

----- Forwarded message -----

From: **ELIZABETH WOOD** <elizabethwood13@bigpond.com>

Date: Wed, 28 Nov 2018 at 12:46

Subject: RE: Karlos matter & log books

To: J H <joan.lesley1@hotmail.com>

Thankyou Joan/Steve ... good info ... have passed it on. As you are aware we're in the process of getting our heads around the looming approval of Dungay Creek Road on 6th December as well (shakes head in despair) xx

From: J H <joan.lesley1@hotmail.com>

Sent: Wednesday, November 28, 2018 11:31 AM

To: KMilne@tweed.nsw.gov.au; vconnell@tweed.nsw.gov.au; dgalle@tweed.nsw.gov.au; Bilambil Urliup Alliance Group Inc <BilambilUrliupAllianceGroupIn>; elizabethwood13@bigpond.com; Bilambil Urliup Alliance Group Inc <BilambilUrliupAllianceGroupIn>

Subject: Karlos matter & log books

Sent from [Mail](#) for Windows 10

From: [J H](#)

Sent: Wednesday, 28 November 2018 11:24 AM

To: [Bilambil Urliup Alliance Group Inc](#)

Subject: Karlos matter & log books

Hi Peter, you can see what's going to happen here. In my detailed letter to Vince and CC to the Mayor **over 6 months ago**, the log book situation was set out in detail. What they are proposing here is unenforceable-perhaps by design. I also note that over a year ago that the truck drivers keep log books **by the drivers** was proposed by Councillor Polglase. This is a ridiculous and in-enforceable suggestion.

Council officers have no power to make the truck driver keep log books or fill out or produce log books. Trucks less than 100km from their home depot (as the crow flies) i.e. Brisbane to Bilambil, do not even need to have a log book/work diary under state law. What I advised, (in the email to Vince six months ago) after 25 years in law enforcement is that the new DA needs to have a condition of that DA, that the APPLICANT has condition/s of the DA approval do the following.(If you tie it to the applicant and then the applicants nominated person **it matters not that the DA is applied to the land and not the person.**

As part of the DA approval consent conditions the applicant must advise council who is the nominated person & their address & to receive penalty & other notices and that failure to advise within 14 days of a change of address or a change of the person **shall be a breach of the DA.**

The nominate person **NOT THE TRUCK DRIVER** shall be responsible for keep a hardcopy document i.e. log book, **on site in a nominated location on the land** that sets out in legible English, the trip date and times (in NSW time- as this is a very well know ploy used to get out of log book offences by QLD drivers), trailer and vehicle state & registration Full name of the driver, licence number and state of trips to and from the site & literage carted. This aforementioned is a total waste of time unless it included the words, **the nominated person must keep the log book in real time and produce it on demand for inspection by council officers. Failure to fill out the log book in real time and failure to produce the log book on demand to council officer will both be deemed a breach of the DA consent conditions.**

I also note that Denise does no mention that **water meters need to be certified by an approved authority.** Another thing that as someone that prosecuted people under the criminal standard for years can see an angle the size of a 19 metre truck where having this wording will be unenforceable. The wording of this DA consent conditions needs to be applicants nominated person shall install a water meter that is certified as accurate by the relevant certifying authority in NSW. (insert here the name) This certification of accuracy needs to be undertaken yearly. A certified copy of the certificate of accuracy shall be send to council within 14 days of its issue. The applicants nominated person shall within 14 days advise the council in writing of any malfunction of the water meter. Council officers shall be allowed as a condition of the DA approval to without notice, to enter the premises and land and inspect the water meter is operating correctly and inspect the original accuracy certificate which shall be kept with the hardcopy log book as aforementioned. Failure to allow entry, failure to allow inspection, failure to maintain certification and failure to notify a malfunction of the water meter **within 14 days shall all individually or severally be deemed to be a breach of the consent conditions.**

I also take issue with Denise's assertion that a photograph of a truck at a certain time is not admissible evidence. I have spend 25 years going to court and whilst it might **not prove a breach** to a criminal

standard (beyond reason doubt) or the civil standard (on the balance or probabilities) or even a tribunal standard (on the facts before the court) it is most certainly admissible as circumstantial evidence.

I note that despite my advising council what needs to be done here in relation to log books and meters some six months go the Uki DA by the retired Labor party politician was recommended by council staff without ANY conditions for record keeping or water meters.

This obviously is in keeping the general air of inaction filtering down from some Councillors to staff as evidences by one councillor saying to a local publication that its OK the breach DA conditions a little bit in order to conduct business.

Further than I was advised by someone in council (I don't know if it is true or not) that a certain Quarry within the shire has breached its allowable trip movements by **some 20,000 heavy vehicles** and council staff have recommended NO ACTION, but when "I'm a celebrity get me out here" SELF REPORTS a breach they get fined.

