dated 9 March 2018 disagreeing with that assertion for reasons set out in that letter.
- 4.7 By letter to the parties dated 15 March 2018, I advised that I did not intend to disqualify myself from acting as delegate, for reasons set out in that letter.
- 4.8 A bundle of the correspondence referred to in paragraphs 4.5-4.7 is **Attachment 1** hereto.
- 4.9 The objections hearing was subsequently scheduled to occur on 20 April 2018 and proceeded on that date.

5 Conduct of Objection Hearing on 20 April 2018

- 5.1 The objection hearing commenced at the offices of Thomson Geer at 11:00am and concluded at 12:15pm. The attendees are set out in the table below.

Person	Position	Representing/Role
Peter Bittner	Partner HWLE	The Owner
Luke Walker	Solicitor HWLE	The Owner
Michael Marshall	Partner Thomson Geer Lawyers	Delegate Appointed by the Constructing Authority
Cameron Gee	Paralegal Thomson Geer	Observer

- 5.2 At the hearing three additional issues were raised that were not otherwise raised in the NOO (or at least expressed in the NOO in somewhat different terms). These were the following:-
 - (a) That in relation to my earlier report, that I had exceeded my role/function by making a recommendation in circumstances where there was no express statutory scope to do so in section 8 of the Act. It was further argued that it is not the role of the delegate to "adjudicate" and that only the Council may perform that function;
 - (b) That paragraph 8.31 of my earlier report was objectionable; and
 - (c) That in acting as a delegate, I am bound to act in accordance with the "Briginshaw Standard".

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

6 Grounds of objection

- 6.1 Apart from the NOO, the Owner has not produced any additional documents or reports beyond what was produced in the course of the previous objection hearing.
- 6.2 A number of grounds of objection from the previous hearing are reproduced in relation to the NOO in response to the Amended NIR. Where the grounds of objection are the same or substantially the same, I will refer to my earlier report as appropriate.
- 6.3 For the sake of convenience, I have summarised the various grounds of objection set out in the NOO. I have also added the additional items set out in paragraph 5.2 above. The consolidated list of objections to the Amended NIR is set out below and I will refer to the numbering in the table in my discussion of each issue.

Objection No.	Ground of Objection	Reference/Notice of Objection
1.	Apprehension of bias.	NOO – Item 1
2.	Denial of natural justice/procedural fairness.	NOO – Item 2
3.	Making a recommendation in delegate report dated 31 January 2018 exceeded the delegate's role and function.	Objection Hearing
4.	Paragraph 8.31 of delegate report dated 31 January 2018 is objectionable.	Objection Hearing
5.	Delegate subject to "Briginshaw Standard".	Objection Hearing
6.	The Council has failed to demonstrate that the drainage purposes cannot be better located elsewhere.	NOO – Item 3
7.	The Council has failed to ensure that the drainage purposes cannot be adequately accommodated on the land without taking part of the land.	NOO – Item 4
8.	The Council's intention to take part of the Land is, and would be unreasonable.	NOO – Item 5
9.	The Council has failed to provide to the delegate logically probative material supporting the Amended NIR.	NOO – Item 6
10.	The Council relied upon outdated and incomplete material in issuing the Amended NIR.	NOO – Item 7
11.	The Council's failure to demonstrate that the taking of the Land is required for drainage purposes.	NOO – Item 8
12.	The Council's non-compliance with Guidelines for Local Government- Compulsory Acquisition of Land (Guideline)	NOO – Item 9
13.	The Council's failure to consider the financial impact of taking the Land	NOO – Item 10

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

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6.4 **The Objections**

6.5 Ground 1 asserts that "a reasonable apprehension of bias arises from the Council's appointment of Mr Michael Marshall as its delegate to hear objections in response to the Amended NIR".

6.6 I reject the assertion that a reasonable apprehension of bias arises from my appointment as Council's delegate to hear objections in response to the Amended NIR. I say this for the following reasons:

- (a) In my opinion, a delegate acting under section 8 of the Act is acting neither as a judicial officer nor as an administrator. Accordingly, the actions of the delegate cannot be impugned on the basis of an apprehension of bias.
- (b) The Act gives the delegate no power to make a decision as to whether or not a resumption proceeds. The delegate's role is to hear the objection and provide a report to the constructing authority.
- (c) The assertion that I made *findings of fact* in my earlier report is misconceived. The Act gives the delegate no power to make findings of fact (in the same manner as a Judge or administrator might make findings of fact). However, the Act does not prohibit the delegate from expressing views, opinions and conclusions about matters that are raised in the objections hearing. The Act does not prohibit the delegate from expressing views as to the merits of the grounds of objection nor the making of a recommendation by the delegate as to whether the constructing authority should or should not proceed with the taking of land. I am aware from my experience in this area of law that it is not uncommon for a delegate to make such a recommendation to the constructing authority.
- (d) It is clear from section 8(2A) of the Act that the decision making function as to whether or not to proceed with the resumption, lies with the constructing authority and not the delegate.

6.7 I acknowledge that the correctness of the views expressed in (a)-(d) above are ultimately legal matters for determination by the appropriate Court if necessary.

6.8 I also refer to the matters set out in my letter to the parties dated 15 March 2018.

6.9 Although no actual bias is alleged against me¹, for the record, I wish to state that:

- (a) I have approached my task to act as delegate with an open mind; and
- (b) I have sought to be impartial.

6.10 Ground 2 asserts "the Council has not accorded Genamson procedural fairness nor complied with the rules of natural justice in issuing the Amended NIR".

6.11 In relation to ground 2, I have no comment to make on that issue as my role as delegate is independent of the Council. It is ultimately an issue for determination by the appropriate Court if required. As delegate, I have endeavoured to ensure that the Owner is afforded natural justice and procedural fairness, to the extent it is relevant and appropriate for me to do so in discharging my specific function.

6.12 Ground 3 asserts that making the making by me of a recommendation in delegate report dated 31 January 2018, exceeded the statutory role and function of a delegate acting pursuant to section 8 of the Act. I refer to my comments in paragraph 6.6(c) above. Clearly this is ultimately a matter for the appropriate Court to determine if required.

6.13 Ground 4 asserts that Paragraph 8.31 of delegate report dated 31 January 2018 was objectionable. That paragraph reads:

¹ Letter HWLE to MBRC dated 5 March 2018.

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

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8.31 The Court decision was delivered on 11 September 2017. The issue of the NIR to the Owner post dated that event. It is self evident that the suitability of the Koala Park as an alternative site:-

- (a) has been considered by the Council;
- (b) has been considered by the respective hydraulic experts, including Dr Johnson;
- (c) was found by Judge Rackemann to be problematic for the reasons identified in the Judgment.

- 6.14 The Owner's objection centres on my use of the phrase "*it is self-evident*" and suggested that it was synonymous with there in fact being no evidence to support the proposition. This argument lacks any substance as it is apparent from a reading of the Judgment that the suitability of the koala park was a live issue in the Planning & Environment Court (PEC) proceedings between the Owner and the Council. Clearly this is ultimately a matter for the appropriate Court to determine if required.
- 6.15 Ground 5 asserts that in performing my function as delegate, I am subject to the "*Briginshaw Standard*". I am familiar with the Briginshaw Standard (of proof). It was not made clear by HWLE at the objection hearing as to what was actually meant by this ground, in terms of how it related to my role as delegate. I enquired of the owner's lawyers whether they could refer me to any case authority to support that proposition. No case authority was forthcoming. Instead reliance was placed by HWLE upon "general administrative Law principles". Clearly this is ultimately a matter for the appropriate Court to determine if required.
- 6.16 Ground 6 repeats Ground 6 from the previous objection hearing. I refer to paragraphs 8.25-8.32 of my earlier report. I have nothing further to add to that earlier discussion.
- 6.17 Ground 7 repeats Ground 7 from the previous objection hearing. I refer to paragraphs 8.33- 8.38 of my earlier report. I have nothing further to add to that earlier discussion.
- 6.18 Ground 8 asserts that the Council's intention to take the land, is and would be unreasonable. This is a new ground that was not raised in the previous objection process. Unreasonableness is asserted on 2 bases:
- (a) That there is no need for part of the Land to be taken for drainage purposes; and
 - (b) Other land is available and better suited for the drainage purposes.
- 6.19 In relation to the point raised in paragraph 6.18(a), the documents and reports attached to the Amended NIR disclose, in my opinion, a reasonable basis for the Council to seek to take part of the land. However, I acknowledge that this is ultimately a matter for the appropriate Court to determine if required.
- 6.20 In relation to the point raised in paragraph 6.18(b), this issue is in effect substantially the same issue as covered by grounds 6 and 7 of the previous objection and I refer to my discussion of those matters in my earlier report.
- 6.21 The matters raised in paragraphs 5 (d)-(i) of the NOO raise legal arguments that should be determined by the appropriate Court if required. I do not propose to comment further on those issues.
- 6.22 Ground 9 asserts that the Council have (sic) failed to provide the delegate with logically probative material supporting the amended NIR. The particular documents referenced under this ground are the;
- (a) The 2009 report;
 - (b) The Feasibility Study; and
 - (c) The report from Dr Trevor Johnson dated 22 December 2017.

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Moreton Bay Regional Council

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- 6.23 The thrust of this ground of objection appears to be that the 2009 Report has been overtaken by events, the Feasibility Study is incomplete and in draft, and that the only "logically probative material" before me is Dr Johnson's report which concludes that the taking of the land for drainage purposes is not justified. I note that the three documents referred to above (including, importantly, the report of Dr Johnson) were before the Council when it determined to issue the amended NIR. The question as to what weight the Council gives to each of these documents is a matter for the Council to determine. This is not a matter for me acting as delegate to determine.
- 6.24 It is asserted on behalf of the Owner, that pursuant to section 8(2)(b) of the Act, the delegate is required to prepare a report to the Council on the matters put forward by the Owner in support of its grounds of objection. I agree that this is a requirement, albeit expressed implicitly rather than expressly. The notice then goes on to assert that as a consequence of this requirement, *"that the delegate is required to make findings of fact in relation to the material put before him by Genamson (and only the matters put before him by Genamson)"*. In my opinion (and as stated in paragraph 6.6(c) of this report), I am not required to make "findings of fact". I disagree with the assertion that it is incumbent upon me acting as delegate to determine what weight ought to be given to differing reports and technical assessments and to make findings of fact as to which document is "logically probative". Once again, I acknowledge that this is ultimately a legal issue for the appropriate Court to determine if required.
- 6.25 Ground 10 asserts that the Council relied upon outdated and incomplete material in issuing the amended NIR. The thrust of this ground is that the report of Dr Johnson demonstrates that the 2009 Report and the Feasibility Study are not soundly based and that *"none of the conclusions in Dr Johnson's reports have been rebutted by the Council"*. It is then said that if I were to recommend that the Council proceed with the taking of the land, that *"such a recommendation would completely ignore the comprehensive report of Dr Johnson and would clearly be so unreasonable that no reasonable person could make it"*. As noted earlier, it is for the Council (and not for the delegate) to determine whether or not to proceed with the taking of the land. In view of this ground of objection, and also noting the assertion in ground 1 of apprehended bias on my part due in part to the recommendation made in my earlier report, I have come to the view that in the circumstances I will refrain from making any recommendation in this report as to whether the Council should or should not proceed with the taking of the land as set out in the Amended NIR.
- 6.26 Ultimately the question whether the Council has relied upon outdated and incomplete material in issuing the Amended NIR is a matter for the Council to consider when forming its opinion whether to discontinue, further amend or proceed with the proposed taking of the land.
- 6.27 Clearly the Council should give due consideration to the report of Dr Johnson when it formulates its opinion as to how it intends to proceed.
- 6.28 Ground 11 asserts that the Council has failed to demonstrate that the taking of land is required for drainage purposes. The landowner places reliance upon Dr Johnson's report and evidence adduced in the Planning & Environment Court Appeal. These matters were discussed in my earlier report (refer paragraphs 8.25-8.38). It is also clear that the Council should give due consideration to the Judgment of the Planning & Environment Court in the Appeal before determining how it intends to proceed.
- 6.29 Ground 12 asserts that the Council has not complied with the Guideline. Whether or not this is the case, and if so what are the legal implications, are clearly legal issues for the appropriate Court to determine if required. I do not propose to comment further on the issue.
- 6.30 Ground 13 asserts that the Council has failed to consider the financial impact of taking the land. Whether or not this is the case, and if so what are the legal implications, are clearly legal issues for the appropriate Court to determine if required. I do not propose to comment further on the issue.

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7 Conclusion

- 7.1 The grounds of objection raised against the Amended NIR substantially, if not completely;
- (a) raise matters that were raised in the previous multiple notices of objection and dealt with in the earlier delegate report;
 - (b) raise matters that properly fall for consideration by the Council when forming an opinion whether to discontinue, amend or proceed with the proposed taking of land in respect of the Amended NIR; or
 - (c) concern matters of law that properly fall for determination by the appropriate Court if required.
- 7.2 As noted above, it is appropriate in my opinion that the Council give consideration to, or further consideration to the report of Dr Johnson and to the PEC Judgment before determining whether to discontinue, amend or proceed with the proposed taking of land as set out in the Amended NIR.

Dated: 24 May 2018



Michael Marshall

Delegate of the Constructing Authority

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Attachment 1



Phone: 3480 6661
Our Ref: A16622848
Your Ref: MFM:4084041
Date: 23 February 2018

Mr Michael Marshall
Thomson Geer
By email only: mmarshall@tqlaw.com.au

cc Mr Luke Walker
HWL Ebsworth Lawyers
By email only: walker@hwle.com.au

Dear Michael,

**Genamson Holdings Pty Ltd and Moreton Bay Regional Council
Objection to Notice of Intention to Resume Part of Lot 5 on RP88015
134-140 Morayfield Road, Caboolture South**

You have previously acted as Council's delegate for an objections hearing by the landowner to Council's Notice of Intention to Resume (NIR).

Council has amended the NIR to remove the requirement for an easement across the landowners site from Morayfield Road.

Under section 7(4AB) of the *Acquisition of Land Act 1967* the period in which an objection may be served starts again.

The NIR specifies 19 April 2018 at 11am at Council's chambers at 220 Gympie Road, Strathpine for the objections hearing, in the event the landowner desires to be heard.

In the event the landowner seeks to be heard in support of the grounds of objection, would you be available to again act as Council's delegate on that date?

Previously the objections hearing was conducted at your offices. If you are available to act as delegate it might be possible to convene the hearing at your offices again if the landowner or its representatives are agreeable.

I look forward to receipt of your response.

Yours sincerely,

Richard Duhig
Senior Legal Officer
Legal Services Department

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrcc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

Moreton Bay Regional Council

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

Ting, Benjamin

From: Marshall, Michael <mmarshall@tglaw.com.au>
Sent: Saturday, 24 February 2018 4:34 PM
To: Richard Duhig; Luke Walker
Subject: RE: Genamson Holdings Pty Ltd & Moreton Bay Regional Council [TGLAW-Legal.FID1792719]

Dear Richard and Luke

I refer to Mr Duhig's letter received on Friday 23 February.

I confirm I am willing to continue to act as the independent delegate in respect of the further objection hearing.

However, I am already committed on 19 April as I have a mediation at 11:30am that day.

I am available to conduct the hearing on either 18 April or 20 April, and can meet the convenience of the legal representatives for Genamson at that time.

I request that Mr Walker indicate whether he is agreeable to conducting the hearing on either of those days.

Alternatively, the hearing could proceed on 19 April, provided that it does not commence before 3:30pm.

I look forward to hearing from you both.

regards

Michael Marshall | Partner
THOMSON GEER
T +61 7 3338 7525 | M 0407 914 748
Level 16, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 Australia
mmarshall@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

From: Margaret Smith [mailto:margaret.smith@moretonbay.qld.gov.au] **On Behalf Of** Richard Duhig
Sent: Friday, 23 February 2018 3:07 PM
To: Marshall, Michael <mmarshall@tglaw.com.au>
Cc: Luke Walker <lwalker@hwle.com.au>; Richard Duhig <Richard.Duhig@moretonbay.qld.gov.au>
Subject: Genamson Holdings Pty Ltd & Moreton Bay Regional Council

Good afternoon,

Please see **attached** correspondence.

Regards,

Richard Duhig
Senior Legal Officer
Legal Services Department
Office of the Chief Executive Officer
Moreton Bay Regional Council
220 Gympie Road, Strathpine Qld 4500
P: (07) 3480 6661
E: richard.duhig@moretonbay.qld.gov.au
www.moretonbay.qld.gov.au

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Our Ref: PJB:LIW:688403

Your Ref:

5 March 2018

Mr Richard Duhig
Moreton Bay Regional Council
220 Gympie Road
STRATHPINE QLD 4500

Email: richard.duhig@moretonbay.qld.gov.au

CC: mmarshall@tglaw.com.au

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Dear Richard

**Genamson Holdings Pty Ltd and Moreton Bay Regional Council
Objection to Notice of Intention to Resume Part of Lot 5 on RP88015
134-140 Morayfield Road, Caboolture South**

We refer to your letter of 23 February 2018 and Mr Marshall's email of 24 February 2018.

In that correspondence, you seek to ascertain Mr Marshall's availability to act as the Council's delegate in respect of the hearing of any objections relating to the amended Notice of Intention to Resume dated 20 February 2018 (**Amended NIR**). In turn, Mr Marshall has indicated that he is available to act as same.

Given that Mr Marshall has already produced a report in respect of this Land recommending that the Council proceed with its proposed resumption, we do not consider it appropriate for him to act further in this matter.

In particular, we are concerned that, in light of his previous recommendation, a fair-minded lay observer might reasonably apprehend that Mr Marshall may not bring an impartial mind to the resolution of the question that he is required to decide. In that respect, the authorities recognise that a reasonable apprehension of will often arise where a decision-maker has previously made findings against a party.¹

For the avoidance of doubt, we stress that no actual bias is alleged against Mr Marshall (who is, of course, a well-respected and experienced solicitor) but merely that a reasonable apprehension of bias would arise in the mind of a fair-minded lay observer.

¹ See, for example, *Livesey v New South Wales Bar Assn* (1983) 151 CLR 288; *Singh v Minister for Immigration and Multicultural Affairs* (1997) 77 FCR 440; and *Gabrielsen v Nurses Board of South Australia* (2006) 90 ALD 695.

Doc ID 533931543/v1

Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

Adelaide
Brisbane
Canberra
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ABN 37 246 549 189

Moreton Bay Regional Council

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Accordingly, we require that the objection hearing in respect of the Amended NIR be conducted by an independent delegate of the Council who has not had any previous dealings in respect of this matter.

We look forward to your response.

Yours faithfully



Peter Bittner
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au



Luke Walker
Associate
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

cc Mr Michael Marshall - Thomson Geer Lawyers

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Phone: 3480 6661
Our Ref: A16672806
Your Ref: PJB:LW:618645
Date: 9 March 2018

Mr Luke Walker
HWL Ebsworth Lawyers

By email only: lwalker@hwle.com.au

cc Mr Michael Marshall
Thomson Geer

By email only: mmarshall@tqlaw.com.au

Dear Luke,

**Proposed Resumption of Land - Part of Lot 5 on RP88015 - 134-140 Morayfield Road,
Caboolture South**

Thank you for your correspondence dated 5 March 2018.

We do not agree Council's Delegate is possessed of apprehended bias because he heard the objections hearing regarding the original Notice of Intention to Resume.

This is not a situation in which the Delegate is reviewing his earlier decision as was the case in *Gabrielsen v Nurses Board of South Australia*¹ or *Singh v Minister for Immigration and Multicultural Affairs*² nor is the Delegate being asked to make a decision in circumstances where in an earlier decision the same decision maker made adverse findings of character regarding one of the parties as was the case in *Livesey v New South Wales Bar Association*³.

The delegate is being asked to hear objections regarding an amended Notice of Intention to Resume. As was held in *Vietnam Veterans Association of Australia New South Wales Branch Inc and Geoffrey Davis v John Patrick Gallagher*⁴ (at 20.7, 20.9):

"The mere fact that the decision-maker has decided an issue of fact or law in a particular way, and is likely to decide it in the same way if it arises again, does not indicate pre-judgment amounting to bias...It would be an abdication of duty, and an encouragement of procedural abuse, for a decision-maker to automatically disqualify himself or herself whenever requested by one party to do so the grounds of a possible appearance of pre-judgment or bias, regardless of whether the other party desired that the matter be dealt with by the decision-maker to whom the hearing of the case had been entrusted by the ordinary practices and procedures of the particular court or tribunal".

¹ (2006) 90 ALD 695

² (1997) 77 FCR 440

³ (1983) 155 CLR 288

⁴ (1994) 52 FCR 34

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It was also held in *Vietnam Veterans (at 20.8)*:

"The apprehension required to be shown is that the decision-maker's mind is so prejudiced in favour of a conclusion already formed that he or she will not alter that conclusion irrespective of the evidence or arguments presented to him or her."

The Delegate will hear objections and prepare a report regarding an amended Notice of Intention to Resume which is different to the Notice of Intention to Resume in respect of which objections were previously heard. It is impossible to form the view the decision-maker's mind is so prejudiced in favour of a conclusion when the circumstances giving rise to the decision-maker's involvement have changed.

Additionally, it is in the interest of consistency of decision-making that the original delegate is maintained.

Accordingly, Council does not propose changing the Delegate. Mr Marshall however may wish to address the issue and I shall ask he do so in separate correspondence.

Yours sincerely,



Richard Duhig
Senior Legal Officer
Legal Services Department

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

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THOMSON GEER
LAWYERS

Level 16, Waterfront Place
1 Eagle Street
Brisbane QLD 4000 Australia

GPO Box 169 Brisbane QLD 4001
DX 134 Brisbane

T +61 7 3338 7500
F +61 7 3338 7599

Our ref MFM:4084041
Your ref A16672806

15 March 2018

richard.duhig@moretonbay.qld.gov.au

lwalker@hwle.com.au

Mr Richard Duhig
Moreton Bay Regional Council
220 Gympie Road
STRATHPINE QLD 4500

Mr Luke Walker
HWL Ebsworth Lawyers
GPO Box 2033
BRISBANE QLD 4000

Dear Sirs

**Genamson Holdings Pty Ltd and Moreton Bay Regional Council
Proposed Resumption of Part of Lot 5 of Lot 5 on RP88015 - 134-140 Morayfield Road, Caboolture
South
Further Objection Hearing in relation to Amended Taking of Land Notice**

I refer to your letter dated 9 March 2018 and to Mr Walker's letter dated 5 March 2018.

I have considered both letters carefully including the cases referred to. I have reached the conclusion that there are no circumstances of apprehended bias present which preclude me from acting as a delegate at the proposed hearing relating to the amended Notice of Intention to Resume (**ANIR**)

Apprehended bias would only exist if there are reasonable grounds to apprehend that I would not take a critical approach to the objections or treat new information objectively.¹ In my opinion, there are no reasonable grounds to take that view.

The amended taking of land notice is such that I will be hearing different or substantially different objections to the ones I considered and addressed in my report. Consequently, this case is more analogous to *Vietnam Veterans' Association of Australia New South Wales Branch Inc v John Patrick Gallagher*² than cases where the same questions of fact and law are posed to a delegate.³

As suggested in *Vietnam Veteran's* case, merely because it may be considered likely that I would make the same decision on similar questions of fact or law does not mean apprehended bias is present. The fact that my earlier report recommended that the Council proceed with the taking of land, does not of itself demonstrate apprehended bias. It must further be shown that I would not bring a critical mind to the matter.

¹ *Singh v Minister for Immigration and Multicultural Affairs* (1997) 77 FCR 440, 451.

² (1994) 52 FCR 34.

³ See e.g. *Gabrielsen v Nurses Board of South Australia* (2006) 90 ALD 695 and *Singh v Minister for Immigration and Multicultural Affairs* (1997) 77 FCR 440.

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Furthermore, at neither the earlier objections hearing, nor in the report, did I express any adverse views about the character of the objector. Thus apprehended bias as demonstrated in *Livesey v New South Wales Bar Association*⁴ could not be found to exist.

In my opinion there are no reasonable grounds to show that I have prejudged the decision so as to bring a closed mind to the further objection hearing proposed.

Accordingly, I do not propose to disqualify myself from acting as the Council's delegate for the purpose of hearing any objections in respect of the ANIR.

I await confirmation of details of the date, time and venue of the objection hearing. I have not yet been provided with the ANIR to resume or any further notice of objection by the landowner and ask that I be provided with these and any other relevant documents.

Yours faithfully
THOMSON GEER



Michael Marshall
Partner
T +61 7 3338 7525
M 0407 914 748
E mmarshall@tglaw.com.au

⁴ (1983) 155 CLR 288.

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#3 Grounds of Objection Report 31 January 2018

Report by delegate in relation to the hearing of an Objection by Genamson Holdings Pty Ltd in respect of a proposed taking of land by the Moreton Bay Regional Council pursuant to the Acquisition of Land Act 1967 (Qld)

1 Author

- 1.1 This report was prepared by Michael Marshall, delegate appointed by Moreton Bay Regional Council.

2 Distribution

- 2.1 Peter Bittner, Partner HWL Ebsworth, on behalf of Genamson Holdings Pty Ltd.
2.2 Luke Walker, Solicitor HWL Ebsworth, on behalf of Genamson Holdings Pty Ltd.
2.3 Richard Duhig, Senior Legal Officer Moreton Bay Regional Council.

3 Background Information

Property Address	134-140 Morayfield Road, Caboolture
Property Description	Lot 5 on RP88015
Registered Owner/Objector	Genamson Holdings Pty Ltd
Date of Notice of Intention to Resume	12 October 2017
Date of Lodgement of Objection	A total of 3 notices of objection (NOO) were received as follows:- 1. Letter HWL Ebsworth (HWLE) to Moreton Bay Regional Council (MBRC) dated 15 November 2017 (NOO1); ¹ 2. HWLE "List of Further Objections" received on 22 November 2017 (NOO2); and 3. Letter HWLE to Thomson Geer Lawyers dated 15 January 2018 including supplementary brief of documents and matters referred to in letter from SLR Consulting Pty Ltd to HWLE dated 22 December 2017 (NOO3).
Purpose of Resumption	Drainage purposes and purposes incidental to carrying out drainage purposes.

¹ The grounds are listed on page 1 of the Notice as numbered 3-8 inclusive. This was acknowledged to be a typographic error and the grounds should be correspondingly re-numbered 1-6.

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4 Introduction

- 4.1 This report relates to a hearing in respect of an objection made to the proposed taking of land pursuant to the *Acquisition of Land Act 1967* (the **Act**).
- 4.2 The Moreton Bay Regional Council (**Council**) issued a Notice of Intention to Resume (**NIR**) dated 12 October 2017 to Genamson Holdings Pty Ltd (**the Owner**) giving notice that the Council intends to take:
- "1 for drainage purposes ... part of Lot 5 on RP 88015, containing an approximate area of 1.22ha and being part of the land contained in title reference 18406052 and is the area shaded yellow on the enclosed copy of sketch no. 16/1933542-Sk1; and
 - 2 for purposes incidental to the carrying out of drainage purposes, ... an easement over part of Lot 5 on RP 88015, containing an approximate area of 720 square metres and being part of the land contained in title reference 18406052 and the area hatched in black on the enclosed copy of sketch no. 16/1933542-Sk1."
- 4.3 The NIR stated that the Owner:
- "May on or before the 15th day of November 2017 serve upon the Chief Executive Officer of the Council at the Council chambers, 220 Gympie Road, Strathpine an objection in writing to the taking of the land ...*
- If you state in your objection that you desire to be heard in support of the grounds of your objection, you may appear and be heard by the Council or its delegate at the office of the Council at 220 Gympie Road, Strathpine on the 22nd day of November 2017 at 11 o'clock in the morning."*
- 4.4 By letter dated 15 November 2017, HWLE, acting on behalf of the Owner delivered a written Notice of Objection. That letter stated in part:
- "We confirm that our client wishes to be heard in support of the grounds of objection at 11am on 22 November 2017."*
- 4.5 On 17 November 2017, I received a delegation by the Chief Executive Officer of the Council of *"the power to hear the objector and to prepare a report on the objections hearing under section 8 of the Acquisition of Land Act 1967"*. The delegation of power was made pursuant to section 259 of the *Local Government Act 2009*.
- 4.6 On 17 November 2017 I received from Mr Duhig an electronic brief of documentation entitled "Brief to Delegate". A hard copy of the same brief was delivered to me on Monday, 20 November 2017. The instrument appointing me as delegate is contained at tab 4 of the Brief. A copy of the Brief to Delegate is **Attachment 1** to this report.
- 4.7 A copy of the Brief was also provided by Mr Duhig to HWLE on behalf of the Owner.
- 4.8 The venue for the objections hearing was changed to the offices of Thomson Geer Lawyers at 1 Eagle Street, Brisbane, following my appointment as Council's delegate. The change in venue was acknowledged by HWLE in an email to Mr Duhig dated 21 November 2017.

5 Conduct of Objection Hearing on 22 November 2017

- 5.1 The objection hearing commenced at the offices of Thomson Geer at approximately 11.20am on 22 November 2017. The persons in attendance at the hearing were as follows:-

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Person	Position	Representing/Role
Peter Bittner	Partner HWLE	The Owner
Luke Walker	Solicitor HWLE	The Owner
Thomas Canniffe	HWLE	The Owner
Richard Duhig	Senior Legal Officer Moreton Bay Regional Council	The Constructing Authority
Michael Marshall	Partner Thomson Geer Lawyers	Delegate Appointed by the Constructing Authority
Andrew Stower	Summer Law Clerk Thomson Geer Lawyers	Observer

5.2 *Preliminary Matters*

5.3 I disclosed the following matters:-

- (a) I had not received any instructions or documents from the Council other than the material contained in the Brief to Delegate;
- (b) I am engaged by the Council to provide legal services to it from time to time. I also act for parties in dispute with the Council against the Council including in respect of compulsory acquisition matters.

5.4 I sought and obtained confirmation that the Owner had received a copy of the delegation to Ms Anne Moffat dated 20 October 2015 (as requested in the letter of objection from HWLE in its letter of objection dated 15 November 2017).

5.5 I sought and obtained confirmation from HWLE that they were in a position to proceed with the objection hearing.

5.6 HWLE produced a document entitled "List of Further Objections" dated 22 November 2017, which is **Attachment 2** hereto.

5.7 HWLE noted a procedural non-compliance in that the Notice of Intention to Resume dated 12 October 2017 stated that the objection hearing would occur on 22 November 2017 at 11am at the office of Council at 22 Gympie Road, Strathpine, but that the Council had subsequently changed the venue to the office of Thomson Geer following my appointment as delegate. It was stated by HWLE that the Council had not amended the Notice of Intention to Resume pursuant to section 7(4AA) of the Act. I enquired as to whether HWLE contended that the change in venue had caused the Owner any prejudice. This was answered in the negative. I enquired whether HWLE asserted that there had been a lack of procedural fairness as a result. This was answered in the negative. I enquired as to whether HWLE contended that the proper course of action should be for the Council to issue an amended NIR and for the process to restart. This was answered in the negative. HWLE indicated that it wished to proceed with the objections hearing, but on the basis that the asserted non-compliance was noted. It has been duly noted by me.

5.8 An objection was then taken by HWLE to the presence of Mr Duhig. The grounds for that objection included that Mr Duhig:-

- (a) had prepared the Brief to Delegate without consultation with the owner and that the Brief did not contain all relevant materials;

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- (b) would be involved in the decision making process of the Council as to whether to proceed with the taking of the land; and
 - (c) if present at the objection hearing could jeopardise the independence or perceived independence of my function as a delegate.
- 5.9 I indicated that I did not consider it inappropriate for Mr Duhig, as a representative of the Constructing Authority to be present at the objection hearing. I also stated that I did not envisage that Mr Duhig would be an active participant. Mr Duhig at this point volunteered to remove himself, to avoid any dispute over the issue. Mr Duhig left the room at approximately 11.40am.
- 5.10 HWLE raised a question as to my relationship with the Council and the circumstances surrounding my engagement and instructions. HWLE acknowledged that my disclosures referred to in paragraph 5.3 of this report had partly addressed those matters. I was asked whether I had any discussions with Mr Duhig prior to receipt of the brief. I responded that:-
- (a) I had initial discussions with Mr Duhig concerning my availability to accept a delegation for the purpose of an objection hearing but without any substantive discussion about the specifics of the matter;
 - (b) following my appointment I had a discussion with Mr Duhig about matters of protocol surrounding the conduct of the objection hearing including noting that it would be inappropriate for Mr Duhig and I to confer about the substance of the matter either prior to or following the objection hearing; and
 - (c) my engagement was made pursuant to LocalBuy which is a panel of service providers operated by the Local Government Association of Queensland which pre-qualifies organisations to provide services to local governments at agreed charges.
- 5.11 HWLE then made representations about a range of issues that are raised in the 2 notices of objection. The grounds of objection are dealt with in section 8 of this report.
- 5.12 It was indicated by HWLE that the brief delivered to me by the Council ought in their view to have included additional material and also that the Council held further documents that should be provided by it to the Owner to allow a properly detailed notice of objection to be provided.
- 5.13 I enquired of HWLE whether they were agreeable to an adjournment of the objections hearing, to allow time for the matters referred to in paragraph 5.13 to be addressed. HWLE responded in the affirmative.
- 5.14 I sought HWLE's consent to Mr Duhig being recalled to the hearing to discuss procedural matters (rather than the substance of the objections) HWLE agreed to that course of action.
- 5.15 Mr Duhig then rejoined the hearing. I advised that the objection hearing was being adjourned to deal with an issue relating to additional documentation and that I would be writing to the parties with a proposal for certain steps to occur, prior to the objection hearing being re-convened. The hearing concluded at approximately 1.30pm.

6 Further Steps

- 6.1 **Attachment 3** is a copy of a letter sent to the parties on 23 November 2017. Following responses from both parties, I wrote to both parties on 4 December 2017 and advised on the timetable for the recommencement of the objection hearing.
- 6.2 **Attachment 4** to this report is a copy of the letter sent to the parties on 4 December 2017.
- 6.3 HWLE wrote to the Council on 8 December 2017 requesting various additional documents or classes of documents (**Attachment 5**) to which the Council responded by letter dated 15 December 2017 (**Attachment 6**).

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- 6.4 By letter dated 22 December 2017, HWLE wrote to me (**Attachment 7**) and provided me with certain additional documents to supplement the documents contained in the brief provided by the Council.
- 6.5 By letter dated 15 January 2018, HWLE on behalf of the Owner delivered "further submissions" on the proposed resumption which I have treated as a third written notice of objection – **Attachment 8**.
- 6.6 **Attachment 9** is a bundle of further emails passing between the parties and myself prior to the recommencement of the objection hearing on 17 January 2017.

7 Conduct of resumed objection hearing on 17 January 2017

- 7.1 The objection hearing recommenced at the offices of Thomson Geer at approximately 11am on 17 January 2017. The persons in attendance at the hearing were as follows:

Person	Position	Representing/Role
Peter Bittner	Partner HWLE	The Owner
Luke Walker	Solicitor HWLE	The Owner
Thomas Canniffe	HWLE	The Owner
Michael Marshall	Partner Thomson Geer Lawyers	Delegate Appointed by the Constructing Authority
Nick Traves	Summer Law Clerk Thomson Geer Lawyers	Observer

- 7.2 HWLE repeated its objection to Mr Duhig attending at the objection hearing. It was noted that Mr Duhig was contactable by telephone if required, including to discuss procedural matters following the discussion on the grounds of objection.
- 7.3 I noted that on 15 January 2018 I had received a further written objection from HWLE on behalf of the owner and also a supplementary brief of documents comprising of two volumes.
- 7.4 HWLE then made representations about a range of issues, particularly in respect of the further written notice of objection dated 15 January 2018 and the report which had been prepared by the owner's hydraulic engineering consultant, Dr Trevor Johnson dated 22 December 2017.
- 7.5 When HWLE concluded their representations in respect of the grounds of objection I enquired as to whether there were any additional issues or grounds of objection other than those raised in the various notices of objection that had been delivered. I was advised that the owner's grounds of objection should include the matters specifically referred in Dr Johnson's report dated 22 December 2017 and also a contention by the owner that the Council had not considered, or failed to properly consider the financial implications associated with the consequences of any decision to proceed with the taking of land as notified, or in respect of potential alternative solutions which may obviate the need for the taking of land.
- 7.6 I then sought and received confirmation from HWLE that the owner would not be delivering any additional written notices of objection to the proposed taking of land.
- 7.7 With the consent of HWLE, I then telephoned Mr Duhig and conferenced him into the meeting. I advised Mr Duhig that the discussion about objections had concluded and that I wished to briefly address certain procedural matters moving forward. I stated that the Queensland Government Guidelines for Local Governments – Compulsory Acquisition of Land (**Guideline**) recommended that the objector be given a copy of the objection report and any new reports or material for

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comment within 14 days and that I intended to adopt that recommendation. I indicated that I would seek to prepare the objection report with a view to circulating it to the parties during the course of the week commencing 22 January 2018. Mr Duhig and HWLE concurred with that course of action.

8 Grounds of objection

- 8.1 HWLE on behalf of the Owner has delivered three separate written notices of objection on the dates set out in section 3 of this report.
- 8.2 The third notice of objection is supported by a supplementary brief of documents provided to me by HWLE which includes a letter prepared by Dr Trevor Johnson of SLR Consulting Australia Pty Ltd.
- 8.3 For the sake of convenience, I have summarised the various grounds of objections arising from the three written notices of objection and also the matters raised verbally at the two hearings:-

Objection No.	Nature of Objection	Reference/Notice of Objection
1.	Denial of natural justice/procedural fairness	NOO1 and NOO2
2.	The Council's intention to take part of the land is, and would be, unreasonable	NOO1
3.	The Council's intention to take part of the land was not reached in good faith	NOO1
4.	Non-compliance with section 7(3)(e)(iii) of the Act	NOO2
5.	Independence of delegate	NOO2
6.	The Council has failed to demonstrate that the drainage purposes and easement for purposes incidental to drainage purposes cannot be better located elsewhere	NOO1
7.	The Council has failed to demonstrate that the drainage purposes cannot be adequately accommodated on the land without taking part of the land	NOO1
8.	The taking of part of the land will leave a parcel of land that is of no practical use or value to the owner	NOO1
9.	Material before delegate	NOO3
10.	Financial implications of alternative courses of action	Hearing 17/01/2018
11.	Dr Johnson Report	22/12/2017

- 8.4 As can be seen from the 11 grounds listed above, a number relate to legal issues rather than factual matters. The legal issues are raised in grounds 1-5 inclusive. For convenience sake I refer to these as the "legal objections". The balance issues contained in grounds 6-11 will be referred to simply as "the objections". There is some overlap between some of the grounds.

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8.5 **Legal Objections**

8.6 The legal objections raised by the land owner raise various questions that fall within the realm of administrative law. I acknowledge that these are all matters that ultimately fall for consideration and determination by a Court of competent jurisdiction. However, as these have been raised in the grounds of objection, it is appropriate for me to provide some consideration and response.

8.7 *Ground 1 – Procedural Fairness/Natural Justice*

8.8 Ground 1 relates to an assertion that there has been a denial of natural justice and procedural fairness. This issue is raised in NOO1 and NOO2. The key particulars referred to are the following:-

- (a) an asserted failure by the Council to provide the owner with "all relevant material" relating to the Council's decision to issue the NIR including the real property description of every piece of land considered by the Council as a viable alternative site and all relevant site selection criteria documents;
- (b) an asserted failure by the Council to comply with the Guideline;
- (c) MBRC has provided material to the delegate unilaterally and without notice to the land owner, the land owner has not had an opportunity to put material to the delegate prior to the objection hearing;
- (d) Council officers in particular Mr Charteris and Mr Duhig are to attend the objection hearing;
- (e) the material put before the delegate by the Council *"invites the delegate into error as it contains irrelevant information and fails to include relevant information"*;
- (f) a report entitled Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009 provided by the Council to the delegate *"is irrelevant and ought not be considered by the delegate"*; and
- (g) the Feasibility Study is not in final form and is not soundly based and should not be relied upon by the delegate.

8.9 In response to these assertions, I determined to adjourn the objections hearing on 22 November 2017 to allow the land owner to request additional documents from the MBRC, for it to respond to that request and for the Owner to have the opportunity to provide further documentation and objections to me. These actions duly occurred. These steps in my opinion have adequately addressed the Owner's concerns as reflected by this ground.

8.10 In relation to the matter raised in paragraph 8.8(d), I refer to the discussion contained in paragraphs 5.8 and 5.9 hereto.

8.11 *Ground 2 – Unreasonable*

8.12 Ground 2 is that the Council's intention to take part of the land is, and would be unreasonable. The substance of the issues raised in Ground 2 are largely, if not entirely raised by Grounds 6 and 7 and are addressed later in this report.

8.13 *Ground 3 – Lack of Good Faith*

8.14 Ground 3 asserts that the Council's intention to take the land was not reached in good faith. The basis for this ground is said to be because *"the purpose stated in the NIR for taking part of the land is untrue"*. This is said to arise because there is no need for the proposed resumption, that other better suited land is available, that the drainage purposes could be accommodated on the land without the taking of the land and/or a smaller portion of land could accommodate the drainage infrastructure.

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- 8.15 It is not clear to me whether the assertions of a lack of good faith and that the purpose stated in the NIR is "untrue" is tantamount to an assertion of bad faith. No overt assertion of bad faith was made by the owners representatives in either of its written notices or at the first objection hearing. There is nothing in the materials I have been provided with or in the matters discussed at the objection hearings that would suggest that the MBRC's intention to take part of the land was not reached in good faith, or that any aspect of the MBRC's conduct could be suggestive of bad faith.
- 8.16 The substance of the issues raised in Ground 3 are largely, if not entirely raised by Grounds 6 and 7 and are addressed later in this report.
- 8.17 *Ground 4 – Non-compliance with Section 7(3)(e)(iii) of the Act*
- 8.18 Ground 4 relates to the fact that the NIR stated that the objection hearing would occur on 22 November 2017 at 11am at the office of the Council at 220 Gympie Road, Strathpine. Following my appointment as delegate, the venue of the objections hearing was changed to the office of Thomson Geer at level 16 Waterfront Place, 1 Eagle Street, Brisbane. The date and time were unchanged. That venue change was communicated by Mr Duhig of MBRC to HWLE who duly attended at the office of Thomson Geer. NOO2 contends that the change in venue was a contravention of section 7(3)(e)(iii) of the Act with the result that the objection hearing was not being held at the place and time stated in the NIR, and that the Council has therefore failed "to hold a valid objection hearing". However at the hearing on 22 November 2017, HWLE informed me that:-
- (a) they did not contend that the owner had suffered any prejudice as a result;
 - (b) they did not assert a lack of procedural fairness on account of this issue; and
 - (c) they did not contend that the NIR should be set aside and the hearing adjourned on account of this issue.
- 8.19 On the basis of these concessions, I regard Ground 4 as being either withdrawn or of no consequence.
- 8.20 *Ground 5 – Independence of Delegate*
- 8.21 In relation to Ground 5, I refer to the discussion contained in paragraphs 5.3 and 5.10 hereto. At the hearing on 22 November 2017 it was indicated by HWLE that:-
- (a) the Owner would not press the point that I would not be able to act independently as the Council's delegate; and
 - (b) no objection was taken by the Owner to me acting as Council's delegate for the purpose of the objection hearing.
- 8.22 In view of these concessions made by HWLE, I have treated this ground of objection as withdrawn.
- 8.23 By way of general comment on Grounds 1-5, none of the legal objections raised by the Owner are, in my opinion, persuasive as would justify a recommendation by me to the Council that the current process should be discontinued by the Council. In particular, I am of the opinion that the Owner has been afforded procedural fairness and natural justice in the process to date. However, I repeat the caveat I expressed at paragraph 8.6.
- 8.24 **The Objections**
- 8.25 *Ground 6 – Locate Infrastructure Elsewhere*
- 8.26 It is argued that the Council has failed to demonstrate that the drainage purposes and easement for drainage purposes cannot be better located elsewhere.

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8.27 In support of this ground, it has been emphasised on behalf of the Owner that the Council has failed to consider the suitability of other sites for the drainage purposes including the Kate McGrath Koala Park (**Koala Park**).

8.28 The report of Dr Johnson dated 22 December 2017 states at page 4:

"There are alternate sites within the catchment which could be used for detention purposes, the most significant of which is the Koala Park immediately upstream of the site. It would be possible to locate at least part of the specified detention volume on that site. Apart from a few trees in one part of the park, there is no vegetation present in the Koala Park other than grass. It would be a simple matter to design a detention basin in this location which did not affect the amenity of the park in any substantial way, or require removal of any trees. While Council also has a plan to construct a water quality control device in this park, the hearing established that there was no impediment to co-locating this device with a detention basin provided that suitable design analysis was undertaken ..."

8.29 However, other than the Koala Park, no other alternative sites are pressed by Dr Johnson.

8.30 The Owner's objections refer at various times to the Judgment of the Planning and Environment Court in *Genamson Holdings Pty Ltd v Moreton Bay Regional Council*.² Indeed at the second objection hearing it was urged on behalf of the Owner that the Council must take this Judgment into consideration before proceeding further with the resumption. It is apparent from a reading of that decision that the issue of alternate location was ventilated at some length by the parties before His Honour Judge Rackemann. The suitability of Koala Park (to contain the drainage infrastructure) was discussed at paragraphs 57-59 of the Judgment. It is worth extracting this passage in full (footnotes omitted):-

"[57] Kate McGrath Park, which lies to the immediate southwest, provides an opportunity to provide at least some of the detention basin function. It is, however, in accordance with the PIP, proposed to be developed with a stormwater quality device, most likely a bio remediation device. Dr Johnson pointed out that a detention basin can be co-located with such a device. Mr Clark accepted as much. As he pointed out, and Dr Johnson acknowledged however, there are issues with collocating such devices. Those include as to functional (including the potential for scour and erosion issues) and increased maintenance issues. He accepted that, if space were not an issue, he would try to separate the devices with the high flows diverted to the detention basin. That is consistent with what is shown on the PIP Stormwater map.

[58] Quite apart from the functional and maintenance issues, there is also, as Dr Johnson acknowledged, a potential limitation in terms of capacity. The park, at about 8000m², is significantly smaller than the subject site, thereby limiting the size of the basin that could be achieved. If something of about the order of 21,000m³ were required (a matter discussed later), then the park would need to be excavated below the level of the existing outlet in order to achieve that volume. If that complication were to be avoided, then only part of the detention volume would be able to be achieved within the park, with Council having to look to implement measures elsewhere to find remaining detention volume.

[59] In those circumstances, attention shifts back to the subject site to achieve a regional detention basin in this vicinity. The appellant's preferred option (supported by Dr Johnson) is that it be achieved on the subject site, underneath the development. This option would see the detention basin being constructed as trunk infrastructure, pursuant to a condition of approval, prior to construction of the appellant's development over the top and subject to an appropriate infrastructure set off or refund. Appropriate arrangements, including easements,

² [2017] QPEC 56.

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would need to be put in place to facilitate Council's ongoing access to, and maintenance of, the detention basin."

8.31 The Court decision was delivered on 11 September 2017. The issue of the NIR to the Owner post dated that event. It is self evident that the suitability of the Koala Park as an alternative site:-

- (a) has been considered by the Council;
- (b) has been considered by the respective hydraulic experts, including Dr Johnson;
- (c) was found by Judge Rackemann to be problematic for the reasons identified in the Judgment.

8.32 At the first objection hearing, it was suggested that another alternative site was 44 Adelaide Drive, Caboolture. However, very little information has been provided in relation to that site. I note that Dr Johnson's report dated 22 December (which post dated the first objection hearing) makes no mention of this alternative.

8.33 *Ground 7 – Co-Location*

8.34 It is argued that the Council has failed to demonstrate that the drainage purpose cannot be adequately accommodated on the land without taking part of the land.

8.35 The Owner contends that the drainage infrastructure should be co-located on the Owner's land, by means of constructing the extension to the existing Heritage Plaza Shopping Centre on a platform above the drainage infrastructure. This matter was also considered at some length in the Planning and Environment Court proceedings at paragraphs 59-81. Paragraph 80 of the Judgment is extracted in full below:-

"[80] The evidence satisfies me that it is possible to develop a detention basin with a total capacity of 21,000m³ on the site below the proposed development. It would be accompanied by some safety issues, albeit not, of themselves, unacceptable. It would also be accompanied by some maintenance issues, which would likely affect efficiency, to some extent, compared with a free-standing detention basin. It would provide some benefit to the wider catchment, beyond offsetting the impacts of the development of the site itself, but the extent to which it would also do so have not been ascertained. It carries the potential to limit the extent to which the benefits of the council's planned regional detention basin, if developed on the subject land, can be maximised and also carries the potential to require compensatory benefits to be found elsewhere."

8.36 It is clear that the Court did not consider that its finding at paragraph 80 of the Judgment served to bind or compel the Council to accept the co-location option. That is expressly recognised by the discussion in paragraph 81 of the Judgment where it is stated:-

"[81] I am satisfied that the proposal has the potential, if constructed prematurely, to prejudice the Council's infrastructure planning. That does not call for refusal of the development application. It is however, relevant to impose conditions to address that potential prejudice. In my view it is, in the circumstances of this case, and notwithstanding the attractions of co-location, not unreasonable, having regard to matters including maximising the efficient provision of infrastructure, to do so by imposing a condition which delays commencement of construction for a reasonable, but certainly not elongated, time to afford the council an opportunity to promptly complete its proposed acquisition without prejudice to the development of a standalone basin, unless it is prepared, on reflection, to consent to the appellant's preferred alternative condition involving the co-location option."

8.37 It is apparent that the co-location option:-

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- (a) has been considered by the Council;
 - (b) has been considered by the respective hydraulic experts, including Dr Johnson; and
 - (c) was found by the Court to carry with it certain potential limitations as compared with a free standing detention basin.
- 8.38 To conclude this discussion I note that the Court has acknowledged that the Council may wish to make provision for the drainage infrastructure by way of a standalone basin on the Owner's land. This is the path that the Council has chosen to proceed by. It would appear that paragraph 80 of the Judgment confirms that there is a valid basis for the Council to conclude that the public interest is better served if a standalone detention basin is developed on the land proposed to be resumed, rather than co-located under the extension to the Heritage Plaza Shopping Centre.
- 8.39 *Ground 8 – Balance Land of No Practical Use*
- 8.40 It is argued by the Owner that the taking of part of the land will leave a parcel of land that is of no practical use or value to the Owner.
- 8.41 The focus of this ground is the 150 car parking spaces for the existing development. Part of the proposed resumption involves an easement running through the car parks of the existing Heritage Plaza Shopping Centre (refer to Sketch No. 16/1933542-Sk1 attached to the NIR). The purpose of the easement is to allow the installation of the necessary pipes and drainage infrastructure and to permit access to those works.
- 8.42 The Owner argues that:-
- (a) the easement runs directly through the majority of the 150 car parks provided by the existing development;
 - (b) the easement would cause the existing development to be unable to comply with the conditions of the existing approvals as it would "*destroy the majority of the car parks provided by the existing development*"; and
 - (c) as a consequence the entirety of the land should therefore be taken by the Council pursuant to section 13(1) of the Act.
- 8.43 The materials I have been briefed with by both the Council and the Owner did not include:-
- (a) the existing development approval for the Heritage Plaza Shopping Centre;
 - (b) any report of a traffic engineer in support of the assertion that the easement would destroy the majority of the existing car parks; or
 - (c) any map or plan depicting the area of the proposed easement superimposed against the existing Heritage Plaza Shopping Centre.
- 8.44 Notwithstanding the matters referred to in paragraph 8.43, this ground of objection is not persuasive for several reasons:-
- (a) an aerial photograph of the existing development shows that the easement will run through the existing carpark rather than the built form structure of the existing shopping centre.³ This aerial photograph is **Attachment 10**.
 - (b) the terms of the proposed easement (which are set out in schedule 4 to the NIR) do not preclude the future use by the Owner of that part of the land for car parking. Of relevance the proposed terms only preclude the construction of a dwelling house or other building on the area of the proposed easement; and

³ This photograph was not included in the brief provided to me, which I caused to be obtained in preparation for the first objection hearing. It was tabled by me and discussed at that hearing.

- (c) to the extent that there is a permanent loss of existing car parking (which appears unlikely), the Owner is at liberty to apply to the Council to modify the terms of the existing approval. All loss or damage arising as a result would be compensable in the ordinary course of events.
- 8.45 The Owner has not demonstrated any persuasive basis that would lead me to the view that the balance land would be of no practical use or value to the Owner.
- 8.46 Following completion of the easement works, it would appear that the existing Heritage Plaza Shopping Centre can operate in much the same manner (if not identically) to its current operations.
- 8.47 *Ground 9 – Material Before Delegate/Probative Value*
- 8.48 It is contended in NOO3 that, as delegate, I am "required to make findings of fact based on that (sic) matters put before you by (the Owner)". It is further contended that in this case "there is no probative material before you that would justify a finding that the proposed resumption is required. Indeed, the weight of evidence is overwhelmingly to the contrary. In the circumstances, the land holder submits that you, as delegate of the Council, could not reasonably conclude that the proposed resumption is required".
- 8.49 These contentions once again raise issues of administrative law. I re-state the caveat referred to in paragraph 8.6. However, as the issue has been raised, it is necessary for me to address it. In my opinion the materials contained in the Council's brief to the delegate (**Attachment 1**) provide a reasonable basis for the Council to seek to resume the land for the purpose of drainage purposes.
- 8.50 *Ground 11 – Financial Implications of Alternative Courses of Action*
- 8.51 At the second objection hearing, it was contended that the Council had failed to consider the financial implications associated with alternative courses of action to that of the proposed resumption including valuation of alternate sites. The brief to delegate provided by the Council does not appear to address that issue, at least in express terms. That of course does not necessarily mean that the Council has not considered such matters. The terms of the Act impose no such requirement on the Council. The Guideline does refer to a range of matters that "may be relevant to the assessment process" including "obtain indicative valuations for site options". It is neither necessary nor appropriate for me to express my opinion as to the legal status of the Guideline. However, it is clear enough from the written notices of objection, the report of Dr Johnson and the Judgment of the Planning and Environment Court, that there are only two seriously proposed alternative courses of action, namely to locate the infrastructure in the Koala Park or to co-locate the infrastructure under the extension to Heritage Plaza Shopping Centre. As noted earlier, the material discloses potential problems and/or inadequacies with both alternatives for a range of reasons including capacity, safety and maintenance.
- 8.52 In my opinion this is not a sufficient basis for me to recommend that the resumption be discontinued.
- 8.53 *Ground 12 – Dr Johnson Report/ Supplementary Material*
- 8.54 Shortly prior to the second objection hearing, I was provided with a report prepared by Dr Johnson dated 22 December 2017. It is noted that Dr Johnson gave evidence on behalf of the Owner in the Planning and Environment Court proceeding and that a considerable amount of the substance of his report addresses issues that were the subject of findings by Judge Rackemann. I have reservations as to the legal correctness of the assertion made on behalf of the Owner that, in my role as delegate, it is incumbent on me to make findings of fact based on matters put before me by the Owner, which would include the Dr Johnson report. One obvious difficulty with doing so, is that I do not hold any expertise or qualification in the discipline of hydraulic engineering. I note that pursuant to section 8(2) of the Act, the Council is obliged to consider the matters raised in the report prior to making its determination whether to proceed or not with the proposed taking of land. The same comments apply in respect of the approximately two lever arch volumes of

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

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additional documentation provided to me under cover of letter from HWLE dated 22 December 2017.

9 Conclusion

9.1 In the written notices of objection and at the objection hearings a number of legalistic arguments were put forward on behalf of the Owner as to what my role as delegate required me, as a matter of law, to do and urged certain courses of action upon me.

9.2 It is neither necessary nor appropriate for me to engage with those legal arguments and I do not intend to do so. In discharging my function as delegate I have had regard to:-

- (a) the provisions of the Act, particularly section 8;
- (b) the Guideline; and
- (c) relevant case law discussing the role and purpose of the objection hearing.

9.3 Further to paragraph 9.2(c) above, I have had regard to the following discussion by the Queensland Court of Appeal in the case of *Little v Minister for Land Management*⁴ which included the following passage:

"Procedural fairness also requires that a potential objector be given adequate time for steps required, such as preparation of a notice of objection and preparation for a hearing when one is required." (page 200 line 45)

"The Act then gives them two complementary rights to present a case in opposition to the resumption proposed. The first, the notice of objection, must be in writing. The second is a right 'to be heard in support of the grounds of the objection'. ... That is to say, an objector is given a right to elaborate upon and explain the basis of his opposition and to argue for his point of view. There is nothing in the statutory silence which suggests that an adversarial proceeding is contemplated." (page 201 line 45)

9.4 I am of the view:-

- (a) that the grounds of objection do not provide sufficient reasons to discontinue with the resumption; and
- (b) that the MBRC should proceed with the resumption.

Dated: 31 JANUARY 2018



Michael Marshall

Delegate of the Constructing Authority

⁴ [1995] 1 Qd R 190.

*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

Attachment 1

GENAMSON HOLDINGS PTY LTD

AND

MORETON BAY REGIONAL COUNCIL

**COMPULSORY ACQUISITION -
134-140 MORAYFIELD ROAD, CABOOLTURE SOUTH**

BRIEF TO DELEGATE

**Michael Marshall
Thomson Geer
Level 16 Waterfront Place
1 Eagle Street
Brisbane Qld 4000**

Richard Duhig
Moreton Bay Regional Council
220 Gympie Road
Strathpine Qld
Ph: (07) 3480 6661
Ref: A16215745

Moreton Bay Regional Council

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Instructions

You are instructed to act as Council's delegate at an objections hearing pursuant to section 8 of the *Acquisition of Land Act (Qld) 1967* to be held at your offices on Wednesday 22 November 2017 at 11am.

You are briefed with the relevant information to hear the objections. Should you require further information when preparing your report please contact the writer and cc the objector's solicitor and the information will be provided to you and the objector's solicitor.

A delegation from Council's CEO is included in the brief.

Dated: 17 November 2017

Signed: Richard Duhig



Moreton Bay Regional Council

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

In the Matter of

GENAMSON HOLDINGS PTY LTD

AND

MORETON BAY REGIONAL COUNCIL

**COMPULSORY ACQUISITION -
134-140 MORAYFIELD ROAD, CABOOLTURE SOUTH**

INDEX TO BRIEF

NO.	DOCUMENT	DATE
1.	Notice of Intention to Resume and associated documents	12.10.17
2.	Correspondence from HWL Ebsworth enclosing objections	15.11.17
3.	Reports supporting the resumption: (a) Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments (b) Investigation Report: Morayfield 134 Morayfield Road Feasibility Study Regional Detention Basin	2009 Undated
4.	CEO Moreton Bay Regional Council delegation to Michael Marshall, Thomson Geer	17.11.17

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Phone: (07) 3480 6860
Our Ref: A2016-487
Date: 12 October 2017

Genamson Holdings Pty. Ltd.
Suite 44, 650 George Street
SYDNEY NSW 2000

Dear Mr. Lowe

**PROPOSED RESUMPTION OF PART OF LAND FOR DRAINAGE PURPOSES
PART OF LOT 5 ON RP88015 (134 MORAYFIELD ROAD, CABOOLTURE)**

Council has identified your property, or property you have an interest in, as being affected by a proposed resumption for drainage purposes. Council intends to resume 1.22ha for drainage purposes, and 720m² as an easement for purposes incidental to carrying out drainage purposes.

We enclose a Notice of Intention to Resume ("NIR") advising you of Council's intention to acquire the land and easement.

A copy of the NIR has been forwarded to any party that may have an interest in the land, including the Office of the Registrar of Titles, for information and noting.

As stated in the NIR, you may object to the proposed taking of the land and easement, and request inspection of any relevant Council reports or documents in support of your objection. Council's resumption delegate is also available to hear any verbal submissions in support of your objection, at an objection hearing.

Please note the times specified in the NIR for the lodgement of a written objection and the time and date for an objection hearing. The dates have been chosen to ensure you have adequate time to prepare any objection you may wish to lodge against the proposed resumption and to prepare for an objection hearing should you wish to object.

Please note that Council will assume you do not wish to attend an objection hearing if Council does not receive written confirmation of your intention to attend the objection hearing on or before 15 November 2017.

We also enclose a handout about Council's policy and procedures on resumption matters, as well as a Background Information Statement outlining the work proposed and the reasons for that work.

In the near future, it will be necessary for Council's surveyors to carry out a survey to ascertain the precise area proposed to be acquired. Apart from defining the area and location, the survey will assist you in your negotiations with Council for payment of compensation. A Council officer will contact you shortly to arrange an acceptable time to carry out the required survey.

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

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Council does not treat lightly the disturbance to your interests in this matter. Council is willing to negotiate the acquisition of the subject land and easement, and will meet reasonable costs incurred in the preparation of a valuation or claim for compensation for the land and easement required, if you wish to engage a valuer and/or solicitor to assist in your negotiations with Council. If you wish to negotiate an agreement for the acquisition of the land and easement, Council will, at your request, send you an acquisition agreement.

For general enquiries regarding the acquisition process, or to negotiate a written agreement for acquisition of the land and easement, please contact Property Services on (07) 3480 6860, or email propertyservices@moretonbay.qld.gov.au.

Kind Regards



Anne Moffat
Director

Executive and Property Services

Enc. Notice of Intention to Resume
Council's Policy and Procedures on Resumption Matters
Background Information Statement

C/c Westpac Banking Corporation
275 Kent Street
Sydney NSW 2000

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Phone: (07)3480 6669
Our Ref: A2016-487

Date: 12 October 2017

"THE ACQUISITION OF LAND ACT 1967"

AND

"THE LOCAL GOVERNMENT ACT 2009"

NOTICE OF INTENTION TO RESUME

Registered Owner

Genamson Holdings Pty. Ltd.
A.C.N. 053 174 271
Suite 44, 650 George Street
SYDNEY NSW 2000

Registered Mortgagee

Westpac Banking Corporation
Attention: Property Services
275 Kent Street
Sydney NSW 2000

NOTICE IS HEREBY GIVEN that pursuant to the Acquisition of Land Act 1967 ("the Act") and the Local Government Act 2009 the MORETON BAY REGIONAL COUNCIL ("the Council") intends to take:

1. for drainage purposes, the land described in Schedule 1 hereto; and
2. For purposes incidental to the carrying out drainage purposes, the easement described in Schedule 1A hereto.