I spent a great deal of my time assisting council with some 6.5km of roads bulldozed through virgin rainforest, Environmental Protection and RU 2 farmland with the net result an \$8000 penalty notice being issued for polluting the creek and not even a re-vegetation order issued for the farmland zoning road construction. Numerous other unauthorised works were rectified by retrospective DA approval. The developer gets to keep the bulldozed roads and the wait for a pro developer council to be elected.

A few weeks ago council solicitors contacted me to give evidence on behalf of the council in relation to a 100 plus housing subdivision application at Dungay that has been knocked back by the shire, with yet another land and environment court hearing at rate payers expense. What another great waste of time that is going to be. I am amazed they haven't already started construction and then applied for retrospective approval.

It is very simple unless all new water DA's have the water meter & log book conditions as I have set out and most specifically **the words failure to do so** and produce **is a breach** of the DA, it is a total waste of time & ratepayers money, to even bother with any enforcement and it also is a total waste of rate payers funds to keep **having staff refer matters continually for legal advising** and even take matters to the land and environment court when as soon as council have a win they retrospectively approve prior breaches and buildings.

If Mr Karlos as set out in Judge Mores findings on truck movement calculations alone was taking 60 million litres when council approval was for 5, if council now approves 28 million, why would anyone running a business making around \$8000 a day at half a cent even be bothered by any threat of enforcement.

I await with interest the wording of any new conditions to enable the waste of ratepayers fund to be avoided on any new Water mining DA's. **To this end as I am retired I offer my services as an unpaid consultant in conjunction with planning staff and council solicitors to get the wording right on any future DA's regarding log book and water meter wordings so that future waste of ratepayers funds and staff time can be avoided**

Several million dollars has so far been spent by council including legal costs and staff time, **I cannot understand why they cant spent 2 hours getting the wording right** for all new water and other DA's within the shire that enforcement is made very easy for staff and cost effective for the ratepayer.

The scenario is simple. Council receives complaint with a photograph of a tanker driving into a property outside allowable times. The council officer spends 60 minutes on a site visit. The breach is so simple to prove either the log book wasn't filled out, entry to inspect the water meter is denied or the offence is proved as a truck movement outside allowable times. The breach fine is issued. This results in the business being compliant in the future or more breaches are issued.

It also send a signal to the community that it is not a free for all when it comes to development in this Shire. If 100 plus residents in Urliup Road unlawfully put in water bores in the coming year and then applied for retrospective approval would it be 15 years before they were prosecuted? In the meantime making \$8000 a day, it seems too good to be true. It would certainly generated enough money for private prosecutions of Breaches of the Local Government Act & associated costs. Am I missing something here? Perhaps 20,000 self reported breaches re the Quarry with a recommendation for no action is telling me something ?

Kind regards-Steve Henderson member of the Bilambil Urliup Alliance Group Incorporated

From: [Bilambil Urliup Alliance Group Inc](#)

Sent: Wednesday, 28 November 2018 9:01 AM

To: [Bilambil Urliup Alliance Group Inc](#)

Subject: Latest Response TSC to Bilambil Urliup Alliance Group

Good morning

Here's the 3rd response from Denise

From: Denise Galle <DGalle@tweed.nsw.gov.au>

Sent: Tuesday, 27 November 2018 9:26 AM

Hi Peter,

DA18/0910 - Sign from 5 November 2018:



Council put up a second sign for DA18/0910 on Wednesday 21 November.



Whilst it may appear that nothing is being done about Karlos, the matter has been regularly reported to Council Meetings following legal advice and Council Officers are acting on those Council resolutions.

The meeting of 6 December 2018 (agenda available tonight at 8.30pm) contains the following reports regarding the Karlos sites:

- Confidential legal advice and confidential report – Order relating to water extraction (not accepted by the Mayor as a late report on 15 November 2018 so it will go to the meeting on 6 December 2018)
- General meeting Karlos Helipad 8.2 Review Report DA17/0805
- General meeting Karlos Helipad New DA18/0637
- General meeting Karlos New DA Water Extraction DA18/0910

Council recently produced the following statement to explain the ongoing compliance matters pertaining to water extraction:

TWEED COUNCIL'S CURRENT APPROACH TO COMPLIANCE ISSUES ARISING FROM EXISTING APPROVED COMMERCIAL WATER EXTRACTION USES

The starting reference point for all Council's compliance and enforcement actions is Council's adopted Compliance Policy. This Policy is based on the NSW Ombudsman Enforcement Guidelines and Model Compliance and Enforcement Model Policy for Councils December 2015. A copy of Council's Policy can be accessed or downloaded from Council's web site.

Dependent on the extent and scale of potential impact and risk, compliance investigations by Council officers may be elevated to the elected Council to seek approval to engage legal advice from Council's solicitors to assess and determine whether resources should be expended to pursue legal action or fines in respect of non-compliant activity, or alternatively to seek rectification for a compliant activity through an application process.

This approach is consistent with the policies and actions taken by councils throughout the state, and in accordance with the legal framework of various court systems.

In reaching the determination of any significant decisions on compliance and enforcement action, Councils must weigh up the time, risk and expense of resources that legal action inevitably demands.