You may on or before the 15th day of November 2017 serve upon the Chief Executive Officer of the Council at the Council Chambers, 220 Gympie Road, Strathpine an objection in writing to the taking of the land.

The objection must state the grounds of the objection and the facts and circumstances relied on by the objector in support of those grounds.

Any matter pertaining to the amount or payment of compensation is not a ground of objection.

If you state in your objection that you desire to be heard in support of the grounds of your objection, you may appear and be heard by the Council or its delegate at the office of the

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E info@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

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Council at 220 Gympie Road, Strathpine on the 22nd day of November 2017 at 11 o'clock in
the morning.

The Council is willing to negotiate to acquire by agreement or, failing agreement, to negotiate
the compensation to be paid and all consequential matters.

Details of the period within which a claim for compensation under the Act must be served on
the Council, and a claimant's right to apply to the Land Court to serve a claim after the end of
the time period within which a claim for compensation must be served, are contained in s19
(3) to (6) of the Act which is reproduced in Schedule 2.

Your attention is also directed to s20 (2A) of the Act which is reproduced in Schedule 3.

The proposed easement terms are outlined in Schedule 4.

DATED this 12th day of October 2017.

SIGNED ON BEHALF OF MORETON BAY)
REGIONAL COUNCIL by ANNE MOFFAT)
the Director of Executive and Property)
Services thereof, being an authorized)
delegate to sign this Notice of Intention to)
Resume pursuant to s259 of the *Local)
Government Act 2009* and CEO Approval)
delegation dated 20 October 2015)


DIRECTOR

*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

SCHEDULE 1

Part of Lot 5 on RP88015, containing an approximate area of 1.22ha and being part of the land contained in Title Reference 18406052 and is the area shaded yellow on the **enclosed** copy of Sketch No. 16/1933542-Sk1.

SCHEDULE 1A

An easement over part of Lot 5 on RP88015, containing an approximate area of 720m² and being part of the land contained in Title Reference 18406052 and is the area hatched in black on the **enclosed** copy of Sketch No. 16/1933542-Sk1.

SCHEDULE 2

S19 (3) to (6) of the Act

- (3) A claim for compensation may be served on the constructing authority only within 3 years after the day the land was taken.
- (4) Despite subsection (3), the constructing authority may accept, and deal with, a claim for compensation served by the claimant more than 3 years after the day the land was taken if the constructing authority is satisfied it is reasonable in all the circumstances to do so.
- (5) If the constructing authority does not accept a claim served by the claimant more than 3 years after the day the land was taken, the claimant may apply to the Land Court to decide whether it is reasonable in all the circumstances for the constructing authority to accept the claim.
- (6) If the Land Court decides it is reasonable in all the circumstances for the constructing authority to accept the claim, the constructing authority must accept, and deal with, the claim under the Act.

SCHEDULE 3

S20 (2A) of the Act

However, in assessing the compensation, a contract, licence, agreement or other arrangements (a **relevant instrument**) entered into in relation to the land after the notice of intention to resume was served on the claimant must not be taken into consideration if the relevant instrument was entered into for the sole or dominant purpose of enabling the claimant or another person to obtain compensation for an interest in the land created under the instrument.

*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

SCHEDULE 4

MORETON BAY REGIONAL COUNCIL ("the Council") has the right to enter upon the proposed easement ("the land") for drainage purposes to construct, place and lay and forever use, maintain, inspect, cleanse, repair, replace and manage the Relevant Works for conducting drainage water in, through, over or under the land (and whether the same or any of them are laid or constructed at the same time or at different times) and to obtain full, free and uninterrupted access to the Relevant Works at all times with engineers, surveyors, workmen and other persons and with equipment to do such works and things as the Council in its discretion thinks fit. The Council has the right to use such part or parts of the owner's land immediately adjacent to or adjoining either side of the land as the Council considers reasonable or necessary for the proper exercise of these rights.

Unless the Council allows, the owner must not erect or construct any dwelling house or other building on the land or use the land in any way which would obstruct or interfere with the works constructed by the Council upon the land and the proper and effective use of it by the Council.

"**Relevant Works**" means drainage works for overland or underground drains, pipes, conduits and channels for the passage or conveyance of rainwater and other lawful discharges to local government drainage through, across or under the land together with manholes, field inlet pits and all other usual or necessary fittings and attachments as well as works for the protection and/or support of all such things.

**ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)**



COUNCIL'S GENERAL PROCEDURE IN DEALING WITH RESUMPTIONS

This handout is not legal advice and has been prepared purely to assist persons served with a Notice of Intention to Resume to gain a general understanding of the resumption process.

STEP

1. Council decision authorising resumption.

2. Preparation of Notice of Intention to Resume (N.I.R.)

* N.I.R. allows at least 30 days for a person to object in person and in writing.

N.I.R. advises that Council is willing to negotiate to acquire by agreement

3. N.I.R. sent to owners, mortgagees and to other persons who would be entitled to claim compensation under the *Acquisition of Land Act 1967*. A copy of the N.I.R. also provided to the Registrar of Titles for noting on Certificate of Title.

* Council's handout on resumption procedures enclosed with letter forwarding N.I.R.

An opportunity is available for relevant Council documents to be inspected.

4. Hearing of objections, if required.

* Hearing is held with Council's delegate and a report prepared by the delegate.

5. Report submitted to Council on the resumption proposal and any objections to the proposal.

6. Decision by Council to proceed/amend (or not to proceed) with resumption. Owners notified of Council decision.

* Preparation of a Plan of Survey by surveyor.

7. Application to State Government Department responsible for administering the *Acquisition of Land Act 1967*, or declaration by the Council, and proclamation of the resumption published in the Government Gazette.

* Council becomes owner of the resumed land at date Proclamation published in Government Gazette.

8. A copy of the resumption Proclamation together with extracts from *Acquisition of Land Act 1967* forwarded to owners, mortgagees and other persons who would be entitled to claim compensation.

* Extracts from the *Acquisition of Land Act 1967* outline rights to compensation.

Registered valuer/s engaged to assess compensation.

9. Proclamation registered in Titles Office.

10. Compensation paid as an advance or in full.

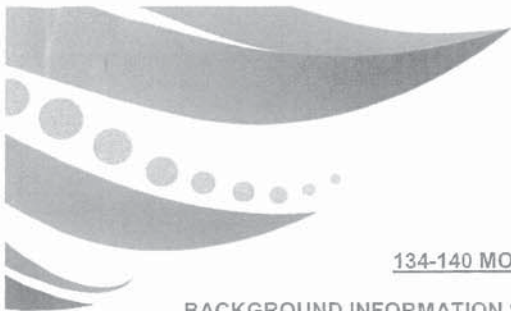
* "Without Prejudice" conference with valuer/s convened where necessary.

11. Land Court of Queensland determines compensation where agreement has not been reached on compensation.

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0580 | E mbro@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



134-140 MORAYFIELD ROAD, CABOOLTURE SOUTH

BACKGROUND INFORMATION STATEMENT FOR PRIVATE PROPERTY RESUMPTION

BACKGROUND

Objective

The Priority Infrastructure Plan identifies a trunk detention basin (SSC_DB_3) in the vicinity of the site at 134-140 Morayfield Road, Caboolture South. The detention basin is to have a total capacity of 21,000m³, requiring approximately 12,600m² of land.

This location is the only viable location for a detention basin of this capacity.

Project Needs

In circumstances where intensification of development is supported by the Planning Scheme, the increased development results in an increased impervious (water cannot penetrate) area. The consequence is increased stormwater run-off into drainage lines and waterways, which can significantly increase flood levels and velocities throughout the catchment. Regional infrastructure items, such as detention basins, are considered and planned for within the Priority Infrastructure Plan. In established urban areas where intensification is supported, Council often has limited access to public land to mitigate the increased flood impacts. In these circumstances acquisition of private land, as in this circumstance, may be the only reasonable alternative to enable development in the balance of the catchment.

The area to be resumed is approximately 12,200m² as well as 720m² for an access easement. The extent of the proposed acquisition is shown in Figure 1 below.



Figure 1 - Proposed lots and easement (Concept Plan for Discussion Only)

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3265 0555 | F (07) 3205 0599 | E mbrc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

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MATERIAL ON WHICH FINDING OF FACT WAS BASED

A detention basin in this location was first identified by Council in 2009 as part of a flood investigation for the Burpengary Creek and Caboolture River catchments. The detention basin was then included as a project in the Adopted Infrastructure Charges Resolution (superseded) and is now included in the Priority Infrastructure Plan in the MBRC Planning Scheme.

Council officers recently undertook a feasibility study to confirm the need for a detention basin in this location. The investigation concluded that the location identified at 134-140 Morayfield Road, Caboolture South is the most practical and suitable location for the detention basin because it offers the opportunity to capture virtually all of the upper catchment flows, reduce the existing flood risks at Morayfield Road and address future increased flows due to the intensification allowed under the Planning Scheme.

ALTERNATIVE ALIGNMENTS / OPTIONS

An evaluation of alternative stormwater management options and alternative locations for a detention basin were considered as part of the feasibility study.

FINDINGS ON MATERIAL QUESTIONS OF FACT

Expected Benefits

The detention basin will offer the following benefits:

- Capture upper catchment flows
- Reduce the existing flood risks at Morayfield Road
- Address future increased flows due to the intensification allowed under the Planning Scheme
- Limit potential increases in flood damages downstream as a result of development upstream of the basin

REASONS FOR DECISION

The project will capture virtually all of the upper catchment flows, reduce the existing flood risks at Morayfield Road and address future increased flows due to the intensification allowed under the Planning Scheme.

Reason for Resumptions

A portion of approximately 12,200m² (plus 720m² for an easement) of Lot 5 on RP88015 is required to be resumed by Council to complete this project. It is not possible to achieve the required detention in a cost effective manner at another location within the catchment or by utilizing alternative stormwater management solutions. The acquisition of a portion of freehold land from the aforementioned property is therefore necessary to achieve the required detention.

Moreton Bay Regional Council

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Our Ref: PJB:LIW:618645
Your Ref: A2016-487

15 November 2017

By Courier
Chief Executive Officer
Moreton Bay Regional Council
220 Gympie Road
STRATHPINE QLD 4500

Email: ceo@moretonbay.qld.gov.au
CC: propertyservices@moretonbay.qld.gov.au

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Sir

**Objection to Notice of Intention to Resume Land for Drainage Purposes and Easement for Purposes Incidental to Carrying Out Drainage Purposes
134-140 Morayfield Road, Caboolture South**

We act for Genamson Holdings Pty Ltd, the owner of land situated at 134-140 Morayfield Road, Caboolture South in the State of Queensland and more particularly described as Lot 5 on RP88015 (**Land**).

We are instructed to make a formal objection to Council's Notice of Intention to Resume dated 12 October 2017 (**NIR**) with respect to Council's intention to take part of the Land for drainage purposes and to impose an easement over part of the Land for purposes incidental to carrying out drainage purposes.

The **enclosed** document (**Notice of Objection**) sets out our client's grounds of objection and the facts and circumstances in support of those grounds.

As detailed in the Notice of Objection, the Council has not provided our client with sufficient material and information to allow our client to properly consider and assess Council's proposed acquisition.

We confirm that our client wishes to be heard in support of the grounds of objection at 11.00am on 22 November 2017.

So that our client may sensibly prepare for the objection hearing, please provide:

1. the CEO Approval Delegation granted to Ms Anne Moffat dated 20 October 2015;
and

Doc ID 451120203/v1
Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

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HPV 11/2017 10/1/17

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
25 September 2018

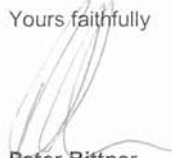
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- the appropriate delegation to the delegate of Council who will conduct the objection hearing.

We look forward to receipt of the above.

Yours faithfully



Peter Bittner
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au



Luke Walker
Solicitor
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Grounds of Objection to Notice of Intention to Resume dated 12 October 2017

134-140 Morayfield Road, CABOOLTURE SOUTH QLD 4510

GENAMSON HOLDINGS PTY LTD ACN 053 174 271 (**Owner**), the owner of land located at 134-140 Morayfield Road, CABOOLTURE SOUTH in the State of Queensland, more particularly described as Lot 5 on RP88015 (**Land**), objects to the taking of part of the Land for drainage purposes and the imposition of an easement over part of the Land for purposes incidental to drainage purposes (**drainage purposes**) as set out in the Moreton Bay Regional Council's (**Council**) Notice of Intention to Resume dated 12 October 2017 (**NIR**), on the following grounds:-

3. the Council has not accorded the owner procedural fairness nor complied with the rules of natural justice in issuing the NIR;
4. the Council has failed to demonstrate that the drainage purposes and easement for purposes incidental to drainage purposes cannot be better located elsewhere;
5. the Council has failed to demonstrate that the drainage purposes cannot be adequately accommodated on the Land without taking part of the Land;
6. the Council's intention to take part of the Land is, and would be, unreasonable;
7. the Council's intention to take part of the Land was not reached in good faith; and
8. the taking of part of the Land will leave a parcel of land that is of no practical use or value to the Owner.

The facts and circumstances in support of the above grounds are as follows:-

1. In relation to ground one:
 - (a) the Council has not afforded procedural fairness to the Owner as the Council has not, within a reasonable time or at all, provided the Owner with all relevant material relating to the Council's decision to issue the NIR, including (but not limited to):
 - (i) the real property description and address sufficient to readily identify every piece of land considered by the Council as a viable alternative site to the subject land; and
 - (ii) all relevant selection criteria documents in existence for choice of location of sites for the drainage purposes and purposes incidental to carrying out the drainage purposes.
 - (b) the Council has not complied with the *Guidelines for Local Governments - Compulsory Acquisition of Land*;
2. In relation to ground two:

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- (a) the Council has failed to adequately consider the suitability of other sites for the drainage purposes or whether any land is required for the drainage purposes. In particular:
 - (i) the proposed drainage infrastructure could be located in the Kate McGrath Koala Park (along with the treatment infrastructure proposed for that location), amongst other locations;
 - (ii) the proposed drainage infrastructure is unnecessary if appropriate discharge controls are imposed on other nearby properties;
 - (iii) the proposed drainage infrastructure is not required for approximately ten (10) years or more, if at all; and
 - (iv) the Council has failed to demonstrate that the quantity of detention to be provided by the taking of part of the Land (being 21,000m³) is in fact required;
- (b) the Council has failed to adequately consider the suitability of other sites for the location of the drainage infrastructure for the drainage purposes. In particular:
 - (i) a number of other drainage solutions are available to the Council in the area that would better serve the drainage needs of the catchment;
 - (ii) the Council's Priority Infrastructure Plan (**PIP**) is indicative only and does not require that the drainage infrastructure be constructed on the Land;
 - (iii) the proposed drainage infrastructure could reasonably be co-located in the Kate McGrath Koala Park; and
 - (iv) the proposed drainage infrastructure to be located on the Land is unnecessary if appropriate discharge controls are imposed on other nearby properties.
- 3. In relation to ground three:
 - (a) on 16 December 2015, the Owner provided technical drawings and other material demonstrating that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (b) in *Genamson Holdings Pty Ltd v Moreton Bay Regional Council* [2017] QPEC 56 (**PEC Appeal**) at [80], Rackemann DCJ found, on the basis of expert evidence, that the drainage purposes could be accommodated on the Land as outlined in the technical drawings without the taking of the Land;
 - (c) the technical drawings and other material provided to the Council on 16 December 2015 are but one way that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (d) in forming the intention to take part of the Land, the Council has failed to consider:

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- (i) the technical drawings and other material provided to it on 16 December 2015;
 - (ii) the expert evidence led at the hearing of, and the judgment in, the PEC Appeal; and
 - (e) despite request, the Council has failed to demonstrate why the drainage purposes cannot be adequately accommodated on the Land without taking the Land.
4. In relation to ground four:
- (a) there is no need for part of the Land to be taken for drainage purposes;
 - (b) other land is available and better suited for the drainage purposes;
 - (c) if the Land is, in fact, necessary for the drainage purposes (which is not admitted), there is no need for the Council to take part of the Land as proposed in the NIR because:
 - (i) on 16 December 2015, the Owner provided technical drawings and other material demonstrating that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (ii) in the PEC Appeal at [80], Rackemann DCJ found, on the basis of expert evidence, that the drainage purposes could be accommodated on the Land as outlined in the technical drawings without the taking of the Land;
 - (iii) the technical drawings and other material provided to the Council on 16 December 2015 are but one way that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (iv) in forming the intention to take part of the Land, the Council has failed to consider:
 - (A) the technical drawings and other material provided to it on 16 December 2015;
 - (B) the expert evidence led at the hearing of, and the judgment in, the PEC Appeal; and
 - (v) a smaller portion of the Land could accommodate the drainage infrastructure necessary for the drainage purposes;
 - (d) in deciding to issue the NIR, the Council has taken into account irrelevant considerations and failed to take into account relevant considerations;
 - (e) the Council has not complied with the *Guidelines for Local Governments - Compulsory Acquisition of Land*;

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- (f) the PIP is indicative only and does not require that the drainage infrastructure be constructed on the Land;
 - (g) the Council has based its decision to issue the NIR on reports and investigations that are wrong; and
 - (h) taking the Land would be premature because it may not be required for drainage purposes for approximately ten (10) years or more, if at all.
5. In relation to ground five:
- (a) the purpose stated in the NIR for taking part of the Land is untrue because:
 - (i) there is no need for part of the Land to be taken or for the imposition of an easement over part of the Land for the drainage purposes;
 - (ii) other land is available and better suited for the drainage purposes;
 - (iii) if the Land is, in fact, necessary for the drainage purposes (which is not admitted), there is no need for the Council to take part of the Land as proposed in the NIR because:
 - (A) on 16 December 2015, the Owner provided technical drawings and other material demonstrating that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (B) in the PEC Appeal at [80], Rackemann DCJ found, on the basis of expert evidence, that the drainage purposes could be accommodated on the Land as outlined in the technical drawings without the taking of the Land;
 - (C) the technical drawings and other material provided to the Council on 16 December 2015 are but one way that the drainage purposes could be accommodated on the Land without the taking of the Land;
 - (D) in forming the intention to take part of the Land, the Council has failed to consider:
 - (1) the technical drawings and other material provided to it on 16 December 2015;
 - (2) the expert evidence led at the hearing of, and the judgment in, the PEC Appeal; and
 - (E) a smaller portion of the Land could accommodate the drainage infrastructure necessary for the drainage purposes;
 - (iv) in deciding to issue the NIR, the Council has taken into account irrelevant considerations and failed to take into account relevant considerations;

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- (v) the Council has not complied with the *Guidelines for Local Governments - Compulsory Acquisition of Land*;
- (vi) the PIP is indicative only and does not require that the drainage infrastructure be constructed on the Land;
- (vii) the Council has based its decision to issue the NIR on reports and investigations that are wrong; and
- (viii) taking the Land would be premature because it may not be required for drainage purposes for approximately ten (10) years or more, if at all.

6. In relation to ground six:

- (a) the existing shopping centre development (**Existing Development**) located on part of the Land is required to provide car parking pursuant to rezoning approvals dated 22 November 1989 and 4 November 1992 (**Existing Approvals**);
- (b) the Existing Development currently provides 150 car parking spaces;
- (c) the easement proposed to be imposed on the Land as part of the NIR (**Proposed Easement**) runs directly through the majority of the car parks provided by the Existing Development;
- (d) the Proposed Easement allows the Council, inter alia, to construct overland drains, pipes, conduits and channels within the servient tenement;
- (e) the Proposed Easement would cause the Existing Development to be unable to comply with the conditions of the Existing Approvals as it would destroy the majority of the carparks provided by the Existing Development;
- (f) in the premises:
 - (i) the taking of part of the Land and the imposition of the Proposed Easement will cause the remainder of the Land to become of no practical use or value to the owner; and
 - (ii) the entirety of the Land should therefore be taken by the Council pursuant to s13(1) of the *Acquisition of Land Act 1967*.

Moreton Bay Regional Council

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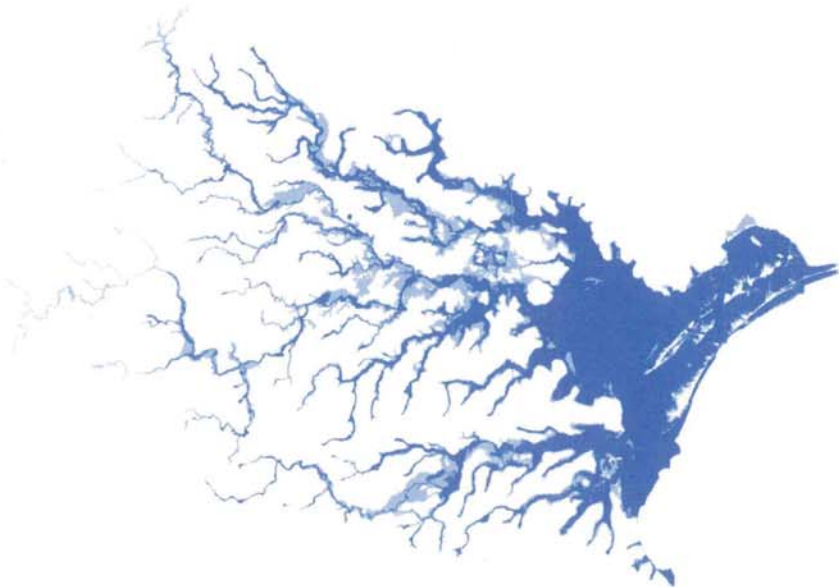
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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009



**Prepared by:
MBRC Drainage, Waterways & Coastal Planning Unit**



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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

1 Introduction

The following investigation was undertaken by the Drainage, Waterways and Coastal Planning Unit of Moreton Bay Regional Council (MBRC) to assist with the development of the Planning Scheme Policy "PSP21E Trunk Infrastructure Contributions – Stormwater". PSP21E relates to the establishment of an equitable mechanism for levying new development to fund the cost of stormwater trunk infrastructure for the Caboolture District.

The purpose of the investigation was to identify the stormwater quantity trunk infrastructure required to meet the future development demands in the Caboolture district. To make this assessment, determination of existing and future land development demand scenarios was undertaken. The change in these land use values (from existing to future) were used as the basis for the investigation's recommended trunk infrastructure.

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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

2 Methodology

A series of separate analyses were undertaken to establish the performance of various components of the stormwater quantity infrastructure network within the study area including natural and man-made open channels and culvert crossings. Where deficiencies were observed to meet future demand, an upgrade requirement was identified and incorporated into an infrastructure program. Where appropriate, trunk infrastructure in the form of regional scale detention storage and drainage reserves were also identified and included in the program. The program includes an estimate of preferred construction timing, establishment cost and recommendations on how these costs should be apportioned between existing and future residents.

An important feature of this investigation has been the use of well established and rigorous engineering calculation methodologies, employed using principles being established for the concurrent Moreton Bay Climate Risk and Flood Mapping project, namely:

- Regional scale data capture techniques (that leverage spatial technology to increase the efficiency and accuracy of input datasets)
- Regional scale numerical analysis (to improve the speed and consistency of engineering assessments and ensure expenditure is targeted towards areas of greatest need)
- Flexible data management and analysis tools (recognising that engineering assessments should be revised and improved as available information also changes or improves)

This investigation is limited to stormwater quantity infrastructure requirements within the Burpengary and Caboolture river level catchments and their component creek catchments. While areas outside these river catchments are outside the area covered by this analysis, the unit cost of stormwater quantity infrastructure per demand unit can be logically transposed between similar catchments and an outline planning process has been adopted for validation.

The investigation does not include an assessment of trunk pipe drainage requirements. It is recommended that this be undertaken as soon as possible for incorporation into a future revision of PSP21E.

It is also noted that whilst the methods employed are detailed and rigorous, they are broad scale, as necessary for an investigation of this nature. All identified infrastructure should be progressively re-assessed relative to the desired standards of service as the information available continues to improve.

A series of maps describing key study input and output has been included in Appendix A and a series of tables describing the identified infrastructure requirements has been included in Appendix B.

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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

3 Investigation Area

The investigation area includes all major catchments (Creek Catchments) within the Burpengary and Caboolture minor basins (River Catchments) as listed below:

River	Creek	ID	Area Ha
Burpengary	Burpengary Creek	BUR	6,395
Burpengary	Little Burpengary Creek	LBC	1,727
Burpengary	Deception Bay	DEC	517
Caboolture	Godwin Beach	GOD	3,480
Caboolture	Caboolture Mouth	CBM	1,690
Caboolture	King John Creek	KJC	4,825
Caboolture	Gympie Creek	GYM	1,635
Caboolture	Lagoon Creek	LAG	4,458
Caboolture	Sheepstation Creek	SSC	3,075
Caboolture	Wararba Creek	WAR	7,210
Caboolture	Caboolture River	CAB	11,269
Caboolture	Gregors Creek	GRE	1,672

The Burpengary Caboolture investigation area has a total area of approximately 48,000 hectares and includes the existing urban development areas of Burpengary, Morayfield, Caboolture, Deception Bay and Godwin Beach.

Outside the urban development area the investigation area comprises mostly rural landuse, with some areas of remnant forest remaining in the steep headwaters and the low lying floodplains.

The creek and open channel network drains generally in a west to east manner, with Burpengary Creek and Caboolture River representing the main first order stream channels discharging to Moreton Bay. It is noted that both the Deception Bay and Godwin Beach major catchments also incorporate independent outlet discharge points.

The various stream channels and their associated floodplains are well defined with limited cross-connections. Sensible development of the floodplain has generally resulted in the retention of natural channels throughout the region. However there is a network of transport corridors that traverse the floodplains via culverts and bridges creating constrictions, along with some locations where the stream channels have been re-engineered and piped to suit adjoining development.

A significant amount of future potential development has been identified within the catchment involving the expansion of urban development in and around existing major settlements. Details of estimated increases in impervious cover were supplied by Council's Strategic Planning group for use in this investigation. It is noted that this excludes the proposed 'investigation area' west of Caboolture as identified in the SEQ Regional Plan. If this development area proceeds then a separate similar investigation will be required for the catchments affected.

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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

4 Data Collection and Collation

There were limited previous studies available of sufficient detail to assist with this investigation. As a result the majority of information used for this assessment was derived from first principles using hydrologic and hydraulic modelling tools as described in Section 4 and 5 below.

Key data sets used for hydrologic and hydraulic modelling include:

- High resolution aerial photography (base data)
- LiDAR topographic survey (base data used for catchment delineation and hydraulic modelling)
- Detailed stream and catchment network (used for hydrologic and hydraulic modelling)
- A grid of synthetic 'design' rainfall gauges based on Australian Rainfall & Runoff (AR&R) (used for hydrologic modelling)
- Culvert and bridge dimensions (used for assessment of crossing performance)

It is noted that the culvert and bridge dimension data available at study commencement contained some significant data gaps and inconsistencies. During the course of this investigation a field campaign was undertaken in order to confirm key structure dimensions and levels. The Godwin Beach Waterway Management Plan (GHD, 2004), was also used to extract basic details of existing culvert crossing structure dimensions in the Godwin Beach creek catchment.

It is also noted that previously established flood extents (a composite of results from previous flood investigations undertaken by the former Caboolture Shire Council) were compared against hydraulic model results as a general sensibility cross-check.

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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

5 Hydrologic Modelling

The study investigations were based on a detailed hydrologic model of the catchment prepared using accurate and comprehensive catchment and stream network information as described in Section 3 and the mapping in Appendix A.

The hydrologic software adopted for use in this study is the runoff-routing modelling package WBNM. WBNM is a highly regarded industry standard hydrologic model, incorporating design procedures from AR&R. WBNM is well supported in Australia and has undergone extensive research to validate its underlying algorithms and parameters. For this investigation the model was established using regionally calibrated storage lag factors and conservative design infiltration loss parameters.

The WBNM hydrologic model was employed to estimate peak discharges throughout the catchment resulting from a 100 year Average Recurrence Interval (ARI) Embedded Design Storm and a 2 hour Probable Maximum Precipitation (PMP) as a notional 'extreme' event.

Sufficient detail was incorporated into the catchment and stream network to permit results to be used for the purposes of hydraulic modelling and identification of detention basin requirements. Calculation points were also incorporated at sufficient levels of detail to allow determination of peak flows at approximately 240 existing crossing locations. Requirements for crossing upgrade were established using the outlet structure routines provided within WBNM.

The use of a runoff-routing hydrologic model provides a more rigorous basis for infrastructure determination than a rational method approximation as it uses full storm temporal patterns in accordance with AR&R and explicitly routes flow through the channel network thus accounting for variation in catchment linearity and connectivity. It also lends itself to progressive improvements as more catchment specific data becomes available.

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6 Hydraulic Modelling

The peak flow results derived from hydrologic modelling were used as input to a hydraulic model of the investigation area's floodplains.

The hydraulic software adopted for use in this study is the hydrodynamic modelling package TUFLOW. TUFLOW is recognised as an industry standard package (widely used by flood modellers across Australia). It has strong capability as a hydrodynamic computational engine (wide range of potential model applications with results verified through calibration) with well understood and simple parametisation. TUFLOW has open and transparent input and output file structures facilitating the development of database tools for efficient data manipulation and integration with Council's GIS

Key features of the model's application for this investigation include:

- Separate models were prepared for the Burpengary and Caboolture River systems due to numerical computation limitations. Each analysis domain was represented using a two-dimensional grid, oriented north-south and an adopted grid cell size of 10m.
- Model topography based on LiDAR only. It is noted that LiDAR does not capture the component of the creek channel below water level. No correction was applied, however this is considered to have limited accuracy implications since the component of conveyance provided by bathymetry is generally small during major flood events (since the full channel and overbank areas are engaged).
- Inflow to the model domain provided at regular spacings co-incident with the outlet of each minor catchment. Inflows were extracted from WBNM as full local hydrographs. Both a 100 year Embedded Design Storm and 'extreme event' were modelled assuming existing case catchment conditions.
- No modelling of hydraulic structures (i.e. culverts and bridges) except where significant depth of afflux was observed upstream of high embankments without openings.
- Average Mannings's 'n' hydraulic roughness of 0.06 for floodplain areas and 0.02 for large waterways. Variation with flow depth was not considered.
- A downstream boundary condition of 2.30 mAHD approximately equivalent to a 20 year ARI storm tide as determined by the recently completed Storm Tide Hazard Study (Cardno, 2009). This boundary condition was fixed for the full duration of the event.

Results extracted from the model include data layers describing spatial variation in peak water surface level, depth, velocity and hydraulic hazard in accordance with NSW Floodplain Development Manual 2005. Flood extents were also derived.

Mapping has been included in Appendix A describing general flood behaviour within the study area. Model results indicate that the study area has well defined floodplains and limited flow break-out into development areas. The floodplains of the major creek systems merge in the lower reaches downstream of the Bruce Highway and show low sensitivity to the increase in flow between the 100 year ARI and extreme flood event.

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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

7 Stormwater Infrastructure Requirements

Four types of stormwater quantity infrastructure were identified as part of this investigation:

- Detention Basins (DB)
- Crossing Upgrades (CU)
- Drainage Corridor Reserves (RES)
- Open Channel Work (OCW)

Descriptions of how these various infrastructure items were identified, costed and prioritised are included in the following sub-sections.

7.1 Detention Basins (DB)

Identification

PSP21E defines a 'Detention Basin' as:

"A pond or basin designed to temporarily detain storm or flood waters, in order to attenuate peak flows to acceptable levels downstream within a constructed major drainage system or stream.

A detention basin should comprise an inlet structure, a grassed or concrete basin, an outlet structure, an embankment or other means to enclose the basin and an overflow spillway. A GPT may be required at the inlet to the basin to limit the amount of coarse sediment, litter and debris entering the basin. The volume of the basin and the outlet structure should be sized to attenuate the outflow peak discharge during the design flood to a predetermined limit. The outlet structure should be fitted with a grate to prevent persons or large objects being drawn into the downstream system. Where the outlet pipework discharges to an open channel or stream appropriate erosion protection should be provided. The overflow spillway should be designed to pass flows in excess of the design discharge of the outlet system. A suitable "all weather" access road is required to permit access for maintenance."

In order to establish Detention Basin requirements the following sequence of analyses were undertaken:

- An 'Area Of Interest' (AOI) for floodplain detention storage was identified based on those catchments within the Designated Infrastructure Service Area (DISA) and a cumulative area of less than 500 hectares.
- The WBNM hydrologic model for a future growth scenario was run to identify the increase in local flood discharge resulting from future development.
- The amount of flood storage required to maintain a non-worsening condition in respect of peak flow was calculated using a preliminary detention basin sizing technique recommended in the Queensland Urban Drainage Manual (Boyd method).

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- A desktop site selection was undertaken based on areas of denser urban growth where cumulative catchment area was optimal for placement of detention storage.
- For each major catchment the total volume of required flood storage was distributed across the preferred detention basin sites on a pro-rata basis based on cumulative discharge in the 100 year ARI event. This provided a detention storage volume for each site.

Costing

Costing for Detention Basins includes two major components:

Land Acquisition - Where detention basins were located on existing Council land no land acquisition cost was included. For those basins identified on private land the required area of acquisition was calculated assuming an average 2m depth (at full storage) and a 20% uplift factor for access maintenance and batters. Land valuation was on the basis of market value for land that is 50% flood free, 25% above the 50yr event, and 25% below the 50yr event at the subject site (refer market valuation report "Land Cost Estimates for Open Space and Community Purpose Land and Future Stormwater Land and Riparian Corridor Management Areas" (Planet Valuation Services, March 2009).

Construction

The adopted construction unit rate costs were established by a report prepared by sub-consultants EnGeny in March 2009 and are as follows:

Basin Volume (m3)	Rate (\$/m3)
0 - 15000	60.0
15001 - 30000	54.2
30001 - 50000	48.3
50001 - 80000	44.4
80001 - 120000	41.3
120001 - 150000	38.1
>15000	36.3

Prioritisation

Prioritisation of detention basins for the purpose of financial modelling was linked to the impervious cover of the local minor catchment. This method ensures that those basins in areas of existing demand are established quickly.

While some strategic planning will be required to suit Council's flood mitigation program, in practical terms the construction of detention basins will be undertaken on an opportunistic basis as each catchment develops.

7.2 Crossing Upgrades (CU)

Identification

PSP21E defines a 'Crossing Upgrade' as:

"Measures to improve the hydraulic conveyance or efficiency of a waterway or constructed channel at a road crossing. These may include the installation of additional pipes or box culverts and new or increased bridge waterway openings or

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spans. It also includes associated headwall, wingwalls, concrete aprons and erosion protection and may also include limited channel re-alignment upstream and downstream of the crossing."

To establish the requirement for waterway crossing upgrades, the MBRC Hydrologic Model (refer Section 4) was used to identify flows and estimated overtopping depths at each culvert structure for a range of design flood events. Those structures that did not meet Desired Standards of Service (DSS) were identified as requiring an upgrade. Where a crossing upgrade was identified as potentially not being feasible, an allowance was made for cost towards the establishment of non-structural flood safety measures.

Costing

Costing of crossing upgrades involved the separate calculation of the following cost components for each structure upgrade:

- Trenching for culvert installation
- Service relocation
- Base slab construction (where a box culvert)
- Supply and installation of new culvert barrels (based on supplier estimates)
- Headwall construction
- Traffic control
- 10% allowance for design, tender and supervision costs

Costings were based on conceptual design only and therefore incorporate a 30% contingency. Costing of crossing upgrades assumes no land acquisition component.

Prioritisation

Prioritisation of crossing upgrades for the purpose of financial modelling was linked to the calculated depth of overtopping at the structure. This method ensures that those crossing upgrades that represent the greatest safety risk are upgraded first.

7.3 Drainage Corridor Reserves (RES)

Identification

PSP21E defines a 'Drainage Corridor Reserve' as:

"The area of land acquired or transferred to Council, identified within the applicable planning as being specifically required for the lawful discharge of drainage from upstream urban catchments where ownership of the land and responsibility for maintenance of revegetated buffers and maintenance and operation of any drainage system lies with Council".

Drainage reserves were identified throughout the investigation area as a land envelope:

- where flood information was available, all areas with velocity multiplied by depth ($V \times D$) greater than 0.4 in a 100 year ARI event. This represents the component of the floodplain with greatest conveyance and therefore of highest importance with respect to overall floodplain management. This threshold has also been set equivalent to a safe trafficable depth for pedestrian safety as identified in Council's design manual

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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

AND

- where flood information was not available (generally smaller creek systems), all areas within a 10 meter distance of a creek centreline for all creeks with a minimum contributing area of 10 hectares. This is a practical limit of maximum contributing area above which pipe drainage no longer remains an appropriate design solution.

In addition, where land was identified as Riparian Corridor Management Area (RCMA) as part of the Stormwater Quality network and was adjacent to Drainage Corridor Reserves, the adjacent RCMA land was included in the Drainage Corridor Reserve for the purpose of providing a single cost of land acquisition for the overall area.

Costing

Costing of drainage reserves is based on the acquisition cost of land at current market value (refer market valuation report "*Land Cost Estimates for Open Space and Community Purpose Land and Future Stormwater Land and Riparian Corridor Management Areas*" (Planet Valuation Services, March 2009).

Generally, Council will look to acquire land within the 100 year floodplain. However, in some areas it may be necessary for Council to acquire small areas of non-floodprone land to permit maintenance access as well as sensible linkages and layouts for adjoining development. Accordingly, valuation of land for Drainage Corridor Reserve includes 80% of the land at the floodplain rate and 20% of the land at the flood-free rate.

Prioritisation

Prioritisation of drainage reserves for the purpose of financial modelling was linked to the priority established for the adjoining Riparian Corridor Management Areas.

While some strategic acquisition will be required, in practical terms the acquisition of drainage reserves will occur as required when adjoining parcels are developed.

7.4 Open Channel Work (OCW)

Identification

PSP21E defines 'Open Channel Work' as:

"Excavated or formed channel to collect and convey the design flood flow from an upstream catchment to discharge to a watercourse, wetland or detention basin. Characteristics include regular profile, full or partial lining of the channel invert and batters with concrete, rock or vegetation and downstream erosion protection works."

Areas requiring open channel work were identified from a hydraulic assessment of the capacity of existing engineered channels using TUFLOW (refer Section 5). The need for upgrade was established where these channels were identified as having no additional capacity in areas of future growth.

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*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

Costing

Costing of open channel work involved the separate calculation of the following cost components for each work item:

- Earthworks
- Service relocation
- Construction of debris control structures at road crossings (to assist reliability of channel capacity under conditions of potential blockage)
- Retaining walls
- Landscaping
- 15% allowance for survey, design, tender and supervision costs

Costings were based on conceptual design only and therefore incorporate a 30% contingency. Costing of open channel work assumes no land acquisition component.

Prioritisation

Prioritisation of open channel work was on the basis of a desktop assessment of those areas with least capacity to accommodate increased peak discharge (low capacity given highest priority). This ensures that the identified upgrades occur before significant impacts due to new development can occur.

*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009

8 Conclusions and Recommendations

The above investigation, undertaken for the purpose of identifying stormwater quantity trunk infrastructure for the Caboolture district, has utilised the best available hydraulic and hydrological engineering modelling techniques and theory applicable to broad-scale strategic infrastructure assessment. The infrastructure assessment has been verified by site inspections and outline planning to ensure appropriate distribution and consistency with the desired standards of service. It is therefore, recommended that the trunk infrastructure identified in this investigation be considered as the basis for the stormwater quantity calculation of the developer contributions in Council's *PSP21E Trunk Infrastructure Contributions – Stormwater*.

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

List of Maps

Catchment Mapping

- 1.01 Investigation Area
- 1.02 Catchment and Stream Network
- 1.03 Catchment Aerial Photography
- 1.04 Catchment Topography
- 1.05 Existing Impervious Cover
- 1.06 Future 2021 Impervious Cover
- 1.07 Impervious Cover Increase

Hydrologic Modelling

- 2.01 Peak Flow - Existing 100 yr ARI Embedded Design Storm
- 2.02 Peak Flow - Future 100 yr ARI Embedded Design Storm
- 2.03 Peak Flow - Existing versus Future Comparison
- 2.04 Peak Flow - Extreme Event
- 2.05 Detention Basin Areas of Interest
- 2.06 Waterway Crossings
- 2.07 Waterway Crossings - Existing Performance

Hydraulic Modelling

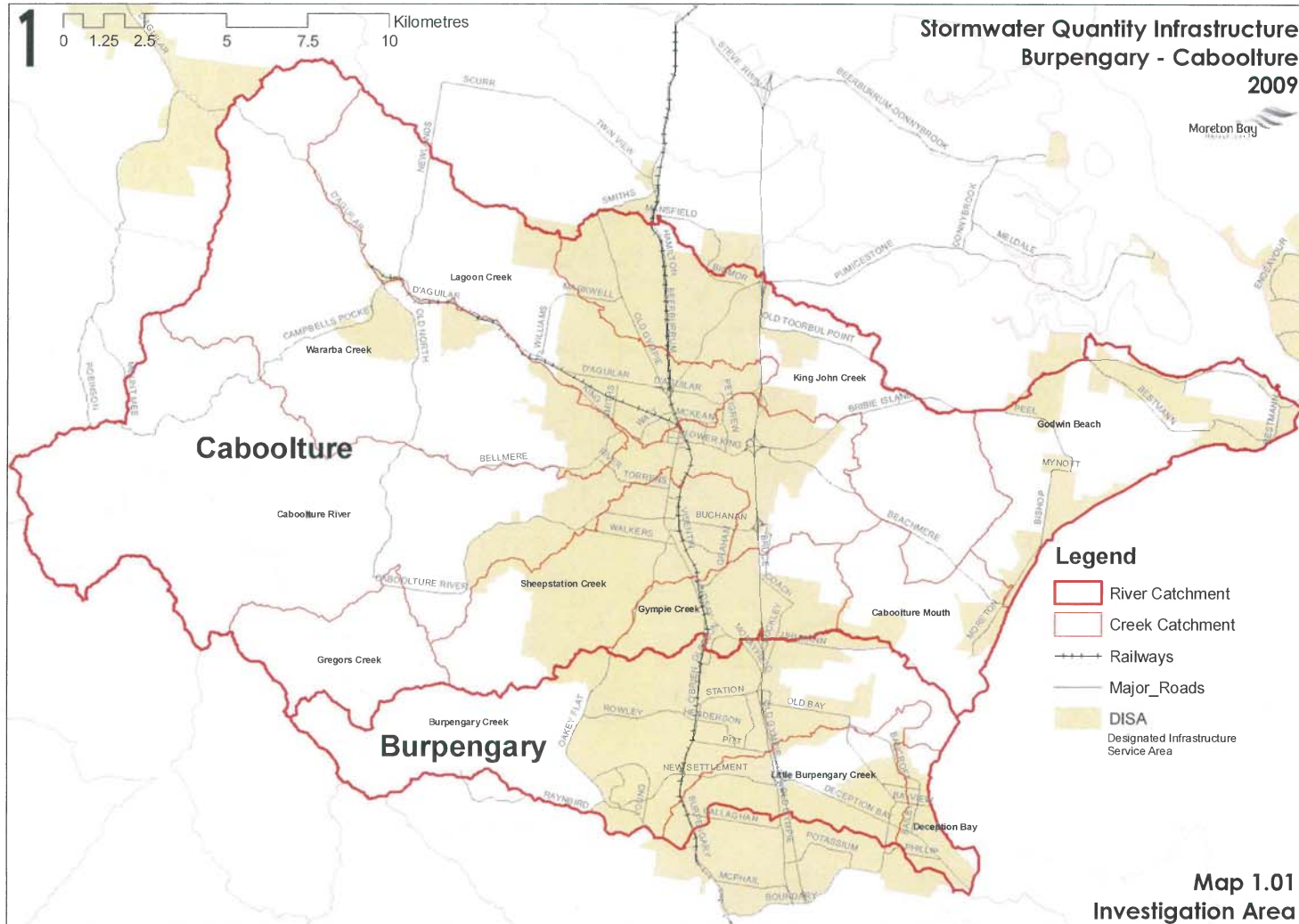
- 3.01 Flood Extents - 100yr ARI EDS and Extreme Event
- 3.02 Flood Surface Level - 100 yr ARI EDS
- 3.03 Velocity x Depth - 100 yr ARI EDS
- 3.04 NSW FPDM Hazard - 100yr ARI EDS

Stormwater Quantity Infrastructure Requirements

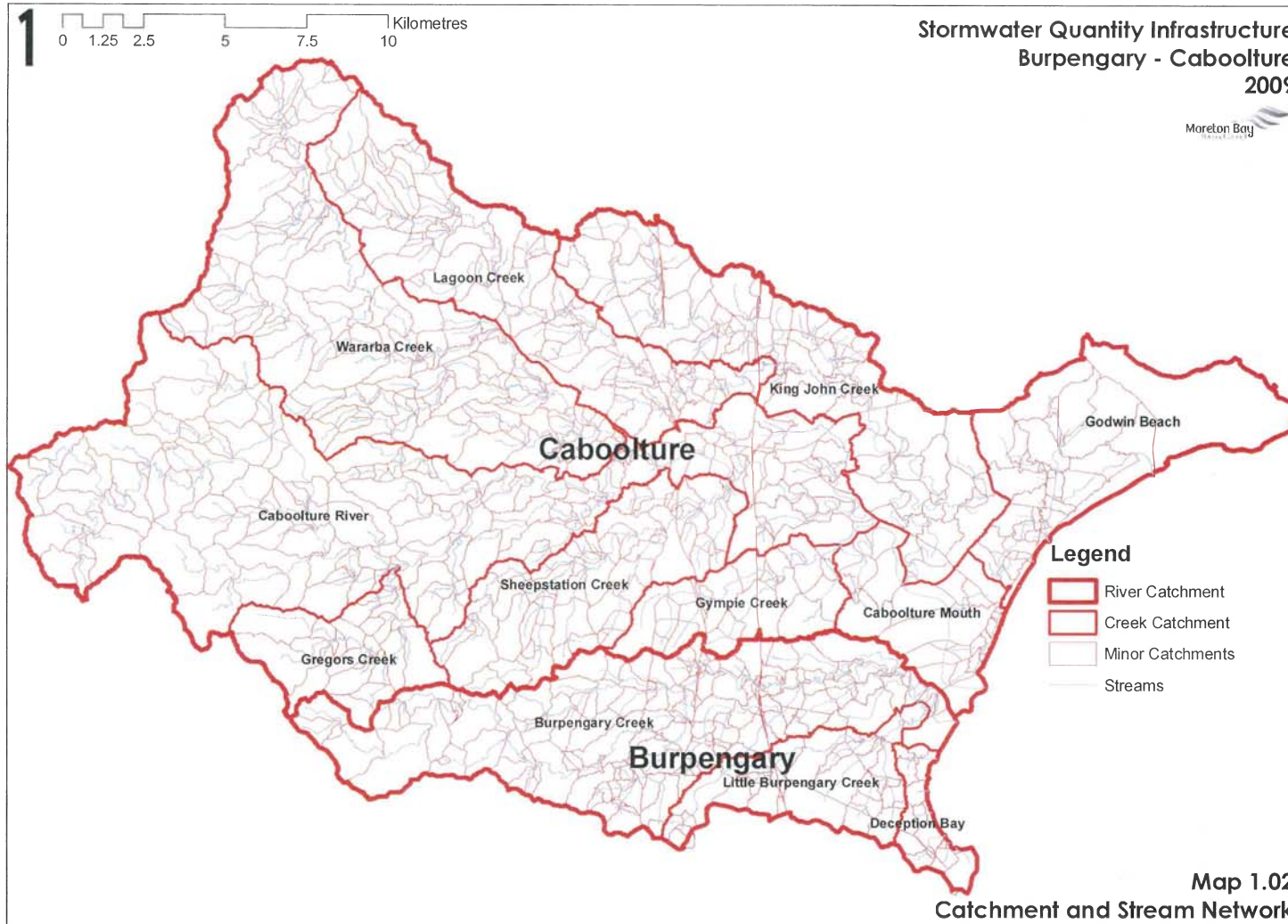
- 4.01 Detention Basins (DB)
- 4.02 Crossing Upgrades (CU)
- 4.03 Corridor Reserve (RES)
- 4.04 Open Channel Work (OCW)

Appendix A

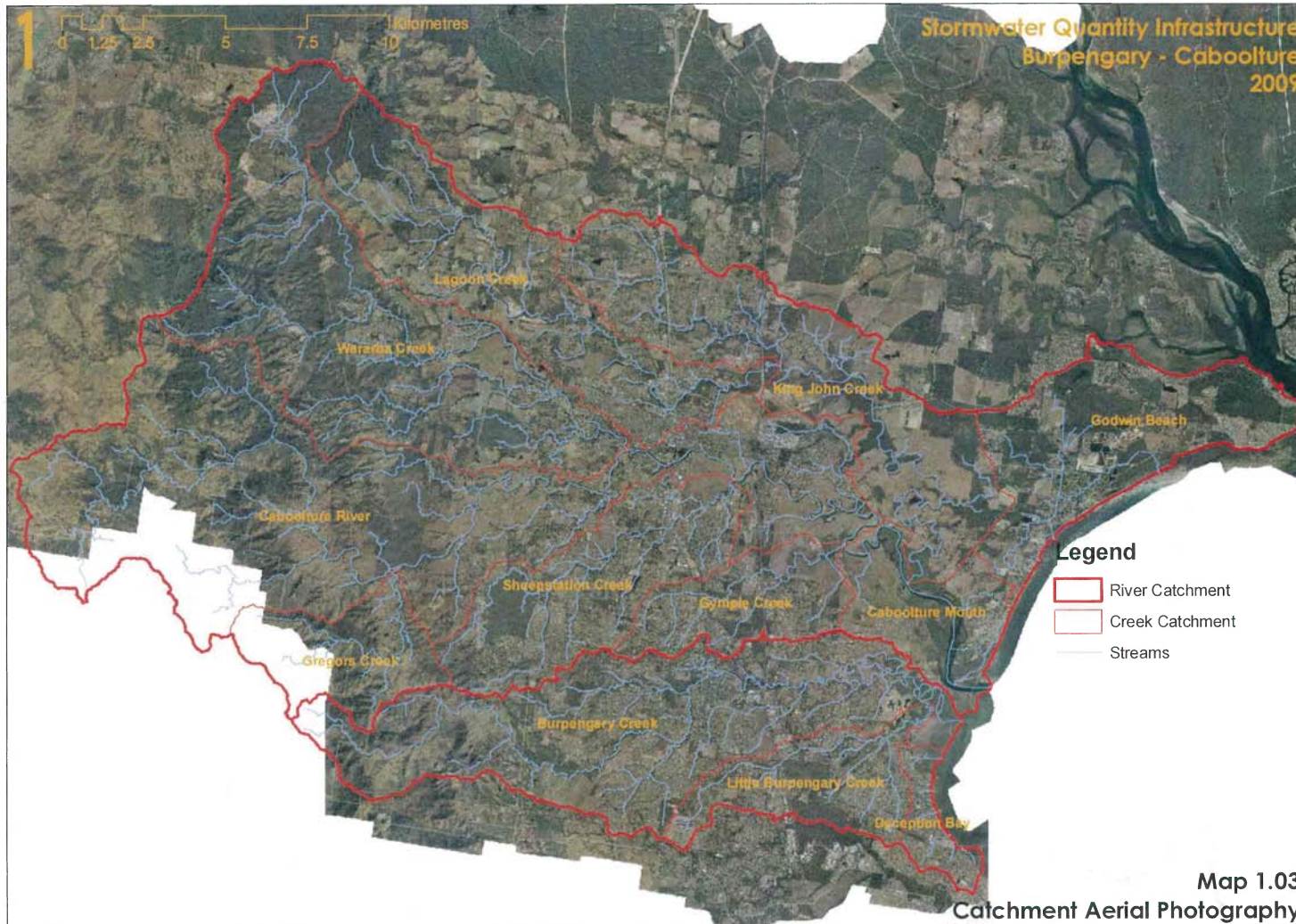
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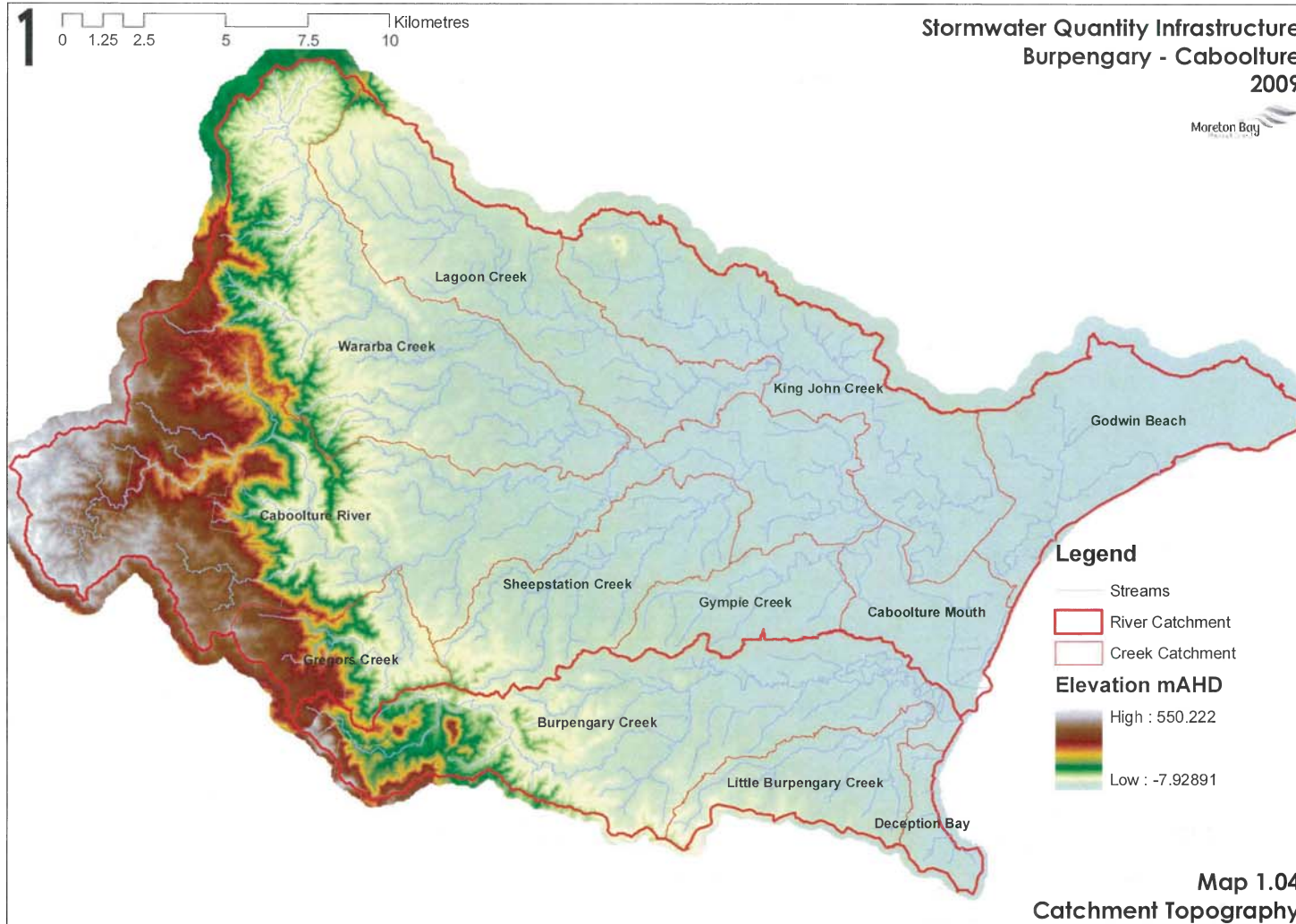
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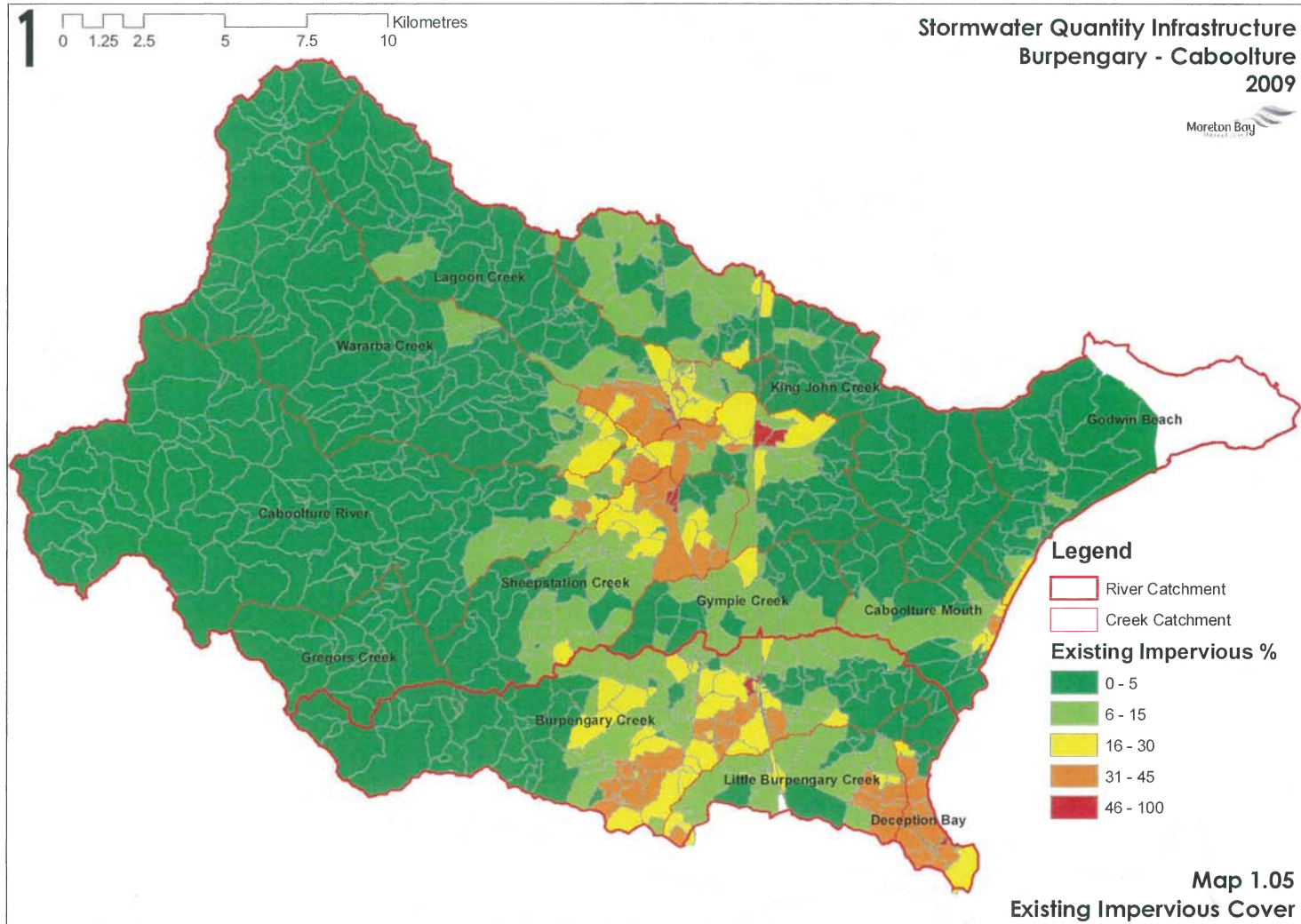
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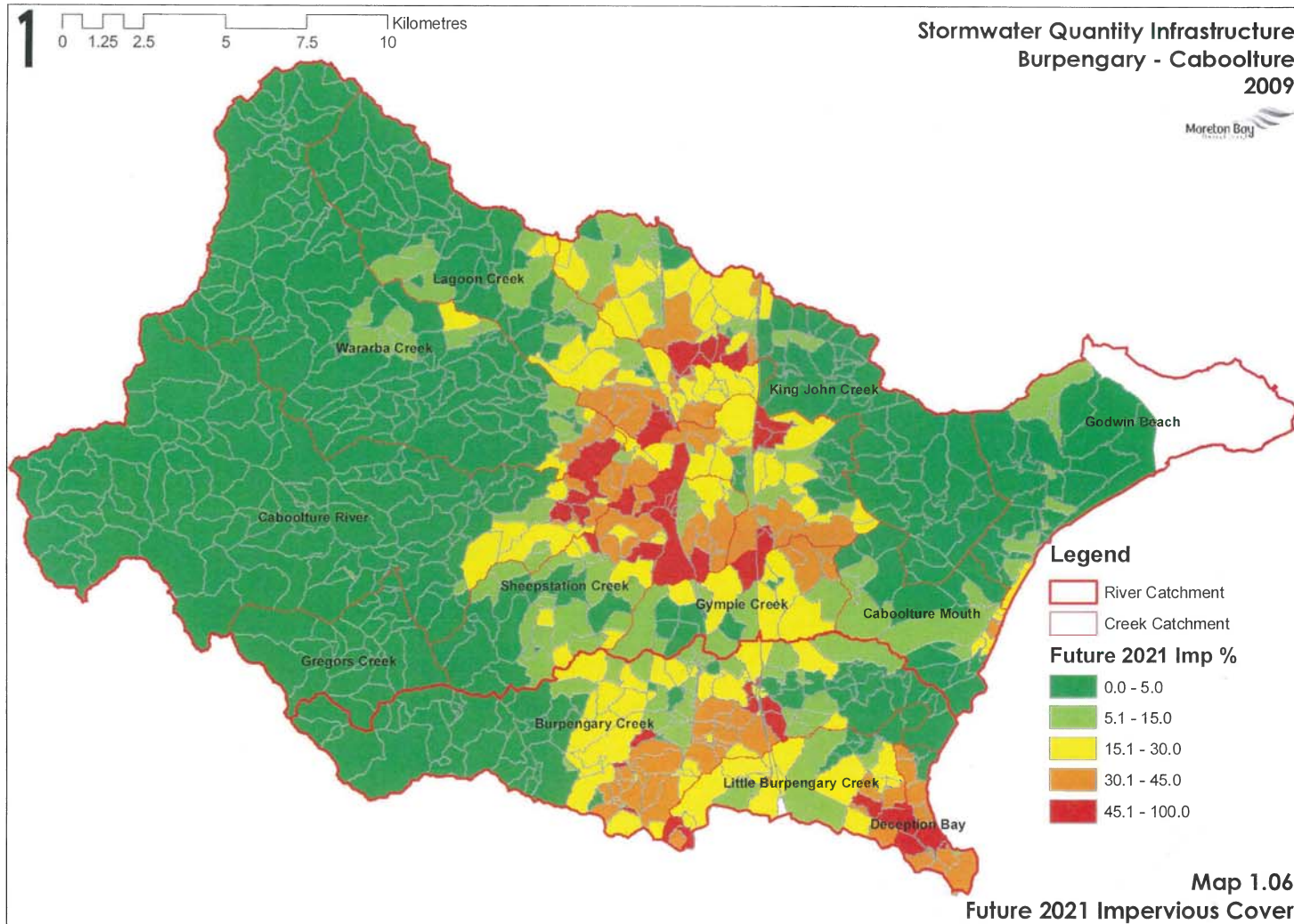
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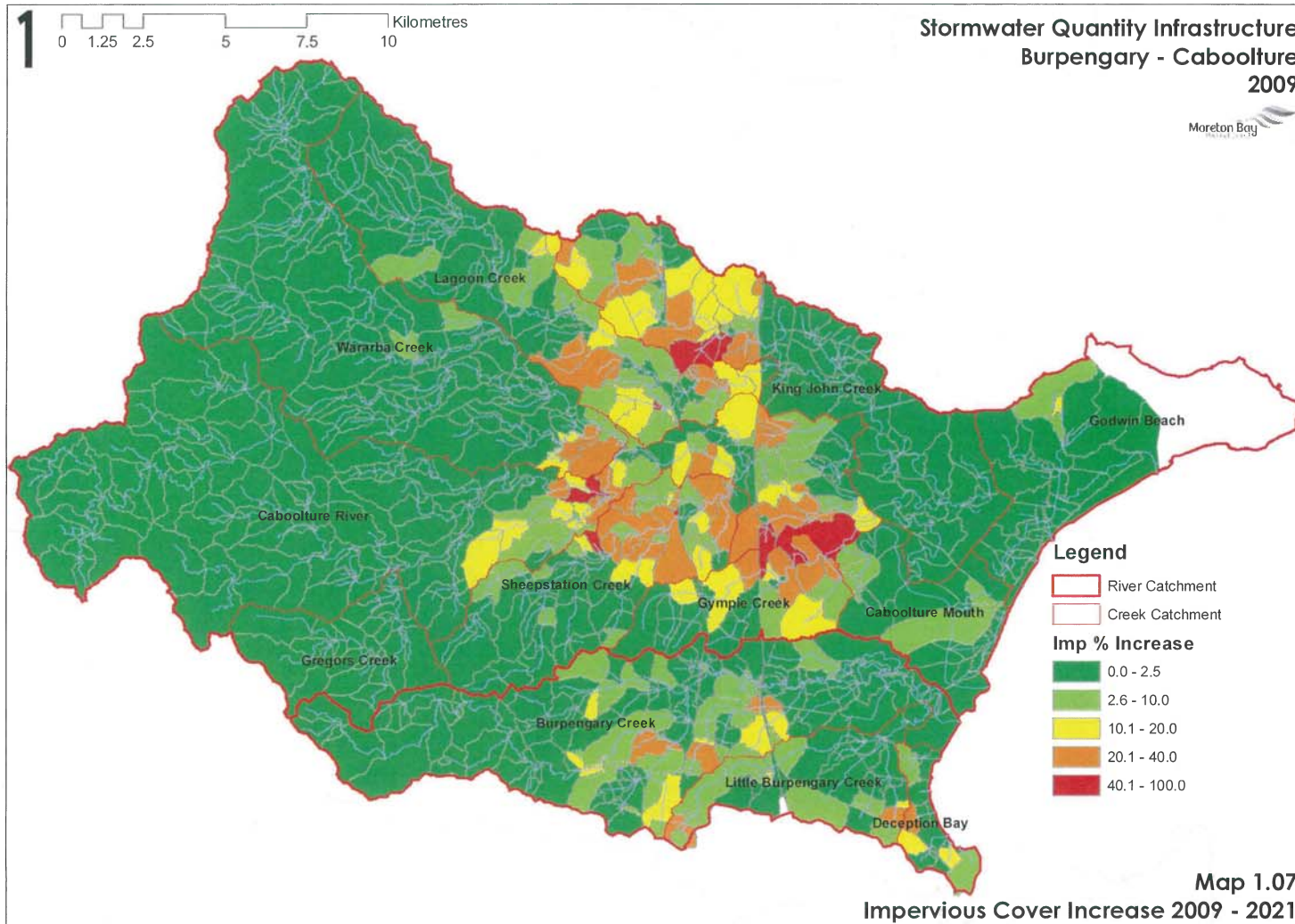
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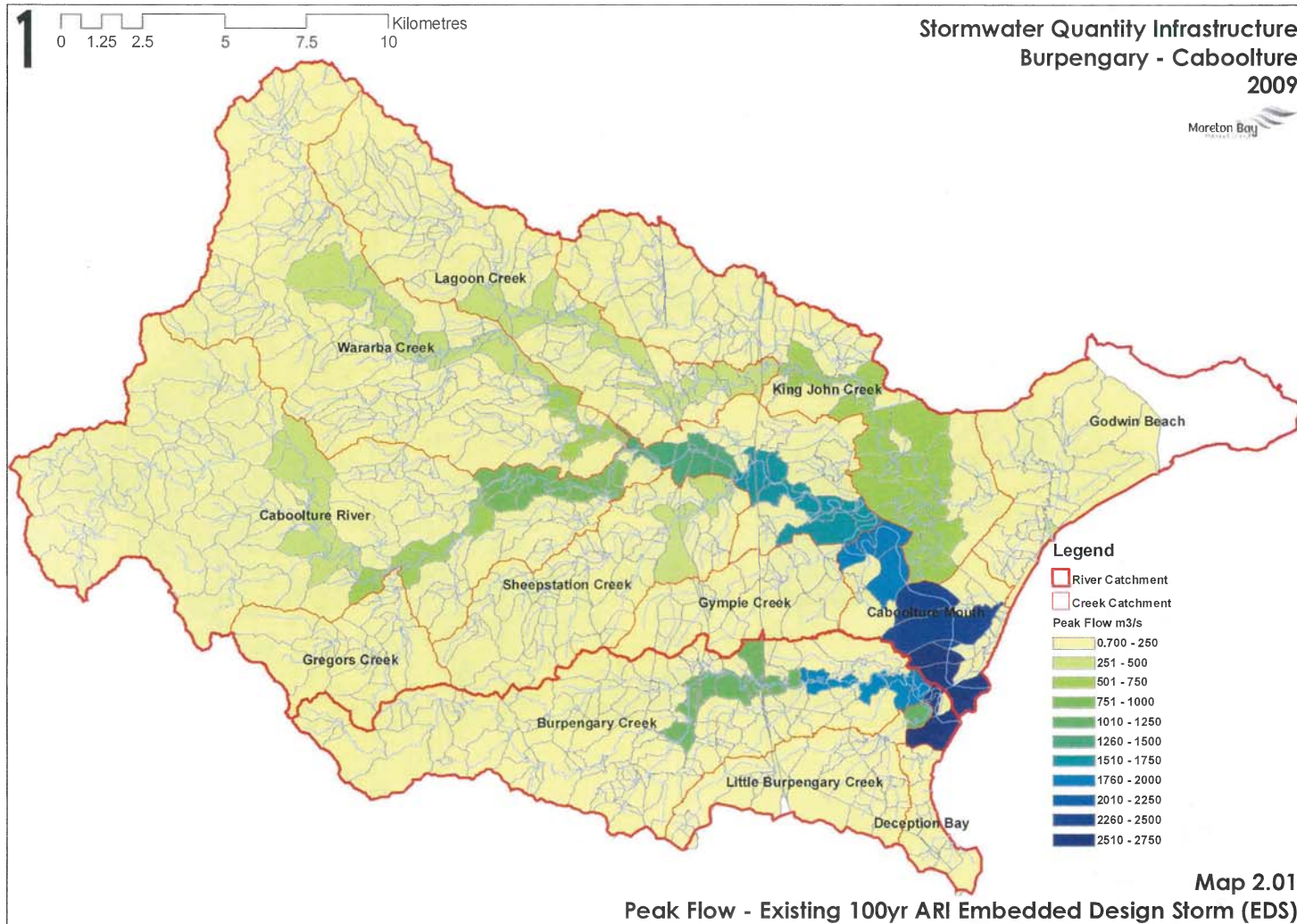
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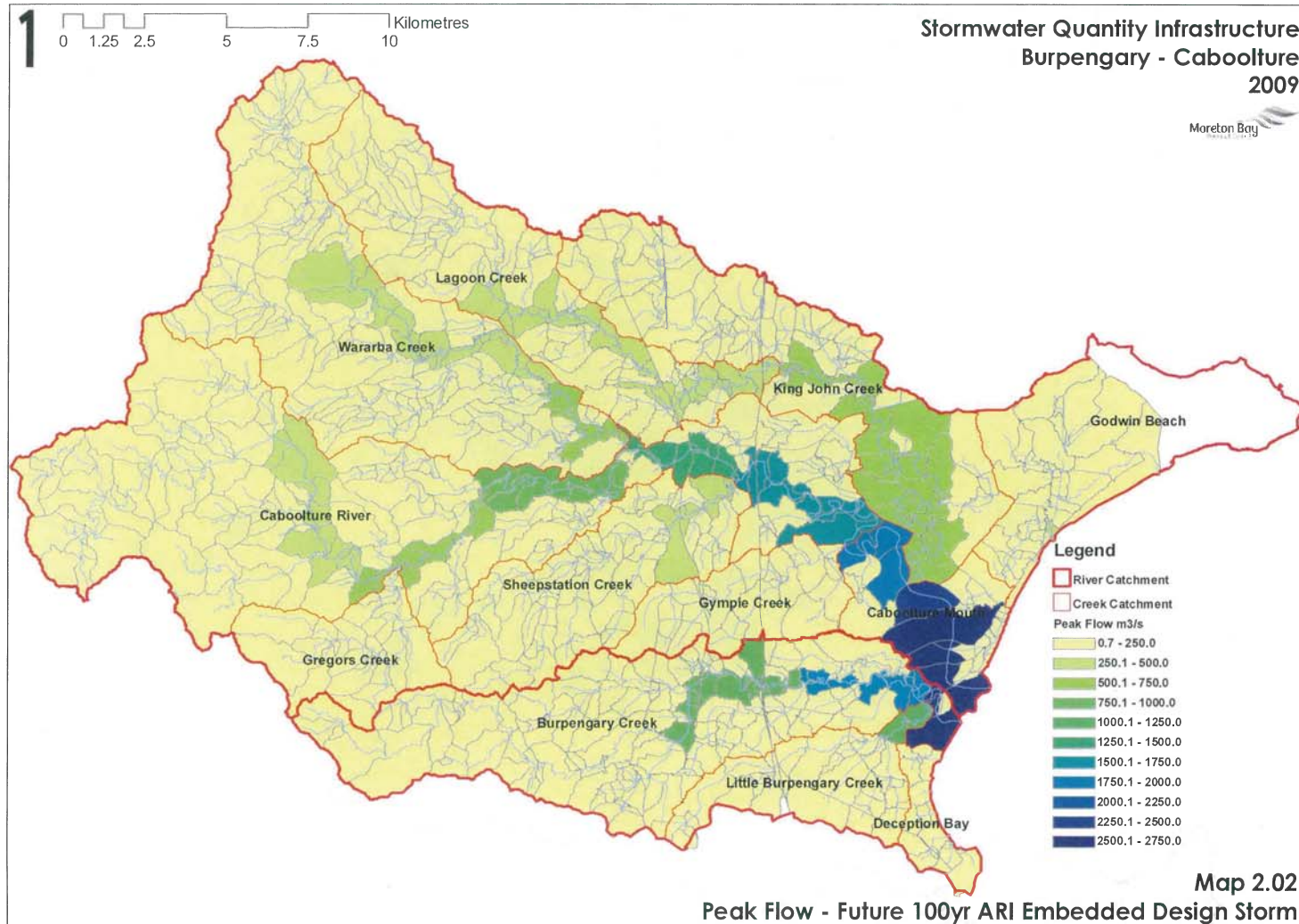
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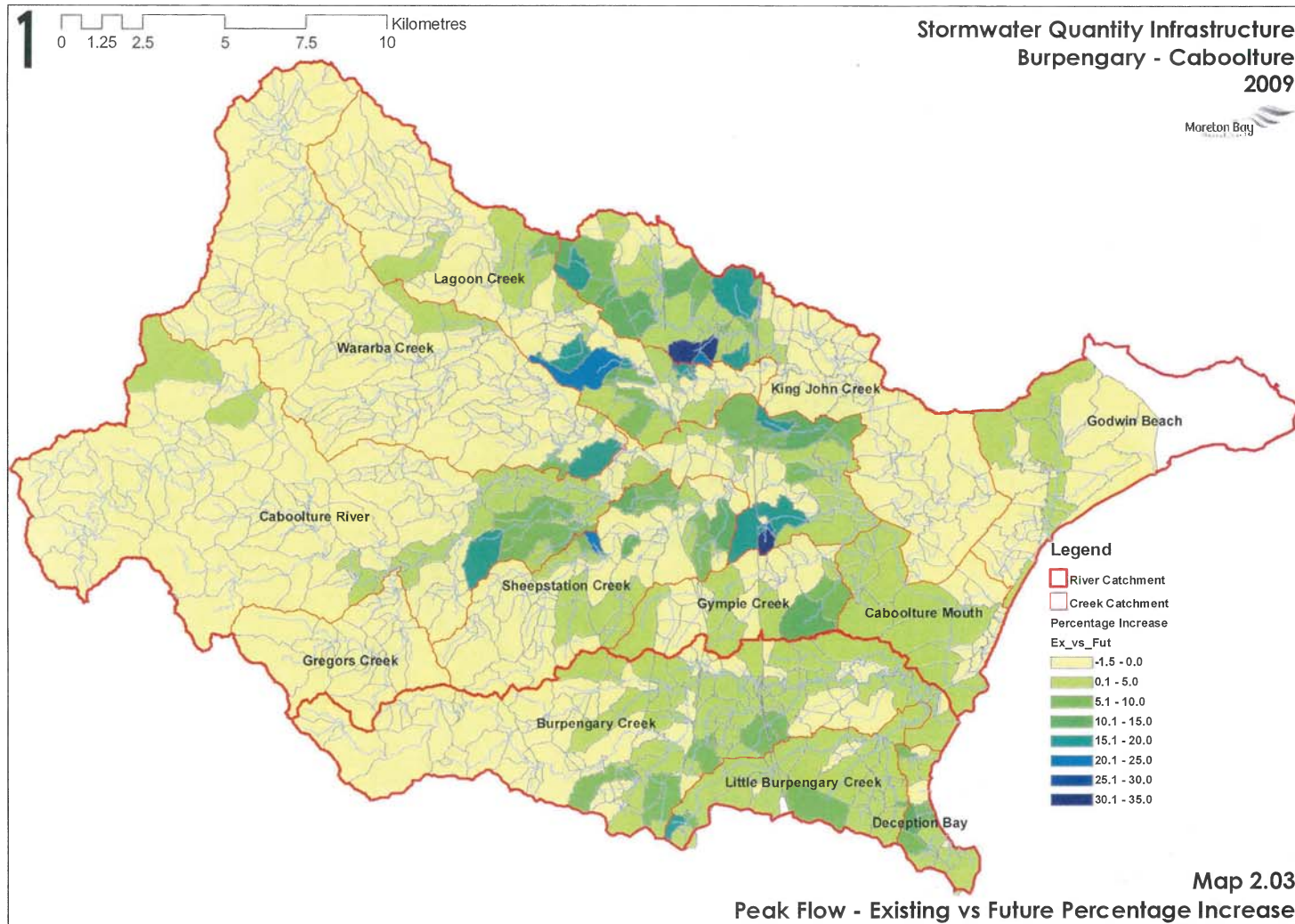
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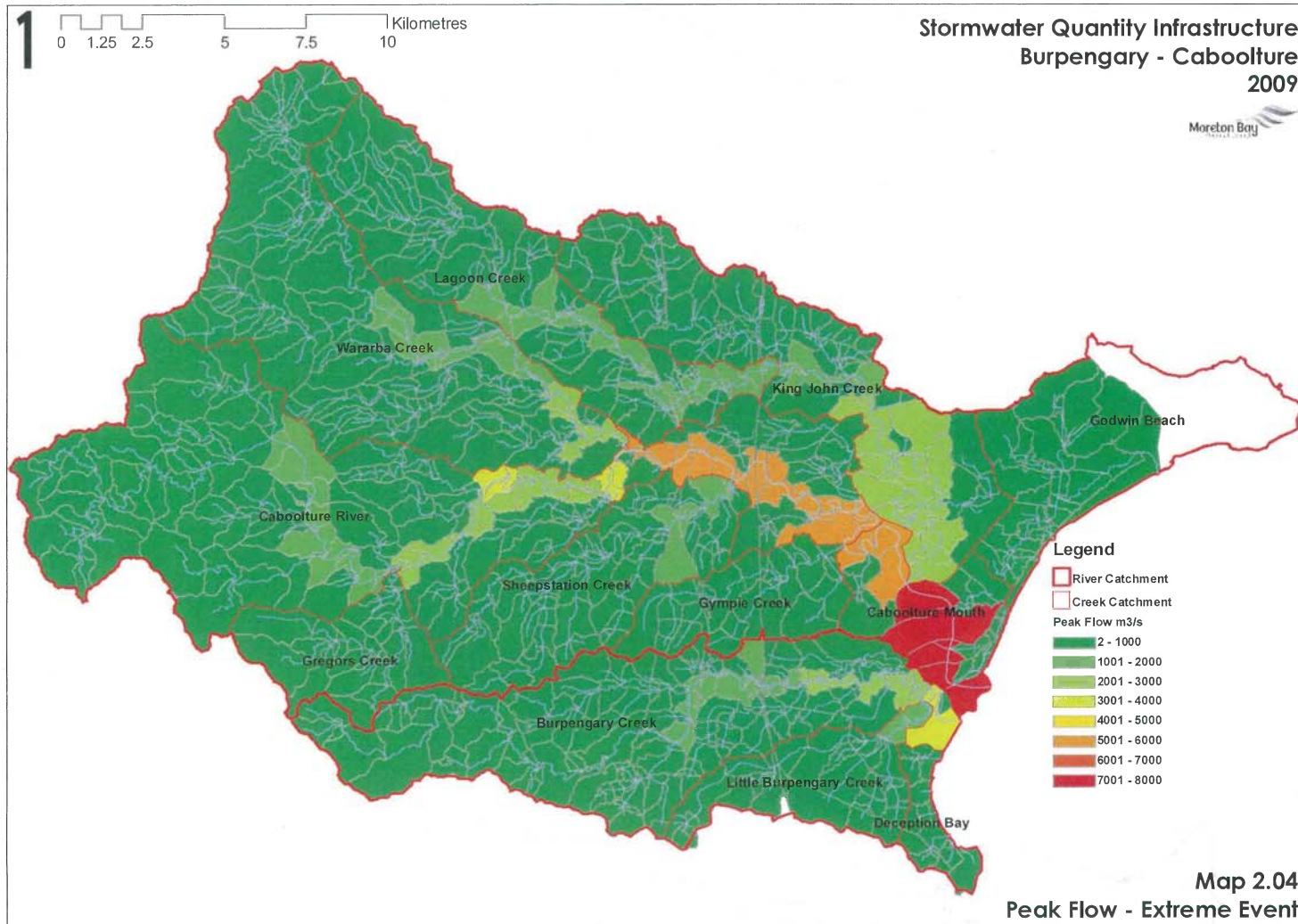
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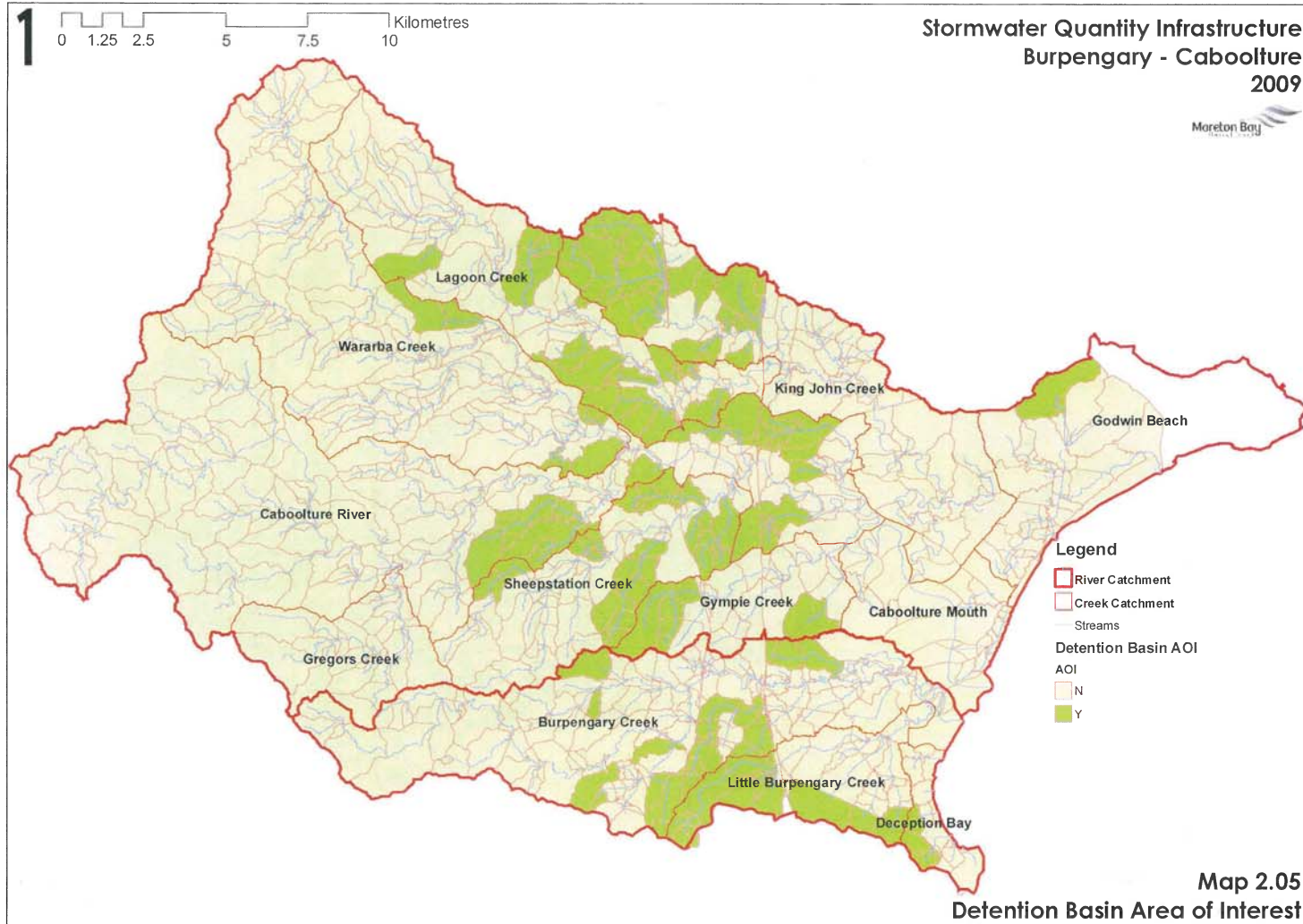
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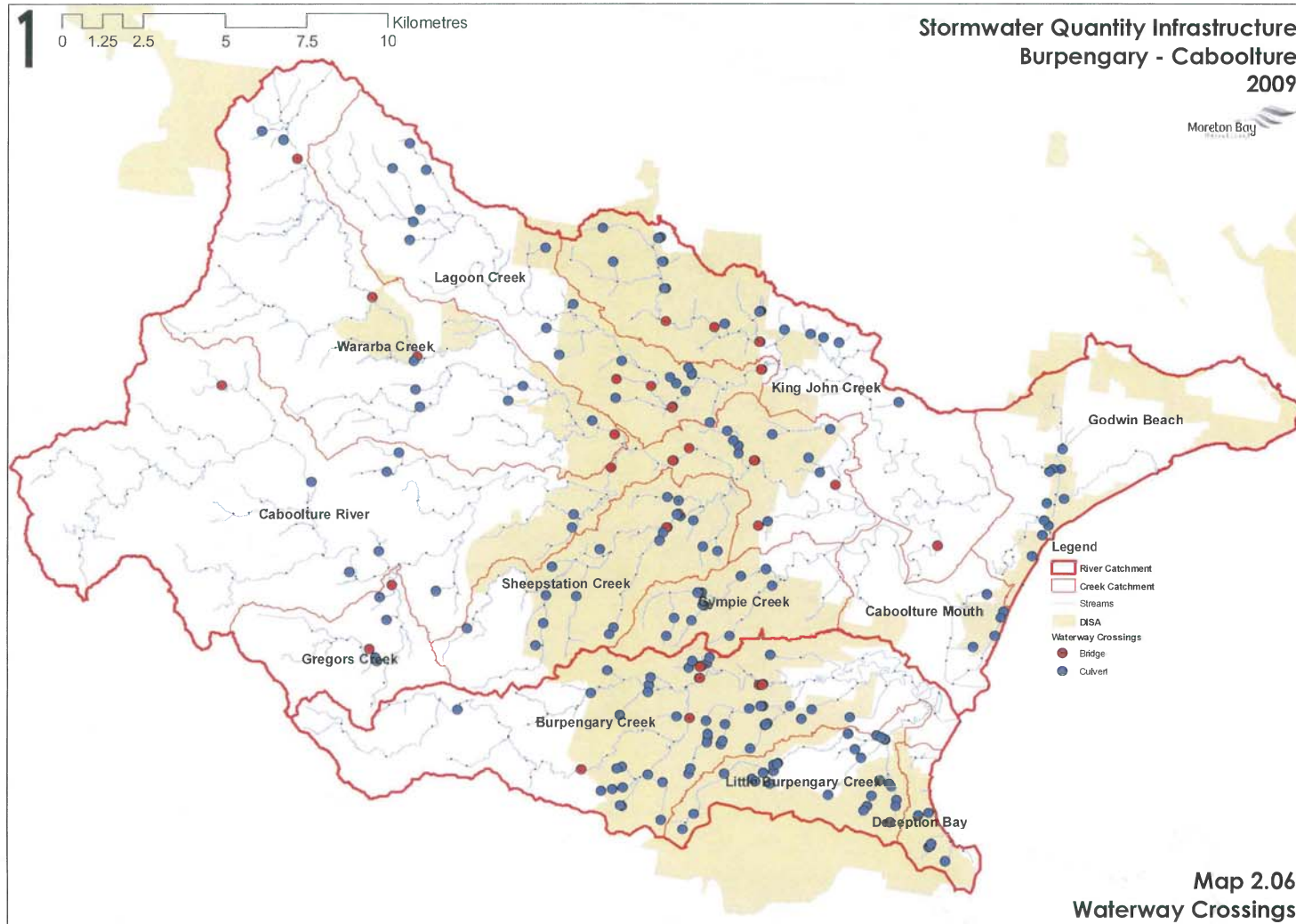
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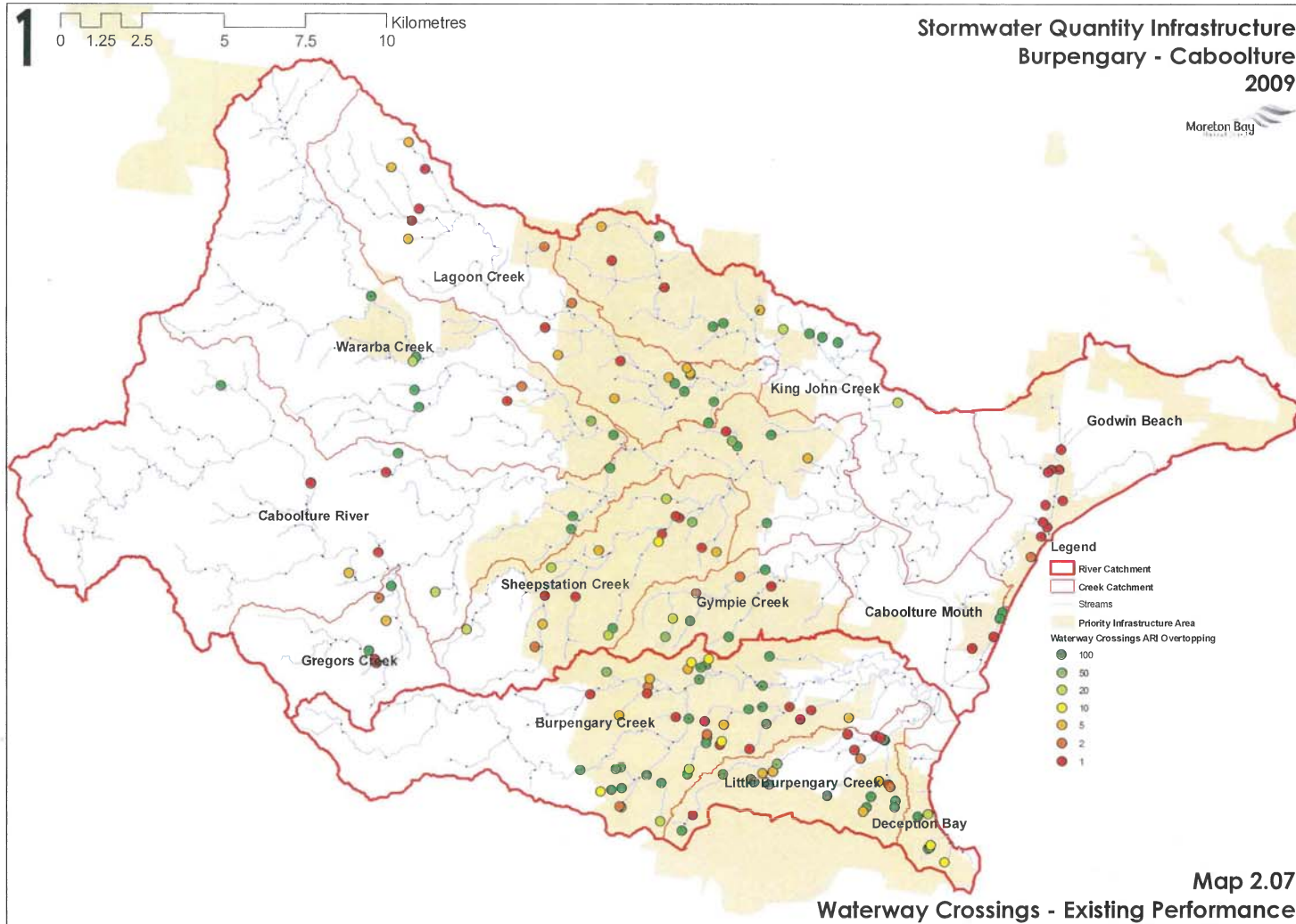
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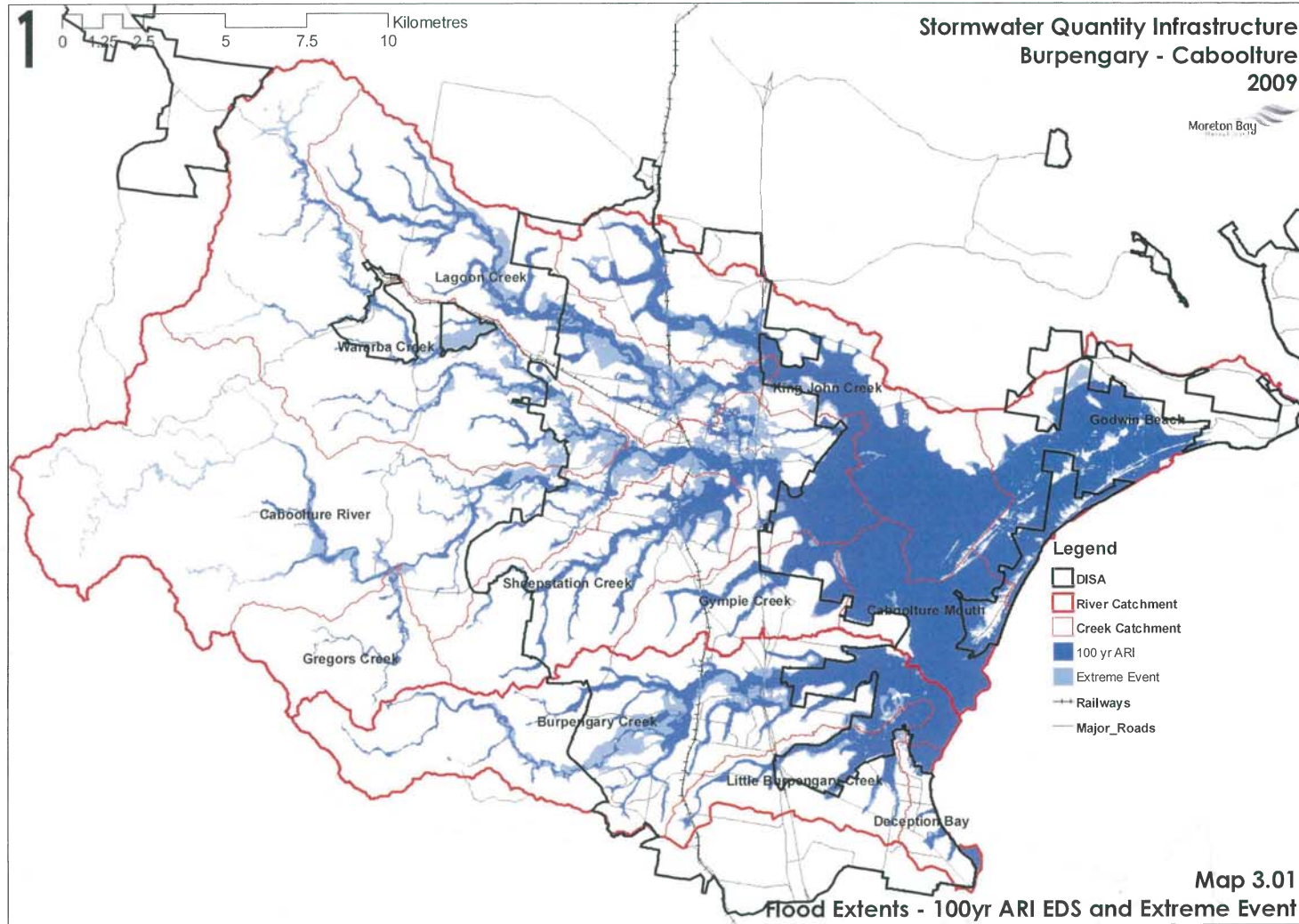
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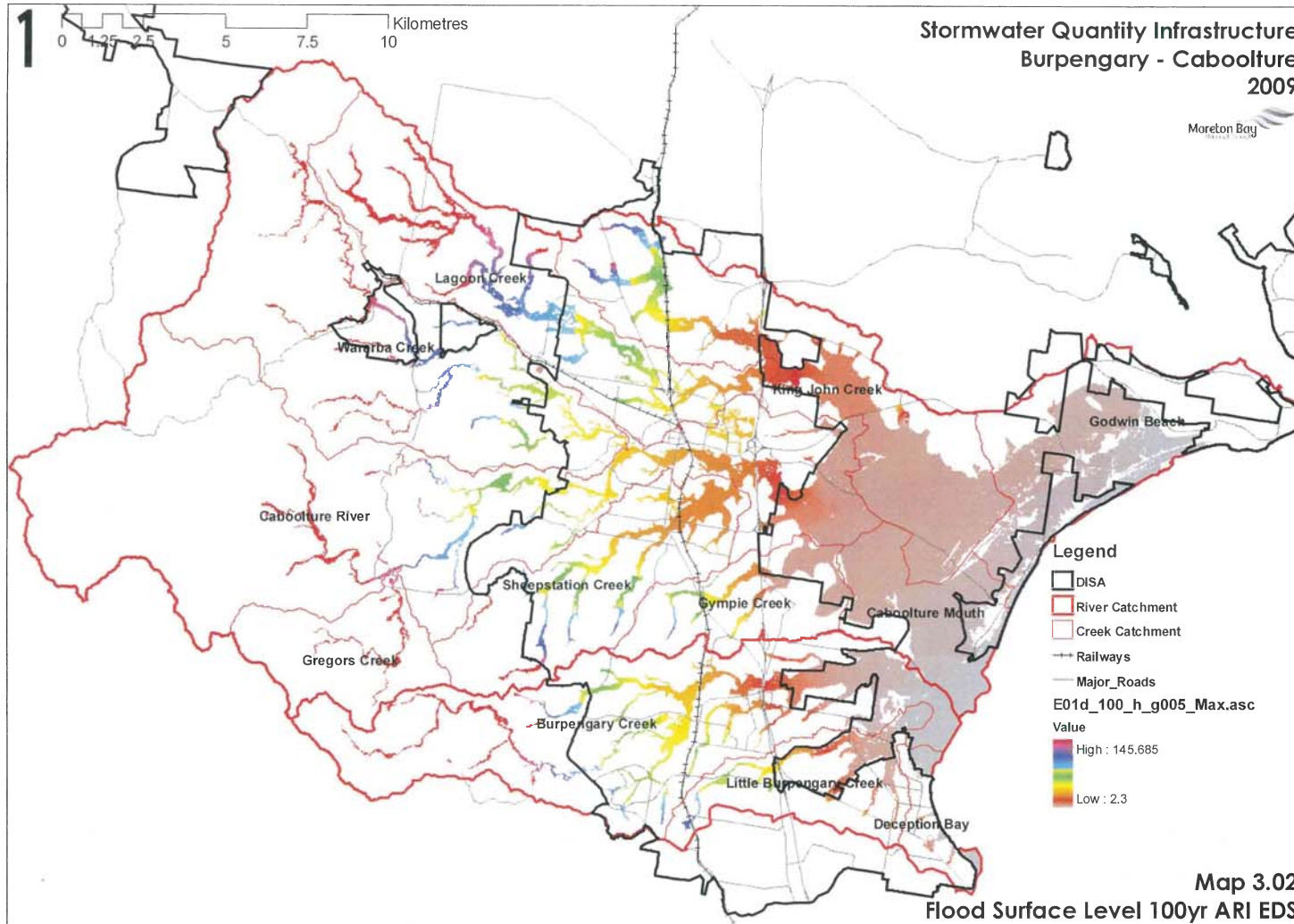
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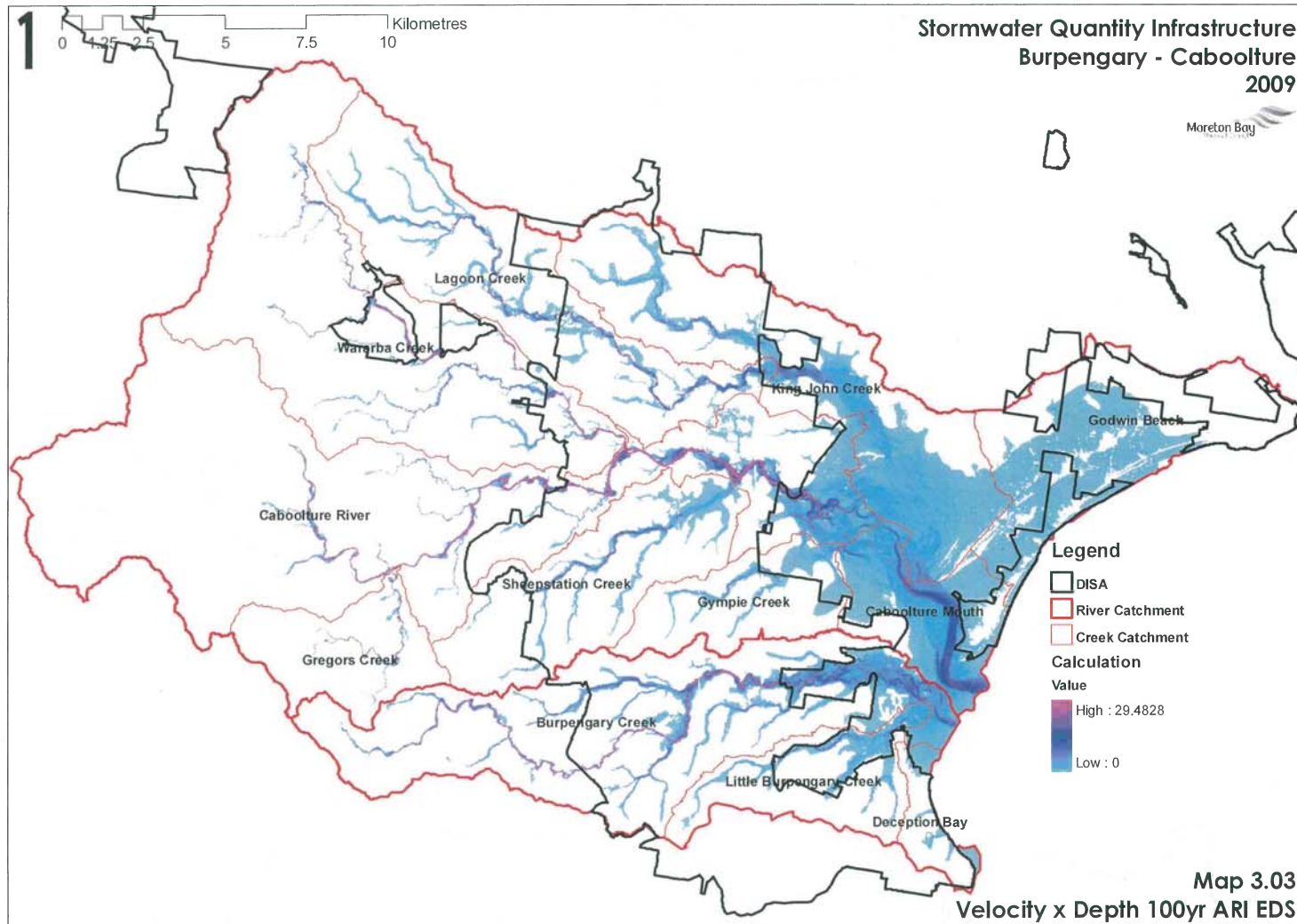
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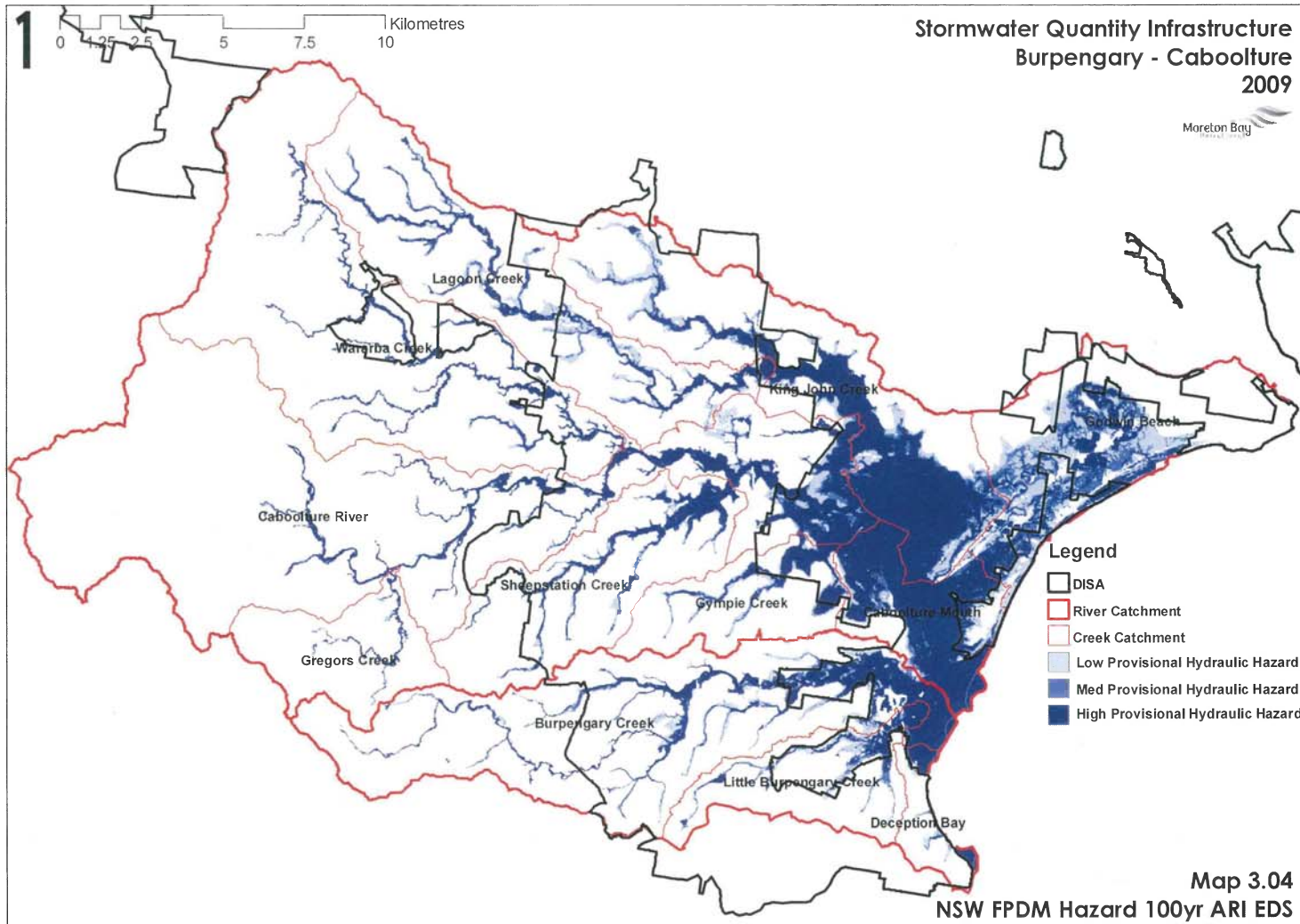
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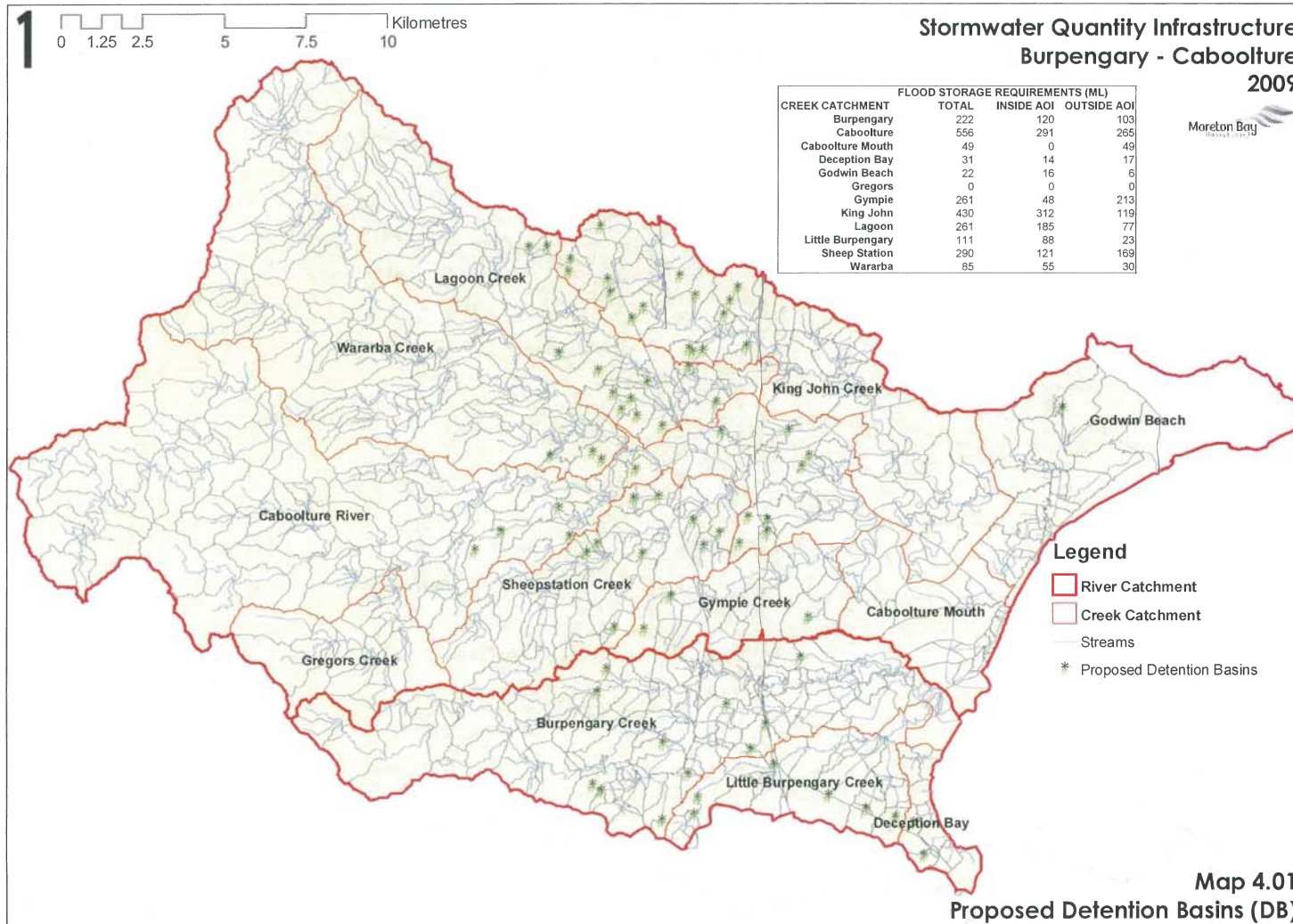
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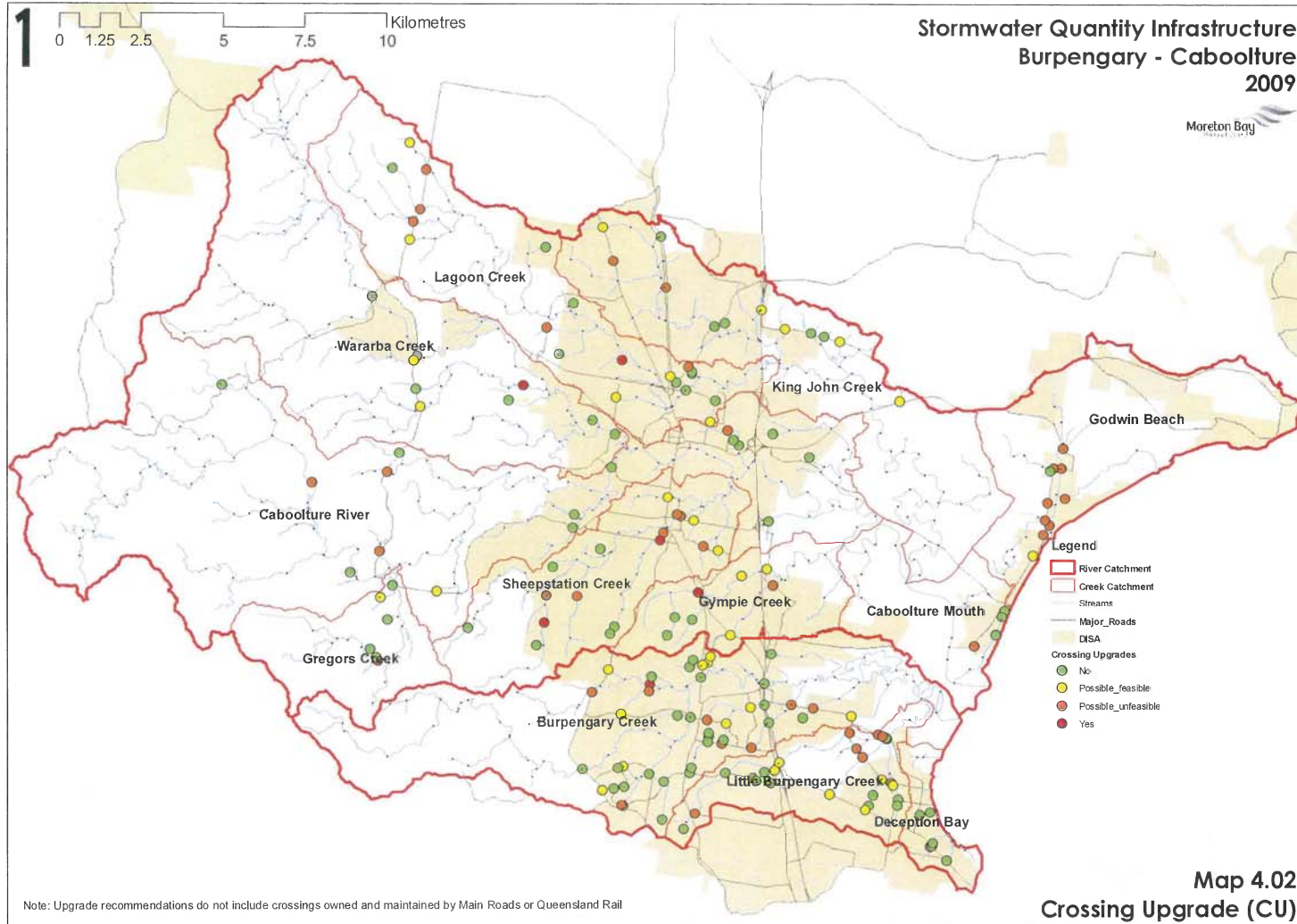
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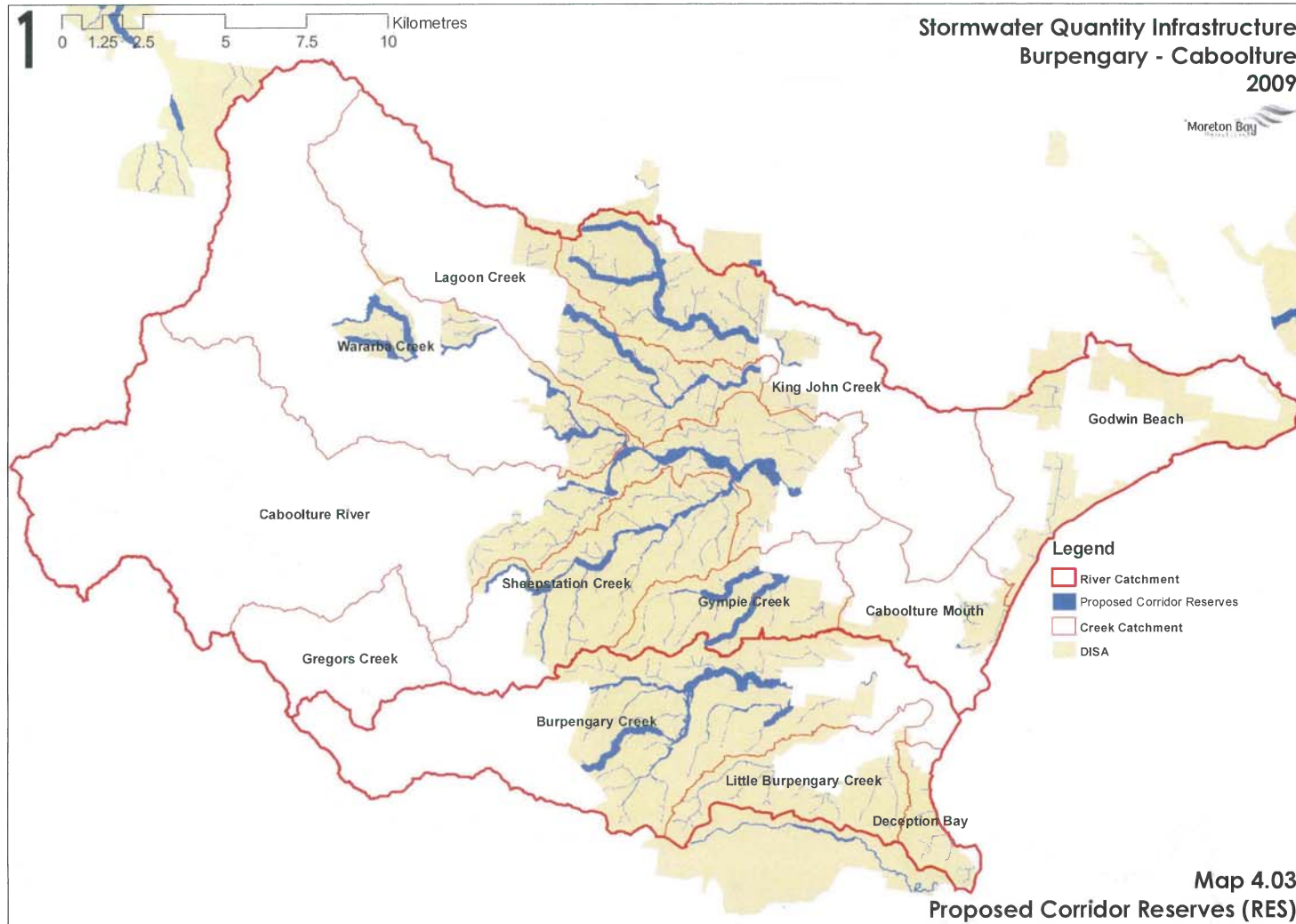
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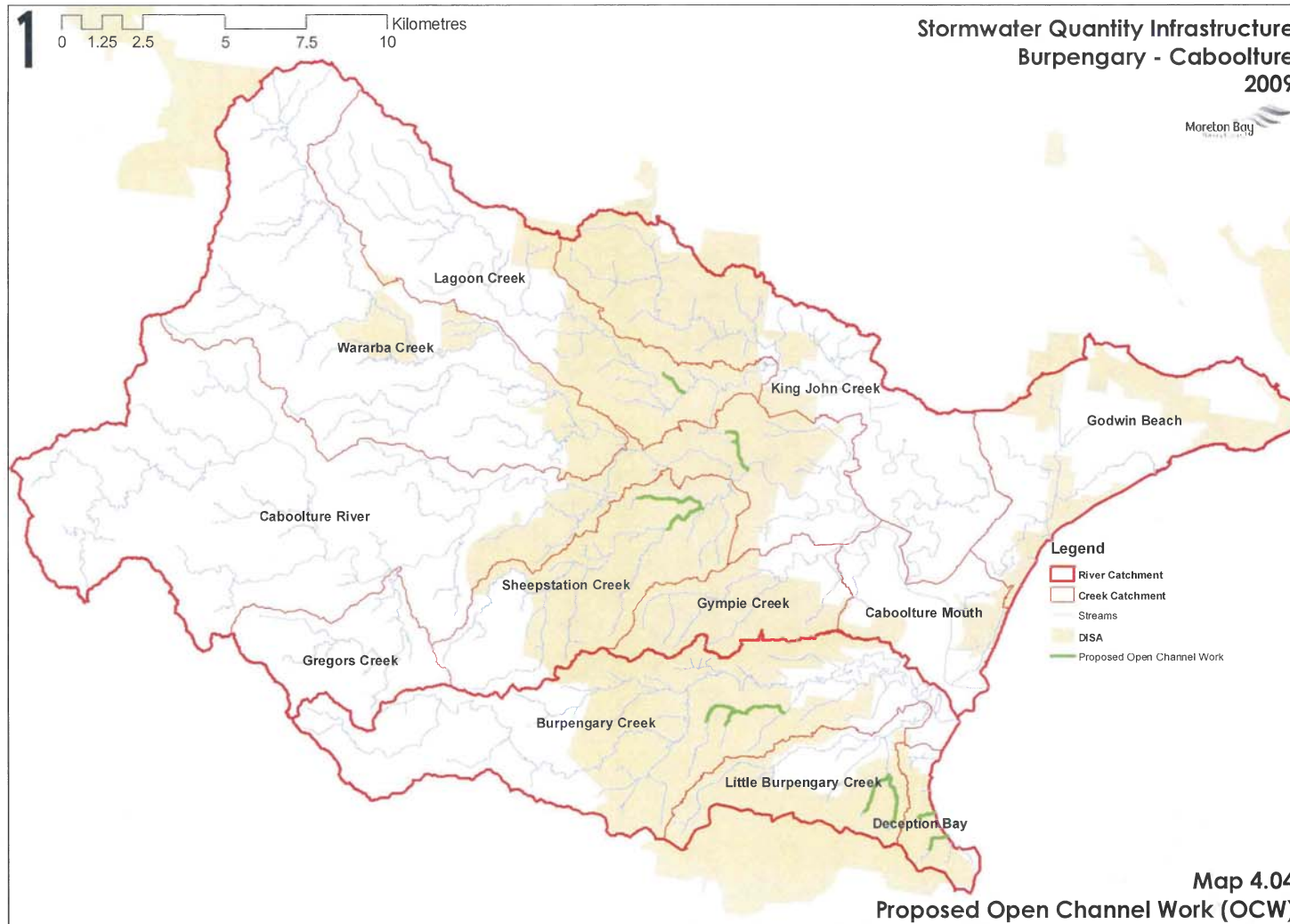
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*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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List of Tables

- 1.01 Detention Basins (DB)
- 1.02 Crossing Upgrades (CU)
- 1.03 Corridor Reserve (RES)
- 1.04 Open Channel Work (OCW)

Appendix B

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
25 September 2018

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Supporting Information

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Stormwater Quantity Infrastructure Burpengary - Caboolture 2009
Table 1.01 Detention Basins

ID	River	Creek	Land_Cost	Const_Cost	Total_Cost	Year	Owner	Volume_ML	Volume_m3	Area_m2	Priority	Suburb	Land_YN	Const_Rate
CAB_DB_1	Caboolture	Caboolture River	817,800	1,571,800	2,389,600	2011	Private	29	29000	17400	1	CABOOLTURE	Yes	54
SSC_DB_3	Caboolture	Sheepsstation Creek	387,450	1,138,200	1,525,650	2012	Private	21	21000	12600	2	MORAYFIELD	Yes	54
LAG_DB_11	Caboolture	Lagoon Creek	535,800	1,029,800	1,565,600	2013	Private	19	19000	11400	3	CABOOLTURE	Yes	54
CAB_DB_9	Caboolture	Caboolture River	0	1,463,400	1,463,400	2014	MBRC	27	27000	16200	4	CABOOLTURE SOUTH	Yes	54
DEC_DB_1	Burpengary	Deception Bay	165,900	420,000	585,900	2014	Private	7	7000	4200	5	DECEPTION BAY	Yes	60
LDC_DB_5	Burpengary	Little Burpengary Creek	237,000	600,000	837,000	2014	Private	10	10000	6000	6	DECEPTION BAY	Yes	60
BUR_DB_6	Burpengary	Burpengary Creek	0	780,000	780,000	2015	MBRC	13	13000	7800	12	BURPENGARY	Yes	60
DEC_DB_2	Burpengary	Deception Bay	165,900	420,000	585,900	2015	Private	7	7000	4200	8	DECEPTION BAY	Yes	60
LAG_DB_10	Caboolture	Lagoon Creek	507,600	975,600	1,483,200	2015	Private	18	18000	10800	7	CABOOLTURE	Yes	54
LAG_DB_7	Caboolture	Lagoon Creek	0	1,836,540	1,836,540	2015	MBRC	38	38000	22800	10	CABOOLTURE	Yes	48
LBC_DB_6	Burpengary	Little Burpengary Creek	0	420,000	420,000	2015	MBRC	7	7000	4200	11	DECEPTION BAY	No	60
SSC_DB_9	Caboolture	Sheepsstation Creek	0	540,000	540,000	2015	MBRC	9	9000	5400	9	MORAYFIELD	No	60
LAG_DB_12	Caboolture	Lagoon Creek	479,400	921,400	1,400,800	2016	Private	17	17000	10200	16	CABOOLTURE	Yes	60
LAG_DB_8	Caboolture	Lagoon Creek	338,400	720,000	1,058,400	2016	Private	12	12000	7200	14	CABOOLTURE	Yes	60
LAG_DB_9	Caboolture	Lagoon Creek	0	720,000	720,000	2016	MBRC	12	12000	7200	15	CABOOLTURE	No	60
SSC_DB_4	Caboolture	Sheepsstation Creek	0	480,000	480,000	2016	MBRC	6	6000	4800	6	MORAYFIELD	No	60
SSC_DB_7	Caboolture	Sheepsstation Creek	0	420,000	420,000	2016	MBRC	7	7000	4200	17	MORAYFIELD	No	60
WAR_DB_2	Caboolture	Waratah Creek	554,000	1,084,000	1,638,000	2016	Private	20	20000	12000	18	BELLMERE	Yes	54
WAR_DB_3	Caboolture	Waratah Creek	564,000	1,084,000	1,648,000	2016	Private	20	20000	12000	19	BELLMERE	Yes	54
CAB_DB_4	Caboolture	Caboolture River	1,143,900	2,563,080	3,706,980	2017	Private	62	62000	37200	20	UPPER CABOOLTURE	Yes	41
BUR_DB_1	Burpengary	Burpengary Creek	793,350	2,076,180	2,869,530	2018	Private	43	43000	25800	25	NARANGBA	Yes	48
BUR_DB_10	Burpengary	Burpengary Creek	55,350	180,000	235,350	2018	Private	3	3000	1800	22	BURPENGARY	Yes	60
BUR_DB_5	Burpengary	Burpengary Creek	36,900	120,000	156,900	2018	Private	2	2000	1200	28	NARANGBA	Yes	60
BUR_DB_7	Burpengary	Burpengary Creek	59,350	180,000	239,350	2018	Private	3	3000	1800	23	BURPENGARY	Yes	60
BUR_DB_8	Burpengary	Burpengary Creek	0	540,000	540,000	2018	MBRC	9	9000	5400	27	MORAYFIELD	No	60
BUR_DB_9	Burpengary	Burpengary Creek	147,600	480,000	627,600	2018	Private	8	8000	4800	21	BURPENGARY	Yes	60
BUR_DB_2	Burpengary	Burpengary Creek	278,750	813,000	1,091,750	2019	Private	15	15000	9000	33	MORAYFIELD	Yes	54
KJC_DB_16	Caboolture	King John Creek	423,000	813,000	1,236,000	2019	Private	15	15000	9000	24	CABOOLTURE	Yes	54
BUR_DB_11	Burpengary	Burpengary Creek	129,150	420,000	549,150	2019	Private	7	7000	4200	31	BURPENGARY	Yes	60
CAB_DB_11	Caboolture	Caboolture River	278,750	813,000	1,091,750	2019	Private	15	15000	9000	32	MORAYFIELD	Yes	48
LDC_DB_1	Burpengary	Little Burpengary Creek	461,250	1,385,000	1,846,250	2019	Private	25	25000	15000	30	BURPENGARY	Yes	54
LBC_DB_2	Burpengary	Little Burpengary Creek	269,000	1,084,000	1,353,000	2019	Private	20	20000	12000	32	BURPENGARY	Yes	54
SSC_DB_5	Caboolture	Sheepsstation Creek	571,950	1,488,250	2,060,200	2019	Private	31	31000	18600	39	MORAYFIELD	Yes	48
CAB_DB_12	Caboolture	Caboolture River	278,750	813,000	1,091,750	2020	Private	15	15000	9000	34	MORAYFIELD	Yes	54
CAB_DB_8	Caboolture	Caboolture River	885,890	2,319,840	3,205,730	2020	Private	46	46000	28000	38	UPPER CABOOLTURE	Yes	48
KJC_DB_9	Caboolture	King John Creek	253,800	540,000	793,800	2020	Private	9	9000	5400	36	CABOOLTURE	Yes	60
LAG_DB_6	Caboolture	Lagoon Creek	338,400	720,000	1,058,400	2020	Private	12	12000	7200	37	CABOOLTURE	Yes	60
SSC_DB_8	Caboolture	Sheepsstation Creek	461,250	1,385,000	1,846,250	2020	Private	25	25000	15000	35	MORAYFIELD	Yes	54
BUR_DB_4	Burpengary	Burpengary Creek	495,800	1,152,400	1,648,200	2021	Private	22	22000	13200	39	BURPENGARY	Yes	54
CAB_DB_7	Caboolture	Caboolture River	479,400	921,400	1,400,800	2021	Private	17	17000	10200	41	CABOOLTURE	Yes	54
OYM_DB_3	Caboolture	Oympie Creek	332,100	975,600	1,307,700	2021	Private	18	18000	10800	43	BURPENGARY	Yes	54
KJC_DB_7	Caboolture	King John Creek	0	1,020,800	1,020,800	2021	MBRC	19	19000	11400	44	ELMSBAH	No	54
LDC_DB_3	Burpengary	Little Burpengary Creek	164,500	600,000	764,500	2021	Private	10	10000	6000	40	NARANGBA	Yes	60
SSC_DB_6	Caboolture	Sheepsstation Creek	119,700	360,000	479,700	2021	Private	6	6000	3600	42	MORAYFIELD	Yes	60
BUR_DB_3	Burpengary	Burpengary Creek	147,600	480,000	627,600	2022	Private	8	8000	4800	49	NARANGBA	Yes	60
CAB_DB_3	Caboolture	Caboolture River	479,400	921,400	1,400,800	2022	Private	17	17000	10200	50	CABOOLTURE	Yes	54
KJC_DB_15	Caboolture	King John Creek	169,200	360,000	529,200	2022	Private	6	6000	3600	51	CABOOLTURE	Yes	60
KJC_DB_9	Caboolture	King John Creek	1,699,800	1,884,870	3,584,670	2022	Private	39	39000	23400	45	CABOOLTURE	Yes	48
LAG_DB_5	Caboolture	Lagoon Creek	617,800	1,571,800	2,189,600	2022	Private	29	29000	17400	46	CABOOLTURE	Yes	54
SSC_DB_1	Caboolture	Sheepsstation Creek	166,050	540,000	706,050	2022	Private	9	9000	5400	47	UPPER CABOOLTURE	Yes	60
SSC_DB_2	Caboolture	Sheepsstation Creek	72,800	240,000	312,800	2022	Private	4	4000	2400	48	MORAYFIELD	Yes	60
CAB_DB_13	Caboolture	Caboolture River	36,900	120,000	156,900	2023	Private	2	2000	1200	57	MORAYFIELD	Yes	60
KJC_DB_10	Caboolture	King John Creek	676,800	1,360,800	1,977,600	2023	Private	24	24000	14400	55	CABOOLTURE	Yes	54
KJC_DB_11	Caboolture	King John Creek	81,900	1,136,250	1,218,150	2023	Private	21	21000	12600	56	ELMSBAH	Yes	54
KJC_DB_6	Caboolture	King John Creek	318,200	600,000	918,200	2023	Private	11	11000	6600	53	CABOOLTURE	Yes	60
LAG_DB_1	Caboolture	Lagoon Creek	197,400	420,000	617,400	2023	Private	7	7000	4200	54	CABOOLTURE	Yes	60
LAG_DB_3	Caboolture	Lagoon Creek	112,000	240,000	352,000	2023	Private	4	4000	2400	52	CABOOLTURE	Yes	60
WAR_DB_1	Caboolture	Waratah Creek	423,000	813,000	1,236,000	2023	Private	15	15000	9000	56	BELLMERE	Yes	54
KJC_DB_12	Caboolture	King John Creek	592,200	1,136,250	1,728,450	2024	Private	21	21000	12600	59	CABOOLTURE	Yes	54
KJC_DB_13	Caboolture	King John Creek	253,800	540,000	793,800	2024	Private	9	9000	5400	60	CABOOLTURE	Yes	60
KJC_DB_14	Caboolture	King John Creek	253,800	540,000	793,800	2024	Private	9	9000	5400	61	CABOOLTURE	Yes	60
KJC_DB_2	Caboolture	King John Creek	1,522,800	2,252,360	3,775,160	2024	Private	54	54000	32400	63	CABOOLTURE	Yes	41
KJC_DB_5	Caboolture	King John Creek	93,600	1,360,800	1,454,400	2024	Private	24	24000	14400	62	ELMSBAH	Yes	54
CAB_DB_5	Caboolture	Caboolture River	313,650	921,400	1,235,050	2025	Private	17	17000	10200	64	UPPER CABOOLTURE	Yes	54
CAB_DB_8	Caboolture	Caboolture River	313,650	921,400	1,235,050	2025	Private	17	17000	10200	65	UPPER CABOOLTURE	Yes	54
OYM_DB_2	Caboolture	Oympie Creek	202,950	680,000	882,950	2025	Private	11	11000	6600	66	MORAYFIELD	Yes	60
BUR_DB_2	Burpengary	Burpengary Creek	0	120,000	120,000	2026	MBRC	2	2000	1200	70	NARANGBA	No	60
CAB_DB_10	Caboolture	Caboolture River	184,500	600,000	784,500	2026	Private	10	10000	6000	71	MORAYFIELD	Yes	60
GOO_DB_1	Caboolture	Goodwin Beach	127,200	867,200	994,400	2026	Private	15	15000	9000	76	FINCH	Yes	60
OYM_DB_1	Caboolture	Oympie Creek	359,550	1,029,800	1,389,350	2026	Private	19	19000	11400	67	MORAYFIELD	Yes	60
KJC_DB_1	Caboolture	King John Creek	59,700	760,000	819,700	2026	Private	13	13000	7800	72	ELMSBAH	Yes	60
KJC_DB_3	Caboolture	King John Creek	789,600	1,517,600	2,307,200	2026	Private	26	26000	15600	73	CABOOLTURE	Yes	54
KJC_DB_4	Caboolture	King John Creek	319,200	660,000	979,200	2026	Private	11	11000	6600	68	CABOOLTURE	Yes	60
LAG_DB_2	Caboolture	Lagoon Creek	253,800	540,000	793,800	2026	Private	9	9000	5400	69	CABOOLTURE	Yes	60
LAG_DB_4	Caboolture	Lagoon Creek	27,200	420,000	447,200	2026	Private	7	7000	4200	74	MOODLU	Yes	60
LDC_DB_4	Burpengary	Little Burpengary Creek	355,500	813,000	1,168,500	2026	Private	15	15000	9000	75	DECEPTION BAY	Yes	54

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Stormwater Quantity Infrastructure Burpengary - Caboolture 2009
Table 1.02 Crossing Upgrades

ID	River	Creek	Land_Cost	Const_Cost	Total_Cost	Year	Trenching_Cost	Slab_Cost	Barrel_Cost	Headwall_Cost	Traffic_Cost	DesTendSup_Cost	Contingency_Cost
BUR_CU_1	Burpengary	Burpengary Creek	0	731,418	731,418	2010	92664	70200	81120	65000	70762	47188	141565
GOD_CU_1	Caboolture	Godwin Beach	0	247,651	247,651	2010	12150	0	8100	5000	22968	15978	47833
GYM_CU_1	Caboolture	Gympie Creek	0	610,902	610,902	2010	97342	0	73900	65000	59110	39407	116220
LAG_CU_1	Caboolture	Lagoon Creek	0	455,301	455,301	2010	42739	0	39000	65000	44061	29374	88123
LAG_CU_2	Caboolture	Lagoon Creek	0	694,248	694,248	2010	70029	89336	82818	65000	87185	44790	134271
LBC_CU_1	Burpengary	Little Burpengary Creek	0	730,548	730,548	2010	74844	83160	85470	65000	76996	47132	107113
SSC_CU_1	Caboolture	Sheepsasson Creek	0	454,389	454,389	2010	65391	0	33696	65000	46874	31250	92749
BUR_CU_2	Burpengary	Burpengary Creek	0	530,224	530,224	2011	114295	0	61688	15000	51012	34208	102624
BUR_CU_3	Burpengary	Burpengary Creek	0	553,416	553,416	2011	42384	43200	48000	65000	53556	35704	107113
BUR_CU_4	Burpengary	Burpengary Creek	0	358,281	358,281	2011	33521	25785	33425	15000	37576	25650	75151
KJC_CU_1	Caboolture	King John Creek	0	284,168	284,168	2011	19181	0	12488	15000	27500	18334	55001
LAG_CU_3	Caboolture	Lagoon Creek	0	304,220	304,220	2011	28926	0	16500	15000	28411	19627	58881
LBC_CU_2	Burpengary	Little Burpengary Creek	0	286,270	286,270	2011	17820	11880	13200	5000	27704	18489	55407
SSC_CU_2	Caboolture	Sheepsasson Creek	0	361,267	361,267	2011	38147	0	38752	15000	34983	23309	69927
BUR_CU_5	Burpengary	Burpengary Creek	0	225,004	225,004	2012	4630	0	2340	5000	21763	14522	43567
BUR_CU_6	Burpengary	Burpengary Creek	0	235,150	235,150	2012	8066	0	4832	5000	22756	15171	45513
BUR_CU_7	Burpengary	Burpengary Creek	0	658,273	658,273	2012	110396	0	148688	15000	63704	42469	127408
BUR_CU_8	Burpengary	Burpengary Creek	0	446,265	446,265	2012	50011	33120	43606	15000	43187	28791	86374
CAB_CU_1	Caboolture	Caboolture River	0	307,194	307,194	2012	28332	0	16790	15000	29726	19819	59457
KJC_CU_2	Caboolture	King John Creek	0	316,268	316,268	2012	31007	0	19488	15000	30607	20044	61213
KJC_CU_3	Caboolture	King John Creek	0	282,421	282,421	2012	18943	0	11456	5000	25492	16895	50885
KJC_CU_4	Caboolture	King John Creek	0	388,454	388,454	2012	12499	15624	16058	5000	27915	19810	55830
LBC_CU_3	Burpengary	Little Burpengary Creek	0	592,696	592,696	2012	70662	37296	54464	65000	57338	38238	114716
SSC_CU_3	Caboolture	Sheepsasson Creek	0	579,018	579,018	2012	12900	0	73000	15000	56034	37356	112568
WAR_CU_1	Caboolture	Warata Creek	0	409,432	409,432	2012	85536	0	19600	15000	39622	26415	79245
BUR_CU_9	Burpengary	Burpengary Creek	0	257,938	257,938	2013	9792	7650	8840	5000	24982	16641	49522
KJC_CU_5	Caboolture	King John Creek	0	231,994	231,994	2013	9651	0	4416	5000	22454	14987	44902
LAG_CU_4	Caboolture	Lagoon Creek	0	225,347	225,347	2013	3928	0	3240	5000	21800	14530	43616
SSC_CU_4	Caboolture	Sheepsasson Creek	0	280,764	280,764	2013	17971	0	11700	15000	27171	18114	54341
WAR_CU_2	Caboolture	Warata Creek	0	695,318	695,318	2013	110025	22560	37500	65000	58578	39853	117158
BUR_CU_10	Burpengary	Burpengary Creek	0	245,528	245,528	2014	11624	0	7300	5000	23761	15640	47521
BUR_CU_11	Burpengary	Burpengary Creek	0	254,914	254,914	2014	15774	0	8736	5000	24689	16446	49328
BUR_CU_12	Burpengary	Burpengary Creek	0	262,387	262,387	2014	88954	31782	48936	65000	13530	27660	81179
BUR_CU_13	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_14	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_15	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_16	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_17	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_18	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_19	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_20	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
BUR_CU_21	Burpengary	Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
GRE_CU_1	Caboolture	Greggs Creek	0	110,262	110,262	2014	15390	0	8740	15000	3802	7604	22813
GRE_CU_2	Caboolture	Greggs Creek	0	106,682	106,682	2014	12205	0	9600	15000	3679	7357	22072
GOD_CU_2	Caboolture	Godwin Beach	0	280,883	280,883	2014	19732	7368	12700	5000	27182	15128	54564
GYM_CU_3	Caboolture	Gympie Creek	0	507,383	507,383	2014	127167	0	85842	65000	17498	34992	104976
LAG_CU_5	Caboolture	Lagoon Creek	0	173,182	173,182	2014	33056	0	30828	15000	5872	11844	35833
LAG_CU_6	Caboolture	Lagoon Creek	0	128,232	128,232	2014	32246	0	12150	15000	4422	6844	26531
LAG_CU_7	Caboolture	Lagoon Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
LBC_CU_4	Burpengary	Little Burpengary Creek	0	374,909	374,909	2014	38890	19440	28588	15000	36282	24188	72563
LBC_CU_5	Burpengary	Little Burpengary Creek	0	284,812	284,812	2014	10440	36500	37000	65000	9814	19828	58995
LBC_CU_6	Burpengary	Little Burpengary Creek	0	107,335	107,335	2014	13176	0	8150	15000	3703	7406	22218
LBC_CU_7	Burpengary	Little Burpengary Creek	0	30,000	30,000	2014	0	0	0	0	0	0	0
SSC_CU_5	Caboolture	Sheepsasson Creek	0	158,541	158,541	2014	33067	0	21312	15000	5467	10824	33002
WAR_CU_3	Caboolture	Warata Creek	0	313,301	313,301	2014	90565	18522	32340	65000	10903	21607	64821
BUR_CU_22	Burpengary	Burpengary Creek	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_3	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_4	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_5	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_6	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_7	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_8	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_9	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
CAB_CU_10	Caboolture	Caboolture River	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_3	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_4	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_5	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_6	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_7	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_8	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_9	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_10	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_11	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_12	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_13	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_14	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_15	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_16	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_17	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_18	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_19	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_20	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_21	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_22	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_23	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_24	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_25	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_26	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_27	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_28	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_29	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_30	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_31	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_32	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_33	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_34	Caboolture	Godwin Beach	0	30,000	30,000	2015	0	0	0	0	0	0	0
GOD_CU_35	Caboolture	Godwin Beach	0	30,000	30,0								

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Stormwater Quantity Infrastructure Burpengary - Caboolture 2009
Table 1.03 Corridor Reserves

ID	River	Creek	Land_Cost	Const_Cost	Total_Cost	Year	Area_Ha
BRC_RES_1	Stanley River	Blackrock Creek	622,181	0	622,181	2010	17.3
BRI_RES_1	Coastal Creeks	Bribie Island	8,446,250	0	8,446,250	2010	48.5
BUR_RES_1	Burpengary	Burpengary Creek	27,102,800	0	27,102,800	2012	218.6
CAB_RES_1	Caboolture	Caboolture River	26,019,300	0	26,019,300	2015	164.5
CBM_RES_1	Caboolture	Caboolture Mouth	2,042,270	0	2,042,270	2015	12.0
DEC_RES_1	Burpengary	Deception Bay	721,842	0	721,842	2016	5.0
GOD_RES_1	Caboolture	Godwin Beach	2,137,730	0	2,137,730	2016	15.9
GYM_RES_1	Caboolture	Gympie Creek	11,980,800	0	11,980,800	2016	96.6
KJC_RES_1	Caboolture	King John Creek	32,953,700	0	32,953,700	2019	268.1
LAG_RES_1	Caboolture	Lagoon Creek	20,570,600	0	20,570,600	2019	127.9
LBC_RES_1	Burpengary	Little Burpengary Creek	3,397,250	0	3,397,250	2021	25.8
MBC_RES_1	Stanley River	Monkeybong Creek	2,992,790	0	2,992,790	2021	95.3
NIN_RES_1	Coastal Creeks	Ningi Creek	129,821	0	129,821	2021	3.6
ONE_RES_1	Stanley River	One Mile Creek	2,120,930	0	2,120,930	2021	58.9
SMC_RES_1	Coastal Creeks	Six Mile Creek	44,440	0	44,440	2021	1.2
SSC_RES_1	Caboolture	Sheepstation Creek	19,157,500	0	19,157,500	2022	150.2
STA_RES_1	Stanley River	Stanley River	1,055,350	0	1,055,350	2024	29.3
SWC_RES_1	Coastal Creeks	Saltwater Creek	7,185,170	0	7,185,170	2025	54.7
WAR_RES_1	Caboolture	Wararba Creek	14,779,000	0	14,779,000	2026	183.2

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**ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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Stormwater Quantity Infrastructure Dupangary - Caboolture 2009
Table 1.04 Open Channel Work

ID	River	Creek	Land_Cost	Const_Cost	Total_Cost	Year	Length_m	Avg_width_m	Avg_depth_m	No_Xings	Area_m2	Vol_m3	Earthworks_Cost	Services/RelocationCost	DebrisControlCost	RetainingCost	LandscapingCost	Survey/Engineering (at 15%)	Contingency (at 30%)
DEC_OCW_1	Dupangary	Dupangary Bay	0	763,483	763,483	2011	481.1	15	0.30	3	12116	3865	551885	267723	50000	511505	147082	448768	897535
DEC_OCW_2	Dupangary	Dupangary Bay	0	401,279	401,279	2012	533.0	10	0.30	2	5335	1601	125959	165275	50000	253917	338556	140000	291613
SSC_OCW_2	Caboolture	Sheepstation Creek	0	3,376,601	3,376,601	2013	2346.0	40	0.30	4	93649	28152	89118	88105	75000	132158	132158	78981	157962
LAD_OCW_1	Caboolture	Lagoon Creek	0	895,210	895,210	2015	952.1	15	0.30	5	14431	4329	40914	53352	50000	90027	53352	41612	83023
SSC_OCW_1	Caboolture	Sheepstation Creek	0	2,328,316	2,328,316	2017	1611.3	40	0.30	3	64452	19336	102226	96210	125000	144315	144315	92711	185423
LBC_OCW_2	Dupangary	Little Dupangary Creek	0	1,433,104	1,433,104	2019	1692.1	20	0.15	4	23842	5976	109290	145000	75000	218520	291360	125873	251946
LBC_OCW_1	Dupangary	Little Dupangary Creek	0	1,217,729	1,217,729	2021	1456.3	20	0.15	3	29186	4370	129607	102000	100000	253814	328418	143252	286504
CAS_OCW_1	Caboolture	Caboolture River	0	1,361,129	1,361,129	2023	1692.8	20	0.15	2	30956	5075	483380	161130	75000	241895	644520	240880	481721
BUR_OCW_1	Dupangary	Dupangary Creek	0	4,338,007	4,338,007	2025	3677.2	40	0.15	2	147089	22963	703797	234889	100000	351999	838096	349304	696607

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3B

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report: Morayfield, 134 Morayfield Road Feasibility Study Regional Detention Basin (SSC_DB_3)

Title:	Morayfield, 134 Morayfield Road Feasibility Study for Trunk Detention Basin (SSC_DB_3)
Budget Number:	
PID Number:	
RIO Reference:	A12002048
Report Prepared By:	Alister O'Callaghan Senior Engineer Stormwater Infrastructure Planning
Phone:	(07) 3480 6560
Email:	Alister.O'Callaghan@moretonbay.qld.gov.au
Report Reviewed By:	Allan Charteris Coordinator Drainage waterways and Coastal Planning
Phone:	(07) 3480 6452
Email:	Allan.Charteris@moretonbay.qld.gov.au

1. Overview <this section provides key information suitable for rapid appreciation of report outcomes>

A development application has recently be lodged over the undeveloped portion of 134 Morayfield Road Caboolture South (DA/30058/2015/V2C). Trunk detention basin SSC_DB_3 was identified in the vicinity with a storage volume of 21000m³ (21 ML). Open channel works and a wetland are also identified in the plans for trunk infrastructure in the vicinity.

A confirmation has been requested that regional detention is still required in this location and if there exists alternative solutions that will offer a similar reduction in flooding downstream (including to what extent).

Previous assessments used the 2009 LiDAR and associated modelling to identify trunk infrastructure works opportunities that could address identified existing and/or potential future flood risks associated with growth in the region.

The latest flood modelling (based on 2014 LiDAR) has been reviewed identifies similar flood risks to those of the 2009 assessments. The modelling continues to highlight poor flood immunity of Morayfield Road directly downstream of the site.

A review of the catchment, current and potential future flood behaviour, in consideration of the New Draft Planning Scheme, indicates significant potential increases in catchment flows due to future development.

The need for a regional detention basin at this location is supported.

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report:
Morayfield, 134 Morayfield Road
Feasibility Study Regional Detention Basin (SSC_DB_3)

2. Background <this section describes what has occurred in the past that gave rise to this project proposal>

The owners have lodged an application for a Material Change of Use for a Retail showroom, Restaurant, Shop and Take away food outlet (see Figure 1)

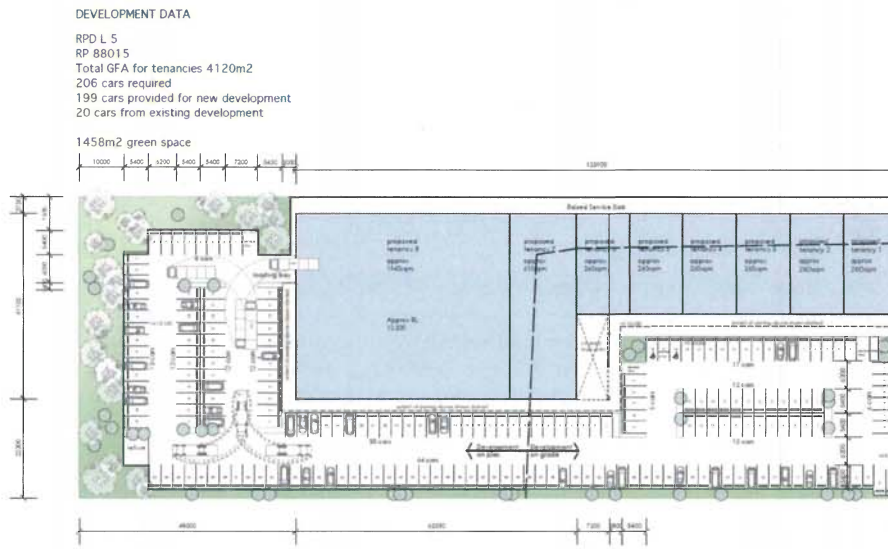


Figure 1 Submitted Development Plan 134 Morayfield Road Caboolture South

In 2009, DWCP undertook a flood investigation to identify trunk stormwater quantity infrastructure for the Burpengary Creek and Caboolture River catchments as part of the development of the Caboolture infrastructure contribution policies and priority infrastructure plan. <http://webapps1/Objective/ObjRef.aspx?id=A6879894>.

The infrastructure identified in the 2009 investigation was subsequently rolled over into Council's Adopted Infrastructure Charges Resolution (AICR).

Within the local catchment, the AICR (see Figure 2) identified a detention basin designed as a regional device for the catchment with a total capacity of order 21,000m³. The total area of land identified for this device is 12,600m². This requirement has been reflected in the Information Request which was sent to the applicant yesterday.

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report:
Morayfield, 134 Morayfield Road
Feasibility Study Regional Detention Basin (SSC_DB_3)

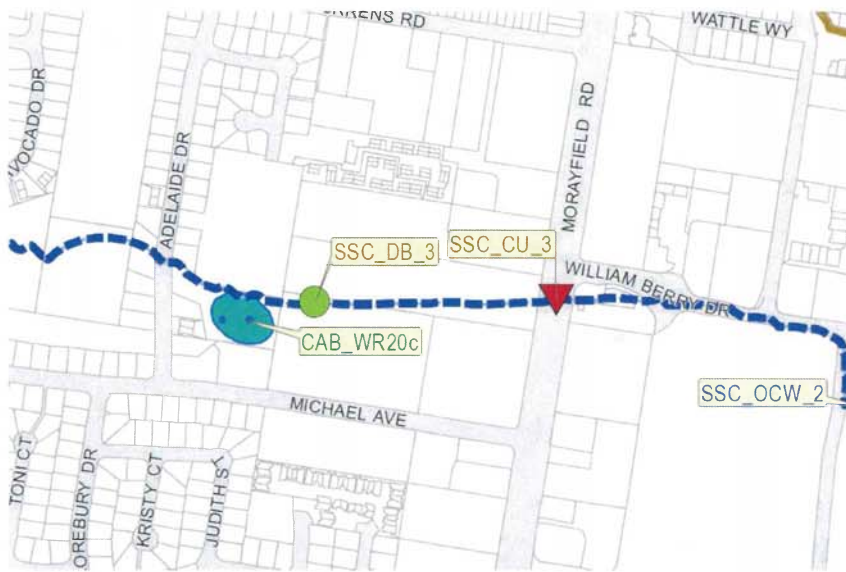


Figure 2 Adopted Infrastructure Charges Resolution

The objective of this investigation is to confirm the need for a detention basin to service this catchment.

3. Site Description <this section describes the site and its key characteristics>

The site is located in Caboolture South at 134 Morayfield Road.

RIO: A_____

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report:
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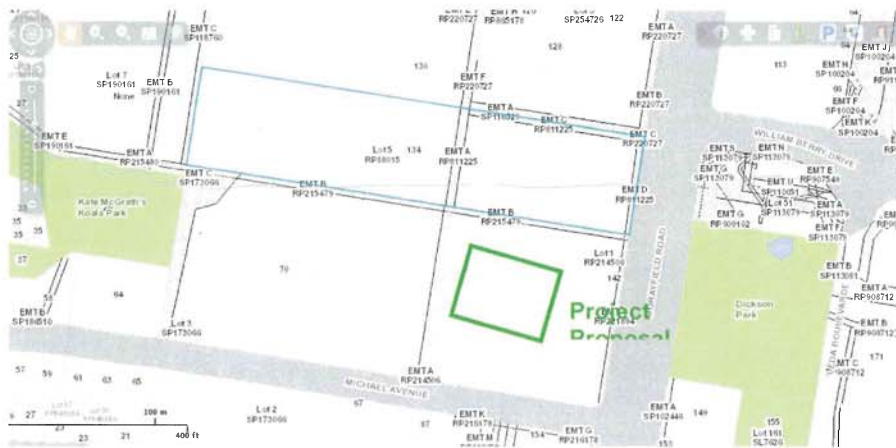


Figure 3: Easement and Legal Descriptions



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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report:
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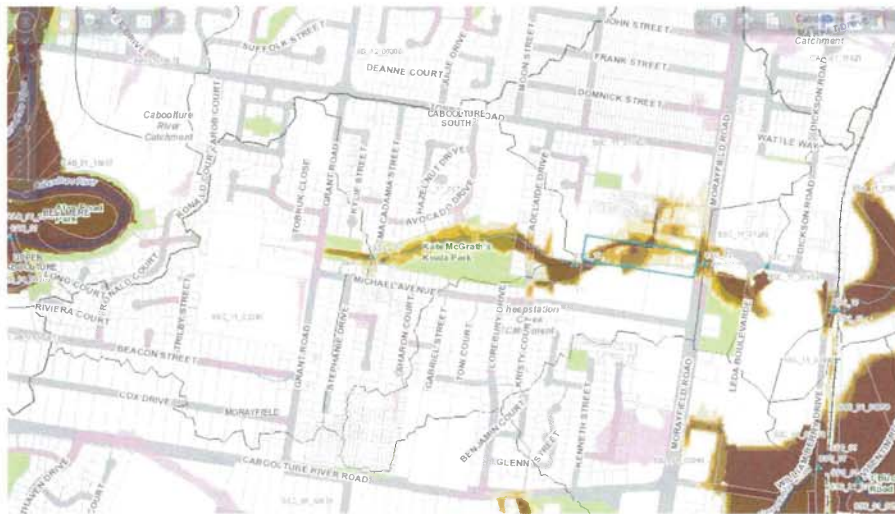


Figure 4 Catchment Plan

The catchment upstream of Adelaide Dr is mostly residential, while the landuse between Adelaide Dr and Morayfield Rd is commercial uses. With the exception of a few as yet undeveloped blocks, the catchment can be considered reasonably fully developed in line with the current planning scheme. However, the New Draft Planning Scheme rezones the residential areas to Next Generation where the opportunity for intensification exists and there are no lower limits on lot sizes.

There are existing significant flooding issues in the area (see Figure 5) and this was evident in the recent (1 May 2015) rain event where the Morayfield Shopping Centre car park flooded.

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report:
Morayfield, 134 Morayfield Road
Feasibility Study Regional Detention Basin (SSC_DB_3)



Figure 5 Flood extents 1% AEP

4. Issues

Issues that need to be considered in developing effective floodplain management strategies in this area include:

- Historical flooding closing Morayfield Road
- Historical flooding of Morayfield Shopping Centre carpark

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report: Morayfield, 134 Morayfield Road Feasibility Study Regional Detention Basin (SSC_DB_3)

- Flooding of properties and road closures downstream in Sheepstation Creek and Caboolture River.
- Potential for development in upstream and adjacent catchments increasing peak flows in receiving waterway (Sheepstation Creek and Caboolture River).
- Blockage of existing 1500 mm diameter pipe inlet in 134 Morayfield Road.
- Remaining limited opportunity for council to retrofit detention into existing developed catchments.

Commercial and residential development in the sub-catchment has been undertaken without significant stormwater quantity controls. With respect to the latest available aerial photography, the residential areas of the sub-catchment appear to be near fully developed, but it is likely there will be some further development/intensification within the commercial precincts close to Morayfield Rd. As noted previously, the New Draft Planning Scheme rezones the residential areas to Next Generation where the opportunity for significant residential intensification exists and there are no lower limits on lot sizes.

The existing levels of development result in flood flows in excess of the capacity of the drainage system, and results in flooding/closure of Morayfield Rd during a 10% AEP (approx. 1 in 10yr) event.

Further, existing conditions result in nuisance flooding of public and private property, including flooding of the lower carpark areas of the Morayfield Shopping Centre (northern carpark). This occurs during events greater than or equal to 10% AEP.

2015 Update

Review of the 2009 investigation has been undertaken. The 2009 investigation was regional in approach, and used available data and flood information to identify flood mitigation opportunities. With the benefit of improved flood data (based on 2014 LiDAR and modelling), the following issues are identified:

- Course catchment delineation in the hydrology model, relative to the overall size of this sub-catchment (3 contributing catchments), which may not reliably represent
 - the catchment response to rainfall
 - the extent of the catchment contributing to the Morayfield Rd crossing – upon review, considered to be an overestimate of contributing catchment area
- The estimate of increase in impervious fraction 2009-2021 is characterised with a 20-40% *increase* in impervious fraction. At first glance, this appears high. Increases to impervious fraction of 2.5-10%, nominated in the 2 other sub-catchments, appears more realistic.
- The methodology for nominating the volume and area of the proposed detention basin is a guide based on the QUDM "Initial Sizing Method" Boyd formula. A more rigorous dynamic routing simulation methodology (as was recommended in the 2009

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report: Morayfield, 134 Morayfield Road Feasibility Study Regional Detention Basin (SSC_DB_3)

study) is recommended to size the basin and its outlet, and to assess the impact to flood behaviour.

A review of the impervious fraction increases has been undertaken in consideration of the proposed changes to landuse under the New Draft Planning Scheme. Much of the area in the upper sub-catchment has been nominated as Next Generation General Residential, which allows an increase in impervious fraction to 0.70-0.85, as documented in the draft Planning Scheme Policy – Integrated Design.

Percentage Impervious vs development category

Development Category	MBRC Planning Scheme Zone	Fraction Impervious
Road Reserves		Fraction of width paved
Park / Rural	<ul style="list-style-type: none"> • Environmental Management and Conservation • Recreation and Open Space 	0.0
	<ul style="list-style-type: none"> • Rural • Extractive Industry 	
Rural Residential (>3000m ²)	Rural residential	0.20
Residential lot (600m ² -1500m ²)	General Residential – Coastal Village General Residential – Suburban	0.50
Residential lot (1500m ² -3000m ²)	General Residential – Coastal Village General Residential – Suburban	0.35
High density	General Residential – Urban General Residential – Next Generation	0.9 0.7-0.85
Commercial / Industrial / Urban Parks	Centre Industry Community Facilities	0.9 to 1.0

Analysis of application of the Next Generation zone confirms a 30-40% *increase* in impervious fraction within this sub-catchment.

Accordingly, future development in the catchment will likely result in a significant increase in flood flows and volumes in line with those set out in the 2009 DWCP report (ie increase in peak flows of 10-15%).

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Investigation Report:
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5. Possible Solutions <this section describes the solution (s) and their benefits and disbenefits >

The following table provides a list of possible solutions to the problem including their benefits and disbenefits.

Table 1:

	Possible Solutions	Pros	Cons
1	Proceed with detention basin	<ul style="list-style-type: none"> Addresses existing flood risks at Morayfield Rd Addresses catchment intensification as prescribed in NDPS 	<ul style="list-style-type: none"> Will prohibit development of 134 Morayfield Rd as proposed
2	Allow proposed development on 134 Morayfield Rd to proceed addressing onsite stormwater issues - no other compensatory works	<ul style="list-style-type: none"> Low cost 	<ul style="list-style-type: none"> Does not address existing flood risks at Morayfield Rd Does not address catchment intensification
3	Allow proposed development on 134 Morayfield Rd to proceed addressing onsite stormwater issues - don't allow upzoning in upper catchment	<ul style="list-style-type: none"> Low cost 	<ul style="list-style-type: none"> Does not address existing flood risks at Morayfield Rd Inconsistent with NDPS

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report:
Morayfield, 134 Morayfield Road
Feasibility Study Regional Detention Basin (SSC_DB_3)

	Possible Solutions	Pros	Cons
4	Allow proposed development on 134 Morayfield Rd to proceed addressing onsite stormwater issues - impose discharge controls on all new development in upper catchment	<ul style="list-style-type: none"> • Low cost • Addresses catchment intensification as prescribed in NDPS 	<ul style="list-style-type: none"> • Does not address existing flood risks at Morayfield Rd • Difficult to the point of being virtually impossible to practically implement
5	Allow proposed development on 134 Morayfield Rd to proceed addressing onsite stormwater issues - locate detention basin(s) elsewhere in catchment	<ul style="list-style-type: none"> • Addresses existing flood risks at Morayfield Rd • Addresses catchment intensification as prescribed in NDPS 	<ul style="list-style-type: none"> • Difficult to locate suitable alternate basin locations • likely to require more detention distributed over a number of basins • Likely to require loss of veg in Kate McGrath Koala Park for construction of detention basin
6	Allow modified version of development on 134 Morayfield Rd to proceed addressing onsite stormwater issues and including some regional detention - locate detention basin(s) elsewhere in catchment	<ul style="list-style-type: none"> • Addresses existing flood risks at Morayfield Rd • Addresses catchment intensification as prescribed in NDPS 	<ul style="list-style-type: none"> • Difficult to locate suitable alternate basin locations • likely to require more detention distributed over a number of basins • Likely to require loss of veg in Kate McGrath Koala Park for construction of detention basin

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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Investigation Report:
Morayfield, 134 Morayfield Road
Feasibility Study Regional Detention Basin (SSC_DB_3)

	Possible Solutions	Pros	Cons
7	Allow development on 134 Morayfield Rd to proceed addressing onsite stormwater issues - install bypass drainage from upstream of development site to Sheepstation Creek	<ul style="list-style-type: none"> Addresses existing flood risks at Morayfield Rd Addresses catchment intensification as prescribed in NDPS 	<ul style="list-style-type: none"> Cost prohibitive
8	Allow development on 134 Morayfield Rd to proceed as suspended slab above detention basin	<ul style="list-style-type: none"> Addresses existing flood risks at Morayfield Rd Addresses catchment intensification as prescribed in NDPS 	<ul style="list-style-type: none"> Difficult to the point of being virtually impossible to practically implement considering access, maintenance, ownership etc

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report: Morayfield, 134 Morayfield Road Feasibility Study Regional Detention Basin (SSC_DB_3)

6. Preferred Solution <this section describes the preferred solution>

This investigation supports previous investigation outcomes including that **a detention basin in this catchment is needed** to address increases in flows due to future development.

The location identified, the remaining undeveloped portion of this property, is the preferred (most practical and suitable) location for such a detention basin. The location offers the opportunity to capture virtually all the upper catchment flows, reduce existing flood risks at Morayfield Rd and address future increased flows due to the intensification prescribed in the NDPS.

7. Indicative Costing and Staging of Preferred Solution

The modified project proposal will have an indicative cost as per the following breakdown:

Item	Quantity	Rate	Cost
Preliminary Investigation			
Detailed Design			
Land Acquisition			
Construction			
		TOTAL	

Ongoing Maintenance

A budget for the ongoing maintenance of the structure will need to be identified.

The suggested staging for the works is as follows:

- Stage 1
- Stage 2

8. Land Acquisitions and Approvals

The project proposal requires the following land acquisition

The undeveloped portion of 134 Morayfield Road.

9. Consultation

The following consultation has been undertaken:

- Principal Engineer
- Councillor
- Designer
- Operations

RIO: A _____

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Investigation Report: Morayfield, 134 Morayfield Road Feasibility Study Regional Detention Basin (SSC_DB_3)

- Etc.

The following further consultation is recommended:

- Director?
- Project manager?
- Residents?
- ECM Budgeting and Programming

10. Further Investigations Required

- As described in Section 6 above

11. Design Issues for Consideration

The following issues need to be considered when undertaking design:

- Construction timing
- Access and maintenance

Due to the complexity of the works this project external design support should be considered.

12. Budget and Delivery Program Implications

The current budget and delivery should be amended as follows:

Year	Current Activity	Current Budget \$	Proposed Activity	Proposed Budget \$
12/13	Construction	XX	Design	\$XX
13/14	Construction	XX	Construction (Stage 1)	\$XX
14/15	Construction	XX	Construction (Stage 2)	\$XX

13. Attachments

Attachment 1 –

Attachment 2 –

RIO: A_____

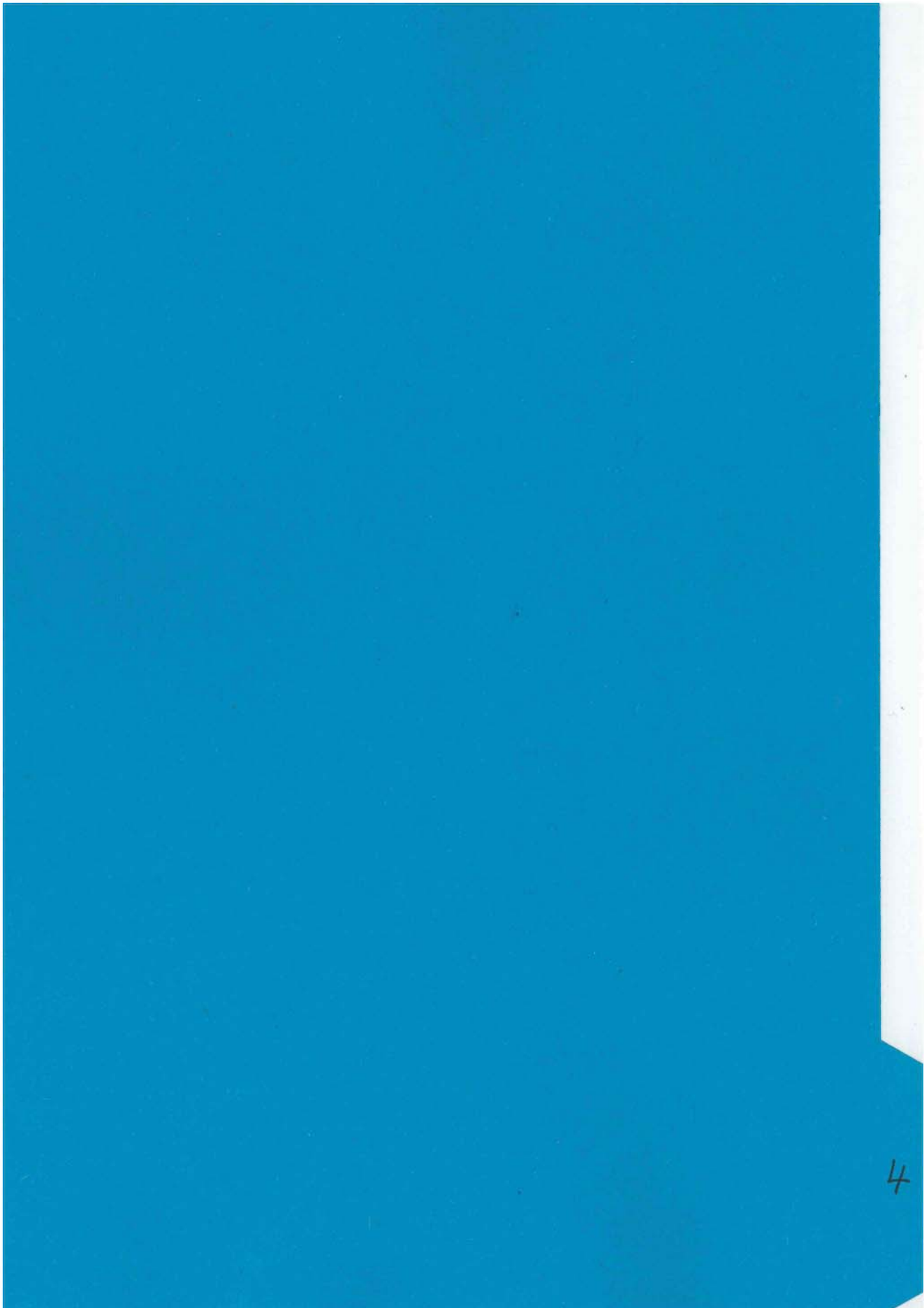
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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Register No: CEO-089

Status: FOR APPROVAL

Delegation by Chief Executive Officer

I, Daryl Hitzman, Chief Executive Officer of the Moreton Bay Regional Council, having been delegated the powers of Council pursuant to s257 of the Local Government Act 2009

HEREBY DELEGATE TO:
Michael Marshall (Thomson Geer Lawyers) (Contractor)

PURSUANT TO:
s259 of the Local Government Act 2009

POWERS DELEGATED:
The power to hear the objector and to prepare a report on the objections hearing under section 8 of the Acquisition of Land Act 1967.

CONDITIONS TO WHICH THE DELEGATION IS SUBJECT (if any):
A contractor must comply with relevant Council policies and directives when exercising a power delegated under this instrument.

ADMINISTRATIVE PROCEDURES TO BE COMPLETED UNDER THE DELEGATION (if any)

This delegation commences on

17/11/2017

A handwritten signature in black ink, appearing to read "D. Hitzman".

Chief Executive Officer

Related Council delegation (if any): Council-106

CEO Approval:
Delegation RIO ID:
Version:

Rescission date (if applicable):
Notes/Comments:

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Attachment 2



LIST OF FURTHER OBJECTIONS

1. **Non-compliance with NIR/AOLA**

1.1 Section 7(3)(e)(iii) of the *Acquisition of Land Act 1967 (AOLA)* provides that a Notice of Intention to Resume must set out:

that an objector who states in the objection that the objector desires to be heard in support of the grounds of the objection may appear and be heard by the constructing authority or its delegate at the time and place specified in the notice

1.2 The Notice of Intention to Resume dated 12 October 2017 (**NIR**) clearly states that the Objection Hearing is take place at the office of the Council at 220 Gympie Road, Strathpine.

1.3 By letter dated 20 November 2017, the Council purported to change the place of the Objection Hearing to the Offices of Thomson Geer Lawyers, 1 Eagle Street, Brisbane.

1.4 The Council has not amended the NIR pursuant to s7(4AA) of the AOLA despite its delegation to the Delegate dated 17 November 2017 indicating that it intended to change the place of the Objection Hearing to the Delegate's offices.

1.5 Accordingly, the Objection Hearing is not being held at the place and time stated in the NIR, contrary to s7(3)(e)(iii) of the AOLA.

1.6 In the circumstances, the Council has failed to hold a valid Objection Hearing pursuant to the AOLA. Nonetheless, for the sake of clarity, and reserving all our client's rights, we will refer to the hearing being held at the Offices of Thomson Geer as the "Objection Hearing".

2. **Denial of Natural Justice/Procedural Fairness**

2.1 Pursuant to the principles outlined in *Little v Minister for Land Management (1995) 1 Qd R 190*, the Landowner is entitled to natural justice/procedural fairness in respect of the proposed resumption outlined in the NIR.

2.2 Procedural fairness has not been afforded to the Landowner in respect of this Objection Hearing as:

- (a) the Council has provided material to the Delegate unilaterally and without notice to the Landowner;
- (b) the Landowner has not been provided with any opportunity to put material to the Delegate prior to the Objection Hearing; and
- (c) Council officers, in particular, Messrs Charteris and Duhig, are to attend the Objection Hearing.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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2.3 The material put before the Delegate by the Council invites the Delegate into error as it:

- (a) contains irrelevant information; and
- (b) fails to include relevant information, in particular material relating to the decision of his Honour Judge Rackemann in *Genamson Holdings Pty Ltd v Moreton Bay Regional Council* [2017] QPEC 056 (**PEC Appeal**).

2.4 In particular, the information put before the Delegate by the Council includes:

- (a) a report entitled "Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009" (**2009 Report**); and
- (b) an undated and incomplete report entitled "Investigation Report: Morayfield, 134 Morayfield Road Feasibility Study Regional Detention Basin (SSC_DB_3)" (**Feasibility Study**).

2.5 The 2009 Report has largely been overtaken by events and provides no justification for the proposed detention basin on the Land, as Rackemann DCJ noted in the PEC Appeal:

[79] Dr Johnson also pointed out that the justification for, or benefits of, a detention basin with the particular volume of 21,000m³ are unknown. The 2009 report (which was withheld from Dr Johnson for some time) referred to a figure of 21,000m³, but is dated and, in his view, unsubstantiated at this time. Mr Clark's evidence was to the effect that there is the potential for the increase in upstream intensification of development to produce significant increases in inflows in Sheepstation Creek and a detention basin is needed, but the council did not rely on his evidence to justify a particularly sizing. The figure of 21,000m³ was not picked up in any of the infrastructure charging resolutions or in the PIP and the planned detention basin has not been the subject of detailed design. The sizing was referred to in an investigation report which became an exhibit, but that was admitted into evidence on the basis that it was not evidence of the truth of its contents. It remains the case however, that a regional detention basin is a longstanding component of the council's infrastructure planning for the benefit of the community.

2.6 Accordingly, the 2009 Report is irrelevant and ought not be considered by the Delegate.

2.7 In Respect of the Feasibility Study, we note that:

- (a) The Feasibility Study is not in final form. Accordingly, the Delegate cannot rely on this incomplete and draft study in considering the Landowner's objections.
- (b) It would be both unreasonable and a denial of natural justice that, prior to the complete feasibility study about the regional detention basin being finalised, the Council's delegate would proceed to make any recommendations in respect of the Landowner's objections.
- (c) It is inappropriate for the land to be acquired until the feasibility study has been completed. The Council (and the Delegate) are unable to properly consider the matter until a correct and complete feasibility study is undertaken. The

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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Landowner should also be provided with the ability to comment on that complete study.

- (d) The Feasibility Study is not soundly based. Examples of this include:
 - (A) of the 13 sections included in the Feasibility Study, 6 sections are presently not completed;
 - (B) section 5 of the Feasibility Study simply makes bare assertions, not supported by any factual or evidentiary matters; and
- (ii) the Feasibility Study ought to be read in conjunction with the hydrological studies that have been undertaken by consultants engaged by the Landowner. Those complete and rigorous studies concluded that the findings of the Council's Feasibility Study are simply wrong.

2.8 In respect of each of those documents, we note that Rackemann DCJ was somewhat critical of the Council for not calling Mr Charteris to justify the size of the detention basin during the following exchange with the Landowner's Hydraulic Expert Dr Johnson:

HIS HONOUR: *So far as you can see, any suggestion of a requirement of 21,000 is not soundly based?*

DR JOHNSON: *No. It's – in my opinion, it's based solely on work done in 2009 that wasn't even detailed at that stage. Mr Charteris agreed with my - - -*

HIS HONOUR: *Is Mr Charteris still at the council?*

DR JOHNSON: *Yes, your Honour. He agreed with my Mr Della that no detailed modelling of the basin - - -*

HIS HONOUR: *I wonder why he's not giving evidence. Anyway...*

DR JOHNSON: *Sorry. He was – he's agreed that no detailed modelling of the basin has taken place, according to that email.*

HIS HONOUR: *Anyway, he's the person who's in charge of all this, isn't he?*

DR JOHNSON: *Yes, your Honour. He's the engineer making the final call as to whether the basin is needed or not.¹*

2.9 Further, the Council has chosen only to put reports supporting the resumption of the Land before the Delegate. In this respect, we note that the Council is in possession of the following documents that militate against the resumption:

- (a) Morayfield Flood Study dated 20 March 2015 (prepared by Cardno);
- (b) Report of BAAM Ecological Consultants dated 13 September 2017;
- (c) Information Request Response dated 16 December 2015; and

¹ T2-81, L5-20.
22 November 2017
Doc ID 452521313/v1

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

- (d) the PEC Appeal.
- 2.10 Copies of those documents will be provided to the Delegate at the Objection Hearing.
- 2.11 Further, it is inappropriate for Council Officers to attend the Objection Hearing in circumstances where:
 - (a) at least one of those officers was involved in making the recommendation to the Council to resume the Land; and
 - (b) the Council is not entitled to present a case to the Delegate at the Objection Hearing.
- 2.12 In respect of the latter point, we note the comments of the Court of Appeal in *Little v Minister for Land Management* (1995) 1 Qd R 190 at 201:

Although this Court has joined in the convenient step of referring to a "hearing", the term is capable of misleading and has clearly been misunderstood by the respondents and their solicitors in their references to such matters as being apprised of the case which they have to answer and their assumption of a hearing which is a contest. That is not the type of hearing which the Act envisages... The Act then gives them two complementary rights to present a case in opposition to the resumption proposed. The first, the notice of objection, must be in writing. The second is a right "to be heard in support of the grounds of his objection" (s. 7(3)(e)(iii)); that is to say, an objector is given a right to elaborate upon and explain the basis of his opposition and to argue for his point of view. There is nothing in the statutory silence which suggests that an adversarial proceeding is contemplated.

3. Independence of Delegate

- 3.1 The Delegate appointed by the Council to conduct the Objection Hearing is a solicitor of Thomson Geer Lawyers, Mr Michael Marshall.
- 3.2 We note the remarks of Wilson J in *Caloundra City Council v Minister for Natural Resources* [2001] 1 Qd R 365 at 370 concerning the functions of the Delegate:

The function of the delegate under s 8 is to hear and report as an alternative to a hearing by the constructing authority itself. It is then for the constructing authority to consider the grounds of the objection and, unless it decides to discontinue the resumption or to amend the notice of intention to resume, to make an application to the Minister under s 9(3). That the delegate does not consider and/or make the application to the Minister does not detract from the fact that he or she is doing something which otherwise the constructing authority would be required to do itself.
- 3.3 Accordingly, the same considerations in respect of bias and other matters apply to the delegate in the same way that they would apply to the Council.
- 3.4 In this respect, the Landowner has not been provided with any information concerning:
 - (a) the terms and conditions of Mr Marshall's appointment;
 - (b) the relationship of Mr Marshall (or his firm) with the Council;

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*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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- (c) any instructions provided to Mr Marshall; or
 - (d) any further information requested by Mr Marshall other than that provided in the "brief" of 20 November 2017.
- 3.5 Accordingly, the Landowner is not satisfied as to the independence of the Delegate in the circumstances.

HWL Ebsworth Lawyers
On behalf of the Objector Landowner

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Attachment 3

THOMSON GEER
LAWYERS

Level 16, Waterfront Place
1 Eagle Street
Brisbane QLD 4000 Australia

GPO Box 169 Brisbane QLD 4001
DX 134 Brisbane

T +61 7 3338 7500
F +61 7 3338 7599

Our ref MFM:4084041

23 November 2017

pbittner@hwle.com.au

richardduhig@mortonbay.qld.gov.au

Mr Peter Bittner
Partner
HWL Ebsworth Lawyers

Mr Richard Duhig
Senior Legal Officer
Office the Chief Executive Officer
Morton Bay Regional Council

Dear Sirs

Genamson Holdings Pty Ltd & Moreton Bay Regional Council
Objection to Notice of Intention to resume land for drainage purposes and easement purposes
incidental to carrying out drainage purposes
134-140 Morayfield Road, Caboolture South
Objection hearing conducted on 22 November 2017

I refer to the objection hearing in relation to the written objection received from HWL Ebsworth (**HWLE**) dated 15 November 2017, on behalf of Genamson Holdings Pty Ltd (**owner**).

1 Objection Hearing 22 November 2017

1.1 During the course of the hearing:

- (a) Further written objections were delivered by HWLE;
- (b) It was indicated by HWLE that in their client's view, the brief delivered to me by Moreton Bay Regional Council (**Council**) ought to have included additional material;
- (c) It was indicated by HWLE that their client was of the view that the Council held further documents that were reasonably required in order to prepare a properly detailed notice of objection to the proposal to take the land.

1.2 As a result of these matters, I directed that the objection hearing be adjourned to a later date, to allow these matters to be further considered and addressed by the parties.

2 Next Steps

2.1 I propose that the matter proceed in accordance with the following draft timetable:

- (a) By 1 December 2017, the owner write to the Council and identify what further documents or classes of documents it seeks to be produced to enable it to properly prepare a supplementary statement of objection;
- (b) By 8 December 2017, the Council respond to the owner and provide any further documents that it wishes to;

Moreton Bay Regional Council

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25 September 2018

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

THOMSON GEER

2

- (c) By 15 December 2017, the owner provide to me whatever materials it wishes to supplement the materials contained in the brief prepared by the Council;
 - (d) By 22 December 2017, the owner provide any supplementary written objection to the proposed taking of land and an indication as to whether it wishes to be heard in support of the supplementary written objection.
- 2.2 If the owner does not wish to again be heard, I will consider the objection hearing to have been concluded and I will proceed to prepare my report.
 - 2.3 If the owner does wish to be heard further, I will contact the parties to arrange a date that is convenient to all parties to reconvene the objection hearing.
 - 2.4 All further documents and communications provided to me by either party are to be copied to the other party.
 - 2.5 If any aspect of the proposed steps/timetable presents difficulty for either party please let me know. I am agreeable to entertaining any changes suggested by either party including as to any reasonable extensions to the proposed timetable.
 - 2.6 If the owner advises me that it does not wish to proceed in the manner outlined above and/or requests that I treat the objection hearing as concluded, then I will proceed on the basis that the objection hearing is concluded and will proceed to prepare my report.
 - 2.7 I request that the parties provide me with their comments in respect of the above proposal by close of business Monday 27 November 2017.

Yours faithfully
THOMSON GEER



Michael Marshall
Partner
T +61 7 3338 7525
M 0407 914 748
E mmarshall@tglaw.com.au

encl

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Attachment 4

THOMSON GEER
LAWYERS

Level 16, Waterfront Place
1 Eagle Street
Brisbane QLD 4000 Australia

GPO Box 169 Brisbane QLD 4001
DX 134 Brisbane

T +61 7 3338 7500
F +61 7 3338 7599

Our ref MFM:4084041
Your ref PJB:LIW:618645

4 December 2017

pbittner@hwle.com.au

richardduhig@moretonbay.qld.gov.au

Mr Peter Bittner
Partner
HWL Ebsworth Lawyers

Mr Richard Duhig
Senior Legal Officer
Office of the Chief Executive Officer
Moreton Bay Regional Council

Dear Sirs

Genamson Holdings Pty Ltd & Moreton Bay Regional Council
Objection to Notice of Intention to resume land for drainage purposes and easement purposes
incidental to carrying out drainage purposes
134-140 Morayfield Road, Caboolture South
Objection hearing conducted on 22 November 2017

I refer to your responses to the draft timetable set out in my letter dated 23 November 2017.

The objection hearing will proceed as follows:-

- 1 By 8 December 2017, the owner write to the Council and identify what further documents or classes of documents it seeks to be produced to enable it to properly prepare a supplementary statement of objections;
- 2 By 15 December 2017, the Council respond to the owner and provide any further documents that it wishes to;
- 3 By 22 December 2017, the owner provide to the delegate whatever documents it wishes to supplement the documents contained in the brief provided by the Council;
- 4 By 15 January 2018, the owner provide any supplementary written objection to the proposed taking of land and indicate whether it wishes to be heard in support of any supplementary written objection; and
- 5 The objection hearing will resume on a date to be agreed during the course of the week commencing 15 January 2018. In that regard, I propose the time of 11:00am on Wednesday 17 January 2018. If the parties prefer another time later that week, please let me know.

Please ensure that I am copied in on all further communications between the parties pursuant to the above.

Moreton Bay Regional Council

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

THOMSON GEER

2

Yours sincerely



Michael Marshall

Partner

T +61 7 3338 7525

M 0407 914 748

E mmarshall@tglaw.com.au

cc Luke Walker
Solicitor
HWL Ebsworth Lawyers
lwalker@hwle.com.au

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Attachment 5



Our Ref: PJB:LIW:618645
Your Ref: A2016-487

8 December 2017

Richard Duhig
Senior Legal Officer
Legal Services Department
Moreton Bay Regional Council
220 Gympie Road
STRATHPINE QLD 4500

Email: richard.duhig@moretonbay.qld.gov.au

CC: mmarshall@tglaw.com.au

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Dear Richard

**Genamson Holdings Pty Ltd & Moreton Bay Regional Council
Objection to Notice of Intention to Resume land for drainage purposes and easement purposes incidental to carrying out drainage purposes
134-140 Morayfield Road, Caboolture South**

We refer to Mr Marshall's letter dated 4 December 2017.

Pursuant to paragraph 1 of the letter, please see the below documents, or classes of documents, our client seeks to be produced so as to enable it to properly prepare a supplementary statement of objections:-

1. the terms and conditions of Mr Marshall's appointment as the delegate of Moreton Bay Regional Council (**Council**);
2. any further information requested by Mr Marshall, other than that provided in the brief of 20 November 2017;
3. any selection criteria documents for the proposed resumption;
4. any reports relevant to the assessment of any and all alternative sites for drainage purposes, and easement purposes incidental to carrying out drainage purposes, for the proposed resumption;

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Norwest
Perth
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Doc ID 456090003/v1

Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

ABN 37 246 549 189

Moreton Bay Regional Council

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*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*


5. all documents relating to the Council's decision to rescind its previous decision to resume the land at 134-140 Morayfield Road, Caboolture South (**Land**);
6. any information relating to the value of the Land;
7. any advice in the Council's possession concerning the resumption of the Land and/or the accommodation of the regional detention basin on the Land, including, but not limited to:
 - (a) any advice received from external consultants, including Mr Steve Clark; or
 - (b) any legal advice received either internally, or externally, concerning the proposed resumption, including from Mr Andrew Skoien of counsel;
8. any communications to, from, or between Council officers in respect of the proposed resumption, including, but not limited to, emails, letters and internal memorandums; and
9. any communications to, from, or between councillors (in particular, Councillors Hain, Sutherland and Charlton) concerning the proposed resumption, including, but not limited to, emails, letters and internal memorandums.

We look forward to receiving your response by 15 December 2017 in respect of the above documents.

Yours sincerely

HWL EBSWORTH
f **Peter Bittner**
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au


Luke Walker
Solicitor
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Attachment 6



Phone: 3480 6661
Our Ref: A16340335
Your Ref: PJB:LIW:618645
Date: 15 December 2017

Mr Luke Walker
Mr Peter Bittner
HWL Ebsworth Lawyers
GPO Box 2033
BRISBANE QLD 4001

By e-mail: walker@hwle.com.au
And: pbittner@hwle.com.au
CC: Michael Marshall of Thomson Geer
By e-mail: mmarshall@tglaw.com.au

Dear Sirs

**Proposed Resumption of Land - Part of Lot 5 RP88015 - 134-140 Morayfield Road,
Caboolture South**

I refer to your correspondence of 8 December 2017.

The following numbering corresponds to that in your correspondence:

1. The terms of Mr Marshall's appointment are as set out in the delegation a copy of which you have received.
2. Mr Marshall has not been provided with any information other than that contained in the brief that you also received.
3. Selection of the appropriate site for the detention basin is set out in material already provided.
4. Reports dealing with this request have already been provided.
5. Council declines to provide documents regarding rescission of Council's previous decision to resume as they are irrelevant to the issuance of the Notice of Intention to Resume dated 12 October 2017 ("NIR").
6. Council declines to provide documents relating to the value of the land to be resumed as they are irrelevant to the issuance of the NIR.
7. (a) Advice received from Steve Clark other than that contained in the joint expert report or individual report for *Genamson v Moreton Bay Regional Council [2017] QPEC* is privileged. Council did not engage other external consultants apart from those engaged in the aforementioned proceedings for which the only documents prepared were joint expert reports you are already in possession of.
(b) Advice received from Mr Skoien is privileged.

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
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8. Council declines to provide the documents sought as they are irrelevant to the issuance to the NIR.
9. Council declines to provide communications between Councillors as they are irrelevant to the issuance of the NIR.

Yours faithfully



Richard Duhig
Senior Legal Officer
Legal Services Department

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Attachment 7



Our Ref: PJB:LIW:688403
Your Ref: MFM:4084041

22 December 2017

Michael Marshall
Partner
Thomson Geer Lawyers
GPO Box 169
BRISBANE QLD 4001

Email: mmarshall@tglaw.com.au
CC: richard.duhig@moretonbay.qld.gov.au

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Dear Mr Marshall

**Genamson Holdings Pty Ltd & Moreton Bay Regional Council
Objection to Notice of Intention to resume land for drainage purposes and easement
purposes incidental to carrying out drainage purposes
134-140 Morayfield Road, Caboolture South**

We refer to:

- your letter of 4 December 2017;
- our letter of 8 December 2017; and
- the Council's letter of 15 December 2017.

Please find **enclosed** copies of the following documents:

1. Report of Dr Trevor Johnson dated 22 December 2017;
2. Flood Study prepared by Cardno Pty Ltd dated 20 March 2015;
3. Information Request Response dated 16 December 2015;
4. Report of BAAM Ecological Consultants dated 13 September 2017;
5. Transcript of Hearing - *Genamson Holdings Pty Ltd v Moreton Bay Regional Council* [2017] QPEC (**Appeal**);

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Doc ID 459010813/v1
Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

ABN 37 246 549 189

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6. First Joint Experts' Report - Hydraulic and Stormwater issues in the Appeal;
7. Second Joint Experts' Report - Hydraulic and Stormwater issues in the Appeal;
8. Dr Johnson's Statement of Evidence in the Appeal;
9. Material disclosed by the Council on 4 October 2017;
10. letter from HWL Ebsworth to the Council requesting reasons pursuant to s32 of the *Judicial Review Act 1991* dated 3 February 2017;
11. letter from the Council to HWL Ebsworth dated 6 February 2017;
12. letter from the Council to HWL Ebsworth dated 3 May 2017;
13. letter from HWL Ebsworth to the Council dated 23 May 2017; and
14. letter from HWL Ebsworth to the Council dated 24 May 2017.

Please let us know if you require any further material.

Yours faithfully



Peter Bittner
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au



Luke Walker
Solicitor
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

cc: Richard Duhig, Senior Legal Officer - Moreton Bay Regional Council

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Attachment 8



Our Ref: PJB:LIW:688403
Your Ref: MFM:4084041

15 January 2018

Michael Marshall
Partner
Thomson Geer Lawyers
GPO Box 169
BRISBANE QLD 4001

Email: mmarshall@tglaw.com.au
CC: richard.duhig@moretonbay.qld.gov.au

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Dear Mr Marshall

**Genamson Holdings Pty Ltd & Moreton Bay Regional Council
Objection to Notice of Intention to resume land for drainage purposes and easement purposes incidental to carrying out drainage purposes
134-140 Morayfield Road, Caboolture South**

We refer to:

- your letter of 4 December 2017;
- our letter of 8 December 2017;
- the Council's letter of 15 December 2017; and
- our letter of 22 December 2017.

Please find below our client's further submissions on the proposed resumption dealt with in the Council's Notice of Intention to Resume (NIR) dated 12 October 2017 (**Proposed Resumption**).

1. Material before delegate

- 1.1 Pursuant to s8(2)(b) of the *Acquisition of Land Act 1967 (AOLA)*, you are required to prepare a report to the Council on the matters put forward by our client in support of its grounds of objection.

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Sydney

Doc ID 460857863/v1
Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
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- 1.2 Accordingly, you are required to make findings of fact based on that matters put before you by our client (and only the matters put before you by our client) and have a duty to act in accordance with the rules of procedural fairness and natural justice.
- 1.3 In that respect, we note the comments of Deane J in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at [367]:
- Of its nature, a duty to act judicially (or in accordance with the requirements of procedural fairness or natural justice) excludes the right to decide arbitrarily, irrationally or unreasonably ... When the process of decision-making need not be and is not disclosed, there will be a discernible breach of such a duty if a decision of fact is unsupported by probative material. When the process of decision-making is disclosed, there will be a discernible breach of the duty if inferences of fact upon which a decision is based cannot reasonably be drawn from such findings of fact. Breach of a duty to act judicially constitutes an error of law which will vitiate the decision.*
- 1.4 In this case, there is no probative material before you that would justify a finding that the Proposed Resumption is required. Indeed, the weight of evidence is overwhelmingly to the contrary.
- 1.5 In the circumstances, the Landholder submits that you, as the delegate of the Council, could not reasonably conclude that the Proposed Resumption is required.
- 2. Probative value of evidence**
- 2.1 The evidence relied upon by the Council to justify the Proposed Resumption consists of:
- (a) the 2009 Report; and
 - (b) the Feasibility Study.
- 2.2 Paragraphs 2.4 to 2.10 of our client's Further Objections dated 22 November 2017 outline why it would be unreasonable for you to rely upon either the 2009 Report or the Feasibility Study.
- 2.3 Further, the Landholder has provided a report from Dr Trevor Johnson dated 22 December 2017 that demonstrates that each of those reports is not soundly based and outlines a number of issues that militate against the Proposed Resumption. Importantly, none of the conclusions in Dr Johnson's report have been rebutted by the Council and his evidence was preferred to that of the Council's expert during the PEC Appeal.
- 2.4 In the circumstances, the only probative material before you is Dr Johnson's report, which concludes that the Proposed Resumption is not justified. Therefore, the Landholder submits that it is not reasonably open to you, as the delegate of the Council, to recommend that the Proposed Resumption proceed.
- 2.5 The alternative is that you recommend that the Council proceed with the Proposed Resumption on the basis of:
- (a) the 2009 Report (which has been overtaken by events) and
 - (b) the Feasibility Study (which is incomplete and in draft).

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
25 September 2018

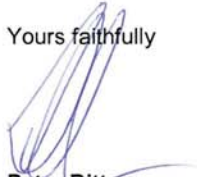
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- 2.6 Such a recommendation would completely ignore the comprehensive report of Dr Johnson and would clearly be so unreasonable that no reasonable person could make it.

We confirm that we wish to be further heard in support of our clients' grounds of objection at the resumed objection hearing to take place at your offices at 11.00 am on 17 January 2017.

Yours faithfully



Peter Bittner
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au



Luke Walker
Solicitor
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

cc Richard Duhig, Senior Legal Officer - Moreton Bay Regional Council

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Attachment 9

Batty, Nathan

From: Luke Walker <lwalker@hwle.com.au>
Sent: Tuesday, 16 January 2018 9:09 AM
To: Marshall, Michael; 'Richard Duhig'
Cc: Peter Bittner
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [TGLAW-Legal.FID1792719] [HWLE-Matter.C0132892.688403]
Attachments: 460929183_1_2018-01-15 Eltr to M Marshall.PDF

Dear Michael

Apologies - letter **attached**.

In respect of the other matters raised in your email, we note our previous objections in this regard.

Yours faithfully

Luke Walker
Solicitor



Level 19, 480 Queen Street | Brisbane QLD 4000
Phone +61 7 3169 4841 Fax 1300 368 717 (Australia) | Fax +61 2 8507 6582 (International)
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From: Marshall, Michael [mailto:mmarshall@tglaw.com.au]
Sent: Tuesday, 16 January 2018 7:33 AM
To: Luke Walker; 'Richard Duhig'
Cc: Peter Bittner
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403] [TGLAW-Legal.FID1792719]

Dear Mr Walker

Your email did not include any attached letter containing the further objections. Please resend with attachment.

In relation to your query, it is a matter for the Council to determine as to who attends the objection hearing on its behalf.

regards

Michael Marshall | Partner
THOMSON GEER

T +61 7 3338 7525 | M 0407 914 748
Level 16, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 Australia
mmarshall@tglaw.com.au | tglaw.com.au

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Moreton Bay Regional Council

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

From: Luke Walker [mailto:lwalker@hwle.com.au]
Sent: Monday, 15 January 2018 5:29 PM
To: Marshall, Michael <mmarshall@tglaw.com.au>; 'Richard Duhig' <Richard.Duhig@moretonbay.qld.gov.au>
Cc: Peter Bittner <pbittner@hwle.com.au>
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [TGLAW-Legal.FID1792719] [HWLE-Matter.C0132892.688403]

Dear Michael

Please see **attached** correspondence concerning our client's further objections.

Noting that Mr Duhig left the room at the Landholder's request on the last occasion, could you please clarify whether you now propose to include a representative of the Council at the resumed hearing?

Yours faithfully

Luke Walker
Solicitor



Level 19, 480 Queen Street | Brisbane QLD 4000
Phone +61 7 3169 4841 Fax 1300 368 717 (Australia) | Fax +61 2 8507 6582 (International)
lwalker@hwle.com.au | www.hwlebsworth.com.au

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From: Marshall, Michael [mailto:mmarshall@tglaw.com.au]
Sent: Monday, 15 January 2018 1:09 PM
To: Luke Walker; 'Richard Duhig'
Cc: Peter Bittner
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403] [TGLAW-Legal.FID1792719]
Importance: High

Dear Sirs

I refer to the letter from Council dated 15 December 2017 and the letter from HWLE dated 22 December attaching additional documentation for consideration as part of the objection hearing process.

In my letter dated 4 December 2017, I proposed that the objection hearing re-commence at **11 am on Wednesday 17 January 2018**. I have not received any response proposing any alternative time. Accordingly, I confirm that the objection hearing will re-commence at that time, at this office. Could both parties please confirm their attendance.

If the landowner has any supplementary/further written objections to deliver (refer para 4 of my letter dated 4 December 2017), please forward these to me as soon as possible.

I look forward to hearing from each of you.

regards

Michael Marshall | Partner
THOMSON GEER
T +61 7 3338 7525 | M 0407 914 748

*ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

Level 16, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 Australia
mmarshall@tqlaw.com.au | tqlaw.com.au

[Advice](#) | [Transactions](#) | [Disputes](#)

From: Luke Walker [<mailto:lwalker@hwle.com.au>]
Sent: Friday, 22 December 2017 1:02 PM
To: Marshall, Michael <mmarshall@tqlaw.com.au>
Cc: 'Richard Duhig' <Richard.Duhig@moretonbay.qld.gov.au>; Peter Bittner <pbittner@hwle.com.au>
Subject: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403]

Dear Michael

Please see **attached** correspondence.

The enclosures will be sent by way of a separate link.

Yours faithfully

Luke Walker
Solicitor



Level 19, 480 Queen Street | Brisbane QLD 4000
Phone +61 7 3169 4841 Fax 1300 368 717 (Australia) | Fax +61 2 8507 6582 (International)
lwalker@hwle.com.au | www.hwlebsworth.com.au

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

Batty, Nathan

From: Richard Duhig <Richard.Duhig@moretonbay.qld.gov.au>
Sent: Tuesday, 16 January 2018 11:03 AM
To: Marshall, Michael
Cc: Peter Bittner; Luke Walker
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403] [TGLAW-Legal.FID1792719]

Dear Michael,

I shall be contactable as requested on 3480 6661 or 0414 448 745.

Regards,

Richard Duhig
Senior Legal Officer
Office of the Chief Executive Officer
Moreton Bay Regional Council
220 Gympie Road
Strathpine Qld 4500
P: (07) 3480 6661
E: richard.duhig@moretonbay.qld.gov.au
www.moretonbay.qld.gov.au

From: Marshall, Michael [mailto:mmarshall@tglaw.com.au]
Sent: Tuesday, 16 January 2018 10:52 AM
To: Richard Duhig
Cc: Peter Bittner ; Luke Walker
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403] [TGLAW-Legal.FID1792719]

Dear Mr Duhig

It appears from the earlier email from Mr Walker of HWLE that they maintain their objection to you being in attendance at the objections hearing.

There is no requirement in the legislation for there to be an employee or representative of the constructing authority present at an objection hearing conducted by a delegate of the Council.

Accordingly I am content to proceed with the objection hearing tomorrow without you being in attendance. However, I ask that you be contactable by telephone between the hours of 11am and 1pm in the event that the landowner's representatives and I consider it appropriate to raise any matters with you for discussion.

regards

Michael Marshall | Partner
THOMSON GEER
T +61 7 3338 7525 | M 0407 914 748

Moreton Bay Regional Council

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25 September 2018

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ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Level 16, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 Australia

mmarshall@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

From: Richard Duhig [<mailto:Richard.Duhig@moretonbay.qld.gov.au>]
Sent: Tuesday, 16 January 2018 10:38 AM
To: Marshall, Michael <mmarshall@tglaw.com.au>
Cc: Peter Bittner <pbittner@hwle.com.au>; Luke Walker <lwalker@hwle.com.au>
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403] [TGLAW-Legal.FID1792719]

Dear Michael,

Further to your e-mail below I am agreeable to the objection hearing recommencing at 11am, tomorrow 17 January.

Given the land owner's representatives objection to a representative of the Council being present, I do not intend being in attendance unless you or the land owner's representatives think it appropriate I'm available.

Regards,

Richard Duhig
Senior Legal Officer
Office of the Chief Executive Officer
Moreton Bay Regional Council
220 Gympie Road
Strathpine Qld 4500
P: (07) 3480 6661
E: richard.duhig@moretonbay.qld.gov.au
www.moretonbay.qld.gov.au

From: Marshall, Michael [<mailto:mmarshall@tglaw.com.au>]
Sent: Monday, 15 January 2018 1:09 PM
To: Luke Walker <lwalker@hwle.com.au>; Richard Duhig <Richard.Duhig@moretonbay.qld.gov.au>
Cc: Peter Bittner <pbittner@hwle.com.au>
Subject: RE: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403] [TGLAW-Legal.FID1792719]
Importance: High

Dear Sirs

I refer to the letter from Council dated 15 December 2017 and the letter from HWLE dated 22 December attaching additional documentation for consideration as part of the objection hearing process.

In my letter dated 4 December 2017, I proposed that the objection hearing re-commence at **11 am on Wednesday 17 January 2018**. I have not received any response proposing any alternative time. Accordingly, I confirm that the objection hearing will re-commence at that time, at this office.

Could both parties please confirm their attendance.

If the landowner has any supplementary/further written objections to deliver (refer para 4 of my letter dated 4 December 2017), please forward these to me as soon as possible.

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I look forward to hearing from each of you.

regards

Michael Marshall | Partner

THOMSON GEER

T +61 7 3338 7525 | M 0407 914 748

Level 16, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 Australia

mmarshall@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

From: Luke Walker [<mailto:lwalker@hwle.com.au>]

Sent: Friday, 22 December 2017 1:02 PM

To: Marshall, Michael <mmarshall@tglaw.com.au>

Cc: 'Richard Duhig' <Richard.Duhig@moretonbay.qld.gov.au>; Peter Bittner <pbittner@hwle.com.au>

Subject: 134-140 Morayfield Road, Caboolture South - Proposed Resumption [HWLE-Matter.C0132892.688403]

Dear Michael

Please see **attached** correspondence.

The enclosures will be sent by way of a separate link.

Yours faithfully

Luke Walker

Solicitor



Level 19, 480 Queen Street | Brisbane QLD 4000

Phone +61 7 3169 4841 Fax 1300 368 717 (Australia) | Fax +61 2 8507 6582
(International)

lwalker@hwle.com.au | www.hwlebsworth.com.au

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advise of the error.

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Attachment 10



ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

#4 Judgment of the Planning and Environment Court

mm



**PLANNING AND ENVIRONMENT COURT
OF QUEENSLAND**

CITATION: *Genamson Holdings Pty Ltd v Moreton Bay Regional Council*
[2017] QPEC 56

PARTIES: **GENAMSON HOLDINGS PTY LTD**
(Appellant)

v

MORETON BAY REGIONAL COUNCIL
(Respondent)

FILE NO/S: 3265 of 2016

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING COURT: Planning and Environment Court of Queensland

DELIVERED ON: 11 September 2017

DELIVERED AT: Brisbane

HEARING DATE: 30, 31 January, 1, 2, 3 February, 10, 27 March and 24 April 2017

JUDGE: Rackemann DCJ

ORDER: **The appeal is adjourned to allow the parties to formulate conditions of approval**

CATCHWORDS: PLANNING AND ENVIRONMENT – APPLICANT
APPEAL – REFUSAL OF EXTENSION SHOPPING CENTRE – proposal for suspended slab supported by piers over waterway – whether proposal would have unacceptable impact on flooding/stormwater – the significance of the potential for the proposal to catch debris – whether the proposal appropriately responds to the flood hazard constraint on the site – where the council’s infrastructure planning includes a detention basin in the vicinity of the site – whether the proposal would potentially prejudice the council’s infrastructure planning – where that can be addressed by conditions – whether the detention basin could be co-located with the development – where construction could be delayed to give the council the opportunity to promptly complete its acquisition of the site

COUNSEL: T P Sullivan QC with M J Batty for the appellant
A N Skoien for the respondent



Moreton Bay Regional Council

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SOLICITORS: HWL Ebsworth for the appellant
Moreton Bay Regional Council Legal Services for the
respondent

Introduction

- [1] This applicant appeal is against the Council's refusal of a development application to facilitate the extension of the existing Heritage Plaza Shopping Centre, which lies on the western side of Morayfield Road at Caboolture South. The existing shopping centre is located at 134/140 Morayfield Road and comprises a lettable area of 3,035m². The extension would increase that by 4,375m², bringing eight additional tenancies varying in size from 205m² to 2,750m², together with 225 further car parking spaces. The extension would be effected in the vacant, low lying, western part of the site which has an area of approximately 12,196m² and would sit atop a suspended slab at ground level supported by piers. A waterway, namely a tributary of Sheepstation Creek, traverses the site.

The locality

- [2] The site is located in an existing commercial and retail area, which extends along both frontages of Morayfield Road. The site otherwise lies within a broader urban context. To the immediate south lies an IGA Supermarket development which is, in part, developed on a suspended slab on piers, partially over the same waterway which traverses the subject site. To the west lies a retirement village. To the south-west lies a park (Kate McGrath Park), which lies at the confluence of drainage lines. There is an urban residential catchment generally to the west.

Timing of the application

- [3] The development application was made on 30 March 2015, during the life of the Caboolture Shire Plan 2005 (2005 planning scheme). The Moreton Bay Regional Council Planning Scheme 2016 (the 2016 planning scheme) took effect on 1 February 2016. The development application was refused on 15 August 2016.

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The assessment regime

- [4] This appeal proceeded by way of hearing anew, made under the *Sustainable Planning Act 2009* (SPA). The onus lies upon the appellant. Having been made during the life of the 2005 planning scheme, the development application is assessed and decided under that scheme. It is code assessable under that scheme and accordingly is to be assessed having regard to ss 313(2) and (3) of the SPA and decided in accordance with ss 324 and 326 of SPA. The court's decision must not conflict with a relevant instrument (including a planning scheme) unless there are sufficient grounds to justify the decision. Grounds are matters of public interest. The court may give such weight as it considers appropriate to the 2016 planning scheme, conflict with the 2016 scheme however, does not engage s 326.¹

The issues

- [5] The issues in the appeal were identified by reference to the Council's reasons for refusal, and the appellant's nominated grounds, which it contends are sufficient to justify approval in the event of any conflict with the 2005 planning scheme.
- [6] The Council's reasons for refusal relevantly included those which assert that the proposal would be inappropriate in relation to:
- (i) stormwater and flooding issues; and
 - (ii) infrastructure planning, in particular the potential for the proposal to prejudice implementation of Council's planning for the broader management of stormwater/flooding by the construction of a future regional detention basin in the vicinity of the site.

¹ *Sustainable Planning Act 2009* (Qld) s 495(2).

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[7] Those two issues were the refusal issues upon which focus centred in the appeal. Other refusal issues fell away. In particular, it was common ground that ecological issues could be dealt with by way of conditions, particularly as to the provision of an ecological offset.

[8] The conclusion that the proposal is otherwise generally acceptable is consistent with the second joint expert report of the town planning experts in which the following point of agreement was recorded:

“The planners agree:

- (a) the site is appropriately zoned;
- (b) the site is situated within a broader and local commercial precinct;
- (c) the site is currently used for the same purpose, with the proposal representing an extension on the same site of that same purpose;
- (d) adjoining land is already fully developed, with the proposal representing logical infill development in that context;
- (e) the ecological experts agreed in the JER that the site contained some environmental values that would be lost as a result of the proposed development;
- ...
- (g) to the extent (ecological) offsetting is required, it can be conditioned as part of an approval; and
- (h) conditions can be imposed to address all other overlay and practical planning considerations, as is usually the case for urban infill development of this nature.”

[9] For the reasons discussed later, the infrastructure planning issue, although initially pursued as a refusal issue, was ultimately accepted to be capable of being dealt with by way of conditions if necessary.

Grounds

[10] The grounds upon which the appellant relies as sufficient to warrant approval in the event of conflict with a relevant instrument were summarised as follows:

- (a) there is an economic and town planning need for the proposed development;

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- (b) the proposed development would provide diversity and choice in respect of commercial and retail outlets in the locality;
- (c) approval of the proposed development would result in an efficient use of well serviced and well located land;
- (d) approval of the proposed development would reinforce a compact form of settlement, resulting in improved efficiency and use of existing infrastructure in the surrounding area;
- (e) the proposed development is of a similar size and scale to existing developments in the local area and is therefore in keeping with community expectations;
- (f) the proposed development represents an excellent opportunity for infill, commercial and retail development in the location which is served by significant levels of private and public infrastructure supporting commercial and retail uses, and
- (g) approval of the proposed development would not generate any unacceptable impacts.

[11] Those grounds were generally supported by the evidence of Mr Reynolds (the town planner engaged by the appellant) and Mr Norling (the economist engaged by the appellant). Mr Norling expressed the view that there is a strong level of community, economic and planning need for the proposed development for the following reasons:

- (a) the subject site forms a convenient and integral part of the dominant Caboolture/Morayfield principal Regional Activity Centre, which is designated to serve a regional population that forms an important part of Greater Brisbane's northern growth corridor;

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- (b) the proposed development would focus employment on the vibrant and accessible Caboolture/Morayfield Regional Activity Centre;
- (c) the proposed development would consolidate and integrate compatible uses to optimise the use of land within an established higher order centre;
- (d) the proposed development would contribute to a more compact urban form and strengthen the network of activity centres by expanding the mix of businesses and services conveniently available in the Region's highest order centre;
- (e) the proposed development would serve the Morayfield Catchment population, which is projected to increase at 2.57% per annum over the next 15 years, significantly above the rates projected for the Moreton Bay Region and Greater Brisbane;
- (f) the proposed development would satisfy a small part of the Morayfield Catchment's increase in demand for retail floor space over the next 15 years, which is estimated at a total of 203,000m², of which about 71,000m² would be directed to the Caboolture/Morayfield Principal Activity Centre;
- (g) interest has been received from prospective tenants wishing to lease 75% of the proposed floor space, which is considered to be strong evidence of need, especially given that a formal marketing campaign has yet to commence and the current successful anchor tenant wishes to expand into the proposed major tenancy in order to better satisfy its existing customer base;

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- (h) the proposed development would increase the range, convenience and competition of retail facilities available to the Morayfield Catchment, and
- (i) the proposed site is centrally located within the northern part of the Morayfield Centre, such that its development would contribute to the consolidation, integration, vigour, vibrancy and convenience of the Centre.

[12] I accept that the subject proposal would assist in meeting a need for further development of the broader Regional Activity Centre over time and would generally have the benefits otherwise referred to by Mr Norling. It was submitted for the respondent however, that the appellant had failed to demonstrate a public or community need which could not be met by another development elsewhere. I accept that there is a level of need, although I do not regard the need case as particularly strong. In any event:

- (a) the appellant relies upon its grounds in the event that conflict is found with a “relevant instrument”, for the purposes of s 326 of SPA which, in this case, is the 2005 Planning Scheme;
- (b) insofar as the stormwater/flooding issues are concerned:
 - (i) the respondent asserts conflict with 1 DEO of the 2005 Planning Scheme, but for the reasons discussed later, I am satisfied that:
 - A. the proposal will have no unacceptable impact in terms of flooding/stormwater, and
 - B. there is no conflict with the nominated DEO in the 2005 Planning Scheme.

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- (ii) any conflict with the provisions of the 2016 Planning Scheme does not engage s 326 of SPA.
- (c) insofar as the infrastructure planning issue is concerned:
 - (i) the respondent's concern relates to the potential for the proposal to remove the subject site as a potential site for the location of a planned regional detention basin, and
 - (ii) it was ultimately accepted that the respondent's concern, to the extent it is legitimate, can be accommodated by a condition of approval, rather than by refusal of the application.

In the circumstances, there is no need for the appellant to rely on its "grounds" to justify an approval.

Stormwater/flooding impact

- [13] It has already been observed that the subject site is relatively low-lying and is traversed by a tributary of Sheepstation Creek. The site lies towards, but not at, the downstream extremity of the catchment of the waterway which enters the site at its southwest corner and exits at its north-eastern corner, via culverts. It then proceeds east, via the culverts, under Morayfield Road, under the retail and commercial premises to the east, and out into the natural waterway to the east. The waterway is fed from a significant catchment, primarily from the west.
- [14] The proposed development would extend above the areas which would be inundated in times of flood, including the waterway. It is however, proposed to be, in effect, substantially vertically separated from those areas by being built on a platform, supported by piers, so as to minimise the interference with those parts of the site or with stormwater/floodwater. The piers are to be placed at least 10m apart and are to be kept clear of the high hazard flow area. It is proposed for there to be some

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earthworks to achieve the development, but this would result in a net increase in flood storage within the site of in excess of 3000m³ in the 100 year ARI event.²

- [15] It was contended, on behalf of the respondent that, notwithstanding the appellant's endeavours to design the proposal to take account of potential impacts on stormwater and floodwater, it had nevertheless failed to demonstrate that the proposal would have no significant adverse impact. Consequently, it was contended that the proposal conflicts with Desired Environmental Outcome (c)(iv) of the 2005 planning scheme, which speaks of the adverse effects of naturally occurring and man-made hazards on the natural environment and human communities being minimised.
- [16] The 2005 Planning Scheme was supported by, amongst other things, planning policy 19, which related to stormwater. It provided a guide to the council's requirements for information that should be included in a flood study to address stormwater quantity and quality. Relevantly to quantity, it sought a certified flood study from a registered professional engineer to determine, amongst other things, whether the development is likely to cause any nuisance to adjoining, upstream or downstream properties or whether the cumulative impact of development is likely to cause any adverse impact on other properties. The policy provided that the flood study should be based on flood height data up to and including a 100 year ARI storm event.
- [17] The impact of the proposal in terms of stormwater and flooding was examined by two suitably qualified engineers, namely Dr Johnson (who was engaged by the appellant) and Mr Clark (who was engaged by the Council). Those experts participated in a joint meeting and report process, in accordance with the usual practice in this court.

² Exhibit 11, page 13.

- [18] In their second joint report, the experts agreed that the sub-model of the proposed development site and the immediate vicinity, as then established by Dr Johnson's firm, was generally suitable and that the proposed solution:

“With reference to the previous planning scheme as outlined in the Flood Report provides a satisfactory outcome in respect of flood level increases (i.e. flood level increases beyond the boundaries of the site are acceptable) in the absence of debris loading, when considering the Q100 event. However, it is agreed that this analysis does not consider debris loading, and there is disagreement... as to whether this further analysis is required.”

The conclusion of the Flood Report referenced in that point of agreement included that “the proposal development does not cause an actionable adverse impact on flood levels external to the site.” Accordingly, subject to the issue of debris loading, there was agreement between the two nominated experts that the proposed development was acceptable in terms of the 2005 planning scheme.

- [19] Mr Clark's residual concern was that the proposed development could result in unacceptable upstream flood level increases if flood debris came to create a blockage within the pier arrangement and/or the underside of the development platform. Dr Johnson, on the other hand, did not consider blockage by reason of debris to be likely, and disagreed with Mr Clark's assessment of the potential impact and significance of debris.

- [20] It was pointed out for the appellant that there is no provision of the 2005 planning scheme, or the relevant planning scheme policy, which expressly requires a consideration of debris loading. That does not however, justify ignoring Mr Clark's concern. The relevant provision of the planning scheme does not provide any detail in relation to the matters to be considered. The planning scheme policy provides some greater detail, but is only a guide and does not purport to be a comprehensive list of every matter which could potentially be relevant to a consideration of whether

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a given development is, in the circumstances, likely to cause a nuisance or adverse impact.

[21] The concern about debris in this case should however, be put into perspective. In that regard:

- (i) Not all catchments have the same degree of risk in terms of debris or, more particularly, debris of a kind likely to create a blockage across a well-spaced and placed pier arrangement. The subject catchment, as Mr Clark acknowledged,³ is relatively highly urbanised. In the second joint report, Dr Johnson expressed the view that any debris would largely be urban detritus and not be expected to cause significant disruption to flow.⁴ In his trial report, Mr Clark spoke of a “significant” potential for debris (both vegetation and urban detritus) to be generated within the catchment.⁵ Whilst at trial he maintained that there is a “foreseeable risk”,⁶ he conceded in cross-examination⁷ that “in terms of standard methodologies... this catchment comes up as generally a low risk catchment for debris.” I am satisfied that the catchment is indeed, relatively low risk in this regard.
- (ii) Immediately to the west of the IGA development and to the southwest of the subject site, but east of Adelaide Drive, lies Kate McGrath Park. That is a relatively modest park with a

³ T6-17.
⁴ Exhibit 11, para 2(a).
⁵ Exhibit 19, p 19.
⁶ T6-29.
⁷ T6-16.

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small number of mature trees in an otherwise open grassed area. The trees are grassed to their roots (they do not sit on a river bank with scour). Mr Clark accepted that this area is not one which has a high potential to produce fallen trees to contribute to debris.⁸

- (iii) Significant vegetation is otherwise more removed from the site in the upstream area to the west of Adelaide Drive. The flood prone part of that area is again relatively flat and features mature trees grassed to their trunks. There is no formally defined creek line (or associated scour zones). There is some more dense vegetation in a more natural state to the south of the flood zone that would be affected by low-velocity rainfall runoff only. Mr Clark accepted that, in the circumstances, there is a low prospect of trees in this area becoming debris as a result of flooding.⁹
- (iv) Mr Clark's residual concerns about vegetation was not related to trees becoming debris as a result of stormwater/floodwater but rather by reason of high wind and/or lightning strike. He was also concerned about cars potentially becoming washed off a road, presumably Adelaide Drive. Mr Clark made enquiries of the Council about whether it kept records of complaints or problems in relation to previous instances of that kind, but was unable to be provided with any such information.

⁸ T6-18.
⁹ T6-20.

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The Adelaide Drive crossing would be expected to be closed in the Q100 event.¹⁰

- (v) The concern about debris relates to the proposal potentially creating an adverse upstream impact by reason of a blockage which would not otherwise occur (in a way which caused a like effect) in any event. As Dr Johnson identified however, there are, in any event, numerous culverts and grated inlets in this catchment already, any or all of which could catch such debris if it occurs. It was pointed out by Mr Clark that blockages downstream of the site may not have the same impact, but two of the examples given by Dr Johnson exist upstream as follows:

- (A) There is a road culvert on Adelaide Drive approximately 100m upstream of the land. There is also a guardrail which runs above the level of the road surface. This culvert and guardrail would present a significant impediment to the transmission of debris further downstream. The Q100 flood level at Adelaide Drive is less than the height of the guardrails.¹¹ Mr Clark accepted¹² that if a tree were to fall, by reason of high wind or lightning strike, to the west of Adelaide drive and be caught up in the stormwater/floodwater, it would likely catch on the Adelaide Drive guardrail. Whilst there was no

¹⁰ T6-34.

¹¹ T6-28, 33.

¹² T6-21.

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engineering evidence of its structural strength, it is obviously a substantial structure, permanently attached to the ground, made of steel, located on both sides of the road and non-collapsible.¹³ It presents as at least a significant potential impediment;

- (B) The immediately adjoining IGA development to the south is developed on piers over the same watercourse immediately upstream of the subject site. Its pier arrangement features only 5m spacings. As Dr Johnson pointed out, it is an obvious catch point for any major debris. He pointed to its existence as consistent with his view that debris is not considered to be a significant concern in this catchment. Mr Clark, who considers the IGA pier system is “not a good design”, and one he would not propose,¹⁴ also conceded that it is a likely spot to catch any significant debris which happened to make its way through to that point, although he thought there was some residual risk of debris making its way to the subject site notwithstanding.¹⁵

- (vi) Whilst the proposal is not cantilevered, and would introduce a greater number of piers across a broader area, the arrangement under the subject proposal features relatively generous spacing of at least double that which is provided for under the adjacent

¹³ T6-8.

¹⁴ T6-26.

¹⁵ T6-60.

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IGA development. The proposal is for a minimum spacing of 10m between piers and no pier will be placed within the high flow channel of the waterway.

[22] Given the nature of the catchment, the potential for debris to be caught in any event before it arrives at the site, the relatively open pier structure and strategic placement of piers, the risk of the pier system on the subject site causing significant additional blockage by way of debris is, I find, relatively low.

[23] Each of the experts considered the impact of a potential blockage in the event that it did occur. Initially, Mr Clark did so by revising Dr Johnson's model simply by increasing hydraulic roughness to 0.3. This, in effect, modelled a partial blockage across the whole development.¹⁶ That is an unrealistic scenario, given the nature of the development and, not surprisingly, resulted in significantly inflated and overstated predictions of increases in flood levels as a consequence of the development. It is unnecessary to delay upon the approach because Mr Clark, in the course of cross-examination, readily conceded that it was better to consider specific debris scenarios.¹⁷ Each of Dr Johnson and Mr Clark considered some such scenarios.

[24] Dr Johnson's analysis considered blockages in areas more towards the downstream part of the site and out of the high hazard area, where no piers will be placed. He was criticised on that basis. It is unnecessary for me to discuss those criticisms further because, for the reasons which follow, I am satisfied that the proposal will not have an undue impact even having regard to Mr Clark's more conservative scenario.

¹⁶ It is the value which would be adopted for a solid building located across the site. See T6-56.
¹⁷ T6-59.

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[25] Mr Clark, on the other hand, chose what he acknowledged to be the worst case blockage scenario to give the highest level of upstream increase.¹⁸ That is, a blockage across the high velocity part of the channel (albeit that no pier is, itself, within that part of the channel) near the upstream entry of the site towards the southwest corner proximate to the IGA site. It is also the relatively deep part of the channel. Having selected that part for the scenario, Mr Clark then chose to model a complete (that is 100 percent) blockage for a 10m section. That is a very conservative scenario, which makes the following assumptions:

- (i) debris, capable of extending across a 10m span width, is produced upstream in the catchment;
- (ii) if it is produced west of the eastern side of Adelaide Drive, it nevertheless makes its way past the culverts and guardrails of Adelaide Drive;
- (iii) notwithstanding that the higher velocity part of the channel flows directly under the IGA development before emerging on to the subject site to the point of the assumed blockage, the debris either gets through that tighter pillar arrangement under the IGA before getting blocked at the more widely spaced piers at the assumed blockage point on the subject site or, alternatively, skirts around the IGA and enters the site outside of the high flow channel before entering it in time to create a blockage at the assumed spot.
- (iv) Not only does the debris create a blockage at the assumed point, but it also creates a complete (100 percent) blockage for

¹⁸ T6-29, 30.

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the entire 10m width for the entire depth of that section such, such that the entire section is impermeable. Mr Clark conceded, in cross-examination, that “I absolutely accept that you won’t have a metal sheet that 100 percent blocks those piers”.¹⁹

- [26] The evidence of Dr Johnson was that, in the area of high velocity/risk, the piers either are or could be placed further apart, to further reduce any risk of blockage. That is a matter which could be addressed in conditions. Mr Clark modelled a 10m blockage.
- [27] There was, it seems, some attempt by Mr Clark to compare the consequences of his assumed blockage to those which might otherwise occur at the IGA and also at the culverts at the north-eastern part of the site. Unfortunately, they were not very useful comparisons, because he did not model similar blockages. Instead of modelling the same 10m wide debris which, absent the subject development, could be caught, in any event, at the IGA, Mr Clark blocked a 5m blockage at that location. Insofar as the north-eastern culvert is concerned, he modelled only a 50 per cent blockage.
- [28] Mr Clark’s hypothetical complete blockage of the most sensitive cell of the proposed development on the subject site produced results which were far from alarming.²⁰ It revealed that, in such circumstances, there would, as a consequence, be some increase in areas already subject to flood, but no inundation of any habitable building as a consequence. The greatest increase in levels external to the subject site would be below the suspended slab of the piers on the IGA site. That would appear to raise no concern. It would also potentially cause an increase of between 1 and 2 cm in the

¹⁹ T6-29.

²⁰ Even ignoring an afflux which might otherwise occur in any event if, in the absence of the subject development, the debris created a blockage downstream.

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levels in the already flooded Kate McGrath park east of Adelaide Drive and, to a very minor extent, within the yards of some residential properties which adjoin that park. Mr Clark accepted that there would be no increased damage associated with that afflux.²¹ To the west of Adelaide Drive the level of afflux is generally 1cm or less which, it was common ground, is not of significance.

[29] The Adelaide Drive crossing is already inundated during the Q100 year flood. At its centre, it is inundated by between 75cm and 1m and would be expected to be closed to traffic due to the level of hazard.²² In the event of a blockage on the subject site as modelled by Mr Clark, there would be some additional flooding, but the increase would be relatively minor (of the order of 10 or 11mm).²³

[30] Whilst I understand Mr Clark's reluctance to see floodwater on an already flooded and hazardous road increase or indeed to see flood levels on the property of third parties (adjacent to Kate McGrath Park) increased by more than the 1cm generally accepted by hydraulic engineers as within a "no-worsening", there are some things which need to be borne in mind. Firstly, as Dr Johnson pointed out, the proposal has not been designed to produce greater than 1cm of afflux in a 100 year event. It has been designed to achieve a no-worsening (absent debris). The scenario which has been considered is in the nature of a sensitivity test, in the event that a blockage by way of debris also occurs.²⁴ Secondly, the likelihood of that afflux occurring is low, bearing in mind the nature of the catchment and the conservative nature of the scenario modelled. Thirdly, as Dr Johnson pointed out, the extent of afflux, if it were to occur, would not have undue adverse effects.²⁵ In those circumstances, I prefer Dr

²¹ T6-33.

²² T6-34.

²³ T6-35, 6-87.

²⁴ T6-87.

²⁵ T6-87, 88.

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Johnson's opinion that the proposal would not have an undue adverse impact in terms of stormwater and flooding.

- [31] I find that the proposal does not conflict with DEO(c)(iv) of the 2005 planning scheme.

2016 planning scheme with respect to flood hazard

- [32] The respondent alleged conflict with provisions of the 2016 planning scheme with respect to flood hazard.
- [33] The subject site falls within the Morayfield Centre Precinct under the 2016 planning scheme. The overall outcomes for that precinct include the following:
- "p Development avoids areas subject to constraint... where development cannot avoid these identified areas, it responds by:
 - (i) adopting a 'least risk, least impact' approach when designing, siting and locating development in any area subject to a constraint... to minimise the potential risk to people, property and the environment."
- [34] It was submitted that the proposal involves developing an area subject to a constraint, that is a flood hazard, and that even if it be assumed that the development could not avoid that constraint it did not adopt a "least risk, least impact approach" and did not provide an appropriate response to the flood hazard.
- [35] Flood Hazard is more particularly dealt with in the Flood Hazard Overlay Code. That Code applies to land in the Flood Planning Area identified on a flood hazard overlay map and includes land in the following sub-categories:
- (a) High risk area
 - (b) Medium risk area
 - (c) Balance flood planning area

The subject site is identified on a flood hazard overlay map as containing each of those 3 sub-categories.

- [36] The respondent alleges conflict with overall outcomes b and c of the Flood Hazard Overlay Code under the 2015 planning scheme which seeks to avoid inappropriate development in high risk and medium risk hazard areas.
- [37] Overall Outcome (b) provides that development in the high risk area is to manage and mitigate the risk of flood hazard by ensuring that a material change of use is only for one of seven types of uses being a dwelling house, outdoor sport and recreation, park, permanent plantation, cropping, tourist park or a home based business. Further, pursuant to this provision, earthworks are not permitted to occur except where associated with a previous approval.
- [38] Overall Outcome (c) provides that development in the medium risk area is to manage and mitigate the risk of flood hazard by ensuring that the use of the premises is limited to eight types of uses, being those uses set out above for Overall Outcome (b), but in addition, provides that non-residential uses where not involving a vulnerable land use (flood and coastal) can be accommodated. Again, the provision provides that earthworks do not occur except where associated with a previous approval.
- [39] The overall outcomes are designed to achieve the purpose of the flood hazard overlay code which is to:
- “(a) identify whether an area is subject to a flood hazard;
 - (b) minimise the risk to life, property, community, economic development and the environment from the flood hazard by:
 - (i) limiting development in an area of extremely unacceptable, intolerable risk of flood hazard to avoid the risk of the flood hazard;
 - (ii) managing development in an area of unacceptable, intolerable risk of flood hazard to mitigate the risk of flood hazard;

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- (c) ensure that development does not increase the potential for adverse impacts on the premises or other premises, public land, watercourses, roads or infrastructure without appropriate mitigation.”

[40] Insofar as the High Risk area is concerned, it was pointed out, on behalf of the appellant, that whilst its proposed use is not one of those contemplated within such an area under the 2015 planning scheme:

- (i) the proposal vertically separates the development from the area of high risk by suspending it, such that it is immune from flood for the Q100 and even for the Q1000 events;
- (ii) there will be no piers or associated earth works in the actual area of high risk – noting that the evidence established that the mapping of the high risk area in the 2016 planning scheme is somewhat inaccurate.

[41] It was submitted that, in those circumstances, the court ought find that there is no conflict with Overall Outcome (b). That was based on a contention that the High Risk area should not be identified as applying to that part of the airspace above the surface of the land where the proposed development would be suspended. It is unnecessary however for me to deal with that issue of construction. The provisions of the 2016 planning scheme area a matter of weight only in the assessment of this application. Even assuming that the three-dimensional approach to construction contended for on behalf of the appellant is incorrect, I would not be minded to refuse the development on the basis of the resulting conflict, given that the proposal effectively physically separates the development from the flood risk.

[42] The use does fall within the range of uses contemplated in the medium risk area.

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- [43] Insofar as earthworks are concerned, the provisions of the 2016 Planning Scheme for both the high and medium risk areas provide that earthworks do not occur except where associated with a previous approval. It was submitted for the appellant that this should not be constructed as a prohibition on new approvals, but rather as a prohibition on earthworks without approval. In any event, the provisions of the 2016 scheme are a matter of weight only. In this case the earthworks are relatively modest²⁶ and achieve a net increase in flood storage.
- [44] Mr Clark raised concerns about covering the area of hazard with a slab. He pointed out that the proposal offered a confined space for anyone underneath who might need to escape, but Dr Johnson pointed out that the slab could, and in his view should, be raised to afford a comfortable head height in any event. Mr Clark raised a concern about a lack of casual surveillance, but accepted that this part of the site has low surveillance in any event. Issues of safety associated with covering the site with a slab, and the means by which those concerns can be addressed through conditions are discussed later in the context of a suggested detention basin.
- [45] I am satisfied that the proposal, which separates persons and property from the potential flood hazard by vertically removing development clear of the floodwater, whilst sensitively placing the supporting piers in the areas beyond the highest risk, whilst maintaining and modestly increasing on-site flood storage, appropriately responds, or could be conditioned to appropriately respond, to the flood hazard constraint on the site and appropriately minimise the risk.

Infrastructure planning/detention basin

²⁶ Obviously greater earthworks will be involved if the site is used for a regional detention basin as council contends it should be for infrastructure planning reasons.

[46] In 2009 a report was prepared by the Moreton Bay Regional Council's Drainage Waterways and Coastal Planning Unit (the 2009 report). The purpose of that report was to identify the stormwater quantity trunk infrastructure required to meet the future development demands in the Caboolture district.²⁷ The 2009 report identified many items of future trunk infrastructure, one of which was a proposed 21,000m³ detention basin in Morayfield described as being on Sheepstation Creek and given the code SSC_DB_3. It was described as requiring an area of 12,600m² which, as it happens, is close in size to the vacant rear portion of the subject land which is proposed for development. The required land was described as being privately owned. The total estimated cost was \$1,525,650, composed of a land cost of \$387,450 and a construction cost of \$1,138,200. It was then projected to be built in 2012.

[47] In 2011, the Council adopted an infrastructure charges resolution (the 2011 resolution) which referenced a number of future infrastructure projects which were the basis for the calculation of charges. One of those projects was SSC_DB_3, which was described as Sheepstation Creek detention basin and shown on the relevant map symbolically by a coloured box straddling the boundary of the subject site and the IGA site to the south. There followed further iterations of the infrastructure resolutions prior to the coming into force of the 2016 planning scheme. The same detention basin was included in each of those iterations and symbolically shown on the accompanying plans, although a future water quality treatment device was symbolically added in the area of Kate McGrath Park to the southwest. The estimated year of completion was moved to 2015.²⁸

²⁷ Exhibit 6 p 223.

²⁸ See exhibit 6, pages 113, 176.

[48] The 2011 infrastructure resolution stated that it did not form part of the planning scheme. Further, it was conceded, on behalf of the respondent, that neither the 2011 resolution nor any of the subsequent iterations constituted a relevant instrument under ss 313 and 326 of the SPA for the purpose of assessing and deciding the subject development application. The respondent did however, point to its infrastructure planning in the context of alleging conflict with DEO(c)(ix) of the 2005 Planning Scheme, which provided as follows:

“The efficient and effective use and provision of physical and social infrastructure in the shire is maximised.”

[49] Further, since the application was made, the 2016 planning scheme has come into effect and its provisions are a matter of weight in the determination of this application. The Council’s infrastructure planning is now embodied in the priority infrastructure plan (PIP) which forms part of the 2016 planning scheme. The purpose of the PIP is to:

- (a) integrate and coordinate land use planning and infrastructure planning;
- (b) ensure trunk infrastructure is planned and provided in an efficient and orderly manner.

The SSC_DB_3 detention basin is shown on the PIP stormwater network map.

[50] The respondent submitted that the appellant has failed to show its proposal will not have an adverse effect on the Council’s longstanding planning for the provision of planned infrastructure, including as most recently reflected in the PIP.

[51] It was initially contended that the Council’s concern in this respect, if otherwise valid, was a reason for refusal of the development application. The potential for impact upon the realisation of Council’s infrastructure planning however, is related not to an

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approval of the application per se, but rather to the construction of the development across the site prior to the Council having the opportunity to utilise it for the SSC-DB-3 detention basin. It has already been noted that the council's infrastructure planning initially contemplated the basin being constructed by now. The council has already given notice of its intention to resume the subject land for the purposes of constructing the basin. In response to a question from the bench, it was accepted, on behalf of the respondent, that its concern would be adequately addressed by condition of approval which postponed the right to commence construction of the development for a reasonable time to give Council the opportunity to complete the acquisition process. Senior counsel for the appellant also embraced the suggestion that such a condition could address any potential prejudice, although reserved the right to be heard about the time to be allowed. Further it was contended for the appellant that any potential prejudice to the council's infrastructure planning could be met by giving the council the opportunity to impose a different condition.

[52] Ultimately then, at worst for the appellant, this issue goes to conditions of approval rather than to refusal of the application.

[53] The appellant's primary submission was that no condition to address the asserted potential prejudice ought be attached to an approval of its application, because the site is now simply irrelevant to the Council's planning for the proposed detention basin, as part of its broader infrastructure planning, as reflected in the PIP. The basis for that submission is the PIP stormwater map, which shows the SSC_DB_3 detention basin by a circular symbol near the common boundary of the subject site and the IGA site. No part of the symbol however, intrudes over the boundary of the appellant's site.

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- [54] The nature and purpose of the map must however, be kept in mind. It shows a planned future infrastructure network, rather than a series of existing or proposed projects which have been the subject of detailed design. Whilst the network is depicted over a cadastral base, it does not depict the precise size, shape, area, dimensions or exact location of individual components of the network. The small circle which appears beside SSC_DB_3 could not be anything like the size and shape of a detention basin to serve as trunk infrastructure as contemplated. That which is shown is symbolic and indicative. Relevantly, for present purposes, it reflects the Council's infrastructure planning for a detention basin in that vicinity.
- [55] Given the development which has now occurred over the IGA development to the south, the subject site presents as the obvious site, in the vicinity, which is capable of accommodating the planned detention basin. Council's interest in acquiring the site and the Council's concern about the prejudicial effect which development otherwise on the subject site may have on the realisation of its planned infrastructure is understandable. The appellant however, pointed to alternatives to achieve the infrastructure whilst permitting development to proceed.
- [56] In his further statement of evidence, Mr Clark pointed out that the subject site is unique in its location at the junction of three separate sub-catchments, such that a detention basin, located on the subject site, can mitigate flows from all three tributaries, prior to flow reaching Morayfield Road. Dr Johnson did not cavil with that, but pointed out that on appropriately sized and located detention basin somewhere further upstream, on one or more catchments, rather than here, could also achieve appropriate attenuation.²⁹ That however, is not the Council's infrastructure

²⁹ T2-89.

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planning and Mr Clark pointed to the potential inefficiency that could result from such an approach.³⁰

[57] Kate McGrath Park, which lies to the immediate southwest, provides an opportunity to provide at least some of the detention basin function. It is, however, in accordance with the PIP, proposed to be developed with a stormwater quality device, most likely a bio remediation device. Dr Johnson pointed out that a detention basin can be co-located with such a device. Mr Clark accepted as much. As he pointed out, and Dr Johnson acknowledged however, there are issues with collocating such devices. Those include as to functional (including the potential for scour and erosion issues) and increased maintenance issues.³¹ He accepted that, if space were not an issue, he would try to separate the devices³² with the high flows diverted to the detention basin.³³ That is consistent with what is shown on the PIP Stormwater map.

[58] Quite apart from the functional and maintenance issues, there is also, as Dr Johnson acknowledged, a potential limitation in terms of capacity. The park, at about 8000m²,³⁴ is significantly smaller than the subject site, thereby limiting the size of the basin that could be achieved. If something of about the order of 21,000m³ were required (a matter discussed later), then the park would need to be excavated below the level of the existing outlet in order to achieve that volume. If that complication were to be avoided, then only part of the detention volume would be able to be achieved within the park, with Council having to look to implement measures elsewhere to find remaining detention volume.

³⁰ T5-26.
³¹ T3-42, 43.
³² T3-44.
³³ T3-45.
³⁴ T2-67.

[59] In those circumstances, attention shifts back to the subject site to achieve a regional detention basin in this vicinity. The appellant's preferred option (supported by Dr Johnson) is that it be achieved on the subject site, underneath the development. This option would see the detention basin being constructed as trunk infrastructure, pursuant to a condition of approval, prior to construction of the appellant's development over the top and subject to an appropriate infrastructure set off or refund. Appropriate arrangements, including easements, would need to be put in place to facilitate Council's ongoing access to, and maintenance of, the detention basin.

[60] In the course of the hearing and in submissions, Mr Clark and counsel for the respondent raised concerns about that option in various respects. In the course of addresses however, counsel for the respondent made it clear that the respondent would wish to at least consider that option in the event that the court were to find a co-located basin to be an acceptable option.

[61] The appellant's preferred alternative condition can be seen in light of the council's information request of 14 May 2015, in which it drew attention to the infrastructure charges resolution, asserted that the "infrastructure has been identified as a regional device for the catchment and is to have a total capacity of 21,000m³" and asked the then applicant (now appellant) to demonstrate how a detention basin, with a total capacity of 21,000m³, could be achieved on the site, whilst still maintaining conveyance of stormwater conveyance across the site.

[62] The response to that information request demonstrated that it is technically feasible to construct a detention basin of that size on the site. That, of course, involves excavation across the site, so as to provide the storage, whilst still providing a fall, towards the north-eastern end of the site, so that the site drains to the outlet at 7.0

AHD. That involves excavating the site from 8.3AHD to an average 7.5 AHD. The development could then be built over that basin.

[63] The co-location option has the obvious potential benefit of providing a detention basin without prejudice to the potential for the appellant's site to be developed in a way which I am satisfied is otherwise appropriate from a town planning perspective and provides some benefits as generally described in the appellant's grounds. Mr Clark however, raised three concerns about the co-location option.

[64] One of Mr Clark's concerns relates to safety. Whilst there are other developments in the area which feature slabs supported by piers over waterways, Mr Clark was concerned about the safety implications of creating a regional detention basin covered by a slab. Of particular concern to him is the potential for people to be underneath the slab at the start of a rainfall event large enough to cause flooding such as to create a risk of drowning. His concern was exacerbated by the lack of visibility to persons potentially in trouble. He pointed out that this would require the site to be fenced, but that such an arrangement is contrary to best practice detention basin design and that the fence would potentially catch debris.

[65] Dr Johnson acknowledged that, were the co-location option to be adopted then exclusion fencing would be required. He also acknowledged that the relevant section from the Queensland Urban Drainage Manual (QUDM) nominates the provision exclusion fencing as a "last resort", with minimisation of safety risks through appropriate design being the first preference. He pointed out however, that the depth of water in a 21,000m³ detention basin on the subject site, as shown in the design provided in response to the information request, would be such as to trigger a requirement for fencing in accordance with QUDM, even if it were open. Mr Clark suggested that a standalone detention basin could potentially be designed in such a

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way that there were some areas of lesser depth which were unfenced. Dr Johnson contended that the site should, and likely would, be fenced off, if it were developed for either a standalone or co-located basin. It appears likely, that a detention basin on the subject site, if of the order of 21,000m³, would involve a level of fencing, whether it is co-located or freestanding.

[66] Insofar as the concern about fencing creating debris issues is concerned, Mr Clark acknowledged that collapsible or swing fences could be used so as to dissuade people from entering the site without causing an issue in terms of debris blockage.³⁵

[67] Mr Clark also acknowledged, in the course of his testimony, that the exclusion of people from this part of the site could also be reinforced via conditions requiring both security surveillance of the underside of the slab and daily checks of the fencing.³⁶

[68] Mr Clark also acknowledged that a design response could be imposed by way of conditions to also ensure that there are means of escape for anyone who nevertheless finds themselves under the slab in times of a rainfall event. In that regard, as Mr Clark acknowledged, stairs could be provided from the detention basin to one way exit doors, made prominent by illuminated "emergency exit" signage at appropriate locations to provide such opportunities.³⁷

[69] The presence of the slab will obviously impede surveillance, although the subject part of the site is one which currently has a fairly low degree of casual surveillance in any event.³⁸

³⁵ T6-43, 44.

³⁶ T-44.

³⁷ T6-41.

³⁸ T6-46; T4-62.

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- [70] Whilst Mr Clark's safety concerns are understandable, they are, on the evidence, substantially capable of being addressed by way of the imposition of conditions and do not of themselves make the co-location option unacceptable.
- [71] The next issue related to maintenance. Mr Clark pointed out that it will not be possible to see the underside of the slab from surrounding areas. Regular inspections will be necessary to determine whether or not there is debris which needs to be removed. The development as proposed (with no detention basin) provides for a working head height of only 1.6m. Working in such a space is not impossible but, as Mr Clark pointed out, is more resource intensive.³⁹ Dr Johnson suggested that the underside of the slope could be raised by 400 mm to provide a more comfortable working height. With greater excavation, to achieve a detention basin of 21,000m³ however, an ample head height (of 2.4m) should be available.
- [72] That is not to say that the presence of a slab would not likely have some consequences for maintenance. For example, it makes under slab inspections necessary and introduces the need for cleaning any debris from around the piers that are introduced into what would otherwise be an open detention basin. It may limit the exit points to which debris has to be taken and access points for vehicles.⁴⁰ Dr Johnson accepted that it would involve a different maintenance regime under the slab, although he said that it was beyond his expertise to say whether it was greater or lesser.⁴¹ He did however, acknowledge that it would be more difficult to remove sediment.⁴² These are matters of convenience, and of efficiency.

³⁹ T6-48.

⁴⁰ T6-49.

⁴¹ T4-30.

⁴² T4-30.

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- [73] The third issue in relation to the co-location option relates to the benefit from the volume of storage that can be achieved. It has already been noted that the Council, by its information request, asked the appellant to demonstrate “how the identified trunk infrastructure, and detention basin with a total capacity of 21,000m³, can be achieved on the site whilst also maintaining conveyance of storm water drains across the site”. The appellant, by its response, demonstrated that is achievable. In practical terms⁴³ however, a greater capacity cannot be achieved.⁴⁴ Mr Clark claims that the appellant has failed to show that it can provide a sufficient quantity of storage to both provide the benefits of the trunk infrastructure being SSC_DB_3 and to mitigate the effects of its own proposal.
- [74] A 21,000m³ co-located detention basin does not necessarily provide the same benefit for the broader catchment as a free-standing detention basin of the same size on an otherwise undeveloped site. That is because, as Dr Johnson acknowledged,⁴⁵ the development of the site increases its runoff characteristics and so, there is a need to compensate for the effects of the development itself. Accordingly, as Dr Johnson also acknowledged,⁴⁶ a co-located basin potentially needs to provide a greater volume if it is to provide the attenuation, for the broader catchment, which would otherwise be provided by a standalone detention basin. Further, if the benefits which could otherwise be achieved from a free-standing basin on the subject site were limited in some way, then the council would have to look to achieve that elsewhere.⁴⁷
- [75] Dr Johnson suggested that the appellant’s development should be viewed as part of the urbanisation for which the detention basin is to be provided, but he acknowledged,

⁴³ Without excavating below the level of the outlet.
⁴⁴ T4-80.
⁴⁵ T2-83.
⁴⁶ T4-110.
⁴⁷ T4-112.

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in the course of cross-examination,⁴⁸ that the model which was used for the purposes of the flood report assumed no increase in upstream flows onto the subject site and that it did so on the assumption that there will be sufficient detention of those upstream flows through appropriate detention mechanisms, one of which is the plan for a detention basin.

[76] The extent of which the impacts of the development itself consumes the broader benefit which would otherwise flow from a 21,000m³ detention basin was the subject of debate. Dr Johnson pointed to the limited quantity of excavation required on the site, to achieve a no-worsening as modelled in the Flood Report for the subject proposal (without the co-located basin). Mr Clark however, opined that the effect of the development may be the consumption of the flood storage (including airspace) down to the excavated level of RL 8.3 AHD. In the absence of modelling which compares the performance of the co-located and standalone options, there is uncertainty surrounding the extent to which the co-location option would compromise the benefits which could otherwise be achieved from a regional detention basin on the subject site.⁴⁹

[77] Any deficiency on the subject site could potentially be made up elsewhere. Mr Clark initially answered in the affirmative to a question from the bench as to whether that could be accomplished relatively easily,⁵⁰ but later (reasonably) qualified that answer by saying that he had simply meant that it was physically possible to achieve. He explained that, in the absence of the impact of the development being quantified, he was uncertain of the quantity of storage that might be required to make up for the

⁴⁸ T4-99, 100.

⁴⁹ As to the modelling which could have been conducted, see Johnson T4-106, 107, Clark T5-23,24.

⁵⁰ T5-27.

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deficiency.⁵¹ Reliance on the potential to make up an unknown deficiency in an unknown way elsewhere carries the risk of prejudicing the efficiency in the provision of infrastructure.

[78] Dr Johnson dismissed suggestions that he ought to have carried out any further modelling or investigation into the combined requirements for the detention basin and development. He drew attention to the information request, which asked only for the demonstration of how a detention basin with a total capacity of 21,000m³ can be achieved on site and also to a subsequent e-mail exchange between his office and a council officer which confirmed the summary of a discussion. That discussion referred to a regional detention basin with a storage volume of approximately 21,000m³ being required. Dr Johnson took it that a co-located basin of 21,000m³ would be satisfactory. It should be noted that the volume nominated in the information request was for the regional detention basin. Further, the summary in the e-mail exchange went on to say “if council decides a basin is required, council will likely need to purchase the necessary land for the owner, although other engineering options may also be available”. The documents did not expressly raise an issue about the effect of any co-location on the performance of the regional detention basin, but that does not justify the Court ignoring the issue.

[79] Dr Johnson also pointed out that the justification for, or benefits of, a detention basin with the particular volume of 21,000m³ are unknown. The 2009 report (which was withheld from Dr Johnson for some time) referred to a figure of 21,000m³, but is dated and, in his view, unsubstantiated at this time. Mr Clark’s evidence was to the effect that there is the potential for the increase in upstream intensification of development to produce significant increases in inflows in Sheepstation Creek and a

⁵¹ T5-30.

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detention basin is needed, but the council did not rely on his evidence to justify a particularly sizing. The figure of 21,000m³ was not picked up in any of the infrastructure charging resolutions or in the PIP and the planned detention basin has not been the subject of detailed design. The sizing was referred to in an investigation report which became an exhibit, but that was admitted into evidence on the basis that it was not evidence of the truth of its contents. It remains the case however, that a regional detention basin is a longstanding component of the council's infrastructure planning for the benefit of the community.

[80] The evidence satisfies me that it is possible to develop a detention basin with a total capacity of 21,000m³ on the site below the proposed development. It would be accompanied by some safety issues, albeit not, of themselves, unacceptable. It would also be accompanied by some maintenance issues, which would likely affect efficiency, to some extent, compared with a free-standing detention basin. It would provide some benefit to the wider catchment, beyond offsetting the impacts of the development of the site itself, but the extent to which it would also do so have not been ascertained. It carries the potential to limit the extent to which the benefits of the council's planned regional detention basin, if developed on the subject land, can be maximised and also carries the potential to require compensatory benefits to be found elsewhere.

[81] I am satisfied that the proposal has the potential, if constructed prematurely, to prejudice the Council's infrastructure planning. That does not call for refusal of the development application. It is however, relevant to impose conditions to address that potential prejudice. In my view it is, in the circumstances of this case, and notwithstanding the attractions of co-location, not unreasonable, having regard to matters including maximising the efficient provision of infrastructure, to do so by

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imposing a condition which delays commencement of construction for a reasonable, but certainly not elongated, time to afford the council an opportunity to promptly complete its proposed acquisition without prejudice to the development of a standalone basin, unless it is prepared, on reflection, to consent to the appellant's preferred alternative condition involving the co-location option.

Conclusion

[82] For the above reasons, I am satisfied that the appellant has discharged the onus. The appeal will be allowed. The further hearing will, at this time, be adjourned to enable the parties to formulate conditions of approval.

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In the Planning and Environment Court

No. BD3265 of 2016

Held at: Brisbane

Between: GENAMSON HOLDINGS PTY LTD (ACN 053 174 271) Appellant

And: MORETON BAY REGIONAL COUNCIL Respondent



JUDGMENT

Before His Honour Judge Rackemann

Date of Hearing: 1 August 2018

Date of Judgment: 1 August 2018

THIS MATTER HAVING on this day come on for hearing by way of appeal against the refusal of the Respondent dated 15 August 2016 and received by the Appellant on 15 August 2016 of a development application for a Development Permit for a Material Change of Use for Retail Showroom, Restaurants, Shops and Take Away Food Outlets and a Preliminary Approval for building works (**Application**) on land located at 134 to 140 Morayfield Road, Caboolture South and more particularly described as Lot 5 on Registered Plan 88015 (**Land**)

AND UPON HEARING the solicitor for the Appellant and the solicitor for the Respondent

AND UPON READING the Order of his Honour Judge Everson dated 1 September 2016

IT IS ADJUDGED THAT:

1. the Appeal be allowed.
2. the Application be approved subject to the conditions attached hereto and marked "A", comprising pages 1 to 67; and
3. each party bear its own costs of, and incidental to, the proceeding.

UPON THE COURT BEING SATISFIED THAT the change to the finished levels of the land to the levels shown on Cardno Drawings 350186 - SK01 Rev. A and 350186 - SK02 Rev. A is a minor change within the meaning of section 350 of the Sustainable Planning Act 2009,

JUDGMENT

Filed on behalf of the Appellant

HWL Ebsworth Lawyers
Level 19, 480 Queen Street
Brisbane QLD 4000

Form PEC-7

Tel: +61 7 3169 4700 Fax: 1300 368 717
Ref: PJB:LIW:617550

Planning Act 2016

Version 1

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- 2 -

Filed on: 1 August 2018
Filed by: HWL Ebsworth Lawyers
Service Address: Level 19, 480 Queen Street
Brisbane QLD 4000
Phone: +61 7 169 4700
Fax: 1300 368 717
Email: lwalker@hwle.com.au

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Registrar



Doc ID 574838633/v1

Moreton Bay Regional Council

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"A"

DA/30058/2015/V2C - Material Change of Use - Development Permit for Retail showroom, Restaurant, Shop and Take away food outlet, located 134-140 Morayfield Road, Caboolture South

Plans and Documents to be Amended			
Plan / Document Name	Reference Number	Prepared By	Dated
Locality Plan	AT1417, DA01, Revision F	Aquatonic	Dec 2015
Existing Site Plan	AT1417, DA02, Revision F	Aquatonic	2 Mar 2015
General Site Arrangement	AT1417, DA03, Revision F	Aquatonic	2 Mar 2015
New Development Plan	AT1417, DA04, Revision F	Aquatonic	2 Mar 2015
New Development Plan	AT1417, DA05, Revision F	Aquatonic	2 Mar 2015
New Roof Plan	AT1417, DA06, Revision F	Aquatonic	2 Mar 2015
Elevations	AT1417, DA07, Revision F	Aquatonic	March 2015
Sections	AT1417, DA08, Revision F	Aquatonic	March 2015
Regional Detention Basin Layout Plan	350186-SK01 Rev A	Cardno	18/11/15
Regional Detention Basin Section Plan	350186-SK02 Rev A	Cardno	18/11/15
Stormwater Management Plan	3501-86 Ver 1	Cardno	30/3/15

MATERIAL CHANGE OF USE - DEVELOPMENT PERMIT		
DEVELOPMENT PLANNING		
1	Approved Plans and documents	
	Undertake development generally in accordance with the approved plans and documents (as amended in accordance with condition 2). These plans will form part of the approval, unless otherwise amended by conditions of this approval.	Prior to commencement of use and to be maintained at all times.
2	Amended Plan Required	
A	Submit an amended Proposal Plan suite incorporating the following: <ol style="list-style-type: none"> 1. Clearly identify all works associated with the approved detention basin configuration, and other stormwater management works within the site. 2. Clearly identify all stormwater quality treatment measures. 	Prior to any approval of Building Works or . Operational Works.

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	3. Appropriate vertical clearances to allow for Council's plant to undertake maintenance of the detention basin. A clearance height of 2.4 m will be required for maintenance purposes.	
B	Obtain approval from Council for the amended Proposal plan suite in accordance with (A) above.	Prior to any approval of Building Works or Operational Works.
C	Implement the requirements and recommendations of the approved plan(s). The approved amended plan(s) will form part of the approval.	Prior to any approval of Building Works or Operational Works.
3	Water and/or Sewerage	
	Submit to Council a Certificate of Completion or Provisional Certificate of Completion for the development from the Northern SEQ Distributor-Retailer Authority (Unitywater) confirming: (a) a reticulated water supply network connection is available to the land; and (b) a sewerage network connection is available to the land; and (c) all the requirements of Unitywater have been satisfied	Prior to commencement of use.
4	On-Site Car Spaces	
A	Provide car parking as generally shown on the approved plans .	Prior to commencement of use and to be maintained at all times.
B	Provide for the manoeuvring of vehicles on site, generally in accordance with the approved plan. Car spaces, access lanes and driveways shown on the approved plan must not be used for any other purpose.	Prior to commencement of use and to be maintained at all times.
5	Bicycle Parking	
	Install secure bicycle parking and associated support facilities for a minimum of 6 bicycles. All works are to comply with: Caboolture: Council's Design and Development Manual and Austroads Austroads (2008), Guide to Traffic management - Part 11: Parking.	Prior to commencement of use and to be maintained.
6	Building Appearance	
	Where facing residential properties (western elevation), the exterior elements of the building are to be rendered or painted in a range of compatible colours. Unfinished concrete surfaces facing residential purposes are not permitted.	
7	Electrical Transformer	
	Ensure that where electrical transformers are located in the front setback (only where an internal road is not	Prior to the commencement of the

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	<p>proposed) it is screened so that the transformer is not visible from any road frontage and achieves the following:</p> <ul style="list-style-type: none"> • A combination of screening device and landscaping; • The screening device is constructed of durable, weather resistant materials; and • Is integrated with the design of the development and positively contributes to the streetscape. <p>Where an internal road is proposed the transformer is to be located at the end of the roadway internal to the site with provision made for maintenance access through the site.</p> <p>Note: The use of barbed wire or metal prongs is not permitted</p>	use and to be maintained at all times.
8	Street Numbering and Building Names (All Developments)	
	Prominently display street numbers and any building names at the road frontage of the site, to enable identification by emergency services.	Prior to commencement of use and to be maintained at all times.
9	Internal Fire System – Commercial	
A	Provide an internal Fire Hydrant System with fire hydrants placed at intervals of no more than 90 metres from each other. Hydrants may have a single outlet and be located above or below ground.	Prior to commencement of the use or Council's endorsement of any Community Management Statement, whichever occurs first, and to be maintained at all times.
B	Maintain the Fire Hydrant System at no cost to Council or Unitywater.	Prior to commencement of the use or Council's endorsement of any Community Management Statement, whichever occurs first, and to be maintained at all times.
C	Identify hydrants as specified in 'Identification of street hydrants for fire fighting purposes' available under 'Publications' on the Department of Transport and Main Roads website www.tmr.qld.gov.au/~media/busind/techstdpubs/trum/125Amend18.pdf or as amended.	Prior to commencement of the use or Council's endorsement of any Community Management Statement, whichever occurs first, and to be maintained at all times.
10	External Lighting	

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

A	Install external lighting in accordance with AS4282-1997 - (Control of the Obtrusive Effects of Outdoor Lighting) or as amended.	Prior to commencement of use and to be maintained at all times.
B	Provide certification from a suitably qualified person that any external lighting is to be installed in accordance with AS4282-1997 - (Control of the Obtrusive Effects of Outdoor Lighting) or as amended.	Prior to commencement of use and to be maintained at all times.
11	Pedestrian Lighting	
A	Any pedestrian areas utilised during night-time hours are to be installed with lighting in accordance with <i>AS 1158.3.1 Pedestrian Area (Category P) Lighting – Performance and installation design requirements</i> or as amended.	Prior to commencement of use and to be maintained at all times.
B	Provide certification from a suitably qualified person that lighting for pedestrian areas complies with <i>AS 1158.3.1 Pedestrian Area (Category P) Lighting – Performance and installation design requirements</i> .	Prior to commencement of use.
12	Waste Management	
	Manage waste in accordance with Council's General Waste and Recyclable Waste Storage and Collection for Residential and Commercial Developments Policy (Policy No: 48-2150-002) and Technical Guideline.	Prior to commencement of use and to be maintained at all times.
13	Landscaping	
A	Carry out landscaping on site in accordance all of the Probable Solutions of the Landscaping Code as well as Planning Scheme Policy 14 in the Caboolture Shire Plan. Where there is no Probable Solution listed for a corresponding Specific Outcome, submit certification from a suitably qualified person that the landscaping complies with the Specific Outcome. In addition, provide for the following on site: <ol style="list-style-type: none"> 1. A minimum of one (1) shade tree per six (6) car parking spaces or, where no tree is provided, equivalent shade structures. 2. Screening shrubs with a mature height of up to 2m in height at a minimum rate of two (2) shrubs per square metre along the northern half of the western boundary of the site, adjoining the undercroft of the building. 	Prior to works commencing on site and to be maintained.
B	Submit certification from a landscape designer or other suitably qualified person that the landscaping works have been installed on site in accordance with (a) above.	Prior to works commencing on site and to be maintained.
14	Vehicle Encroachment	

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	Protect all landscaped areas and pedestrian paths adjoining any car parking areas from vehicular encroachment by wheel stops, kerbing or similar barrier approved by the Council.	Prior to commencement of use.
15	Screening (Commercial/Industrial)	
	Screen any loading/unloading facilities, plant equipment areas, refuse storage areas and any other outdoor storage areas on the site from direct view from any adjoining road or public space. Where landscaping is used for screening it is to be detailed on an approved landscape plan.	Prior to commencement of use.
16	On Site Services	
	Ensure garbage bin areas, rainwater tanks, hot water tanks, gas bottles and air conditioners are; <ol style="list-style-type: none"> 1. located in the rear setback; or 2. located in the side setbacks and include screening (e.g. fencing or landscaping) from view of any road frontage; or 3. entirely underground where located in the front setback. <p>Note: Rainwater tanks are not permitted within easements.</p>	Prior to commencement of use and to be maintained.
17	Premises – Hours of Operation	
	Limit the hours of operation for all retail/commercial activities to between 7am and 10pm daily, except for food and drink establishments which shall be limited to 7am to 12am daily.	At all times.
18	Loading Bays – Hours of Operation	
	Limit the loading and unloading of vehicles in the northern loading area to between 7am and 10pm. Note: Loading hours are unrestricted for the southern loading bay.	At all times.
19	Infrastructure to the Site – MCU - Single	
A	Provide Fibre-Ready telecommunications infrastructure (Internal and External conduit paths) in accordance with NBN Co Guideline New Developments or NBN Co. Preparation and Installation Guide for SDUs and MDUs as amended, that: <ol style="list-style-type: none"> 1. Extends the service drop conduit from the property boundary to the external Premises Connection Device (PCD) or the likely location of the PCD; and 2. Extends a communications conduit with drawstring from the external PCD or the likely location of the PCD to the internal Fibre Wall Outlet (FWO) or the likely location of the FWO. 	Prior to commencement of use or Council's endorsement of any Community Management Statement, whichever occurs first.

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

B	Provide certification to Council from the installer or an RPEQ engineer (electrical engineer) that the works and infrastructure required in (a) above has been done. Note: A template for certification is available from council for the purpose of this condition.	Prior to commencement of use or Council's endorsement of any Community Management Statement, whichever occurs first.
20	Internal Wiring - Material Change of Use	
A	Install internal wiring (Category 6 or better) within each tenancy from the expected location of any future Network Termination Device (NTD) for High Speed Broadband (based on the recommended locational criteria in the NBN Co Guideline (MDU Building Design Guide OR New Developments or NBN Co. Preparation and Installation Guide for SDUs and MDUs) to the same connection points in the tenancy that would have been or have been installed for telephone and television connections; including but not limited to bedrooms, family/living rooms, and study/office.	Prior to commencement of use or Council's endorsement of any Community Management Statement, whichever occurs first.
B	Provide certification from the installer or an RPEQ engineer (electrical engineering) that the wiring required in (a) above has been done. Note: A template for certification is available from Council for the purpose of this condition. Note: Installers are recommended to be a registered cabler.	Prior to commencement of use or Council's endorsement of any Community Management Statement, whichever occurs first.
21	Management of Wildlife	
A	Carry out approved vegetation clearing under the supervision of a Fauna Spotter Catcher holding a valid Rehabilitation Permit from the relevant State Government Agency.	Prior to and during site works.
DEVELOPMENT ENGINEERING		
22	Replace Existing Council Infrastructure	
	Replace existing Council infrastructure (including but not limited to street trees and footpaths) that is damaged as part of construction works, to a standard which is consistent with Council's standards.	Prior to commencement of use.
23	Alterations and Relocation of Existing Services	
	Any alteration or relocation in connection with or arising from the development to any service, installation, plant, equipment or other item belonging to or under the control of the telecommunications authority, electricity authorities, the Council or other person engaged in the provision of public utility services is to be carried with the development and at no cost to Council.	Prior to commencement of use.
24	Construction Management Plan	

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

A	<p>Submit a Construction Management Plan (CMP) prepared by a suitably qualified person. The CMP is required to ensure the development works (including all construction, demolition and excavation) do not adversely affect the health, safety, amenity, traffic or environment in the surrounding area. The plan is to include (but is not limited to) at least the following:</p> <ul style="list-style-type: none"> • Proposed construction program; • Public safety, amenity and site security; • Operating Hours, Noise and Vibration Controls; • Air & dust management; • Stormwater runoff, erosion & sediment control; • Waste & materials refuse management; • Traffic management; • Construction materials delivery & storage; • Construction office accommodation; and • Contractors vehicle parking arrangements. 	Not less than two (2) weeks prior to any works commencing on site.
B	Obtain approval from Council for the Construction Management Plan.	Prior to works commencing on site.
C	Implement the approved Construction Management Plan and keep a copy of the CMP on site at all times during construction.	At all times during construction of the development.
	<p>Notes:</p> <ul style="list-style-type: none"> • The CMP should be based on the following: • Council will generally only approve early starts for large concrete pours (e.g. monolithic concrete pours for basements and suspended floor slabs) during summer. • Dewatering directly into Council's stormwater system (pipes or overland flow) without appropriate water quality treatment/improvement is not acceptable. • Materials unloading and loading must occur on-site unless prior written approval is given by Council. • All construction office accommodation and associated temporary buildings is to be contained within the site or on a nearby site. 	
25	Access, Internal Roadways, Parking and Servicing Areas	
A	Design, construct and maintain, all line-marking, accesses, internal roadways, parking and servicing areas, in accordance with the approved plan(s) of layout, MUTCD and Australian Standard AS2890. The works must be designed, constructed and maintained in accordance with good engineering practices and Council's Planning Scheme requirements unless conditioned otherwise.	Prior to commencement of use and to be maintained.

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

B	Provide a 'Level V' allotment drainage system in accordance with the Queensland Urban Drainage Manual (QUDM). The design ARI for the system shall be in accordance with QUDM but in no circumstance shall the ARI be less than that for the Minor Stormwater System in the adjacent road system.	Prior to commencement of use and to be maintained.
C	Provide certification from an RPEQ that all works have been designed and constructed in accordance with this permit condition.	Prior to commencement of use.
26	Stormwater Management & Drainage Infrastructure – Design & Construction	
	<p>Design and construct at no cost to Council all necessary stormwater management and drainage works (associated with draining this site) in accordance with Council's design standard current at the time of development.</p> <p>Note: The current design standards and relevant planning scheme codes are:</p> <ol style="list-style-type: none"> 1. Planning Scheme Policy - Design and Development Manual; 2. Stormwater Code. <p>This condition has been imposed under section 665 of the Sustainable Planning Act 2009.</p> <p>Note: A separate Concurrence Agency condition has also been imposed in relation to stormwater.</p>	Prior to commencement of use.
27	Stormwater Drainage - Lawful Discharge	
	Ensure that stormwater from the proposed development is lawfully discharged from the subject land without causing nuisance and annoyance to any person.	At all times.
28	Stormwater Management Plan (Quantity & Quality) – Amended Plan Required	
A	<p>Submit and have approved by Council, an amended Stormwater Management Plan to demonstrate how stormwater from the proposed development can be managed in accordance with Council's planning scheme requirements and design standards, the "Healthy Waterways Water Sensitive Urban Design Technical Guidelines for South East Queensland" and other relevant legislative requirements.</p> <p>In particular the following issues must be addressed in the amended plan:</p> <ul style="list-style-type: none"> • Changes to treatment train locations based on the approved plans and final detention basin configuration. • Modelling of the proposed proprietary products is to be carried out using only the manufacturers 	Prior to any development application for reconfiguring a lot, operational works or building works - whichever occurs first.

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	<p>recommended parameters. A statement by the RPEQ is to be provided confirming that the MUSIC model was prepared using the appropriate parameters.</p> <ul style="list-style-type: none"> • Provide a maintenance plan. • Provide a copy of a long-term maintenance agreement. • Provide a drainage catchment plan indicating the various catchment types with a table of areas. Include information regarding the open area at the western side and corner of the site. • Remove any detention basin treatment nodes. • Undertake stormwater quality modelling in accordance with the most current version of the MUSIC Modelling Guidelines for South East Queensland and provide electronic copies of the MUSIC files to Council. <p>Notes:</p> <ol style="list-style-type: none"> 1. The Stormwater Management Report must be prepared by a suitably qualified and experienced RPEQ. 2. The current design standards and relevant planning scheme codes are: <ol style="list-style-type: none"> a. Planning Scheme Policy 4 - Design and Development Manual; and b. Stormwater Code. 	
B	<p>Implement the works identified in the approved Stormwater Management Plan and provide certification from an RPEQ that all works have been designed and constructed in accordance with this permit condition.</p> <p>Provide Council with "As Built" drawings and specifications of the stormwater management devices certified by an RPEQ</p>	<p>Prior to lodging a request for compliance assessment of subdivision plans or commencement of use - whichever occurs first.</p>
29	Overland Flow Management	
	<ol style="list-style-type: none"> 1. Provide measures to properly manage overland flows draining to and through the land to ensure no nuisance or annoyance is created to any person or premises as a result of the development. The development must not result in any increased ponding on adjacent land, redirection of overland flows to other premises or blockage of an overland flow relief path for flows exceeding the design flows for any underground system within the development. 2. The major and minor drainage systems through the subject land are to be designed to cater for a fully developed (in accordance with the planning scheme) upstream catchment. 	<p>All prior to commencement of use.</p>

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	<p>3. The roads, drainage pathways, drainage features and waterways safely convey the stormwater flows for the major storm event without causing actionable nuisance upon lots.</p> <p>4. Stormwater drainage infrastructure through or within private land is protected by easements in favour of Council (at no cost to Council) with easement areas and dimensions conforming to Council's standards.</p> <p>Note: The current design standards and relevant planning scheme codes are:</p> <ul style="list-style-type: none"> • Planning Scheme Policy Integrated Design; • Works Code. <p>This condition has been imposed under section 665 of the Sustainable Planning Act 2009.</p>	
30	Provision of Trunk Infrastructure –Stormwater Construction	
	<p>Provide the following necessary trunk infrastructure:</p> <ul style="list-style-type: none"> • SSC_DB_3, to be constructed beneath the elevated concrete slab as shown on the approved plans; • Varied pier dimensions to reflect the additional depth of excavation for the detention basin beneath the development; • Adequate under-slab clearance is to be provided to allow for access for Council's skid steer loader with 2.4m minimum clearance under croft height to be provided; • Allowance for Council's skid steer loader to enter and exit the basin in the south-western corner of the site with the required 2.4m height clearance to load within the 6m wide rear setback and park (access to be via park / drainage easement at rear); The floor of the detention basin is to be constructed from concrete and is to be clear of obstructions to enable the plant to efficiently remove the material to load the truck; • The floor of the detention basin is to be free draining and generally at the levels shown on Cardno plan 350186 - SK01 Revision A dated 18/11/2015; • The provision of easements in accordance with drawing titled "Easement Requirements Feb 2018" as included as Attachment A of this decision notice. and the requirements of the Planning Scheme (piers are to be placed at least 10 metres apart and are to be kept clear of the high hazard flow area). 	<p>Prior to site works associated with the use commencing.</p>

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	<p>Design and construct the works in accordance with Council's standards to meet the required standard of service nominated in the Local Government Infrastructure Plan (LGIP).</p> <p>The design must consider the requirements of the Stormwater Code and Planning Scheme Policy 4 - Design and Development Manual.</p> <p>The trunk infrastructure required under this condition is to be identified as the works for the detention basin SSC_DB_3:</p> <ul style="list-style-type: none"> (a) less works that would be required for a detention basin to accommodate the development; and (b) less the works required to facilitate the avoidance of the development in high hazard flow areas. 	
	<p>Notes:</p> <ol style="list-style-type: none"> 1. Where an offset amount or refund has not been stated in the relevant infrastructure charges notice issued with this approval the amount of any offset or refund will, unless agreed otherwise, be calculated based on the default methodology prescribed in section 4.1.4 of Statutory Guideline 03/14 and included in a subsequently amended infrastructure charges notice. 2. Operational works approval will be required from Council for these works. <p>This condition has been imposed under section 646 of the Sustainable Planning Act 2009.</p>	
31	Minimum Finished Floor Levels	
	<p>The finished floor level is to be located, designed and constructed to at least the Flood Planning Level as identified in Council's Planning Scheme.</p> <p>Note: The Flood Planning Level used for development can be obtained from the relevant section of the Flood Check Development Report available via Council's website: www.moretonbay.qld.gov.au.</p>	Prior to commencement of use.
32	Building Materials Below the Flood Planning Level	
A	<p>Building works which are below the Flood Planning Level are to be constructed from materials with a high water resistance.</p>	Prior to commencement of use
	<p>Notes:</p> <ol style="list-style-type: none"> 1. The Flood Planning Level used for development can be obtained from the relevant section of the Flood Check Development Report available via Council's website: www.moretonbay.qld.gov.au. 	

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	2. The Queensland Government Fact Sheet 'Rebuilding after a flood' provides information about water resilient products and building techniques. Available at www.hpw.qld.gov.au .	
33	Drainage Easement	
A	<p>Provide a drainage easement/s in Council's favour over the detention basin for the purposes of drainage, access and maintenance in accordance with drawing titled "Easement Requirements Feb 2018" as included as Attachment A of this decision notice, and the requirements of Planning scheme policy - Design and Development Manual, Stormwater Code and to the satisfaction of Council's Legal Services Department.</p> <p>The provision of easements beyond a width of 10m along the main drainage channel to be considered trunk infrastructure.</p>	Prior to any development application for operational works or building works - whichever occurs first.
B	The basin shall not be modified in any way without prior written approval from Council.	To be maintained.
34	Emergency/Risk and Maintenance Management Plan	
	<p>Submit and have approved by Council, an Emergency Management Plan.</p> <p>In particular the following issues must be addressed in the plan:</p> <ul style="list-style-type: none"> • Identify the locations and types of exclusion fencing and lighting to dissuade people from entering the detention basin. Such fencing could include collapsible or swing fencing. • Identify the locations and methods of security and surveillance of the detention basin. • Identify a suitable means of escape from the detention basin. This may include stairs from the detention basin to one-way exit doors and/or illuminated emergency exit signage at appropriate locations. • Provide an inspection schedule and management plan for corrective actions for the exclusion fencing. • Provide an inspection schedule for regular inspections and management plan for corrective actions to determine whether or not there is debris which requires removal. <p>Notes:</p> <ol style="list-style-type: none"> 1. The Emergency Management Plan must be prepared by a suitably qualified and experienced 	Prior to any development application for operational works or building works - whichever occurs first.

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	<p>Registered Professional Engineer of Queensland (RPEQ).</p> <p>2. The current design standards and relevant planning scheme codes are:</p> <p style="padding-left: 40px;">a. Planning Scheme Policy 4 - Design and Development Manual; and</p> <p style="padding-left: 40px;">b. Queensland Urban Drainage Manual.</p>	
B	<p>Implement the works identified in the approved Emergency Management Plan and provide certification from an RPEQ that all works have been designed and constructed in accordance with this permit condition.</p> <p>Provide Council with "As Built" drawings and specifications of the emergency management devices certified by an RPEQ.</p>	Prior to commencement of use and to be maintained.
C	Monitor the detention basin and its associated works to ensure its ongoing effectiveness in accordance with the approved Emergency/Risk/Maintenance plan.	At all times.
35	Development Timing	
	<p>There shall be no steps taken to progress the Development permitted under this approval, including the making of any related development application or the commencement of the Development:</p> <p style="padding-left: 20px;">(a) until after 12 October 2018; or</p> <p style="padding-left: 20px;">(b) in the event of the receipt by the owner of the land on or before 12 October 2018 of notice of the making of an application under section 9(1) of the Acquisition of Land Act 1967 for the taking of the land for the purpose of a regional detention basin on the land, until after the making of a decision by the relevant minister under section 9(5) of the Acquisition of Land Act 1967 in respect of the application under section 9(1) of the Acquisition of Land Act 1967;</p> <p style="padding-left: 20px;">whichever is the later.</p>	As specified in (a) and (b) of this condition.

ADVICES	
1	Aboriginal Cultural Heritage Act 2003
	<p>The <i>Aboriginal Cultural Heritage Act 2003</i> commenced in Queensland on April 16, 2004. Under the Act, indigenous parties are key in assessing cultural heritage significance.</p> <p>The <i>Aboriginal Cultural Heritage Act 2003</i> establishes a Duty of Care for indigenous cultural heritage. This applies on all land and water, including freehold land. The Cultural Heritage Duty of Care lies with the person or entity conducting the activity.</p> <p>Penalty provisions apply for failing to fulfil the Cultural Heritage Duty of Care.</p>

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

	<p>Those proposing an activity that involves additional surface disturbance beyond that which has already occurred on the proposed site need to be mindful of the Duty of Care requirement.</p> <p>Details of how to fulfill the Duty of Care are outlined in the Duty of Care Guidelines gazetted with the Act.</p> <p>Council strongly advises that you contact the relevant state agency to obtain a copy of the Duty of Care Guidelines and further information on the responsibilities of developer under the terms of the <i>Aboriginal Cultural Heritage Act 2003</i>.</p>
2	Adopted Charges
	<p>Payment of an Adopted Infrastructure Charge in accordance with Council's Infrastructure Charges Resolution (No. 7) dated 11 December 2017 or as amended apply to this development approval.</p> <p>From 1 July 2014, Moreton Bay Regional Council no longer issues an Infrastructure Charges Notice on behalf of Unitywater for water supply and sewerage networks and therefore a separate Infrastructure Charges Notice may be issued directly to the applicant by Unitywater in respect to this development approval.</p> <p>Payment of Infrastructure Charges is to be in accordance with the Infrastructure Charges Notice issued with this development approval and any Infrastructure Charges Notice issued by Unitywater. From 1 July 2014, all Infrastructure Charges for infrastructure networks controlled by Unitywater (eg. water and/or sewerage) regardless of when the Infrastructure Charges Notice was issued are to be paid directly to Unitywater while Infrastructure Charges for networks controlled by Moreton Bay Regional Council will continue to be paid directly to Moreton Bay Regional Council.</p> <p>Note: The applicant may seek re-calculation of the Infrastructure Charges Notice to include any establishment costs as 'credits' within the notice, once the establishments cost can be ascertained.</p>
3	Food Premises - Food Business Licence Advice
	<p>In accordance with the Food Act 2006 the following must be submitted to Council prior to the commencement of construction or fit out of any licensable food business:</p> <ul style="list-style-type: none"> (a) An application for food business licence. (b) Plans and elevations (refer to note below). (c) Supporting documentation. (d) Relevant fee. <p>Please Note: The application is assessed against the provisions of the <i>Food Act 2006, Australia and New Zealand Food Standards Code</i> and <i>AS 4674 – Design, construction and fit-out of food premises</i>.</p>
4	Concurrence Agency Conditions
	<p>Comply with the conditions of Department of Infrastructure, Local Government and Planning response dated 19 February 2017 (reference: SDA-0415-020110) or as amended.</p>

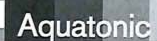
ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Locality Plan - 140 Morayfield Road Caboolture
nts

15

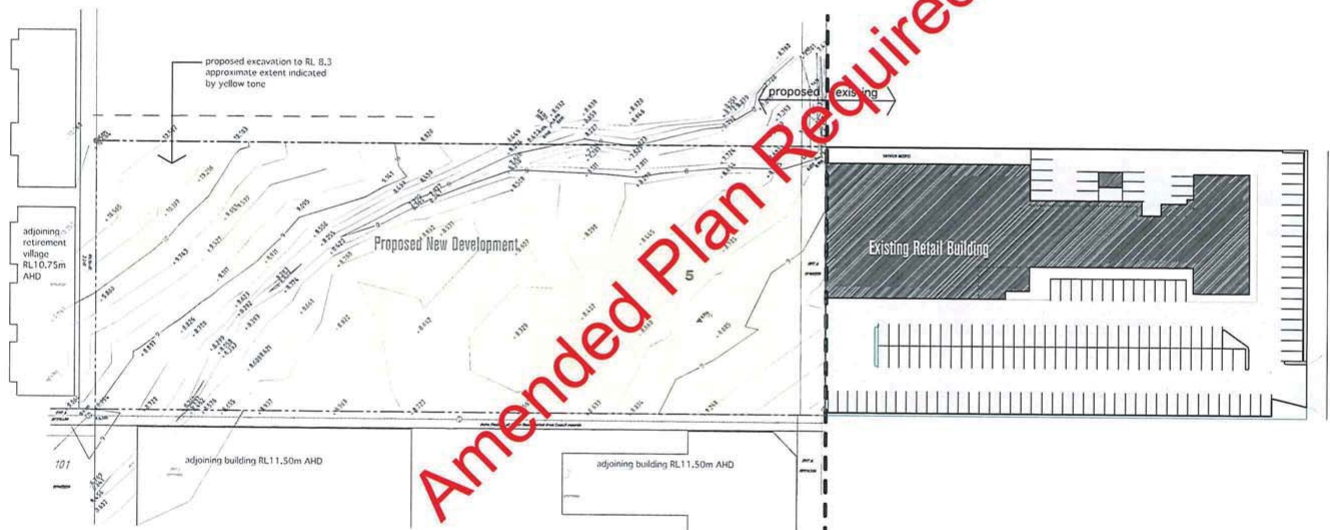
	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	Locality Plan Drawing	Date: 12/1/17 Issue: 02/2/18	Revised Issue for Approval: 02/2/18 DA required for information	Status: Not for Construction	mg lu
					Drawn: LU Checked: MG	Issue: NTS Date: A3 Dec 15	Job number: AT1417 Job number: DA01	Revision: F
© 2013 A&N P2119766986					81 Lugg Street, BARKON Q 4000, BRISBANE AUSTRALIA 4117 3368 2833			



ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

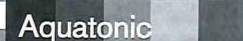
DEVELOPMENT DATA
RPD L 5
RP 88015

EXISTING DEVELOPMENT
Approx. GFA 2600m²
150 cars provided



16

	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	Existing Site Plan Drawing	F 12/1/17 E 16/2/18 Revised leave for approval. Extent of excavation added DA request for information	mg tu
					LU Checked MG scale 1:1000 A3 Mar 15 © 2015 ARN 92119766988	Not for Construction Job number AT 1417 Job number DA02 revision F 81 Lugg Street, BANGKON Q 4002, BRISBANE AUSTRALIA +617-3368 7833



ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

DEVELOPMENT DATA

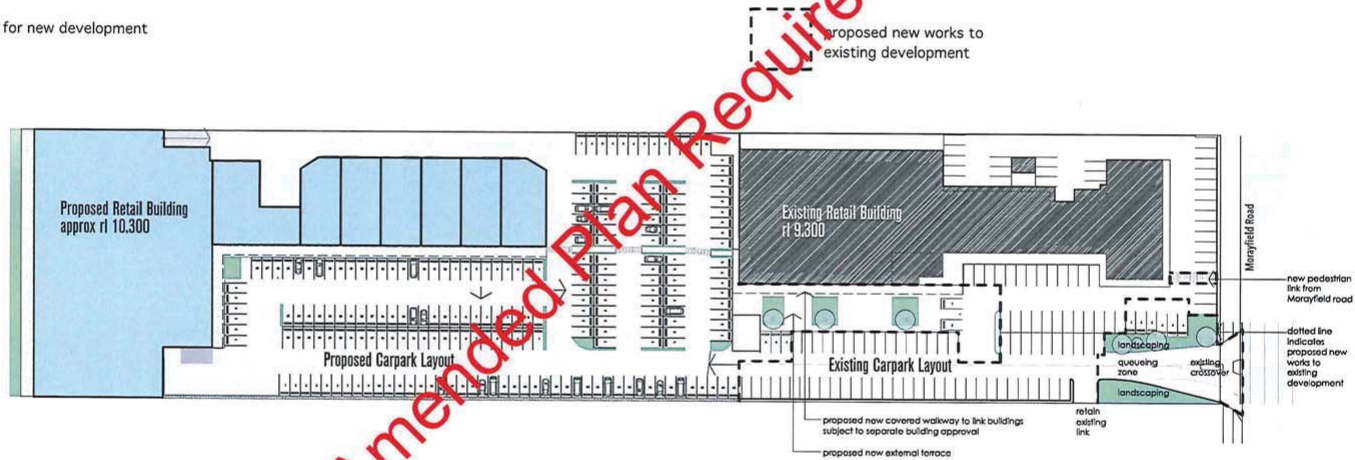
RPD L 5
RP 88015

EXISTING DEVELOPMENT

Approx. GFA 2600m²
150 cars provided
20 extra cars provided

NEW DEVELOPMENT

Total GFA for tenancies 4375m²
18 cars lost to existing development
218 cars required
220 cars provided for new development



17

	G. Lowe Group of Companies	Proposed Retail Center	140 Morayfield Road CABOOLTURE	General Site Arrangement	F 12/1/17 E 9/10/15 Revised issue for Approval Dik request for information	Not for Construction	mg lu
	Client	Project	Location	Drawing	shown LU checked MG scale 1:1000 paper size A3 date Mar 15	job number AT 1417 dwg number DA03 revision F	Aquatonic

© 2010 ABN 9211956988 61 Lugd Street BARDON Q-4033 BRISBANE AUSTRALIA +617 3268 2633

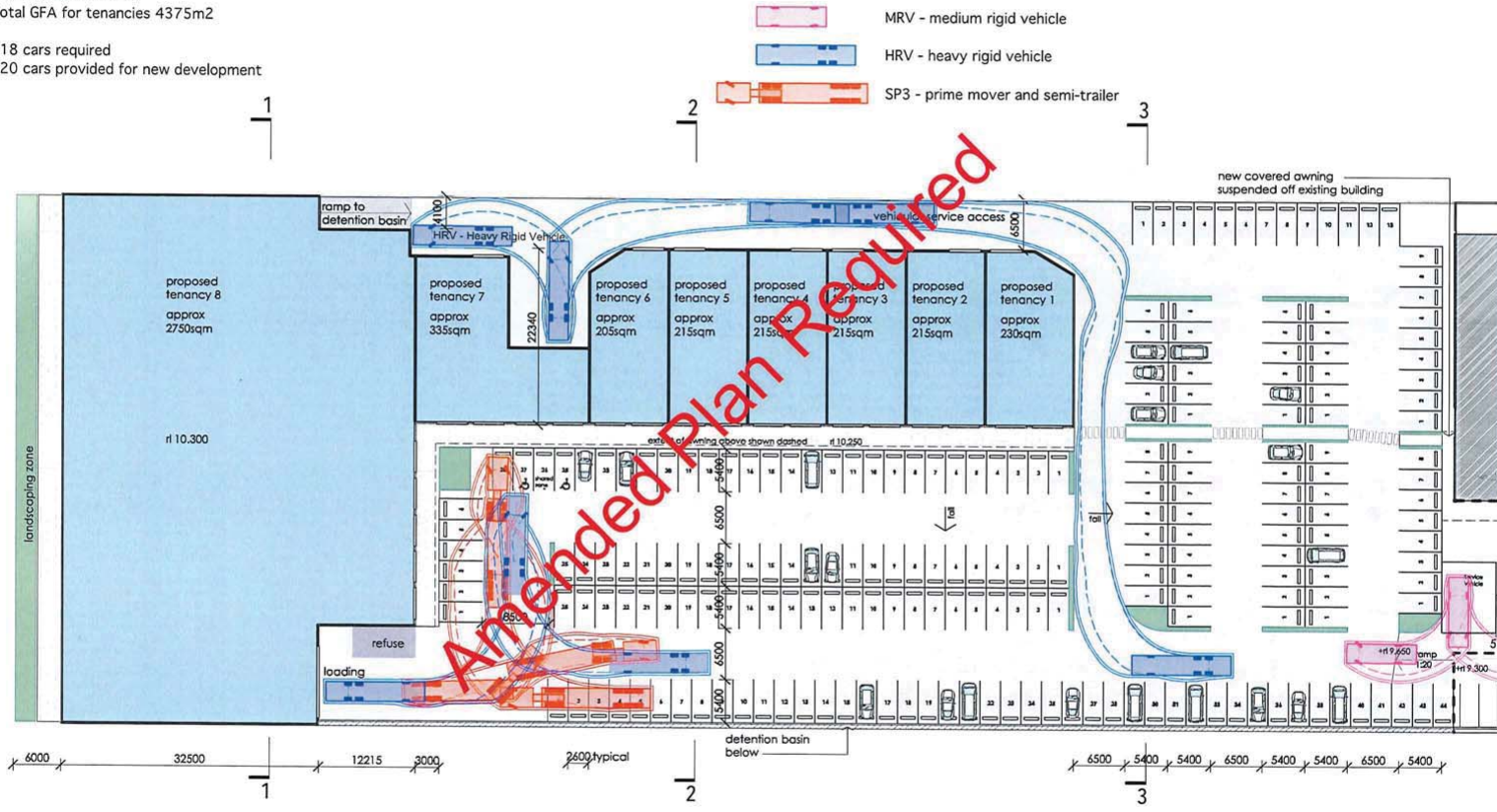
ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

DEVELOPMENT DATA

Total GFA for tenancies 4375m²

218 cars required

220 cars provided for new development



18

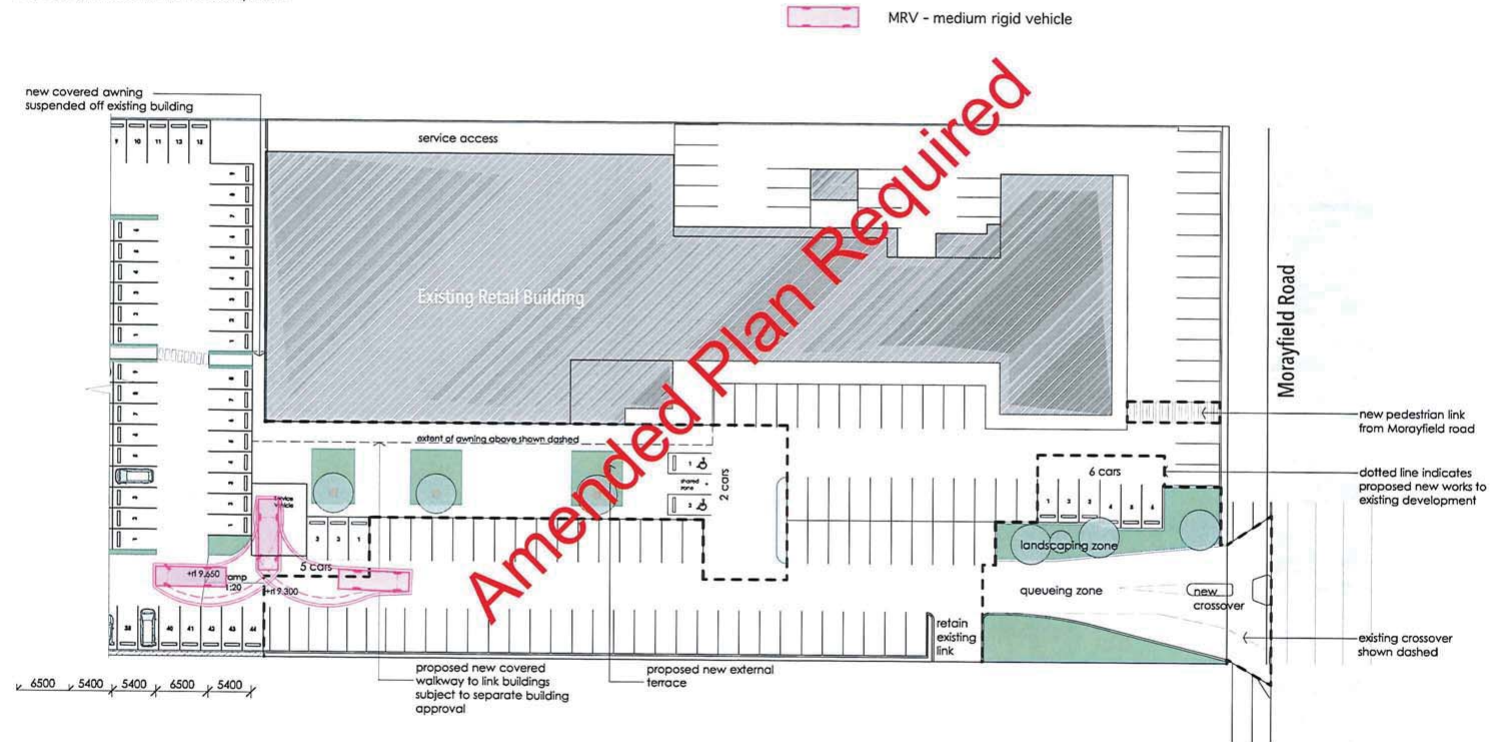
	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	New Development Plan Drawing	Date: 12/1/17 Status: E Action: Revised Issue for Approval Note: DA Request for Information	Scale: 1:500 Date: A3 Mar 15 Job Number: AT 1417 Drawing Number: DA04 Revision: F	Not for Construction	Date: 12/1/17 Status: E Action: Revised Issue for Approval Note: DA Request for Information
					Checked: LU Scale: 1:500 Date: A3 Mar 15 Job Number: AT 1417 Drawing Number: DA04 Revision: F			

Aquatic

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

DEVELOPMENT DATA

Total GFA for tenancies 4375m²
18 cars lost to existing development (20 in excess)
218 cars required for new development
220 cars provided for new development

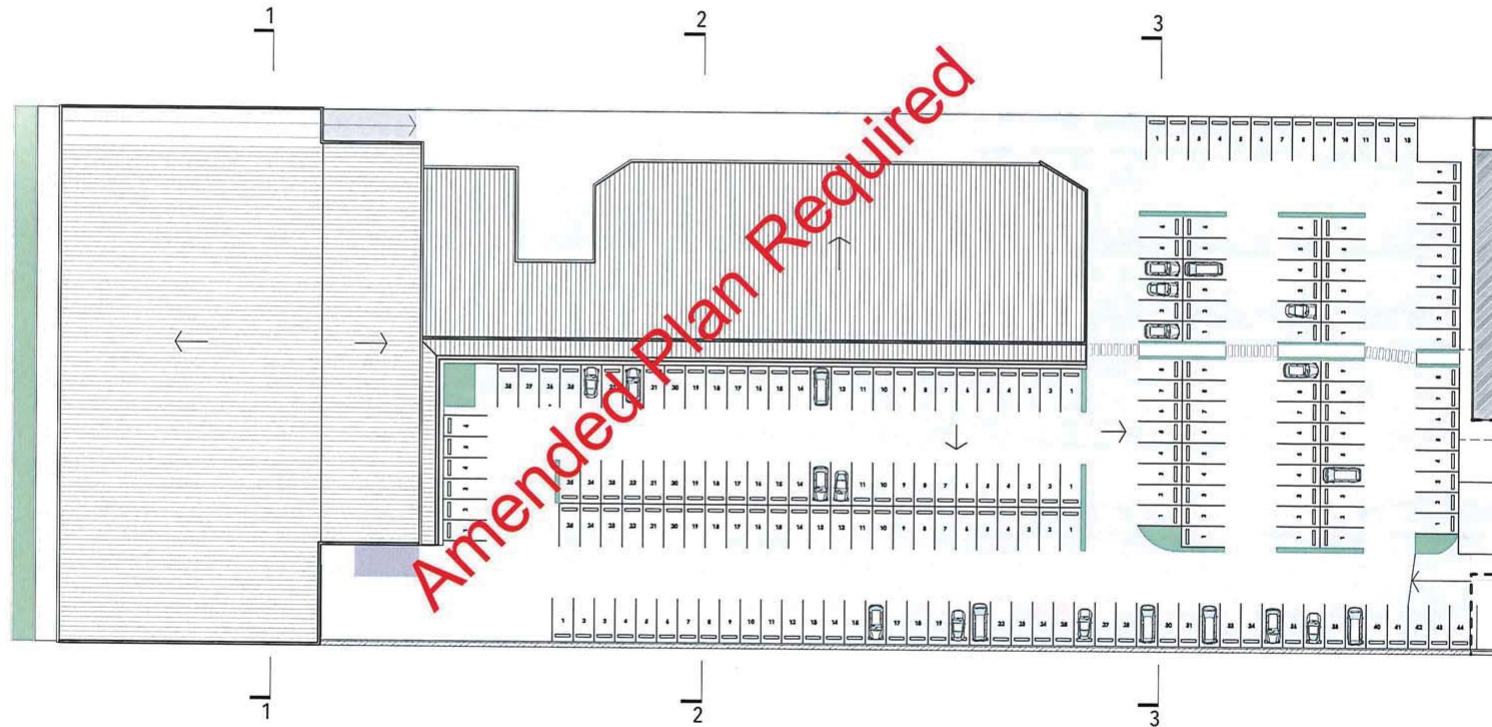


19

	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	New Development Plan Drawing	F 12/1/17 Revised Issue for Approval	E 10/2/15 DA Request for Information	mg lu
					LU 1:500 A3 Mar 15	MG 1:500 A3 Mar 15	
					© 2015 ARN 92119968928 41 Lugg Street, BARDON QLD 4005, BRISBANE AUSTRALIA +617 3358 2833		

Aquatic

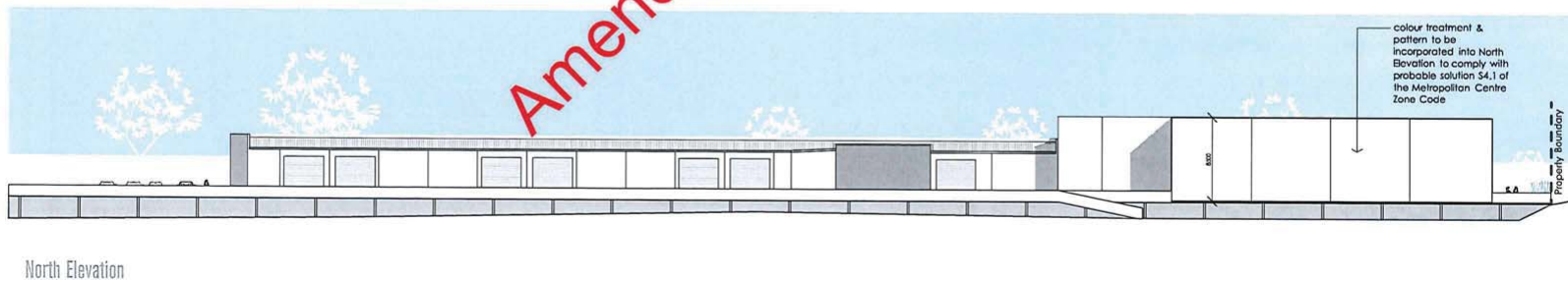
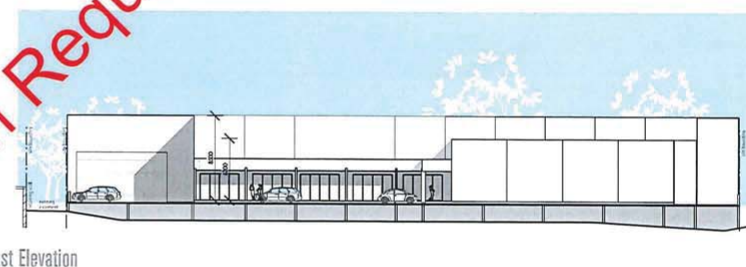
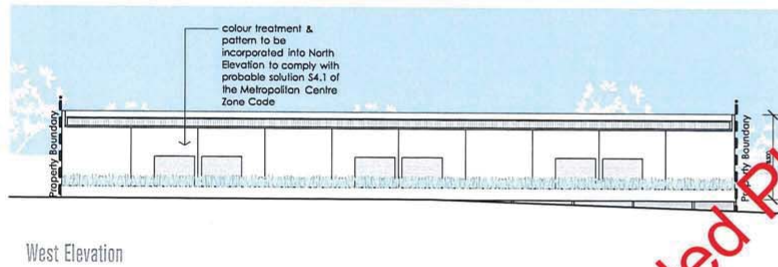
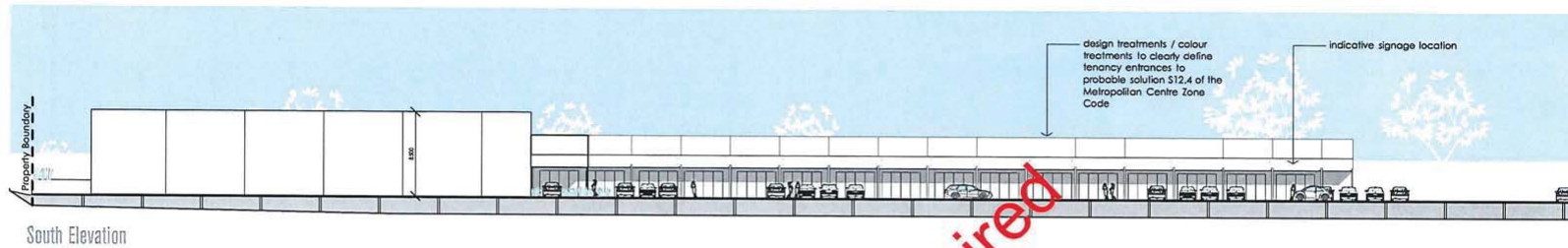
ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



20

	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	New Roof Plan Drawing	F 12/1/17 E 17/2/18	Revised issue for Approval DA required for information	mg lu
					LU MG	Not for Construction 1:500 A3 Mar 15 AT 1417	
© 2013 ABN 92119966988 61 Lugg Street BARKON Q 4063 BREBANE AUSTRALIA +617 3368 2833							

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

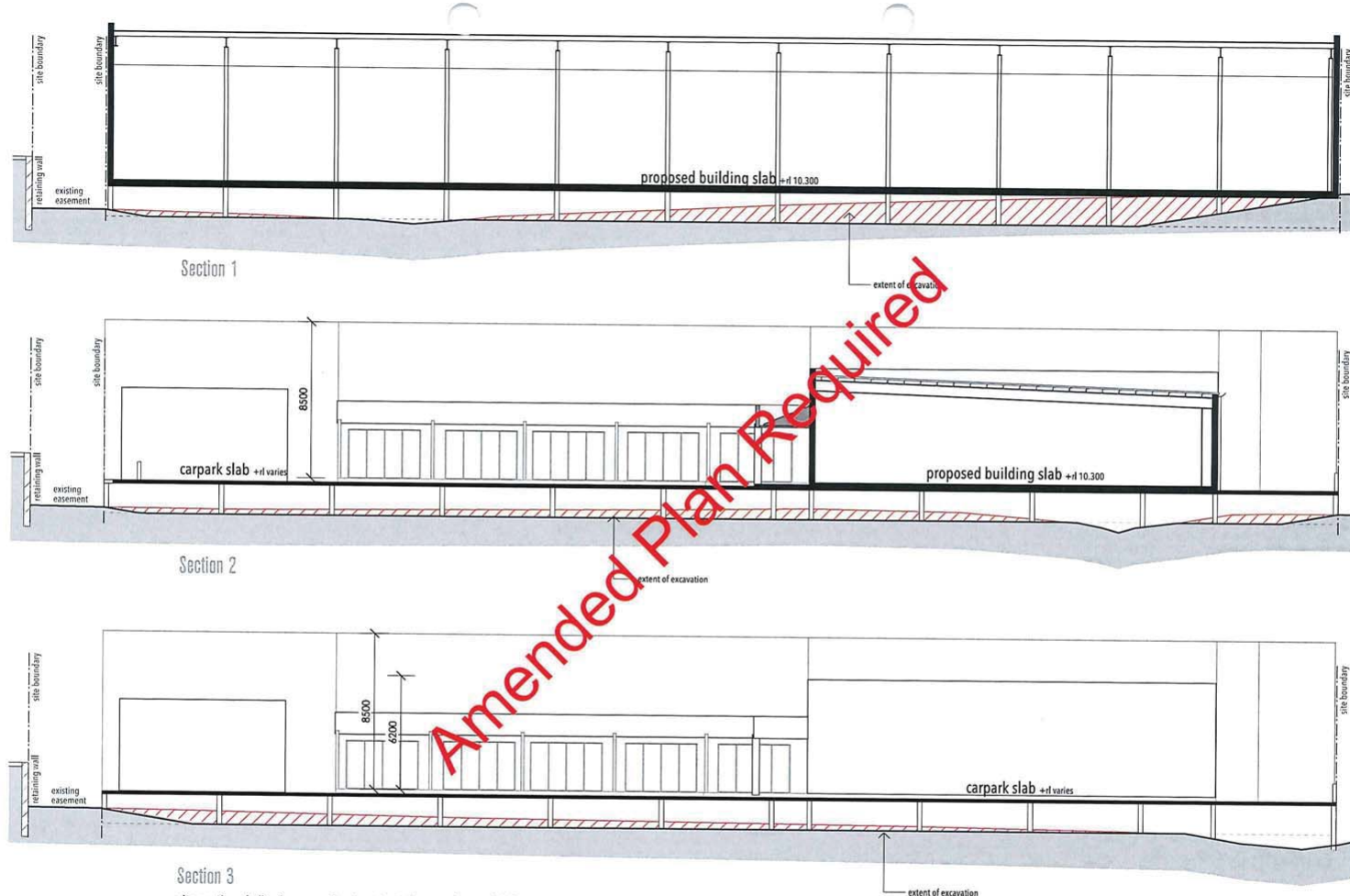


Amended Plan Required

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	G. Lowe Group of Companies	Proposed Retail Center	140 Morayfield Road CABOOLTURE	Elevations	F 12/1/17 E 10/12/15 Date Revised issue for Approval DA request for information Date	Not for Construction Job number: AT 1417 DWG number: DA07 Revision: F	Aquatonic
	Client Project Location Drawing	Scale per date 1:400 Date A3 Mar 15	© 2015 ARN 92119760968 S1 Lugg Street BAYDON G 4003 BRISBANE AUSTRALIA +617 5368 7833				

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Section 3
site sections indicating approximate extent of excavation to rl 8.3
suspended slab supports indicative only, structural system indicative only
piles to be min. 10m apart and no piles to be located within the high risk area of the Flood Hazard Overlay

22

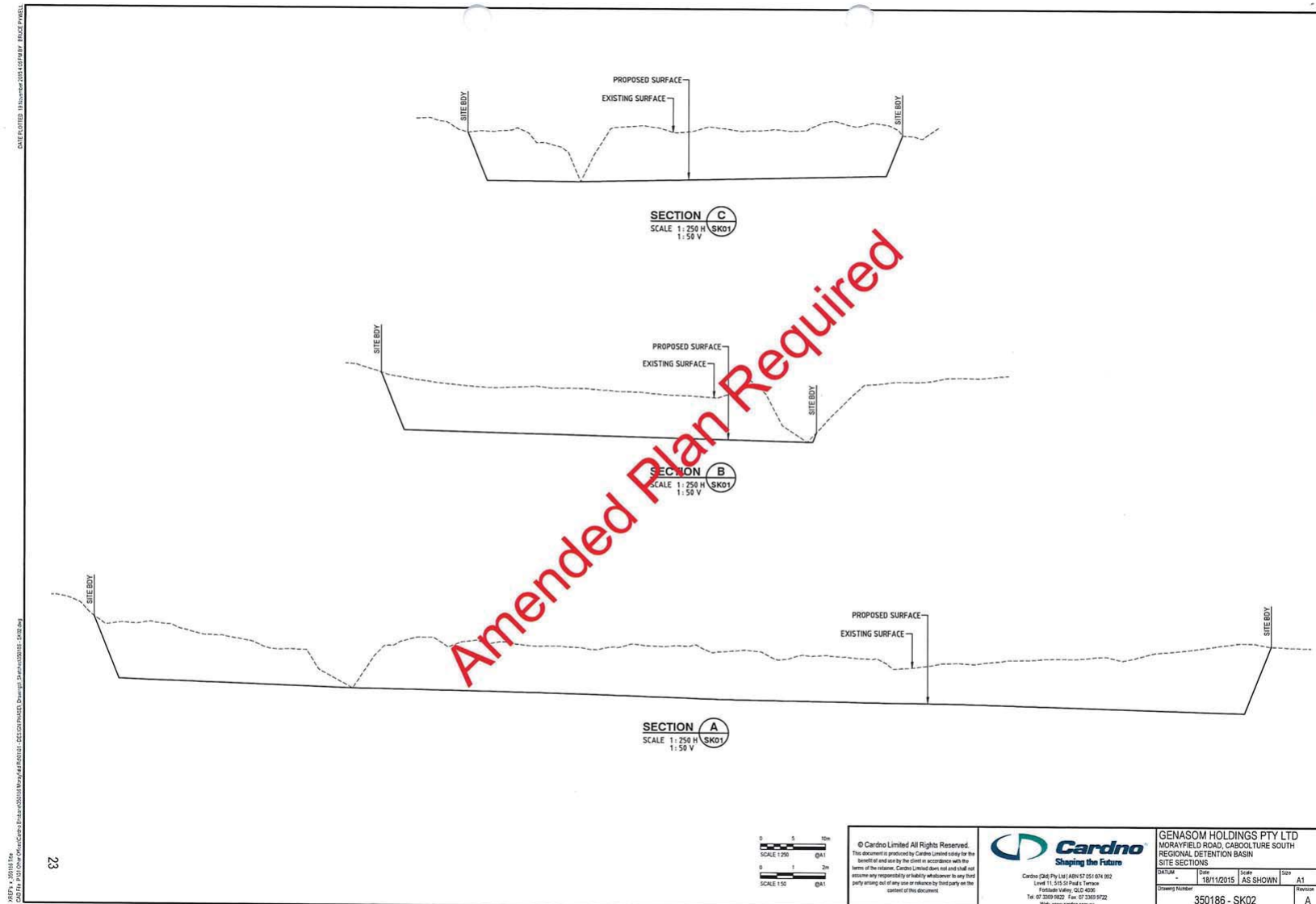
	Client	Proposed Retail Center	140 Morayfield Road CABOOLTURE	Sections	F 13/1/17 E 17/2/16 Issue LU MG 1:200 A3 Mar 15	Revised Issue for Approval DA required for information Not for Construction 100 number AT 1417 100 number DA08 100 number F	mg lu 100
	Project	Location	Drawng	© 2015 A/N Z 11/29/6/968 41 Lugg Street, BARDON Q 4008, BRISBANE AUSTRALIA +617 3338 2633	Aquatonic		

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



22A

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



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GENASOM HOLDINGS PTY LTD MORAYFIELD ROAD, CABOOLTURE SOUTH REGIONAL DETENTION BASIN SITE SECTIONS			
DATE:	18/11/2015	DATE:	AS SHOWN
DRAWING NUMBER:	350186 - SK02	REV:	A1

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd,
● Caboolture South

Stormwater Management Plan

3501-86

Prepared for
Genasom Holdings Pty Ltd

30 March 2015

Amended Plan Required



ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



Contact Information

Cardno (QLD) Pty Ltd
ABN 57 051 074 992

Level 11 Green Square North Tower
515 St Paul's Terrace
Fortitude Valley QLD 4006
Locked Bag 4006 Fortitude Valley

Telephone: 07 3369 9822
Facsimile: 07 3369 9722
International: +61 7 3369 9822

cardno@cardno.com.au.
www.cardno.com.au.

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Prepared for Genasom Holdings Pty Ltd
Project Name 130-140 Morayfield Rd, Caboolture South
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Date 30 March 2015

Document Control

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1	30 March 2015		YY		MD	

Version	Reason for Issue	Approved for Release By	Approved (Signature)	Approved Release Date

Amended Plan Required

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



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Figure 1 Stormwater Management Plan

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



1 Introduction

It is proposed to develop a Commercial Use site on land located at 130-140 Morayfield Road, Caboolture South. The location of the site is shown in the Locality Plan below with the proposed development layout presented in Appendix A.

The eastern portion of the site has already been developed. The proposed development referenced in this report is located adjacent to the existing shopping centre complex in the eastern portion of the site and has a total area of approximately 1.2 hectares.



Locality Plan
(Source: Google Maps)

This Stormwater Management Plan has been prepared to ensure that appropriate management of the quality of stormwater discharging from the site complies with the following requirements:

- Moreton Bay Regional Council (MBRC) Policies and Guidelines;
- *State Planning Policy* (Department of State Development, Infrastructure and Planning (DSDIP), July 2014;
- Standard engineering procedures; and
- Incorporates current Best Management Practices and Water Sensitive Urban Design (WSUD) principles.

The SMP in this report provides detailed information about the proposed management of stormwater quality from the development site and aims to demonstrate compliance with the relevant Water Quality Objectives.

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



2 Stormwater Quality Management

Stormwater quality produced from the developed site is to comply with the following criteria:

The total effect of permanent water quality control measures achieve reductions in the mean annual load generated by the development site to a minimum of:

- i. 80% for Total Suspended Sediment (TSS);
- ii. 45% for Total Nitrogen (TN);
- iii. 60% for Total Phosphorus (TP); and
- iv. 90% reduction in gross pollutants.

The above criteria are the same as the current applicable *State Planning Policy (SPP) (DSDIP, 2014)*. In line with adopting current Best Practice, the SPP objectives detailed below have been adopted for this assessment.

2.1 Applicable Objectives

The *State Planning Policy (DSDIP, 2014)* provides the following construction and post-construction phase stormwater management design objectives as shown in Table 2-1 and Table 2-2.

Table 2-1 SPP Table A - Construction Phase Design Objectives

Issue			Design Objective
Drainage Control	Temporary Works	Drainage	1. Design life and design storm for temporary drainage works: <ul style="list-style-type: none"> • Disturbed area open for <12 months—1 in 2-year ARI event • Disturbed area open for 12–24 months—1 in 5-year ARI event • Disturbed area open for > 24 months—1 in 10-year ARI event 2. Design capacity excludes minimum 150 mm freeboard 3. Temporary culvert crossing—minimum 1 in 1-year ARI hydraulic capacity
Erosion Control	Erosion Control Measures		1. Minimise exposure of disturbed soils at any time 2. Divert water run-off from undisturbed areas around disturbed areas 3. Determine the erosion risk rating using local rainfall erosivity, rainfall depth, soil-loss rate or other acceptable methods 4. Implement erosion control methods corresponding to identified erosion risk rating
Sediment Control	Sediment control measures Design storm for sediment control basins Sediment basin dewatering		1. Determine appropriate sediment control measures using: <ul style="list-style-type: none"> • potential soil loss rate, or • monthly erosivity, or • average monthly rainfall 2. Collect and drain stormwater from disturbed soils to sediment basin for design storm event: <ul style="list-style-type: none"> • design storm for sediment basin sizing is 80th% five-day event or similar 3. Site discharge during sediment basin dewatering: <ul style="list-style-type: none"> • TSS < 50 mg/L TSS, and • Turbidity not >10% receiving waters turbidity, and • pH 6.5–8.5

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



Issue		Design Objective
Water Quality	Litter and other waste, hydrocarbons and other contaminants	1. Avoid wind-blown litter; remove gross pollutants 2. Ensure there is no visible oil or grease sheen on released waters 3. Dispose of waste containing contaminants at authorised facilities
Waterway Stability and Flood Flow Management	Changes to the natural waterway hydraulics and hydrology	For peak flow for the 1-year and 100-year ARI event, use constructed sediment basins to attenuate the discharge rate of stormwater from the site

Table 2-2 SPP Table B - Post-Construction Phase Design Objectives

Climatic Region	Design Objective	Application
South East Queensland	The development is required to achieve the following minimum reductions in total pollutant load, compared with that in untreated stormwater runoff, from the developed part of the site: <ul style="list-style-type: none"> 80% reduction in total suspended solids 60% reduction in total phosphorus 45% reduction in total nitrogen 90% reduction in gross pollutants 	Development for urban purposes within population centres greater than 3000 persons Excludes development that is less than 25% impervious. In lieu of modelling, the default bio-retention treatment area to comply with load reduction targets for all Queensland regions is 1.5% of the contributing catchment area.
All	Waterway stability management <ul style="list-style-type: none"> Limit the peak 1 year ARI event discharge within receiving waterway to the pre-development peak 1 Year ARI event discharge 	Catchments contributing to un-lined receiving waterway. Local government may not require compliance if the waterway is degraded. The results from Cardno's flood study of the site, 130-140 Morayfield Rd, Caboolture South – Flood Study (20 March 2015), demonstrate that the proposed development causes a negligible change in peak discharge in the waterway downstream of the site (i.e. just downstream of Morayfield Road) for all ARI flood events. This finding is consistent with the fact that the proposed works will slightly increase the flood storage volume on the site.

Amended Plan Required

2.2 Construction Phase Water Quality

During the construction phase, the potential exists for increases in the amount of pollutants, particularly sediment, exported from the site. During this period, an Erosion and Sediment Control Plan will be required as part of the overall Environmental Management Plan prepared for the construction phase.

It is considered that the completion of construction activities in accordance with an Erosion and Sediment Control Plan developed using the following guidelines will minimise the nature of any adverse impacts during the construction phase.

- *Best Practice Erosion & Sediment Control 2008* International Erosion Control Association Australasia; and.
- Institution of Engineers Australia. 1996, *Soil Erosion and Sediment Control, Engineering Guidelines for Queensland Construction Sites*. June.

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



2.3 Post-Construction Phase Water Quality

2.3.1 Stormwater Management Practices

The formulation and implementation of the water quality management plan for the development is based on the following key principles:

- Adoption of Water Sensitive Urban Design (WSUD) principles throughout the site. This includes consideration of features such as preventing the concentration of flow in downstream areas and the use of constructed wetland systems to manage runoff water quality.
- Management and control of water quality both during and after construction. A detailed Erosion and Sedimentation Control Plan will need to be developed in accordance with recognised standards during the detailed design phase and implemented on site during the subdivision construction process.

2.3.2 Proposed Stormwater Quality Treatment Train

For commercial developments of this nature, typical stormwater quality treatment measures generally consist of the use of bio-retention systems or proprietary treatment devices (maintained and operated by the owner of the development).

To provide some initial guidance to the respective future lot owners the State Planning Policy provides the following option for sizing the bio-retention area:

"In lieu of modelling, the default bio-retention treatment area to comply with load reduction targets for all Queensland regions is 1.5% of the contributing catchment area."

For a total development area of 1.2ha, the required bio-retention treatment area would be approximately 180m². It should be noted that this area is for the filter area and does not include allowance for batters, sediment forebays (if the contributing catchment area is sufficiently large to warrant a forebay) or other maintenance related requirements.

While the current development layout does not specifically detail the proposed landscape areas, which could be utilised as treatment areas, throughout the site, it is preferable to minimise the number of individual bio-retention devices for both maintenance and cost efficiency.

Given that the site will be privately managed and not handed over to Council, it is proposed to utilise a proprietary system to treat the stormwater runoff generated from the development.

For design purposes, the Stormwater360 system was considered. It is noted that an alternate system may be substituted by the contractor provided it can be demonstrated that the alternate system can achieve the water quality objectives applicable to the site and the system is acceptable to Council.

The Stormwater360 treatment system comprises EnviroPods to provide pre-treatment, followed by the StormFilter Cartridge system. Each of these measures is described below.

- **EnviroPod**

Being inserted into the gully pits, EnviroPods will be used as pre-treatment devices to treat the runoff from roofs, carparks, driveways and other hardstand areas, before being further treated via the StormFilter cartridge system. A total of eleven (11) EnviroPods are proposed to be installed across the site.

The EnviroPods were modelled as a Gross Pollutant Trap providing pollutant reduction of 75.2%, 30%, 21% and 100% for TSS, TP, TN and GP respectively. These figures were advised by the product manufacturer based on their testing.

- **StormFilter Cartridge**

The StormFilter Cartridge is a stormwater filtration device integrated into the manhole as the final treatment measure. It is proposed to use a total of thirty (30) 690mm StormFilter Cartridges. The StormFilter cartridges were modelled as a generic treatment device providing pollutant reductions of 90.8%, 56%, 36% and 100% for TSS, TP, TN and GP respectively. These figures were advised by the product manufacturer based on their testing of the performance of the devices.

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



Table 2-3 Stormwater 360 Treatment System

EnviroPod 200 Units	StormFilter Units
11	2 x 15 Cartridge 690mm Manhole StormFilter

It is noted that rainwater tanks for re-use of rainwater do not form part of the current treatment chain and are no longer required due to the recent changes to the Queensland Development Code.

2.3.3 Design and Performance of Treatment Measures

In order to determine the effectiveness of the adopted treatment train in meeting the WQOs, a stormwater quality analysis was performed using the Model for Urban Stormwater Improvement Conceptualisation (MUSIC) Version 6.1.0.

The model requires the user to specify meteorological data (rainfall and evaporation), soil properties and pollutant loads for each catchment. Suitable parameters for the MUSIC model have been adopted in accordance with the recommendations of Water by Design *MUSIC Modelling Guidelines (Version 1) – 2010*.

The rainfall data corresponding to the Dayboro Post Office rainfall station was input to the model, with a 6 minute time step over the period 1 January 1989 to 31 December 1989, as per the recommendations of the Water by Design *MUSIC Modelling Guidelines (Version 1) – 2010*.

The Commercial Source node has been adopted within the MUSIC modelling. Further, the development has been divided into roof areas (total 0.48ha), car park and driveway areas (total 0.54ha) and balance ground (0.06ha) based on the supplied development layout.

The pollutant export parameters adopted are shown in Table 2-4.

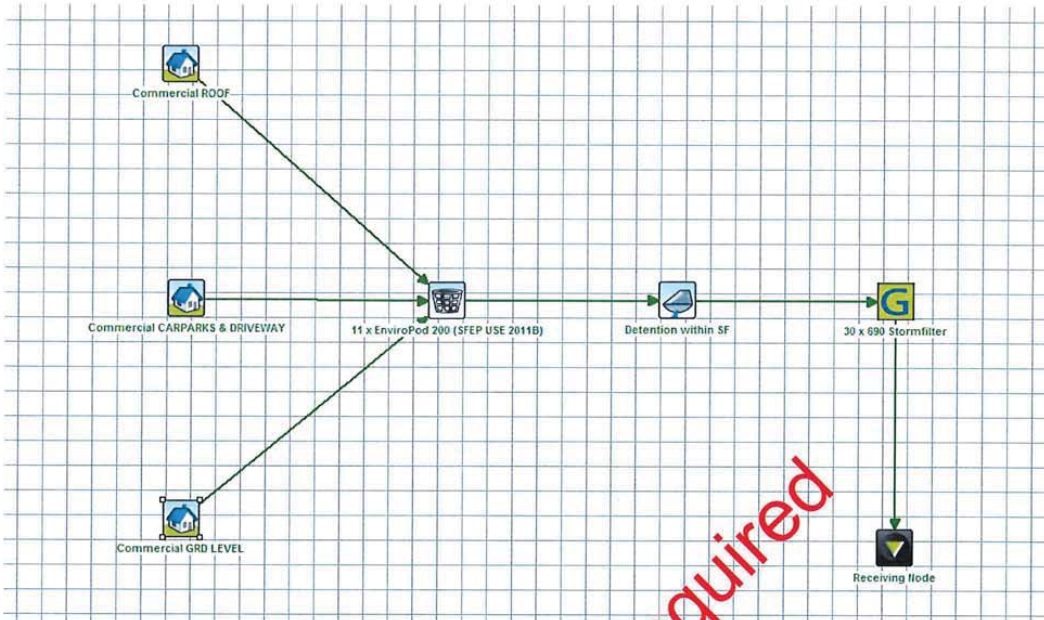
Table 2-4 Pollutant Export Parameters (baseflow) for Split Catchment Commercial (log₁₀ values)

Source Node		TSS (log ₁₀ values)		TP (log ₁₀ values)		TN (log ₁₀ values)	
		Mean	St. Dev.	Mean	St. Dev.	Mean	St. Dev.
Baseflow	Roads (car parks)	0.78	0.39	-0.60	0.50	0.32	0.30
	Ground Level	0.78	0.39	-0.60	0.50	0.32	0.30
Stormflow	Roof	1.30	0.38	-0.89	0.34	0.37	0.34
	Roads (car parks)	2.43	0.38	-0.30	0.34	0.37	0.34
	Ground Level	2.16	0.38	-0.39	0.34	0.37	0.34

The conceptual MUSIC model details are shown below with typical device drawings shown in Appendix B.

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



Conceptual MUSIC Model

The results of the MUSIC modelling, shown as total annual loads, are presented in Table 2-5.

Table 2-5 Predicted Stormwater Discharge Characteristics with Stormwater 360 Treatment

Parameter	Generated Load	Post-development (Mitigated) Load	% Reduction
TSS (kg/yr)	2,756	278	89.9
TP (kg/yr)	5.53	1.92	65.5
TN (kg/yr)	49.7	21.7	45.3
Gross Pollutants (kg/yr)	284	0	100

The results presented above demonstrate that the proposed stormwater treatment measures for the development will satisfy the adopted Water Quality Objectives for all pollutants modelled in MUSIC and therefore the State Planning Policy criteria for water quality have been appropriately addressed.

A detailed response to SPP Code: Water Quality has also been prepared and is included in Appendix C.

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



3 Conclusions

A stormwater management plan has been prepared for the proposed development at 130-140 Morayfield Road, Caboolture South. The stormwater management plan is required to demonstrate that the adverse impacts of the proposed development on stormwater quality can be effectively ameliorated to satisfy Moreton Bay Regional Council and State Planning Policy requirements.

The proposed stormwater management plan for the development includes the use of a proprietary stormwater quality treatment system such as Stormwater360, to treat the runoff quality.

MUSIC modelling was used to estimate the pollutant reduction efficiency of the Stormwater360 system. MUSIC results have demonstrated that the proposed mitigation measures will ensure the development satisfies the stormwater quality objectives as required by Council and the State Planning Policy.

Amended Plan Required

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South

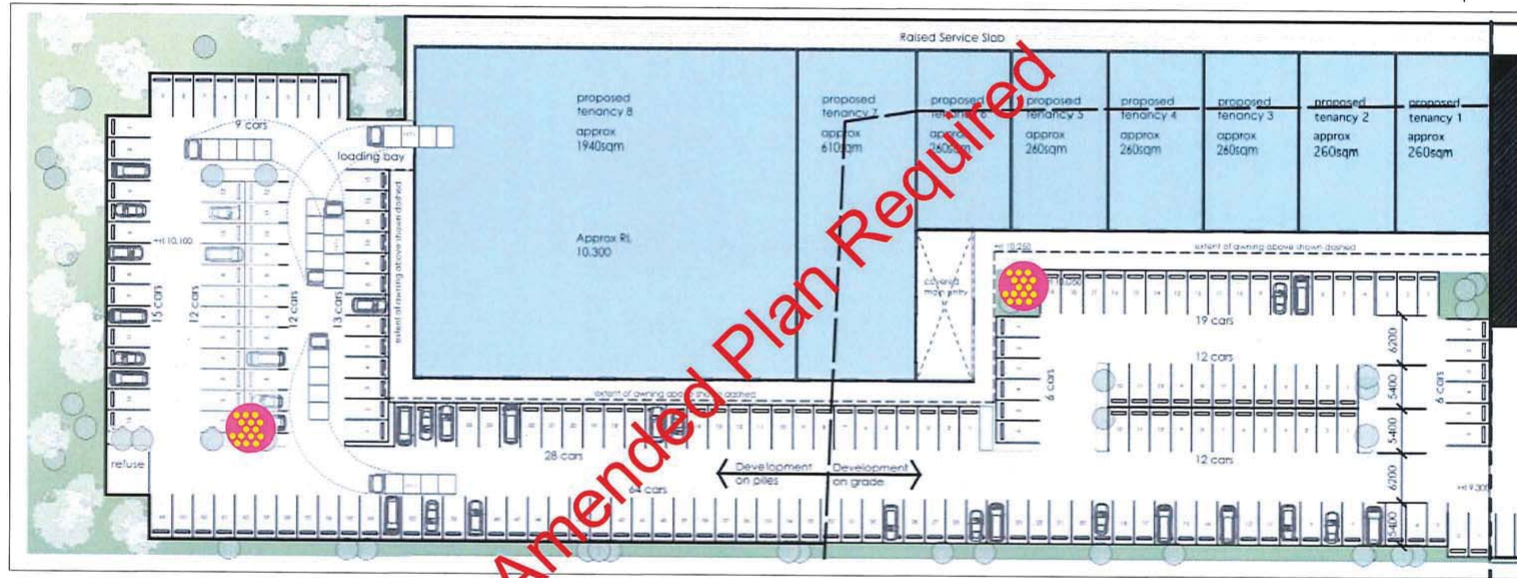


Figure 1 Stormwater Management Plan

Amended Plan Required

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

134-140 Morayfield Rd, Caboolture South
Stormwater Management Plan



Legend
 StormFilter Cartridge System (indicative size and location)

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 Rev: Orig. Date: March 2015
 Genasom Holdings Pty Ltd
 CAD FILE: 0-1341-140-RP88015-Div3_134-140.rvt



Scale 1:500 (A3)
 FIGURE 1
 STORMWATER MANAGEMENT PLAN

Project No.: 3501-06
 PRINT DATE: 31 March, 2015 - 11:44am

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South

APPENDIX

A

Proposed Development Layout

Amended Plan Required

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Locality Plan - 140 Morayfield Road Caboolture
nts

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	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	Locality Plan Drawing	24/3/15 Issue for DA	ground floor amended Issue for DA	mg mg
					20/3/15 EK MG NTS © 2013 ABN 92119969788	Preliminary A3 Mar 15 81 Lugg Street SARDON QLD 4065 BRISBANE AUSTRALIA +617 3588 2233	job number AT1417

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

DEVELOPMENT DATA

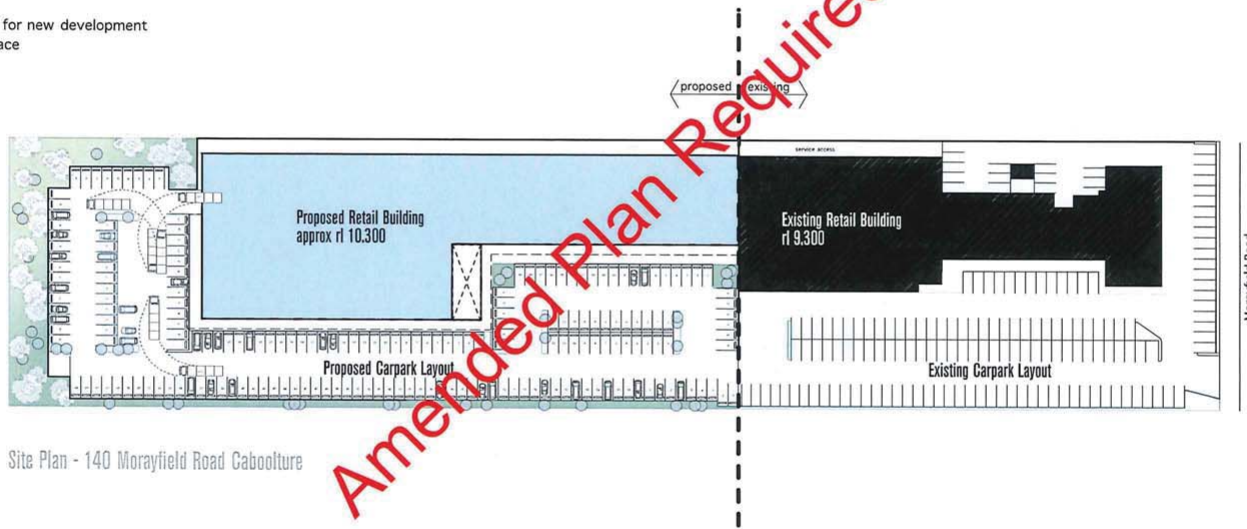
RPD L 5
RP 88015

EXISTING DEVELOPMENT

Approx. GFA 2600m²
150 cars provided

NEW DEVELOPMENT

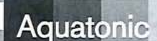
Total GFA for tenancies 4120m²
206 cars required
208 cars provided for new development
1458m² green space



Site Plan - 140 Morayfield Road Caboolture

38

	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	General Site Arrangement Drawing	A 24/3/15 ground floor amended	A 20/3/15 issue for DR	mg mg
					EK drawn	MG checked	Preliminary status
					© 2013 ABN 92119564988 31 Lugg Street BARDON QLD 4005 IPBISAFE AUSTRALIA +617 3368 2833		



ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

DEVELOPMENT DATA

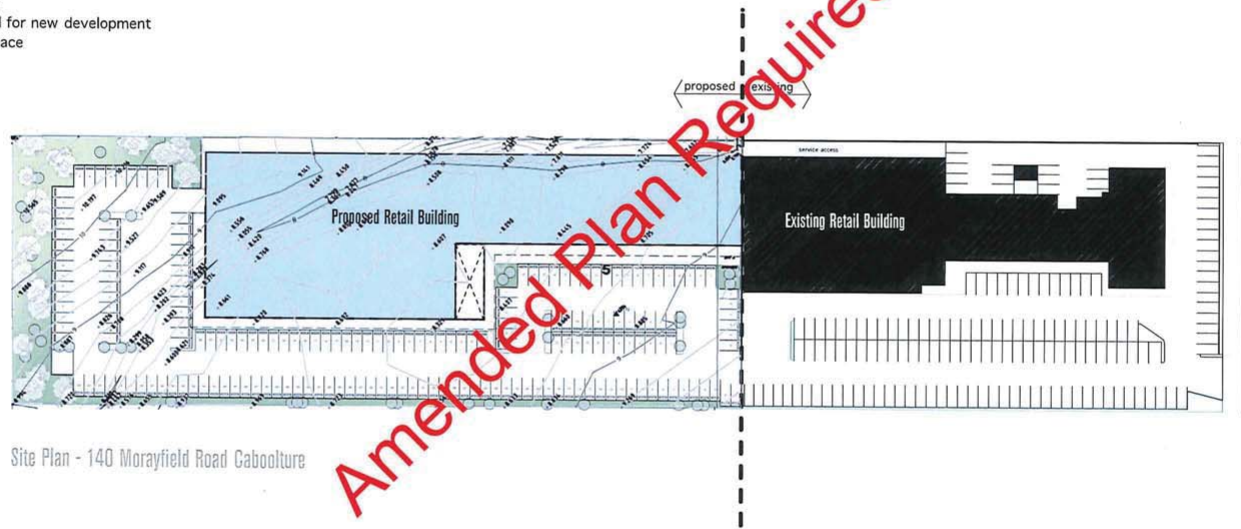
RPD L 5
RP 88015

EXISTING DEVELOPMENT

Approx. GFA 2600m²
150 cars provided

NEW DEVELOPMENT

Total GFA for tenancies 4120m²
206 cars required
208 cars provided for new development
1458m² green space



39

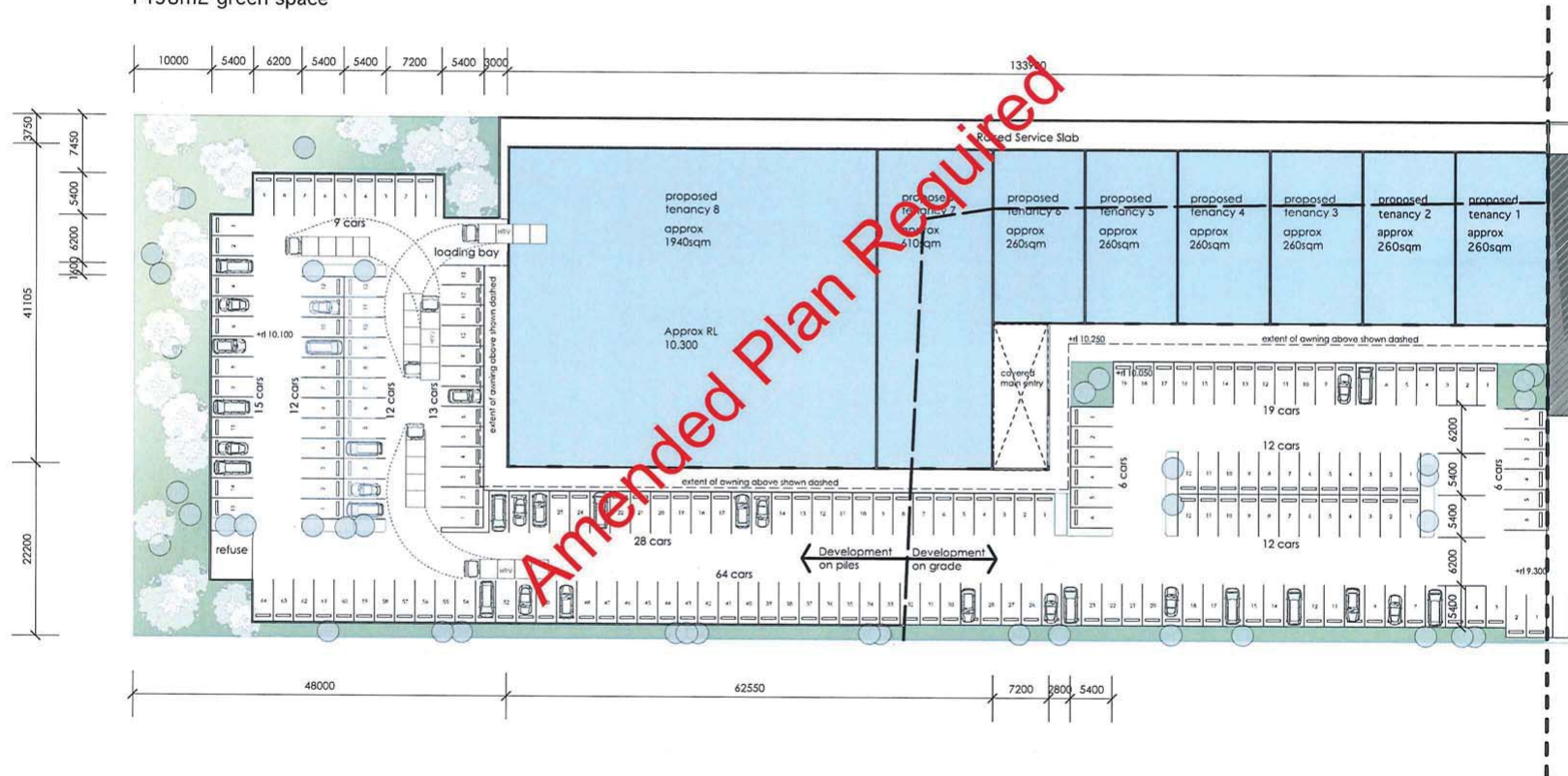
	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	Site Plan Drawing	26/3/15 Date	ground floor amended Issue for DA	mg	
					EK Checked by	MG Checked by	1:1000 A3 Mar 15 Scale: (approx 100:1)	AT 1417 Job number
© 2013 A&N 92117946793					31 Luggal Street GARDON QLD 4065 BRISBANE AUSTRALIA 617 3358 2633			

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

DEVELOPMENT DATA

RPD L 5
RP 88015
Total GFA for tenancies 4120m²
206 cars required
208 cars provided for new development

1458m² green space



40

N	G. Lowe Group of Companies	Proposed Retail Center	140 Morayfield Road CABOOLTURE	Proposed Plan	Rev	24/3/15	ground floor amended	mg		
					Drawn	EK	MC	scale: paper size date	1:500 A3 Mar 15	job number
					© 2013 AIN 92119959783 81 Lugg Street BARDON Q 4065 BRISBANE AUSTRALIA #617 3328 2833					

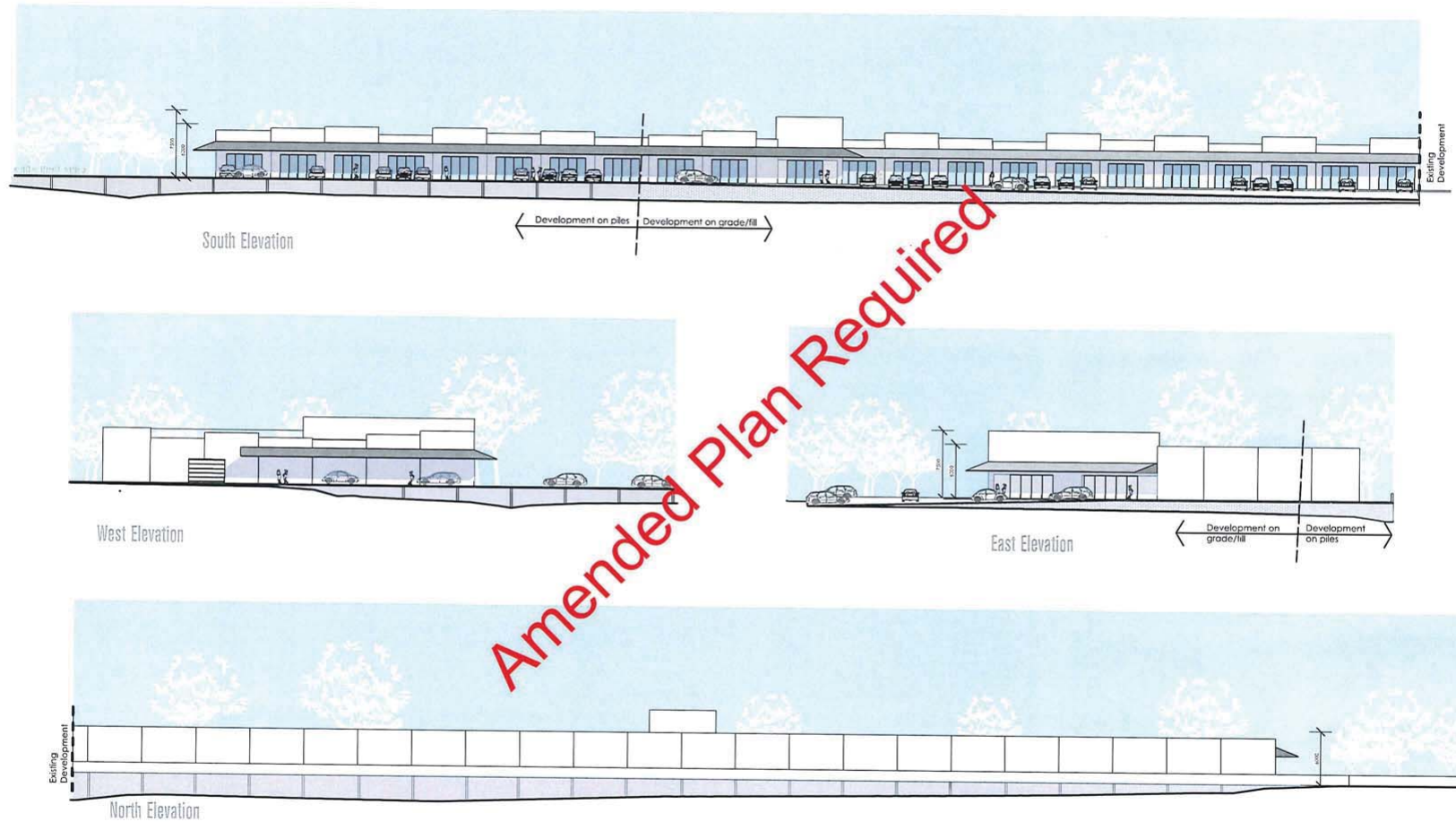
Aquatic

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



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	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	Elevations Drawing	20/3/15 Date	20/3/15 Date	mg mg
					EK Drawn	MG Checked	1:400 A3 Mar 15 Scale / Paper Size / Date

© 2013 A/N 92119946780 41 Hogg Street BARDON QLD 4015 BRISBANE, AUSTRALIA +617 3386 2633

Aquatic

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South

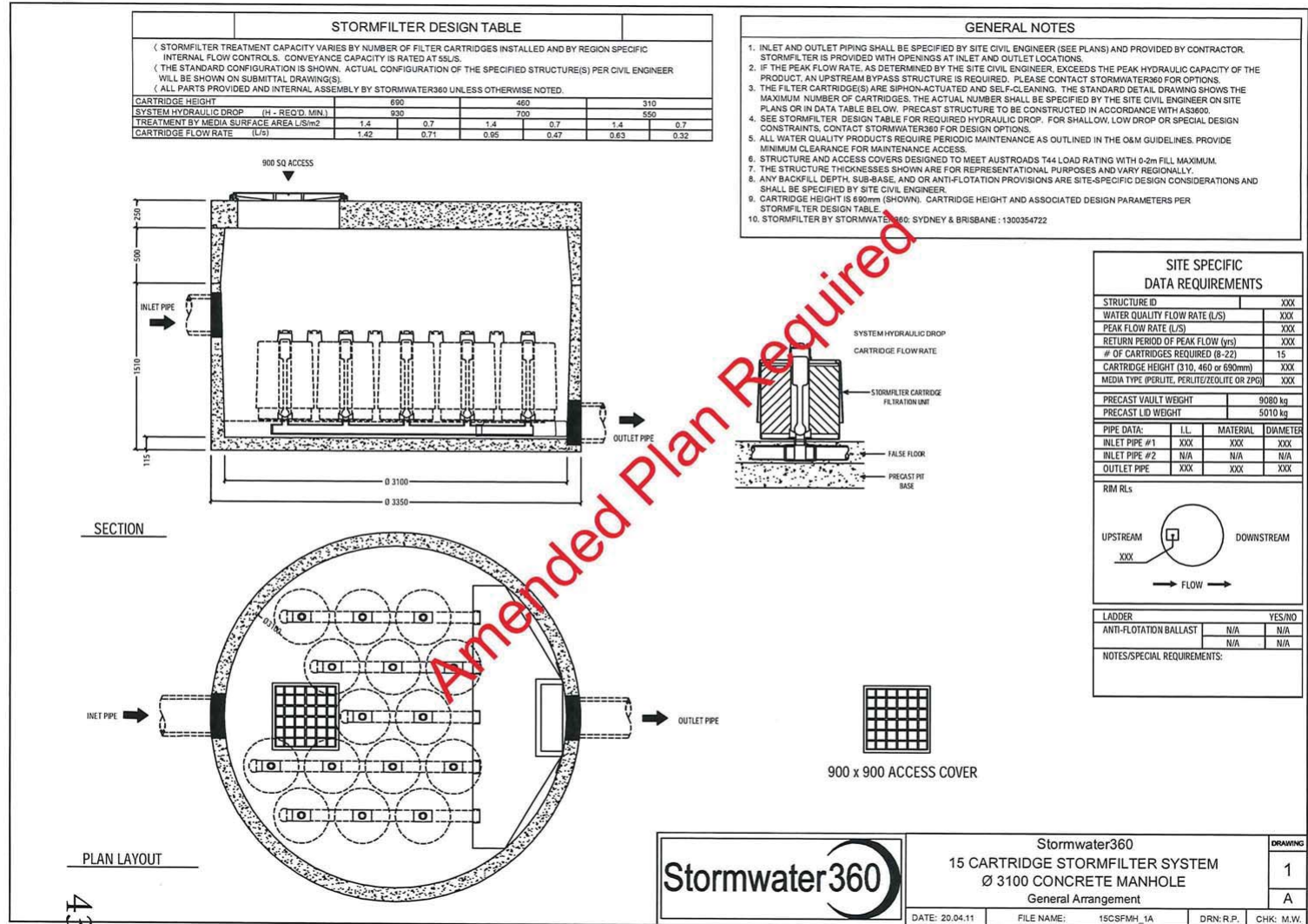
APPENDIX

B

Stormwater360 Details

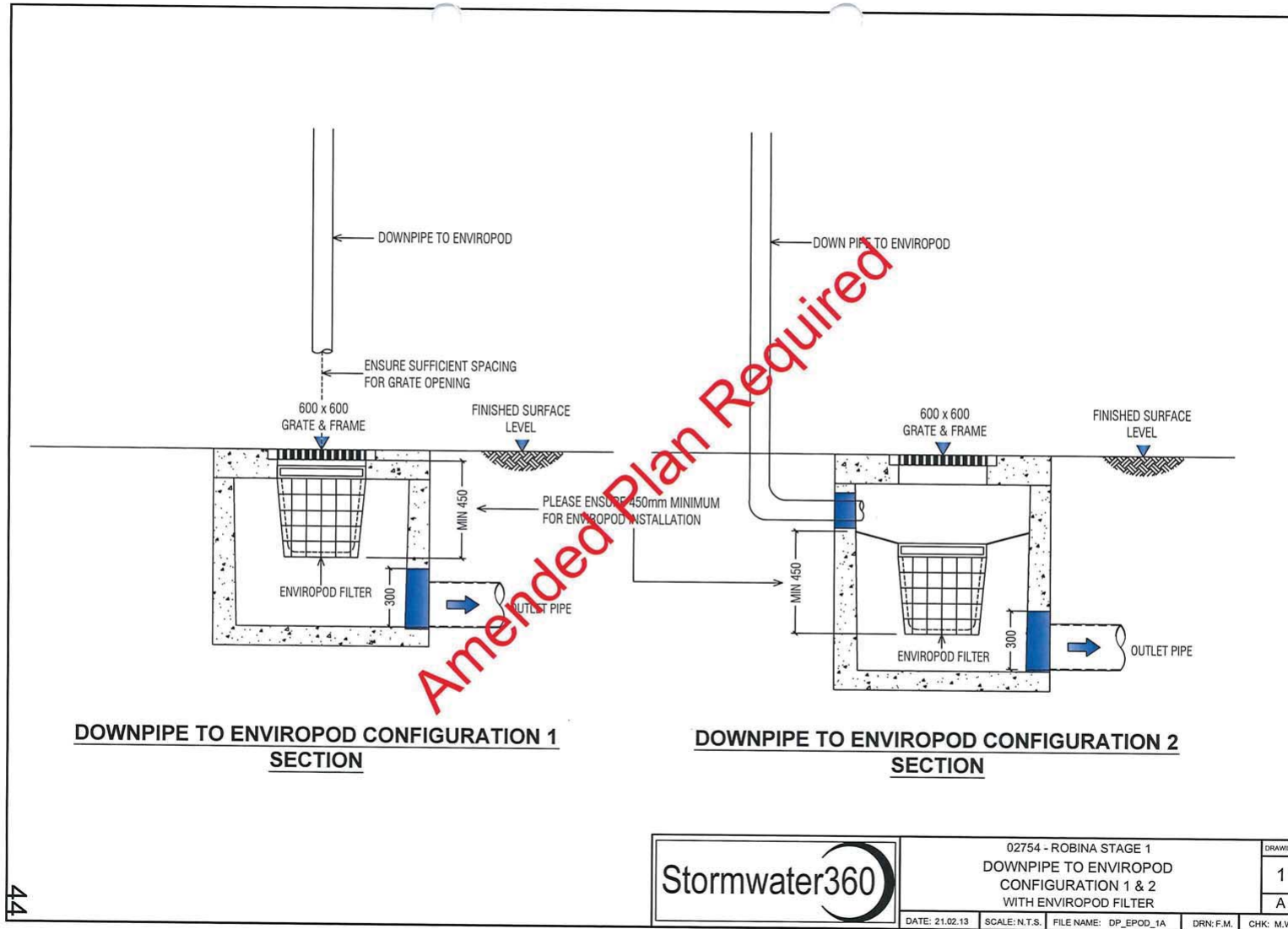
Amended Plan Required

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



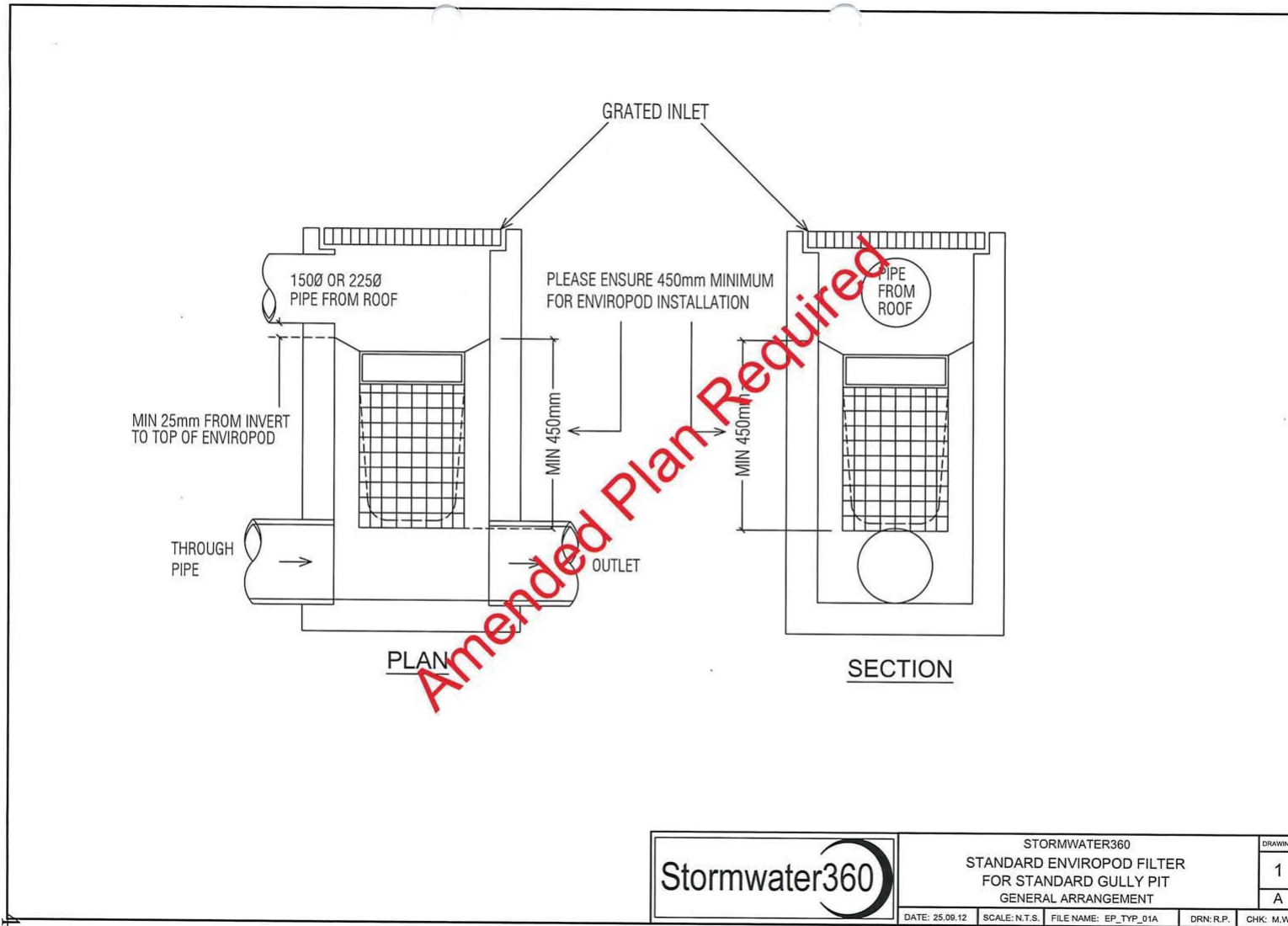
43

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



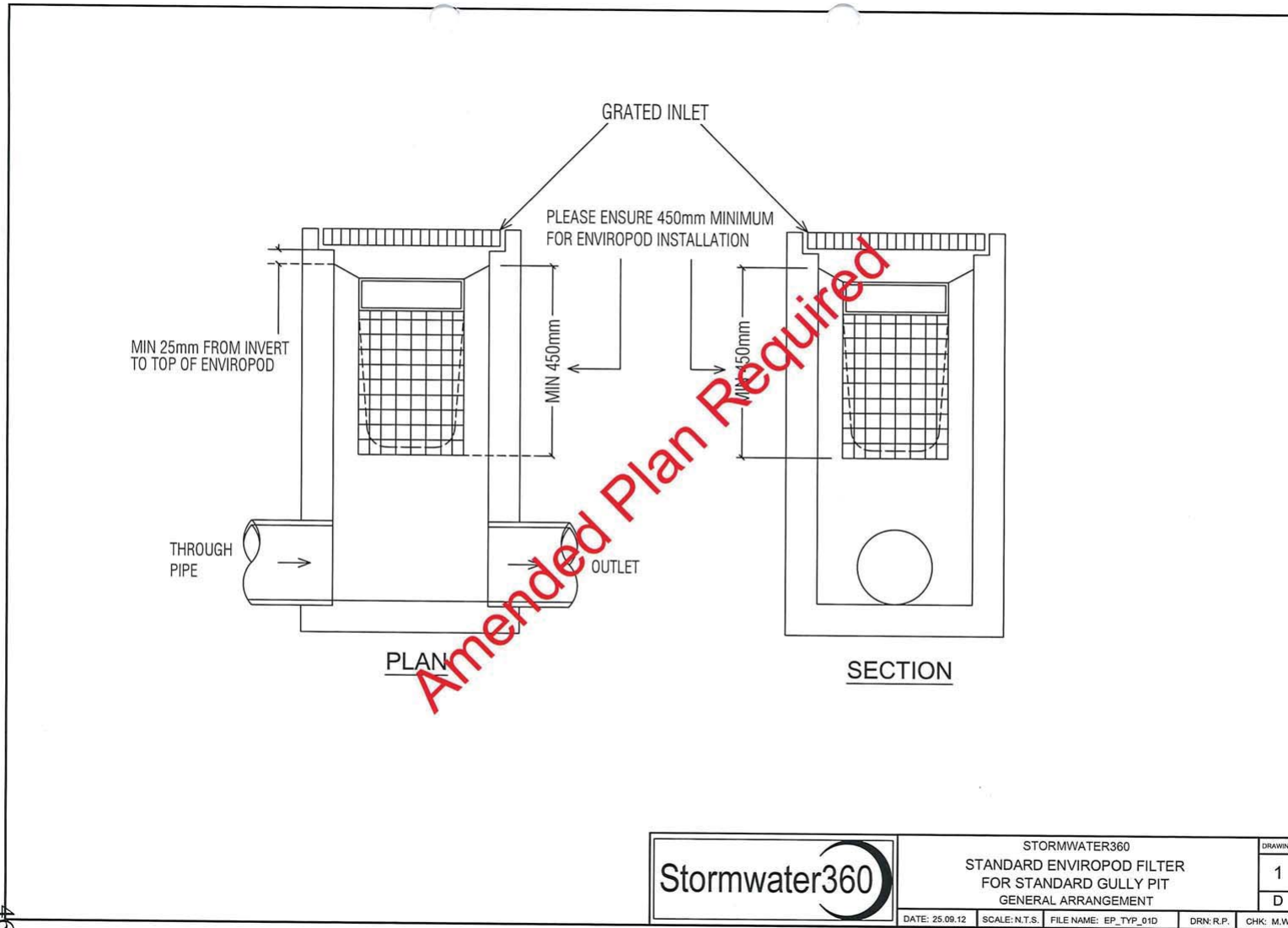
44

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



	STORMWATER360 STANDARD ENVIROPOD FILTER FOR STANDARD GULLY PIT GENERAL ARRANGEMENT	DRAWING 1 A
	DATE: 25.09.12 SCALE: N.T.S. FILE NAME: EP_TYP_01A DRN: R.P. GHK: M.W.	

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

130-140 Morayfield Rd, Caboolture South

APPENDIX

C

SPP Code

Amended Plan Required

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

SPP Code- Water Quality
Performance Outcomes and Acceptable Outcomes



1. Solution: ✓ = Acceptable Solution
A/S = Alternative Solution
N/A = Not applicable to this proposal

PERFORMANCE OUTCOME	ACCEPTABLE OUTCOME	SOLUTIONS ¹	COMMENTS	REVIEWER USE ONLY
Plan to avoid/minimise new impacts				
<p>PO1 The development is planned and designed considering the land use constraints of the site for achieving stormwater design objectives.</p>	<p>AO1.1 A site stormwater quality management plan (SQMP) is prepared, and:</p> <ul style="list-style-type: none"> a. is consistent with any local area stormwater management planning, and b. provides for achievable stormwater quality treatment measures meeting design objectives listed below in Table A (construction phase) and Table B (post construction phase), or current best practice environmental management, reflecting land use constraints, such as: <ul style="list-style-type: none"> • erosive, dispersive and/or saline soil types • landscape features (including landform) • acid sulfate soil and management of nutrients of concern • rainfall erosivity. 	✓	<p>A Site Based Stormwater Management Plan has been developed.</p> <p>The plan is consistent with requirements for Moreton Bay Regional Council.</p> <p>The plan details the measures likely to be necessary during the construction phase to meet the requirements of Table A and the measures required for the operational phase to satisfy the requirements of Table B.</p>	
<p>PO2 Development does not discharge wastewater to a waterway or off site unless demonstrated to be best practice environmental management for that site.</p>	<p>AO2.1 A wastewater management plan (WWMP) is prepared by a suitably qualified person and addresses:</p> <ul style="list-style-type: none"> a. wastewater type, and b. climatic conditions, and c. water quality objectives (WQOs), and d. best-practice environmental management, and 	N/A	<p>All wastewater from site to be directed by a sewerage reticulation system to a Council operated sewage treatment plant for treatment and disposal. A WWMP is not considered to be necessary.</p>	
	<p>AO2.2 The WWMP provides that wastewater is managed in accordance with a waste management hierarchy that:</p> <ul style="list-style-type: none"> a. avoids wastewater discharges to waterways, or b. if wastewater discharge to waterways cannot practicably be avoided, minimises wastewater discharge to waterways by re-use, recycling, recovery and treatment for disposal to sewer, surface water and groundwater. 	N/A	<p>All wastewater from site to be directed by a sewerage reticulation system to a Council operated sewage treatment plant for treatment and disposal. A WWMP is not considered to be necessary.</p>	

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

*SPP Code- Water Quality
Performance Outcomes and Acceptable Outcomes*



PERFORMANCE OUTCOME	ACCEPTABLE OUTCOME	SOLUTIONS ¹	COMMENTS	REVIEWER USE ONLY
PO3 Any non-tidal artificial waterway is located in a way that is compatible with the land use constraints of the site for protecting water environmental values in existing natural waterways.	AO3.1 If the proposed development involves a non-tidal artificial waterway: a. environmental values in downstream waterways are protected, and b. any groundwater recharge areas are not affected, and c. the location of the waterway incorporates low lying areas of a catchment connected to an existing waterway, and d. existing areas of ponded water are included, and	N/A	Development does not include the construction of a waterway.	
	AO3.2 Non-tidal artificial waterways are located: a. outside natural wetlands and any associated buffer areas and b. to minimise disturbing soils or sediments, and c. to avoid altering the natural hydrologic regime in acid sulfate soil and nutrient hazardous areas.	N/A	Development does not include the construction of a waterway.	
PO4 Any non-tidal artificial waterway is located in a way that is compatible with existing tidal waterways.	AO4.1 Where a non-tidal artificial waterway is located adjacent to, or is connected to, a tidal waterway by means of a weir, lock, pumping system or similar: a. there is sufficient flushing or a tidal range of >0.3 m, or b. any tidal flow alteration does not adversely impact on the tidal waterway, or c. there is no introduction of salt water into freshwater environments.	N/A	Development does not include the construction of a waterway.	
Design to avoid/minimise new impacts				

Amended Plan Required

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

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PERFORMANCE OUTCOME	ACCEPTABLE OUTCOME	SOLUTIONS ¹	COMMENTS	REVIEWER USE ONLY
PO5 Any non-tidal artificial waterway is not designed only for stormwater flow management or stormwater quality management.	AO5.1 Any non-tidal artificial waterway is designed and managed for any of the following end-use purposes: a. amenity including aesthetics, landscaping and recreation, or b. flood management, or c. stormwater harvesting as part of an integrated water cycle management plan, or d. aquatic habitat, and	N/A	Development does not include the construction of a waterway.	
	AO5.2 The end-use purpose of any non-tidal artificial waterway is designed and operated in a way that protects water environmental values.	N/A	Development does not include the construction of a waterway.	
Construct to avoid/minimise new impacts				
PO6 Construction activities for the development avoid or minimise adverse impacts on stormwater quality.	AO6.1 An erosion and sediment control plan (ESCP) is provided for the nominated design storm, and minimised when the nominated design storm is exceeded, by addressing design objectives listed below in Table A (construction phase) or local equivalent, for: a. drainage control, and b. erosion control, and c. sediment control, and d. water quality outcomes, and	✓	The SBSMP recommends that the approval be conditioned to require the completion of an Erosion and Sediment Control Plan in accordance with best practice guidelines and to satisfy the requirements of Table A.	
	AO6.2 Erosion and sediment control practices (including any proprietary erosion and sediment control products) are designed, installed, constructed, operated, monitored and maintained, and any other erosion and sediment control practices are carried out in accordance with local conditions and appropriate recommendations from a suitably qualified person, or	✓	The SBSMP recommends that the approval be conditioned to require the completion of an Erosion and Sediment Control Plan in accordance with best practice guidelines and to satisfy the requirements of Table A.	

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

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PERFORMANCE OUTCOME	ACCEPTABLE OUTCOME	SOLUTIONS ¹	COMMENTS	REVIEWER USE ONLY
	<p>AO6.2 The ESCP demonstrates how stormwater quality will be managed in accordance with an acceptable regional or local guideline so that target contaminants are treated to a design objective at least equivalent to Acceptable Outcome AO6.1</p>	✓	The SBSMP recommends that the approval be conditioned to require the completion of an Erosion and Sediment Control Plan in accordance with best practice guidelines and to satisfy the requirements of Table A.	
Operate to avoid/minimise new impacts				
<p>PO7 Operational activities for the development avoid or minimises changes to waterway hydrology from adverse impacts of altered stormwater quality and flow.</p>	<p>AO7.1 Development incorporates stormwater flow control measures to achieve the design objectives set out below in Table A (construction phase) and Table B (post construction phase). Both the construction and operational phases for the development comply with design objectives in Table A (construction phase), and Table B (post construction phase), or current best practice environmental management, including management of frequent flows, peak flows, and construction phase hydrological impacts.</p>	✓	The plan details the measures likely to be necessary during the construction phase to meet the requirements of Table A and the measures required for the operational phase to satisfy the requirements of Table B.	
<p>PO8 Any treatment and disposal of waste water to a waterway accounts for:</p> <ul style="list-style-type: none"> the applicable water quality objectives for the receiving waters, and adverse impact on ecosystem health or receiving waters, and in waters mapped as being of high ecological value, the adverse impacts of such releases and their offset. 	<p>AO8.1 See AO2.1</p>	N/A	<p>Wastewater from site to be directed by a sewerage reticulation system to a Council operated sewage treatment plant for treatment and disposal.</p> <p>Stormwater runoff from the site will be treated to achieve the water quality objectives nominated in the SPP.</p>	

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

*SPP Code- Water Quality
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PERFORMANCE OUTCOME	ACCEPTABLE OUTCOME	SOLUTIONS ¹	COMMENTS	REVIEWER USE ONLY
P09 Wastewater discharge to a non-tidal artificial waterway is managed in a way that maintains ecological processes, riparian vegetation, waterway integrity, and downstream ecosystem health.	AO9.1 Wastewater discharge to non-tidal artificial waterways is managed to avoid or minimise the release of nutrients of concern so as to minimise the occurrence, frequency and intensity of coastal algal blooms, and	N/A	Wastewater from site to be directed by a sewerage reticulation system to a Council operated sewage treatment plant for treatment and disposal. Stormwater runoff from the site will be treated to achieve the water quality objectives nominated in the SPP.	
	AO9.2 Development in coastal catchments avoids or minimises and appropriately manages soil disturbance or altering natural hydrology, and <i>Editor's note: Compliance with this outcome may be demonstrated by following the management advice in the guideline: Implementing Policies and Plans for Managing Nutrients of Concern for Coastal Algal Blooms in Queensland by the Department of Environment and Heritage Protection.</i>	N/A	Development is not located in a coastal catchment.	
	AO9.3 Development in coastal catchments: <ul style="list-style-type: none"> a. avoids lowering groundwater levels where potential or actual acid sulfate soils are present, and b. manages wastewaters so that: <ul style="list-style-type: none"> i. the pH of any wastewater discharged is maintained between 6.5 and 8.5 to avoid mobilisation of acid, iron, aluminium, and metals, and ii. holding times of neutralised wastewaters ensures the flocculation and removal of any dissolved iron prior to release, and iii. visible iron floc is not present in any discharge, and iv. precipitated iron floc is contained and disposed of, and wastewater and precipitates that cannot be contained and treated for discharge on site are removed and disposed of through trade waste or another lawful method. 	N/A	Development is not located in a coastal catchment.	

Moreton Bay Regional Council

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

*SPP Code- Water Quality
Performance Outcomes and Acceptable Outcomes*



PERFORMANCE OUTCOME	ACCEPTABLE OUTCOME	SOLUTIONS ¹	COMMENTS	REVIEWER USE ONLY
PO10 Any non-tidal artificial waterway is managed and operated by suitably qualified persons to achieve water quality objectives in natural waterways.	AO10.1 Any non-tidal artificial waterway is designed, constructed and managed under the responsibility of a suitably qualified registered professional engineer, Queensland (RPEQ) with specific experience in establishing and managing artificial waterways, and	N/A	Development does not include the construction of a waterway.	
	AO10.2 Monitoring and maintenance programs adaptively manage water quality in any non-tidal artificial waterway to achieve relevant water-quality objectives downstream of the waterway, and	N/A	Development does not include the construction of a waterway.	
	AO10.3 Aquatic weeds are managed in any non-tidal artificial waterway to achieve a low percentage of coverage of the water surface area (less than 10%). Pests and vectors (such as mosquitoes) are managed through avoiding stagnant water areas, providing for native fish predators, and any other best practices for monitoring and treating pests, and	N/A	Development does not include the construction of a waterway.	
	AO10.4 Any non-tidal artificial waterway is managed and operated by a responsible entity under agreement for the life of the waterway. The responsible entity is to implement the deed of agreement for the management and operation of the waterway that: <ol style="list-style-type: none"> a. identifies the waterway, and b. states a period of responsibility for the entity, and c. states a process for any transfer of responsibility for the waterway, and d. states required actions under the agreement for monitoring the water quality of the waterway and receiving waters, and e. states required actions under the agreement for maintaining the waterway to achieve the outcomes of this code and any relevant conditions of a development approval, and f. identifies funding sources for the above, including bonds, headworks charges or levies. 	N/A	Development does not include the construction of a waterway.	

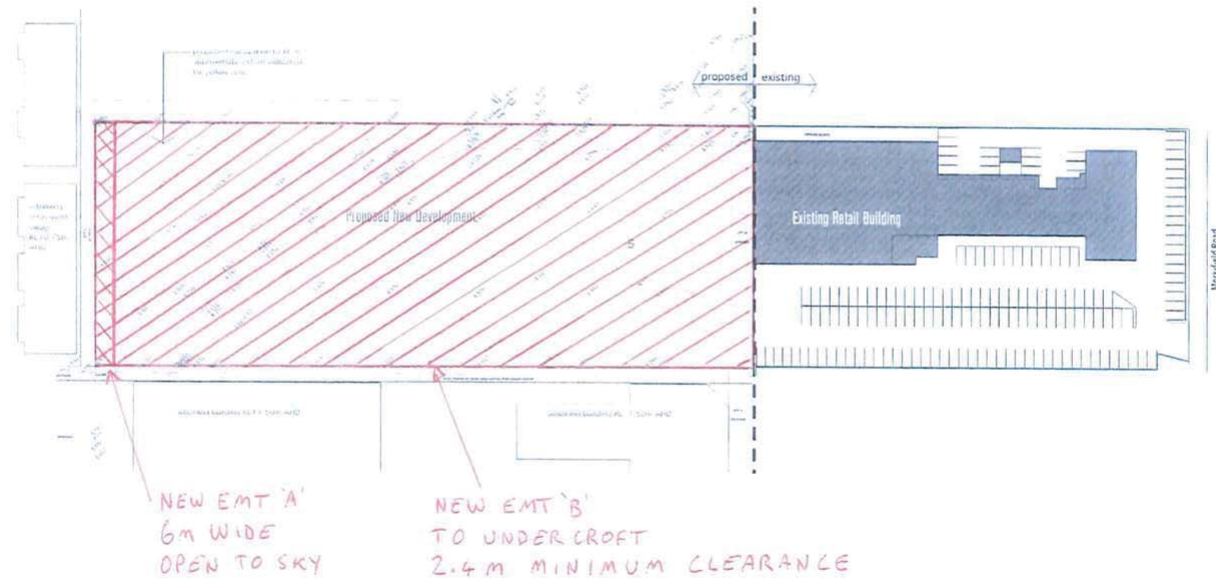
Amended Plan Required

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

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DEVELOPMENT DATA
RPD L 5
RP 88015

EXISTING DEVELOPMENT
Approx. GFA 2600m²
150 cars provided



EASEMENT REQUIREMENTS (FEB 2018):

	G-tower Group of Companies Client	Proposed Retail Center Project	142 Morayfield Road CABOOLTURE Location	Existing Site Plan Drawing	12/11/17 Date	Revised Issue for approval. Extent of easement added. DA request for stormwater. Description	Not for Construction Status	PG No.
					LU Layer	MG Model	1:1000 A3 14/17 Scale	AT 1417 Title

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41 Lucas Street, EASTON QLD, QUEENSLAND, AUSTRALIA. +617 5536 2633

Aquatic

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
25 September 2018

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Supporting Information

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)



Department of Infrastructure,
Local Government and Planning

Our reference: SDA-0415-020110
Your reference: DA/30058/2015/V2C

19 February 2016

The Chief Executive Officer
Moreton Bay Regional Council
PO Box 159
CABOOLTURE QLD 4510
mbrc@moretonbay.qld.gov.au

Attn: Ms Elissa McConaghy

Dear Ms McConaghy

Concurrence agency response—with conditions

134-140 Morayfield Road, Caboolture South
(Given under section 285 of the *Sustainable Planning Act 2009*)

The referral agency material for the development application described below was received by the Department of Infrastructure, Local Government and Planning under section 272 of the *Sustainable Planning Act 2009* on 11 May 2015.

Applicant details

Applicant name:	Genamson Holdings Pty Ltd
Applicant contact details:	C/- Urban Systems Ply Ltd PO Box 12, Paddington QLD 4064

Site details

Street address:	134-140 Morayfield Road, Caboolture South
Lot on plan:	Lot 5 on RP88015
Local government area:	Moreton Bay Regional Council

Application details

Proposed development:	Development Permit for a Material Change of Use for Retail Showroom, Restaurant, Shop and Take Away Food Outlet
-----------------------	---

Page 1

SEQ West Region
Level 4, 117 Brisbane Street
PO Box 129
Ipswich QLD 4305

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ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

SDA-0415-020110

Aspects of development and type of approval being sought

Nature of Development	Approval Type	Brief Proposal of Description	Level of Assessment
Material Change of Use	Development Permit	Mixed use development comprising retail showroom, restaurants, shops, take away food outlet and 208 space car parking area	Code Assessment

Referral triggers

The development application was referred to the department under the following provisions of the *Sustainable Planning Regulation 2009*:

Referral trigger Schedule 7, Table 3, Item 1 – State-controlled road

Conditions

Under section 287(1)(a) of the *Sustainable Planning Act 2009*, the conditions set out in Attachment 1 must be attached to any development approval.

Reasons for decision to impose conditions

Under section 289(1) of the *Sustainable Planning Act 2009*, the department must set out the reasons for the decision to impose conditions. These reasons are set out in Attachment 2.

Further advice

Under section 287(6) of the *Sustainable Planning Act 2009*, the department offers advice about the application to the assessment manager—see Attachment 3.

Approved plans and specifications

The department requires that the following plans and specifications set out below and in Attachment 4 must be attached to any development approval.

Drawing/Report Title	Prepared by	Date	Reference no.	Version /Issue
Aspect of development: Material Change of Use				
Site Plan	Aquatonic	March 2015	DA03	E

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
25 September 2018

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Supporting Information

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

SDA-0415-020110

A copy of this response has been sent to the applicant for their information.

For further information, please contact Kieran Hanna, Principal Planning Officer, SARA SEQ West on (07) 3432 2404, or email lpwchSARA@dilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Darren Cooper
A/Manager – Planning

enc: Attachment 1—Conditions to be imposed
Attachment 2—Reasons for decision to impose conditions
Attachment 3—Further advice
Attachment 4—Approved Plans and Specifications

cc: Genamson Holdings Pty Ltd care of Urban Systems Ply Ltd, flannanmorley@gmail.com
Department of Transport and Main Roads, north.coast.idas@tmr.qld.gov.au

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
25 September 2018

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Supporting Information

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

SDA-0415-020110

Our reference: SDA-0415-020110
Your reference: DA/30058/2015/V2C

Attachment 1—Conditions to be imposed

No.	Conditions	Condition timing
Development Permit for a Material Change of Use for Retail Showroom, Restaurant, Shop and Take Away Food Outlet		
Schedule 7, Table 3, Item 1 – State-controlled road—Pursuant to section 255D of the <i>Sustainable Planning Act 2009</i> , the chief executive administering the Act nominates the Director-General of the Department of Transport and Main Roads to be the assessing authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):		
1.	The development must be carried out generally in accordance with the following plans: <ul style="list-style-type: none"> • Site Plan, Drawing No. DA03 Revision E, prepared by Aquatonic and dated March 2015. 	At all times
2.	(a) Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road. (b) Any works on the land must not: <ul style="list-style-type: none"> (i) create any new discharge points for stormwater runoff onto the state-controlled road; (ii) interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road; (iii) surcharge any existing culvert or drain on the state-controlled road; and (iv) reduce the quality of stormwater discharge onto the state-controlled road. (c) RPEQ certification with supporting documentation must be provided to the Department of Transport and Main Roads, North Coast Region via North.Coast.IDAS@tmr.qld.gov.au (please quote TMR15-013897) confirming that the development has been designed and constructed in accordance with parts (a) and (b) of this condition.	(a) At all times (b) Prior to the commencement of use

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

SDA-0415-020110

Our reference: SDA-0415-020110
Your reference: DA/30058/2015/V2C

Attachment 2—Reasons for decision to impose conditions

The reasons for this decision are:

- To ensure the development is undertaken generally in accordance with the submitted plans of development submitted with the application.
- To ensure that the impacts of stormwater events associated with development are minimised and managed to avoid creating any adverse impacts on the state-controlled road.

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

SDA-0415-020110

Our reference: SDA-0415-020110
Your reference: DA/30058/2015/V2C

Attachment 3—Further advice

General advice	
1.	Stormwater Compliance: To ensure compliance with Condition 1, the applicant is requested to submit the detailed stormwater management design to the Development Assessment Team via North.Coast.IDAS@tmr.qld.gov.au of the Department of Transport and Main Roads for review and endorsement, before construction commences (please quote TMR15-013897). The review and endorsement of the stormwater management design, will ensure that the detention basin and stormwater management system complies with the requirements of Condition 1 and achieve a "no worsening" outcome

Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
25 September 2018

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Supporting Information

*ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

SDA-0415-020110

Our reference: SDA-0415-020110
Your reference: DA/30058/2015/V2C

Attachment 4—Approved plans and specifications

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

DEVELOPMENT DATA

RPD L 5
RP 88015

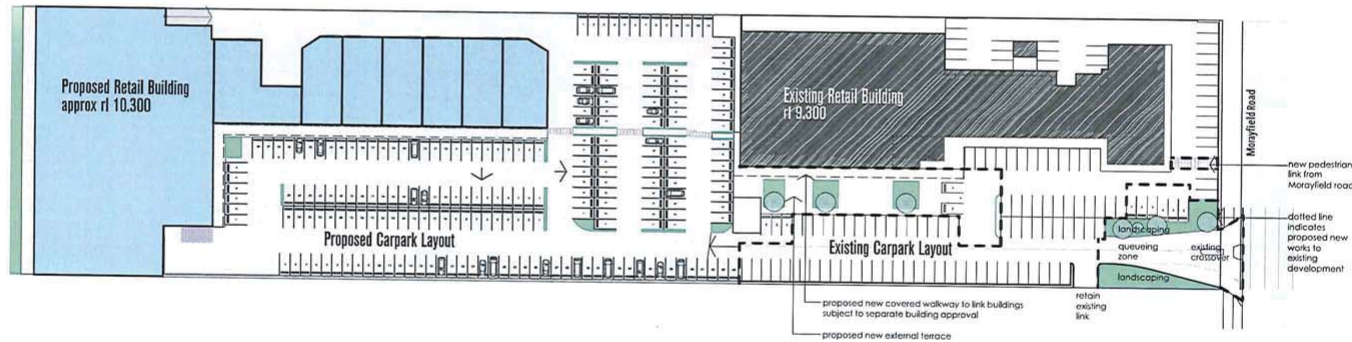
EXISTING DEVELOPMENT

Approx. GFA 2600m²
150 cars provided
20 extra cars provided

NEW DEVELOPMENT

Total GFA for tenancies 4375m²
18 cars lost to existing development
218 cars required
220 cars provided for new development

proposed new works to existing development



PLANS AND DOCUMENTS
Referred to in the
DEVELOPMENT APPROVAL
Date: 19/02/2016
QUEENSLAND GOVERNMENT

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	G. Lowe Group of Companies Client	Proposed Retail Center Project	140 Morayfield Road CABOOLTURE Location	General Site Arrangement Drawing	5/12/15 Date	DA request for information Assignment	Preliminary Status	1:1000 A3 Mar 15 Scale sheet size date	AT 1417 Job number	DA03 Eng number	E Revision
					LU Drawn	MG Checked	2013 ABN 921 17766788 ©	31 Lugga Street, BRISBANE QLD 4000, BRISBANE AUSTRALIA +617 3353 2633 Aquatonic			

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Infrastructure Charges Notice



Original Notice (s640 SPA)

ABN 92 967 232 136

Moreton Bay Regional Council
Caboolture Office, 2 Hasking Street, Caboolture Qld 4510
PO Box 159, CABOOLTURE QLD 4510

Approval No:	DA/30058/2015/V2C	Applicant:	Genamson Holdings Pty Ltd
Approval Description:	Proposed commercial development	Stage:	1
Based On:	2018/19 financial year	Applicant Address:	Genamson Holdings Pty Ltd C/- Urban Systems Pty Ltd PO Box 12 PADDINGTON QLD 4064
Version of Charges Resolution:	Ver 7 - 11 December 2017	Owner:	Genamson Holdings Pty Ltd
Proportional Split (MBRC/UW):	2017/18 financial year Adopted 60/40	Owner Address:	Genamson Holdings Pty Ltd Suite 44 650 George Street SYDNEY NSW 2000
Total Levied Charges:	\$485,191.20	Date Charges Payable:	In accordance with the Sustainable Planning Act 2009
<p>The Total Levied Charge is calculated as the Total Charge less any Offset available as identified below in an Infrastructure Agreement or a condition of the development approval. Where the Offset exceeds the Total Charge and a refund is available, the Total Levied Charge is zero and any refund is addressed in the Refund section of this Infrastructure Charges Notice.</p>			

Property Details

Property Address	Real Property Description
134-140 Morayfield Road, CABOOLTURE SOUTH QLD 4510	Lot 5 RP 88015

Charge Details

Description	Existing Demand (Credit)	Proposed Demand	Unit of Demand	Demand Factor	Charge Rate per Unit of Demand	Total Charge
NON-RESIDENTIAL						
Commercial (bulk goods)						
Proposed Showroom tenancy	0.0000	2750.0000	m2 GFA	1.0000	\$84.99	\$233,722.50
Commercial (bulk goods) - Stormwater (Impervious)						
Additional impervious area	0.0000	12100.0000	m2 impervious area	1.0000	\$6.06	\$73,326.00
Commercial (retail)						
Proposed Shop, Resturant and take away food outlet tenancies	0.0000	1630.0000	m2 GFA	1.0000	\$109.29	\$178,142.70
SUB TOTAL						\$485,191.20
TOTAL GST						\$0.00
GRAND TOTAL						\$485,191.20

Infrastructure Agreement Offset Details

IA Number (Council Ref)	Description

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD, CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Infrastructure Charges Notice



Original Notice (s640 SPA)

ABN 92 967 232 136

Moreton Bay Regional Council
Caboolture Office, 2 Hasking Street, Caboolture Qld 4510
PO Box 159, CABOOLTURE QLD 4510

Agreement Date	
----------------	--

Infrastructure ID Number	Infrastructure Item Description	Delivery Status ¹	Original Agreed Value of Item ²	Previous Value of Item Used ³	New Value of Item Used ⁴	Value of Item left Available ⁵

Notes

- Where an Infrastructure Item has not been delivered, the value of the Infrastructure Item as an offset has been deducted from the charge on an expectation that the Infrastructure Item will be delivered concurrently with, or before, payment of the Levied Charge is due as payable to Council. AVAILABLE means the item has been delivered at the date of issue of this Infrastructure Charges Notice whereas FUTURE means the item has not yet been delivered at the date of issue of this Infrastructure Charges Notice.
- Represents the amount of the Original Agreed Value of the Infrastructure Item.
- Represents the amount of the Original Agreed Value of the Infrastructure Item used in another Infrastructure Charges Notice (e.g. an earlier stage of the development).
- Represents the amount of the Original Agreed Value of the Infrastructure Item used in this Infrastructure Charges Notice to determine the Total Levied Charge.
- Represents the amount of the Original Agreed Value of the Infrastructure Item remaining after the issuing of this Infrastructure Charges Notice.

In respect to the Notes above, where provided for in an Infrastructure Agreement or the Council's Infrastructure Charges Resolution, the value of the infrastructure has been indexed to the date of issue of this Infrastructure Charges Notice.

Development Condition Offset Details

Condition and DA Number	Infrastructure Item Description	Delivery Status ¹	Original Agreed Value of Item ²	Previous Value of Item Used ³	New Value of Item Used ⁴	Value of Item left Available ⁵

Notes - refer to Notes above

Refund Details

In accordance with s637(1)(f) of the Sustainable Planning Act 2009, any refund applicable is listed below and will be refunded in accordance with the terms listed in an infrastructure agreement, or if there is no infrastructure agreement, in accordance with the Council's Infrastructure Charges Resolution Implementation Policy in effect at the date when the refund is payable and the Infrastructure Item has been Delivered⁶ to Council.

Infrastructure Item	Condition Number	Value of the Infrastructure Item Used as Offset in this ICN	Value of Offset available for Refund or transfer to other development ⁷

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Infrastructure Charges Notice

Original Notice (s640 SPA)



ABN 92 967 232 136

Moreton Bay Regional Council
Caboolture Office, 2 Hasking Street, Caboolture Qld 4510
PO Box 159, CABOOLTURE QLD 4510

Notes

6. Delivered is taken to be (a) for land, the date when the land is transferred to Council in fee simple or dedicated as a reserve (e.g. road reserve), and/or (b) for works, the date when the works are accepted by Council in writing and in full as being 'On Maintenance', unless agreed to otherwise by Council in writing.
7. Where an Infrastructure Item has not been Delivered, the value of any refund is not available until the Infrastructure Item has been delivered to Council and has been confirmed by the Council as exceeding any Offset available and is in accordance with the Council's Infrastructure Charges Resolution Implementation Policy.

INFORMATION NOTICE

THE DECISION AND REASONS FOR IT:

The decision to issue this Infrastructure Charges Notice is to support the objectives of the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014 that provides for the establishment of a long-term local infrastructure planning and charging framework in Queensland that supports local government's sustainability and development feasibility.

The Notice has been compiled in accordance with the statutory requirements of the:

- Moreton Bay Regional Council Infrastructure Charges Resolution (as amended)
- State Planning Regulatory Provision (adopted charges) July 2012 (as amended)
- Sustainable Planning Act 2009
- Sustainable Planning (Infrastructure Charges) Amendment Act 2014.

SUBMISSIONS REGARDING THIS NOTICE

The recipient of an Infrastructure Charges Notice may make a submission about the Notice within the relevant appeal period (20 days from receipt of the Notice) in accordance with Chapter 8 Part 2 Subdivision 5 of the Sustainable Planning Act 2009.

APPEALS ABOUT AN INFRASTRUCTURE CHARGES NOTICE

The recipient of an Infrastructure Charges Notice may appeal to the court about the decision to give the notice in accordance with Chapter 7 Part 1 Division 10 s 478 of the Sustainable Planning Act 2009.

TO WHOM THE CHARGE MUST BE PAID

Payment of the Charge must be made payable to MORETON BAY REGIONAL COUNCIL via Customer Service or Development Services, PO Box 159, Caboolture Qld 4510

The Infrastructure Charge has been calculated in accordance with the charges stated in Council's Infrastructure Charges Resolution. This notice will be escalated to time of payment to the extent permitted under legislation in force at that time.

PAYMENT DUE BY:

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Infrastructure Charges Notice

Original Notice (s640 SPA)



ABN 92 967 232 136

Moreton Bay Regional Council
Caboolture Office, 2 Hasking Street, Caboolture Qld 4510
PO Box 159, CABOOLTURE QLD 4510

In accordance with the Sustainable Planning Act 2009 - extract as follows:

A levied charge is payable -

- (a) if the charge applies to reconfiguring a lot that is assessable development or development requirement compliance assessment - before the local government approves the plan of subdivision for the reconfiguration;
- or
- (b) if the charge applies to building work - before the certificate of classification or final inspection certificate for the building work is given;
- or
- (c) if the charge applies to a material change of use - before the change happens;
- or
- (d) otherwise - on the day stated in the infrastructure charges notice, negotiated infrastructure charges notice or amended infrastructure charges notice.

Notice is hereby given that the abovementioned infrastructure charges levied by Moreton Bay Regional Council in compliance with the Sustainable Planning Act 2009, Chapters 8 and 9 on land described for the period described, and such charges are DUE AND PAYABLE BY THE TIME STIPULATED IN THIS NOTICE. These charges plus any arrears and interest thereon may be recovered by legal process without further notice if unpaid after the time stipulated in this notice.

Infrastructure Charges Notice IMPORTANT INFORMATION

PAYMENT

This notice is due and payable by the due time shown. Cheques, money orders or postal notes should be made payable to MORETON BAY REGIONAL COUNCIL and crossed "Not Negotiable". Change cannot be given on cheque payments. Property owners will be liable for any dishonour fees.

OVERSEAS PAYEES

Please forward your infrastructure charges payment by way of a bank draft for the required amount in Australian dollars.

GOODS AND SERVICES TAX

GST is not applicable to the Infrastructure Charges contained in this Notice.

INFRASTRUCTURE CHARGE IS SUBJECT TO PRICE VARIATION

The Levied Charge in this notice will be escalated to time of payment to the extent permitted under legislation and the Council's Infrastructure Charges Resolution in force at that time.

Where indexation is applicable, an online spreadsheet calculator is available to assist with making the calculation
<https://www.moretonbay.qld.gov.au/general.aspx?id=155295>

Council takes no responsibility for the accuracy of the calculator.

PLEASE CONTACT DEVELOPMENT SERVICES BEFORE MAKING PAYMENT.

INFRASTRUCTURE CHARGE ENQUIRIES

ITEM 2.1 - #4 PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

Infrastructure Charges Notice

Original Notice (s640 SPA)



ABN 92 967 232 136

Moreton Bay Regional Council
Caboolture Office, 2 Hasking Street, Caboolture Qld 4510
PO Box 159, CABOOLTURE QLD 4510

Enquiries regarding this infrastructure charge notice should be directed to MORETON BAY REGIONAL COUNCIL, Development Services, Caboolture Office, during office hours, Monday to Friday on phone (07) 3205 0555.

METHODS OF PAYMENT

PAYMENT BY MAIL

Confirm the current Infrastructure Charge applicable and obtain an updated payment notice from Council's Development Services.

Present this updated payment notice immediately with your payment to: MORETON BAY REGIONAL COUNCIL, PO Box 159, Caboolture Qld 4510

NOTE: Cheques must be made payable to MORETON BAY REGIONAL COUNCIL

PAYMENT AT COUNCIL OFFICES

Confirm the current Infrastructure Charge applicable and obtain an updated payment notice from Council's Website.

Present this updated payment notice with your payment to Moreton Bay Regional Council at the Customer Service Counters.

NOTE: Cheques must be made payable to MORETON BAY REGIONAL COUNCIL

PAYMENT MADE BY CREDIT CARD

Credit Cards accepted: Mastercard or Visa

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

#5 Letter of Objection from HWL Ebsworth 7 June 2018



Our Ref: PJB:LIW:688403
Your Ref:

7 June 2018

Chief Executive Officer
Moreton Bay Regional Council
220 Gympie Road
STRATHPINE QLD 4500

Email: ceo@moretonbay.qld.gov.au
CC: angus.conaghan@moretonbay.qld.gov.au;

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Sir

**Genamson Holdings Pty Ltd and Moreton Bay Regional Council
134-140 Morayfield Road, Caboolture South**

We act for Genamson Holdings Pty Ltd (**Genamson**), the registered owner of the above land.

We refer to:

- our client's Notice of Objection dated 29 March 2018 (**Notice of Objection**); and
- the report prepared by Mr Michael Marshall (**Delegate**) as delegate of the Moreton Bay Regional Council (**Council**) dated 24 May 2018 (**Second Delegate Report**).

We repeat and rely upon the matters contained in the Notice of Objection and otherwise comment on the Second Delegate Report (and the resumption process more generally) as outlined below.

1. No authority to issue NIR or Amended NIR

1.1 It has recently come to our client's attention that the proposed resumption of its land has not been properly authorised by the Council.

1.2 In that respect, it is our client's position that the Chief Executive Officer (**CEO**) was not authorised to issue:

- (a) the Notice of Intention to Resume dated 12 October 2017 (**NIR**); and

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

Doc ID 563128443/v1
Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

ABN 37 246 549 189

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

(b) the Amended Notice of Intention to Resume dated 20 February 2018
(Amended NIR).

1.3 This is a serious issue as there is no ability for the Council to retrospectively remedy these matters, and in the circumstances the NIR and Amended NIR are void ab initio.

Facts

1.4 On 19 July 2016, the Coordination Committee of the Council passed a resolution (**19 July Resolution**) in the following terms:

1. That the Council acquire the land described in the confidential report in accordance with Policy No. 12-2150-057 Resumption and Acquisition of Land.¹

2. That the Council authorise the Chief Executive Officer to do all things necessary to give effect to recommendation 1.

(emphasis ours)

1.5 The 19 July Resolution was adopted by the General Meeting of the Council on 19 July 2016.

1.6 On 31 January 2017, the Coordination Committee of the Council passed the following resolution (**31 January Resolution**):

1. That Council, having duly considered this report, is of the opinion that part of Lot 5 on RP88015 containing an approximate area of 1.22 hectares and being part of the land contained in Title Reference 18406052 and an easement over part of Lot 5 on RP88015 containing an approximate area of 720 square metres and being part of the land contained in Title Reference 18406052 be acquired for drainage purposes, and for purposes incidental to carrying out drainage purposes, respectively.

2. That the Chief Executive Officer submit the necessary application to the Department of Natural Resources and Mines requesting that the above land, and interest in land, be taken and vested in the Council, in accordance with the Acquisition of Land Act 1967.

3. That Council confirms that it remains willing to acquire by agreement the land, and interest in land, the subject of the Notice of Intention to Resume.

1.7 The 31 January Resolution was adopted by the General Meeting of the Council on 31 January 2017.

1.8 On 21 March 2017, the Coordination Committee of the Council passed the following resolution (**21 March Resolution**):

1. That Council repeal its decision to take part of lot 5 on RP88015, and an easement over part of lot 5 on RP88015, which is recorded at:

a) item 2.3, page 17/82 of Council's Coordination Committee Report dated 31 January 2017; and

¹ The land being the subject land.

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

b) item 12.1, page 17/38 of Council's General Meeting Minutes dated 31 January 2017.

2. That Council note that a fresh objection hearing will be scheduled to allow the landowner to be heard on its objections to the proposed taking of part of lot 5 on RP88015, and an easement over part of lot 5 on RP88015, described in the Notice of Intention to Resume issued to the landowner dated 11 August 2016.

- 1.9 The 21 March Resolution was adopted by the General Meeting of the Council on 21 March 2017 and accordingly, the 31 January Resolution was repealed.
- 1.10 By resolution dated 28 March 2017 and adopted 28 March 2017 (**28 March Resolution**), the Coordination Committee of the Council delegated certain powers of the Council under the *Acquisition of Land Act 1967 (AOLA)* to the Chief Executive Officer, including *inter alia*:
- (a) power to prepare, serve and amend a Notice of Intention to Resume land, to discontinue a resumption and to give notice to the land registry; and
 - (b) power to consider the grounds of objection to the taking of land and to amend the notice of intention to resume or discontinue the resumption.²
- 1.11 On 12 October 2017, the Director of Executive and Property Services of the Council purported to issue the NIR under delegated authority from the Chief Executive Officer.
- 1.12 On 20 February 2018, the Director of Executive and Property Services of the Council purported to issue the Amended NIR under delegated authority from the Chief Executive Officer.
- 1.13 Since the 21 March Resolution, the Council has not:
- (a) passed any further resolutions authorising the Chief Executive Officer to acquire the Land;
 - (b) passed any resolutions authorising:
 - (i) the issue of the NIR;
 - (ii) the issue of the Amended NIR; or
 - (iii) the taking of any step in the resumption process pursuant to the AOLA

No proper delegation

- 1.14 Point 2 of the 19 July Resolution authorises the Chief Executive Officer of the Council to "do all things necessary" to give effect to Point 1 of that resolution.
- 1.15 By Point 1 of the 19 July Resolution, the Council resolved to acquire the subject land "in accordance with Policy No. 12-2150-057 Resumption and Acquisition of Land" (**Policy**).

² Items 1 and 2 of Schedule 1 of Appendix A of the Supporting Information.

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1.16 Accordingly, the Chief Executive Officer was only authorised to do all things necessary insofar as he was authorised to do those things under the Policy.

1.17 Relevantly, the Policy provides as follows:

3. The Chief Executive Officer is also delegated power to undertake the resumption process necessary to secure land without further reference to Council in each of the following situations where the Chief Executive Officer, in consultation with the Mayor, is satisfied appropriate funding will be available for the acquisition costs:

(i) The land is required within 5 years for projects contained in Council's current capital works program adopted by resolution of Council;

(ii) The land is identified for a project in a Planning report previously approved by the Council;

(iii) The land is required for a project (Divisional Works Program) identified in accordance with the Allocation of Divisional Funds to Capital Works Policy;

(iv) The Chief Executive Officer is satisfied the resumption is minor.

1.18 The effect of the Policy is that the Chief Executive Officer may only undertake the resumption process without further notice to the Council where:

(a) he is satisfied (in consultation with the Mayor) that there is appropriate funding for the acquisition cost; and

(b) one of the conditions in 3(i) to 3(iv) of the Policy is met.

1.19 There is no evidence that:

(a) the Chief Executive Officer consulted with the Mayor concerning funding for the acquisition cost; and

(b) if such consultation occurred, there is no evidence that the Chief Executive Officer could be satisfied that appropriate funding was available.

1.20 Further, none of the conditions in 3(i) to 3(iv) of the Policy is met in respect of the subject acquisition.

1.21 It follows that the issue of the NIR and the Amended NIR (purportedly under delegation from the Chief Executive Officer), in the absence of any further resolution by the Council, were each *ultra vires*.

1.22 Even if the Chief Executive Officer was said to be acting under the powers delegated to him by the 28 March Resolution, the delegation of those powers was expressly limited as follows:

The powers delegated to the CEO under Schedule 1 (in Appendix A of the Supporting Information for this Item) are only exercisable by the CEO in respect of land, if the CEO in consultation with the Mayor is satisfied that appropriate funding will be available for any relevant acquisition costs and:

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- a. the land is required within five years for projects contained in Council's current capital works program adopted by resolution of Council; or
- b. the land is identified for a project in a Planning report previously approved by the Council; or
- c. the land is required for a project (Divisional Works Program) identified in accordance with the Allocation of Divisional Funds to Capital Works Policy; or
- d. the Chief Executive Officer is satisfied that the resumption is minor.

1.23 In the circumstances, the issuance of the NIR and Amended NIR was outside of the Chief Executive Officer's delegation.

Expired delegation

1.24 Section 257 of the *Local Government Act 2009* (LGA) provides as follows:

(1) A local government may, by resolution, delegate a power under this Act or another Act to—

(a) the mayor; or

(b) the chief executive officer...

...

(4) A delegation to the chief executive officer under subsection (1) must be reviewed annually by the local government.

1.25 Point 2 of the 19 July Resolution authorises the Chief Executive Officer the power to "do all things necessary to give effect to recommendation 1". This purported authorisation is clearly in the nature of a delegation under s257(1) of the LGA as:

- (a) it purports to authorise the Chief Executive Officer to exercise powers that would otherwise only be able to exercised by the Council; and
- (b) each of the NIR and the Amended NIR is purported to be issued under the delegated authority of the Chief Executive Officer.

1.26 The delegation to the Chief Executive Officer pursuant to the 19 July Resolution was not reviewed by the Council on or before 19 July 2017 and accordingly, has expired.

1.27 In the circumstances, the Chief Executive Officer was not entitled to act under any authority delegated to him by the 19 July Resolution after 19 July 2017. Accordingly, he was not empowered to issue the NIR or the Amended NIR pursuant to the 19 July Resolution.

2. Second Delegate Report

2.1 Our comments in respect of the Second Delegate Report are outlined below.

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Apprehended bias

- 2.2 Our client maintains its position that a reasonable apprehension of bias arises from the appointment of Mr Michael Marshall as the Council's delegate to hear objections in response to the Amended NIR.
- 2.3 The Delegate's response to this is troubling, as he asserts:
- (a) he is not acting as a judicial officer nor as an administrator and therefore "the actions of the delegate cannot be impugned on the basis of an apprehension of bias";
 - (b) he has no power to make a decision as to whether the resumption ought to proceed but only to hear objections and provide a report to the Council (which, as the constructing authority, will make the decision); and
 - (c) he cannot make findings of fact but nonetheless can express "views, opinions and conclusions" about matters raised in the objection hearing.
- 2.4 At a general level, it is necessary to emphasis that the Delegate is performing a role that the Council would otherwise be required to undertake itself. Accordingly, it is incumbent upon the Delegate to conduct the hearing according to the same standards to which the Council itself would be held, had it chosen to conduct the hearing itself.
- 2.5 Indeed, this was recognised by Wilson J in *Council of the City of Caloundra v Minister for Natural Resources & Ors* (1999) 106 LGERA 233 at [15]:
- The function of the delegate under s 8 is to hear and report as an alternative to a hearing by the constructing authority itself. It is then for the constructing authority to consider the grounds of the objection and, unless it decides to discontinue the resumption or to amend the notice of intention to resume, to make an application to the Minister under s 9(3). That the delegate does not consider and/or make the application to the Minister does not detract from the fact that he or she is doing something which otherwise the constructing authority would be required to do itself.*
- (emphasis ours)
- 2.6 Further, in considering the Second Delegate Report, it is important for the Council to be cognisant of the fact that any error in any part of the Second Delegate Report that is adopted by the Council in making its decision will similarly infect the Council's decision with error.³
- 2.7 In this respect, the Delegate's reliance upon his duty to prepare a report (and not make a final decision) is misplaced in circumstances where:
- (a) he is, in effect, standing in the shoes of the Council in conducting the hearing;
 - (b) his report must be based on all relevant facts and evidence;⁴ and

³ *Sean Investments Pty Ltd v Mackellar* (1981) 38 ALR 363, 371; *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 66.

⁴ *White v Ryde Municipal Council* [1977] 2 NSWLR 909.

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- (c) if he is to express a "view, opinion or conclusion", it follows that such a "view, opinion or conclusion" must be based on logically probative evidence or it will otherwise infect the Council's decision with error if it is relied upon by the Council.
- 2.8 Indeed, it is difficult to see what use any "view, opinion or conclusion" expressed by the Delegate will be to the Council if that "view, opinion or conclusion" is not based on logically probative facts.
- 2.9 We also have concern with the fact that the Delegate, in both the Second Delegate Report and his previous report, has, in respect of a number of grounds of objection, expressed a "view, opinion or conclusion" that is adverse to our client.
- 2.10 Conversely, a number of grounds that are favourable to our client (and adverse to the continuation of the resumption) have been dismissed by the Delegate as legal matters upon which it is inappropriate for him to comment.
- 2.11 This is curious in circumstances where the Delegate:
 - (a) is an experienced solicitor who maintains a practice which, *inter alia*, deals with matters of administrative law as they relate to local governments;
 - (b) was presumably delegated the power to conduct the objection hearing by the Chief Executive Officer in accordance with s259(1) of the LGA, which requires him to be "appropriately qualified"; and
 - (c) expresses views on other matters based on his "experience in this area of law".

Reliance on previous report

- 2.12 At the outset, it is not appropriate for the Delegate to rely on his report dated 31 January 2018 (**Previous Report**).
- 2.13 That is so because s9(4AB) AOLA provides as follows:

If the constructing authority amends the notice of intention to resume, the period within which an entity may serve on the constructing authority an objection to the taking of the land starts again from the day the notice of the amendment is given to the entity.
- 2.14 In this respect, the AOLA makes it clear that the objection process in respect of the Amended NIR is not an addendum to the objection process for the NIR but that the entire process starts again.
- 2.15 Indeed, the Delegate appears to criticise our client for reprising a number of grounds of objection that he asserts were dealt with in the Previous Report. The statutory language of the AOLA makes it clear that this is not only desirable but is what is required.
- 2.16 Accordingly, it is inappropriate for the Delegate to have regard to the Previous Report or for the Previous Report to be put before the Council in making its decision in respect of the Amended NIR.

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- 2.17 This is particularly so in circumstances where the Previous Report made a recommendation to the Council (namely, to proceed with the resumption) from which the Delegate now (appropriately) resiles.⁵

Regard to Judgment

- 2.18 At paragraph 6.14 of the Second Delegate Report, the Delegate addresses the regard that the Council is said to have had to the judgment of his Honour Judge Rackemann⁶ (**Judgment**)).
- 2.19 In that respect, the Delegate seems to assert that:
- (a) the Council had regard to the Judgment in issuing the NIR/Amended NIR; and
 - (b) as the suitability of the Koala Park for the location of any proposed detention basin was a live issue in the proceedings, the Council had regard to that matter in issuing the NIR/Amended NIR.
- 2.20 The Delegate's assertion in this regard is entirely unmeritorious. There is no evidence whatsoever that the Council had regard to the Judgment in issuing the NIR/Amended NIR.
- 2.21 If the Council did, indeed, have regard to the Judgment, it should provide the results of its deliberations to Genamson for comment as a matter of procedural fairness.
- 2.22 We note that the Delegate has appropriately recommended that the Council have regard, or further regard, to the Judgment.

Unreasonableness

- 2.23 At paragraph 6.19 of the Second Delegate Report, the Delegate attempts to dismiss Genamson's objection on the grounds of unreasonableness as, in his opinion, the documents and reports attached to the Amended NIR disclose a reasonable basis for the Council to seek to take part of the Land.
- 2.24 In this respect, the Delegate has failed to justify his opinion and if the Council were to rely upon it in making its decision, it would be led into error.

Procedural Fairness/Natural Justice

- 2.25 Genamson has not been provided with any of the documents to which the Delegate seems to assert that Council had regard in issuing either the NIR or the Amended NIR.
- 2.26 As a matter of procedural fairness, Genamson should be provided with the following documents, and Council's consideration of them, and be given a further opportunity to comment:
- (a) all documents to which the Council had regard in issuing the NIR and the Amended NIR; and

⁵ See paragraph 6.25 of the Second Delegate Report.

⁶ *Genamson Holdings Pty Ltd v Moreton Bay Regional Council* [2017] QPEC 56.

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- (b) the results of the Council's consideration of any further material (such as the Judgment or Dr Johnson's report) following its consideration of any report from the Delegate (including any further report).

3. Previous Report

- 3.1 For completeness, we have addressed matters within the Previous Report with which we take issue below.

Procedural Fairness/Natural Justice

- 3.2 At paragraph 8.9 of the Previous Report, the Delegate asserts that procedural fairness/natural justice has been afforded to Genamson by reason of the opportunity afforded to it to request further document from the Council. With respect, that is not the case.

- 3.3 In accordance with the Delegate's directions, HWL Ebsworth, on behalf of Genamson, wrote to the Council seeking:

- (a) the terms and conditions of the Delegate's appointment as the delegate of Council;
- (b) any further information requested by the Delegate, other than that provided in the brief of 20 November 2017;
- (c) any selection criteria documents for the proposed resumption;
- (d) any reports relevant to the assessment of any and all alternative sites for drainage purposes, and easement purposes incidental to carrying out drainage purposes, for the proposed resumption;
- (e) all documents relating to the Council's decision to rescind its previous decision to resume the land;
- (f) any information relating to the value of the land;
- (g) any advice in the Council's possession concerning the resumption of the land and/or the accommodation of the regional detention basin on the land, including, but not limited to:
 - (i) any advice received from external consultants, including Mr Steve Clark; or
 - (ii) any legal advice received either internally, or externally, concerning the proposed resumption, including from Mr Andrew Skoien of counsel;
- (h) any communications to, from, or between Council officers in respect of the proposed resumption, including, but not limited to, emails, letters and internal memorandums; and

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- (i) any communications to, from, or between councillors (in particular, Councillors Hain, Sutherland and Charlton) concerning the proposed resumption, including, but not limited to, emails, letters and internal memorandums.

(Requested Documents)

- 3.4 On 15 December 2017, the Council wrote to HWL Ebsworth declining to provide any of the Requested Documents.
- 3.5 Accordingly, Genamson has been deprived of the opportunity to consider and comment upon any documents considered by the Council in issuing the NIR, other than:
 - (a) the Stormwater Quantity Infrastructure for Caboolture and Burpengary Catchments 2009 report, which has been overtaken by events; and
 - (b) the draft Feasibility Study, which is neither soundly-based, nor in final form.
- 3.6 In the circumstances, Genamson has not been afforded natural justice and/or procedural fairness.

Locate Infrastructure Elsewhere

- 3.7 At paragraph 8.29 of the Previous Report, the Delegate criticises Genamson, and its expert Dr Johnson, for not identifying any alternative sites for the location of the proposed detention basin other than the Koala Park and/or 44 Adelaide Drive. This assertion appears to misapprehend the role of the objector landholder in the objection process.
- 3.8 Rather than Genamson being required to provide the Council with a list of alternative sites to the subject land, it is for the Council to prove to Genamson that it has considered such alternative sites. With the exception of a few lines within the draft Feasibility Study (which has not been updated following the Judgment) there has been no evidence provided to Genamson that any alternative sites have been considered in any detail whatsoever.
- 3.9 Further, at paragraph 8.30 of the Previous Report, the Delegate attempts to construe the Judgment as supporting the resumption of the subject land (as opposed to locating the proposed detention basin on the Koala Park). That is simply not the case.
- 3.10 The Judgment, in fact, acknowledged that:
 - (a) the Koala Park provided an opportunity to locate "at least some" of the detention basin function;⁷ and
 - (b) locating the proposed detention basin on the Koala Park was only an issue if detention in the order of 21,000m³ were required.⁸
- 3.11 In that respect, the comments of his Honour Judge Rackemann in respect of the size of the proposed detention basin are as follows:

⁷ Ibidem, [57].

⁸ Ibid. [58].

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[79] Dr Johnson also pointed out that the justification for, or benefits of, a detention basin with the particular volume of 21,000m³ are unknown. The 2009 report (which was withheld from Dr Johnson for some time) referred to a figure of 21,000m³, but is dated and, in his view, unsubstantiated at this time. Mr Clark's evidence was to the effect that there is the potential for the increase in upstream intensification of development to produce significant increases in inflows in Sheepstation Creek and a detention basin is needed, but the council did not rely on his evidence to justify a particular sizing. The figure of 21,000m³ was not picked up in any of the infrastructure charging resolutions or in the PIP and the planned detention basin has not been the subject of detailed design.

- 3.12 There has been no evidence provided to Genamson that the Council has considered in detail, or at all:
- (a) the possibility of locating part of the detention basin upon the Koala Park; or
 - (b) whether the particular volume of 21,000m³ is, in fact, required, such that the entirety of the detention basin could be located on the Koala Park (in the event that a lesser capacity is required).
- 3.13 Accordingly, the conclusion of the Delegate at paragraph 8.31 of the Previous Report that it is "self-evident" that the Council has considered the Koala Park as an alternative location is incorrect, especially in circumstances where the Council has refused to provide any documents post-dating the Judgment evidencing its considerations. Further, if the Council has, in fact, considered these matters, Genamson should be provided with evidence of its deliberations as well as an opportunity to provide comment upon them.
- 3.14 Finally, the Delegate's criticism of Genamson at paragraph 8.32 for providing "very little information" concerning the possibility of locating the proposed detention basin (or part of the proposed detention basin) at 44 Adelaide Drive is misplaced. The correct test is to examine whether or not the Council has considered this site, of which there has been no evidence provided to Genamson.

Co-Location

- 3.15 At the outset, paragraph 8.34 mischaracterises the nature of Genamson's objection in this regard. This ground of objection relates to not only the Council's failure to demonstrate that the drainage purpose cannot be adequately accommodated on the land without taking the part of the land outlined in the NIR but a failure to demonstrate that all of the land proposed to be taken is required for the purpose stated in the NIR.
- 3.16 Further, the conclusion reached by the Delegate in paragraphs 8.36 and 8.37 of the Report is unsupported by any evidence that has been provided to Genamson. Far from being clear, there is, in fact, no evidence whatsoever that the Council has, in any way, considering the findings contained in the Judgment.
- 3.17 Indeed, the only consideration given by the Council (albeit very briefly) to the Co-Location Option is contained in the draft Feasibility Study, which was undertaken (although never completed) well before the consideration of the Co-Location by the parties' hydraulic experts and the findings of his Honour Judge Rackemann contained in the Judgment. Curiously, to Genamson's knowledge, there have been no updates or attempts to complete the draft Feasibility Study since the Judgment was delivered.

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- 3.18 In any event, paragraph 80 of the Judgment does not provide a basis for the Council to conclude that the public interest is better served by the taking of the land and the construction of a standalone detention basis as the Delegate concludes in paragraph 8.38 of the Previous Report.
- 3.19 In the Judgment, his Honour was concerned only as to whether it was technically feasible to provide 21,000m³ of detention co-located with the proposed development without unacceptable impacts, which he indeed concluded it was. It follows that the drainage purposes can be accommodated without taking the land as proposed in the NIR.
- 3.20 Section 9(1) of the AOLA, requires that, in order to make an application that the land be taken, the Council must be of the opinion that the land is required for the drainage purposes. This goes beyond the land being taken being the Council's preferred option. Given that the Judgment establishes that a Co-Location option is technically feasible without unacceptable impacts, there is no reasonable basis upon which the Council could be satisfied that the land is required for the drainage purposes.
- 3.21 At paragraph 8.49 of the Previous Report, the Delegate concludes that the materials contained in the Council's brief provide a reasonable basis for the Council to seek to resume the land. This is curious in circumstances where that material did not disclose any consideration of the Judgment, which the Delegate concludes, at paragraph 8.31, the Council self-evidently considered.

Financial Implications of Alternative Courses of Action

- 3.22 At paragraph 8.51 of the Previous Report, the Delegate concedes that the Council has not had regard to the financial implications of taking the land, despite that being a matter specifically contemplated by the Guideline.
- 3.23 Although it is ultimately a matter for the Council, Genamson submits that it ought to give serious consideration to less costly courses of action (such as using land that it already owns, being the Koala Park) before incurring an as yet to be quantified liability in resuming the subject land.

Dr Johnson Report/Supplementary Material

- 3.24 In paragraph 8.54 of the Previous Report, the Delegate seeks to dismiss the report of Dr Johnson provided by Genamson on the basis that he is unable to make findings of fact in respect of it due to his lack of hydraulic engineering qualifications.
- 3.25 Putting aside the fact that decision-makers (such as judicial officers) routinely make findings of fact in areas in which they are not qualified based on the evidence provided by appropriately-qualified experts (such as Dr Johnson), the Council must consider Dr Johnson's report in deciding whether or not to take the subject land.
- 3.26 This is because Dr Johnson is the only expert who has provided any detailed consideration of whether there is a hydraulic engineering basis for resuming the subject land.

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3.27 In this respect, we note that in the Second Delegate Report, the Delegate has appropriately recommended that the Council give consideration, or further consideration, to the report of Dr Johnson.

Yours faithfully



Peter Bittner
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au



Luke Walker
Associate
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

CC: Mr Angus Conaghan - MBRC Legal Services

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

#6 Council's response to the letter dated 7 June 2018



Phone: 3480 6749
Our Ref: A17558587
Your Ref: PJB:LIW:688403
Date: 12 September 2018

Peter Bittner and Luke Walker
HWL Ebsworth Lawyers
Level 19
480 Queen Street
BRISBANE QLD 4001

By e-mail only: pbittner@hwle.com.au
walker@hwle.com.au

Dear Sirs,

**Proposed Resumption of Land - Part of Lot 5 on RP88015 - 134-140 Morayfield Road,
Caboolture South**

We refer to your letter dated 7 June 2018.

In particular, we refer to your assertion that the Council's Chief Executive Officer (CEO) had no authority to issue the notice of intention to resume dated 12 October 2017 (NIR) or Amended Notice of Intention to Resume dated 20 February 2018 (Amended NIR).

With respect, we disagree with your conclusions.

You have identified that Council's Policy No. 12-2150-057 Resumption and Acquisition of Land (Policy), referred to in the resolution of 19 July 2016, refers to certain situations whereby the CEO is delegated power to undertake resumptions without further reference to the Council.

Item 3(ii) of the Policy refers to situations where the land is identified for a project in a Planning report previously approved by the Council.

It is clearly the case in respect of the proposed resumption that your client's land was identified for trunk infrastructure in various Council planning reports. For example, we note the need for the detention basin was designated in the former Caboolture Shire Council's Infrastructure Charges Resolution. It was maintained in the subsequent Moreton Bay Regional Council Infrastructure Charges Resolution and the Priority Infrastructure Plan that commenced with the introduction of the MBRC Planning Scheme on 1 February 2016.

We consider the situation referred to in item 3(ii) of the Policy clearly responds in the present circumstances.

Next steps

We advise the Council's intention to consider the proposed resumption at its meeting on 18 September 2018.

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrcc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

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2

As previously advised, the report prepared by the Council's delegate dated 24 May 2018 and all relevant correspondence (including your letter dated 7 June 2018) will be made available for the Council's consideration.

For your reference, the agenda for the Council meeting together with supporting documentation will be published on the Council's website in advance of the meeting.

Yours sincerely,



Angus Conaghan
Legal Officer
Legal Services Department

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

COORDINATION COMMITTEE MEETING
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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

#7 Letter from HWL Ebsworth Lawyers dated 13 September 2018



Our Ref: PJB:LIW:688403
Your Ref: A2016-487 A16604891

13 September 2018

Angus Conaghan
Legal Officer
Moreton Bay Regional Council
PO Box 159
CABOOLTURE QLD 4510

Email: angus.conaghan@moretonbay.qld.gov.au

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Dear Angus

Proposed Resumption of Land – Part of Lot 5 on RP88015 – 134-140 Morayfield Road, Caboolture South

We refer to your letter of 12 September 2018.

With respect, the premise on which the Council proceeds is fundamentally misconceived. On any reasonable view, the CEO does not have the delegated authority to proceed with the proposed resumption in accordance with Policy No. 12-2150-057 (**Policy**).

This is so for a number of reasons, namely:-

- the Council has previously proceeded on the basis that the Policy does not delegate the requisite authority to the CEO to proceed with the Proposed Resumption;
- the Land is not identified for a project in a Planning report previously approved by the Council; and
- there is no evidence that:-
 - there is appropriate funding available for the acquisition costs of the Land;
 - the CEO has consulted with the Mayor as to whether there is appropriate funding available for the acquisition costs of the Land; or
 - the CEO is satisfied that there is appropriate funding available for the acquisition costs of the Land.

Detailed reasons in respect of each of the above matters is outlined below.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

Doc ID 585680483/v1
Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

ABN 57 246 549 189

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)*

1. Conduct of the Council

1.1 As you would be aware, the Council has attempted to resume the Land previously by its Notice of Intention to Resume dated 11 August 2016 (**2016 NIR**).

1.2 The 2016 NIR was authorised by a resolution of the Coordination Committee of the Council dated 19 July 2016 (**19 July Resolution**)¹ in the following terms:-

*1. That the Council acquire the land described in the confidential report in accordance with Policy No. 12-2150-057 Resumption and Acquisition of Land.*²

2. That the Council authorise the Chief Executive Officer to do all things necessary to give effect to recommendation 1.

1.3 Following an objection process in respect of the 2016 NIR, the Coordination Committee of the Council passed a resolution dated 31 January 2017 (**31 January Resolution**)³ in the following terms:-

1. That Council, having duly considered this report, is of the opinion that part of Lot 5 on RP88015 containing an approximate area of 1.22 hectares and being part of the land contained in Title Reference 18406052 and an easement over part of Lot 5 on RP88015 containing an approximate area of 720 square metres and being part of the land contained in Title Reference 18406052 be acquired for drainage purposes, and for purposes incidental to carrying out drainage purposes, respectively.

2. That the Chief Executive Officer submit the necessary application to the Department of Natural Resources and Mines requesting that the above land, and interest in land, be taken and vested in the Council, in accordance with the Acquisition of Land Act 1967.

3. That Council confirms that it remains willing to acquire by agreement the land, and interest in land, the subject of the Notice of Intention to Resume.

1.4 The 31 January Resolution was subsequently repealed by resolution of the Coordination Committee of the Council on 21 March 2018.

1.5 Clearly, if the Council was of the view that the CEO already possessed the necessary delegation to carry out the proposed resumption, it follows that:-

(a) neither the 19 July Resolution nor the 31 January Resolution would have been required; and

(b) there would be no need for the Council to consider the proposed resumption on 18 September 2018, which could instead be carried out by the CEO.

1.6 In that respect, it is telling that the Council has taken more than three (3) months to provide a response to our letter of 7 June 2018.

¹ Adopted by the General Meeting of the Council on even date.

² The land so described being the Land.

³ Adopted by the General Meeting of the Council on even date.

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
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2. Land not identified

- 2.1 Clause 3(ii) of the Policy, which we understand to be the only section of the Policy upon which the Council relies, provides as follows:-

3. The Chief Executive Officer is also delegated power to undertake the resumption process necessary to secure land without further reference to Council in each of the following situations where the Chief Executive Officer, in consultations with the Mayor, is satisfied appropriate funding will be available for the acquisition costs:

...

(iv) The land is identified for a project in a Planning report previously approved by the Council...

(emphasis added)

- 2.2 The Policy defines "Land" as having the meaning assigned to it under the *Acquisition of Land Act 1967 (Act)*, which is:-

land means land, or any estate or interest in land, that is held in fee simple, including fee simple in trust under the Land Act 1994, but does not include a freeholding lease under that Act.

- 2.3 In your letter, you state that the Land is identified in "various Council planning reports". In particular, you say that the Land is identified in:-

- (a) the former Caboolture Shire Council's Infrastructure Charges Resolution (**Caboolture Shire ICR**)⁴;
- (b) the subsequent Infrastructure Charges Resolution for the MBRC Planning Scheme (**MBRC ICR**)⁵; and
- (c) the Priority Infrastructure Plan contained in the MBRC Planning Scheme (**PIP**).

- 2.4 We acknowledge that a detention basin designated SSC_DB_3, which we understand is what the Council proposes for the Land, is identified in the above documents. Similarly, SSC_DB_3 is identified in the report "Stormwater Quality Infrastructure for Caboolture and Burpengary Catchments 2009" (**2009 Report**).

- 2.5 We doubt whether any of these documents could be described as a "Planning report" or whether the designation of SSC_DB_3 is detailed enough to be considered a "project".

- 2.6 In any event, none of the documents identify the Land as required for SSC_DB_3 as:-

- (a) the Land is not identified by its real property description in any of the documents;
- (b) the 2009 Report does not identify SSC_DB_3 as occurring on the Land;

⁴ We assume this is a reference to the *Moreton Bay Regional Council Infrastructure Charges Resolution (No. 1)* dated 1 July 2011.

⁵ We assume this is a reference to the *Moreton Bay Regional Council Infrastructure Charges Resolution (No. 4)* dated February 2016.

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- (c) the mapping included with the Caboolture Shire ICR, the MBRC ICR and the PIP is indicative only and merely indicates that SSC_DB_3 is proposed to be located in the vicinity of the Land; and
 - (d) in the case of the PIP (which is the most recent document), the relevant mapping in fact indicates that SSC_DB_3 is to be located entirely on an adjoining parcel of land.
- 2.7 The fact that the relevant mapping does not identify the Land was addressed by his Honour Judge Rackemann in *Genamson Holdings Pty Ltd v Moreton Bay Regional Council* [2017] QPEC 56:-

[53] The appellant's primary submission was that no condition to address the asserted potential prejudice ought be attached to an approval of its application, because the site is now simply irrelevant to the Council's planning for the proposed detention basin, as part of its broader infrastructure planning, as reflected in the PIP. The basis for that submission is the PIP stormwater map, which shows the SSC_DB_3 detention basin by a circular symbol near the common boundary of the subject site and the IGA site. No part of the symbol however, intrudes over the boundary of the appellant's site.

[54] The nature and purpose of the map must however, be kept in mind. It shows a planned future infrastructure network, rather than a series of existing or proposed projects which have been the subject of detailed design. Whilst the network is depicted over a cadastral base, it does not depict the precise size, shape, area, dimensions or exact location of individual components of the network. The small circle which appears beside SSC_DB_3 could not be anything like the size and shape of a detention basin to serve as trunk infrastructure as contemplated. That which is shown is symbolic and indicative. Relevantly, for present purposes, it reflects the Council's infrastructure planning for a detention basin in that vicinity.

(emphasis added)

- 2.8 In the circumstances, clause 3(ii) of the Policy is not engaged.

3. Evidence of CEO's satisfaction/consultation with Mayor

- 3.1 As outlined at 2.1 above, clause 3 of the Policy requires that, in order to act under the Policy, the CEO must be satisfied, in consultation with the Mayor, that there is appropriate funding available for the acquisition costs of the Land.
- 3.2 The CEO's satisfaction in this respect is clearly a jurisdictional fact that must be established for the delegation under the Policy to be effective.
- 3.3 Even if the Council can prove that clause 3(ii) of the Policy is applicable to the proposed resumption, it must show that as at the date of the Notice of Intention to Resume dated 12 October 2017 (**2017 NIR**):-
- (a) the CEO had consulted with the Mayor as to whether there was appropriate funding available for the acquisition costs of the proposed resumption; and

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- (b) the CEO had turned his mind to and was satisfied, on reasonable grounds, that there was appropriate funding available for the acquisition costs of the proposed resumption.
- 3.4 We have not been provided with evidence that either of these matters is satisfied, despite seeking reasons from the Council by our letter dated 12 June 2018.
- 3.5 Further, we are not aware of the Council having obtained any valuation of the Land following the decision of the Planning and Environment Court to approve our client's proposed development.
- 3.6 Given that decision's impact on the value of the Land, it is difficult to see on what basis the CEO could be satisfied that appropriate funds have been allocated for the acquisition costs of the proposed resumption, in the absence of a proper valuation.
- 4. Policy not proper delegation**
- 4.1 In addition to the matters outlined above, it is not clear that the Policy is a proper delegation of power to the CEO in accordance with s257 of the *Local Government Act 2009 (LGA)*.
- 4.2 In that respect, we have not been provided with any evidence that:-
 - (a) the Policy has been reviewed annually by the Council, in accordance with s257(3) of the LGA; or
 - (b) the Policy has been reviewed in accordance with the "Review Triggers" outlined therein, which require it to be reviewed at least once every two years.
- 5. Next steps**
- 5.1 We are currently taking instructions from our client to commence proceedings in the Supreme Court of Queensland in order to obtain:-
 - (a) a declaration that the 2017 NIR was *ultra vires* (for the reasons listed in our letter of 7 June 2018 and further expanded upon above); and
 - (b) orders consequent upon that declaration restraining the Council from acting upon the 2017 NIR.
- 5.2 We anticipate being in a position to file and serve those proceedings upon the Council by 21 September 2018.
- 5.3 Accordingly, we require that the Council, consistent with its obligations as a model litigant, not make any decision in respect of the proposed resumption until the foreshadowed proceedings have been finally determined.
- 5.4 As a first step in the proceedings, we anticipate that we will seek disclosure of the following documents that are in the possession or under the control of the Council:-
 - (a) a copy of the register of delegations required to be kept by the Council pursuant to s260 of the LGA;

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- (b) all documents that show that the Policy has been:-
 - (i) reviewed in accordance with s257(3) of the LGA; and
 - (ii) reviewed in accordance with the "Review Triggers" outlined therein;
 - (c) all documents that show the CEO was authorised to carry on the proposed resumption without further reference to the Council;
 - (d) all documents that show:-
 - (i) that the CEO consulted with the Mayor concerning the funding available for the acquisition costs of the proposed resumption; and
 - (ii) that the CEO was satisfied that there was sufficient funding available for the acquisition costs of the proposed resumption (including any valuation report obtained and considered by the CEO for the purpose of establishing such satisfaction); and
 - (e) all documents that the Council says constitute a "Planning report" for the purposes of the Policy that identify the Land for a "project" and the resolutions showing that the Council has approved each of those documents.
- 5.5 In order to minimise time and expense, we request that you provide the documents outlined in 5.4 above to us by way of preliminary disclosure on or before **4.00 pm on 14 September 2018**.
- 5.6 In order to save the expense of obtaining a declaration, our client's concerns will be satisfied if the Council either:-
- (a) gives an undertaking that it will not proceed on the 2017 NIR; or
 - (b) discontinues the 2017 NIR.
- (Offer)**
- 5.7 The Offer outlined above is open for acceptance until **4.00 pm on 14 September 2018**.
- 5.8 We otherwise ask that you confirm that the Council will not make a decision in respect of the 2017 NIR until such time as the foreshadowed proceedings have been finally determined as soon as possible or in any event, by **4.00 pm on 14 September 2018** so that our client can seek urgent injunctive relief if required.
- 5.9 Our client will tender this correspondence on the questions of costs in the event that it is successful in the foreshadowed proceedings.

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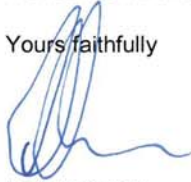
COORDINATION COMMITTEE MEETING
25 September 2018

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CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

We look forward to your reply.

Yours faithfully



Peter Bittner
Partner
HWL Ebsworth Lawyers

+61 7 3169 4743
pbittner@hwle.com.au



Luke Walker
Associate
HWL Ebsworth Lawyers

+61 7 3169 4841
lwalker@hwle.com.au

ITEM 2.1 - PROPOSED RESUMPTION FOR DRAINAGE PURPOSES - 134 MORAYFIELD ROAD,
CABOOLTURE SOUTH - LOT 5 ON RP88015 - DIVISION 3 (Cont.)

#8 Council's response to the letter dated 13 September 2018



Phone: 3480 6749
Our Ref: A17573399
Your Ref: PJB:LIW:688403
Date: 14 September 2018

Peter Bittner and Luke Walker
HWL Ebsworth Lawyers
Level 19
480 Queen Street
BRISBANE QLD 4001

By e-mail only: pbittner@hwle.com.au
lwalker@hwle.com.au

Dear Sirs,

**Proposed Resumption of Land - Part of Lot 5 on RP88015 - 134-140 Morayfield Road,
Caboolture South**

We refer to your letter dated 13 September 2018.

In particular, we refer to your assertions that:

- the Council's Chief Executive Officer ("CEO") does not have delegated authority to proceed with the proposed resumption of your client's land in accordance with Policy No. 12-2150-57 ("the Policy");
- the Council has previously proceeded on the basis that the Policy does not delegate to the CEO the authority to resume land;
- your client's land is not identified in a Planning Report approved by Council, with two Infrastructure Charges Resolutions and the Priority Infrastructure Plan contained in the MBRC Planning Scheme identified as not being "Planning Reports";
- there is no evidence of:
 - o the Council being appropriately funded to acquire your client's land;
 - o consultation between the CEO and the Mayor as to whether the Council has the appropriate funds to acquire your client's land; and
 - o the CEO being satisfied that the Council has the appropriate funds available to acquire your client's land.

As we have previously advised, we do not accept these assertions.

Your letter goes on:

- to indicate that you are currently taking instructions in respect of potential proceedings in the Supreme Court of Queensland to seek declarations about the matters noted above and to seek orders restraining Council from making a decision in respect of the proposed resumption of your client's land;
- to request that we provide to you by way of "preliminary disclosure" the classes of documents outlined in paragraphs 5.4(a) – 5.4(e) by **4pm today, 14 September 2018**, being only about 25 hours after our receipt of your letter;
- to require that the Council indicate that it will not proceed to make a decision about the proposed resumption of your client's land until "foreshadowed proceedings have been

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

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finally determined" (with Council asked to provide undertakings to that effect **by 4pm today, 14 September 2018**);

- to propose that the Council, **by 4pm today, 14 September 2018**, either give an undertaking not to proceed with the proposed resumption or discontinue the proposed resumption; and
- to suggest that your client may seek "urgent injunctive relief", if required.

In circumstances where the Council does not accept your assertions, having considered your objections in detail and at length, Council declines to give any such undertaking or to discontinue the proposed resumption. There is no reason why the matter should not be placed before Council at its meeting of 18 September 2018 for consideration, and determination, by Council.

We are currently considering your request for preliminary disclosure and we will revert to you as soon as a decision is reached about that matter. We expect that we will be able to properly respond to your request by 21 September 2018.

We otherwise confirm that Council intends to consider the proposed resumption at its meeting on 18 September 2018.

We do not see any need for urgent proceedings (whether for declarations, consequential orders or other injunctive relief) in the circumstances of this case. The issues raised by your client in respect of the proposed resumption (including its allegations about the validity of delegation and the subject notice of intention to resume) have been raised by your client on various occasions and have been placed before Council for its consideration. Once Council has made a decision in respect of the proposed resumption, then either:

- (a) the resumption will not proceed, in which case any further action concerning the validity of the resumption would be unnecessary; or
- (b) Council decides to proceed with the resumption and, in that event, your client, if it so chooses, would be able to ventilate all of its issues concerning the validity of the resumption (or some of them, or such other issues about the resumption that it may consider relevant) before the Supreme Court of Queensland in the one proceeding.

In contrast, there is considerable urgency arising from the need for Council to make a decision about the proposed resumption, one way or the other, before expiry of the statutory time limit of 12 months from the date of the subject notice of intention to resume (issued on 12 October 2017). Delay may prejudice the ability of Council to make a decision, one way or the other, about the proposed resumption.

We note that a copy of your letter of 13 September 2018, along with this response, will be provided to each of the councillors for their consideration prior to the meeting of Council on 18 September 2018.

We reserve Council's rights to refer to this correspondence in any proceedings brought by your client, including with respect to the question of costs.

Yours sincerely,



Angus Conaghan
Legal Officer
Legal Services Department

Customer Service Contacts

PO Box 159 Caboolture QLD 4510 | T (07) 3205 0555 | F (07) 3205 0599 | E mbrcc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

SUPPORTING INFORMATION

Ref: [A17562353](#)

The following list of supporting information is provided for:

ITEM 5.1

NEW LEASE - MORETON DISTRICT INVITATION RACING PIGEON CLUB INC - DIVISION 2

#1 Burpengary Sports Complex - Proposed lease area

ITEM 5.1 - NEW LEASE - MORETON DISTRICT INVITATION RACING PIGEON CLUB INC. (Cont.)

#1 Burpengary Sports Complex - Proposed lease area