An appropriate level of equity and procedural fairness also needs to be applied to all parties involved in a compliance matter.

It is on that basis that Council has acted appropriately and in accordance with its Compliance Policy and relevant legislation in advancing investigations and action relating to a large number of complaints received in respect to the operations of four approved commercial water extraction businesses.

Whilst some complainants and community members have expressed their dissatisfaction and frustration that these matters have not been finalised and resolved sooner, it is important to acknowledge that Council has firstly acted prudently in seeking the advice of its solicitors and undertaken the gradual progression of investigation and actions which will provide Council with the minimum level of risk and financial exposure in any future legal proceedings. It should be pointed out that any person has the right to take their own legal action to seek to cease the existing commercial water extraction uses. However, any such action comes with the risk of having to pay the costs of the persons that they are seeking to prosecute, if such an action fails.

More importantly, Council is making gradual, yet good progress in seeking compliant operations for each of the four businesses that have been the subject of complaints.

The current status of the compliance investigations for each of the four subject commercial water extraction businesses is as follows:

- **No. 2574 Kyogle Road Kunghur (DA05/0995 & DA16/0579)** – legal advice has recently been received, and a late report is currently being finalised for Council to determine a suitable course of action at its meeting of 15 November 2018. It should also be noted that a Section 4.55 Modification Application for DA16/0579 (Reference DA16/0579.10) has recently been received for alterations and additions to the existing water bottling facility to stage the application to enable bulk water extraction as part of Stage 1 and construction of the water bottling facility as Stage 2. The public exhibition period for this application commences on Wednesday 14 November 2018 and the submission period closes on Wednesday 28 November 2018. The application will be reported to Council for determination in the coming months.

- **No. 101 Bryens Road Nobby's Creek (DA06/0603)** - legal advice has recently been received, and a late report is currently being finalised for Council to determine a suitable course of action at its meeting of 15 November 2018.

- **Nos. 10-20 Edwards Lane & No. 308 Numinbah Road Kynnumboon (DA05/1507 & DA06/1023)** - On the basis of the initial responses and advice received, Council resolved the following in respect of the Edwards Lane/Numinbah Road matter:

"RESOLVED that Council, in respect of the current compliance investigations into the water extraction activities being carried out on the premises No. 10-20 Edwards Lane Kynnumboon:

A. Takes no action for historic breaches from 2006/2007 given the cooperative response Council has had to the alleged breaches; and

B. Writes to The Harris Group - Pristine Water Supplies reinforcing the need for compliance with all conditions of the consent and request reporting for the last 7 years as required by Condition 4.2 of DA06/1023.03 which could include log books of water extraction from the site, truck movements, including dates and times to and from the site and water supply records from the water bottling company detailing total volume received."

- **In regards to the water extraction activities being carried out on the premises No. 477 Urliup Road, Urliup**, in accordance with the resolution at Council's meeting last Thursday, legal advice has recently been received and a late report is currently being finalised for Council to determine a suitable course of action at its meeting of 15 November 2018.

It should also be noted that a new DA (DA18/0910) has recently been lodged for No. 477 Urliup Road for development consent for a water bottling facility (as defined by 7.15 of Tweed LEP) and use of existing structures for the water bottling facility, which proposes to involve:

(i) a maximum of 28.5ML of water would be taken out in each 12 month period.

- (ii) *the water would be transported by 6m trucks with a maximum capacity of 13,000 litres. The vehicles are rigid trucks with a maximum length of 6 metres;*
- (iii) *approval is sought for up to 6 loads per day (i.e. 12 trips per day);*
- (iv) *the operating hours would be between 7 am to 6 pm Monday to Friday and between 8 am and 6 pm on Saturday and Sunday.*
- (v) *all the necessary infrastructure to support the operation is currently in place.*

The public exhibition period for this application commenced on Wednesday 7 November 2018 and the submission period closes on Wednesday 21 November 2018. The application will be reported to Council for determination in the coming months.

Admissible evidence is evidence beyond any doubt that a breach has occurred.

For example a photo of a 10m truck on Urliup Road by itself would not be admissible evidence as it does not show that

- the 10m truck is even associated with Karlos land
- that the truck is full of water
- does not show who is driving the truck and under who's instruction

So any evidence that Council gathers must first

- clearly show what the consent authorises (this has only recently been clarified by the Judgement). And DA18/0910 if approved may change the applicable conditions;
- clearly show on what day a breach occurred (time, date, photo, Stat Dec of authorised officer to confirm what was seen and how that breaches the consent)
- then Council (under the Act) may conduct interviews of the site owner to question the evidence gathered.

Regards,

Denise Galle

Team Leader Development Assessment
Planning and Regulation Division

Murwillumbah Office

NSW Time



p [\(02\) 6670 2459](tel:(02)66702459)

e dgalle@tweed.nsw.gov.au

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Sent: Friday, 23 November 2018 4:45 PM

To: Denise Galle

Dear Denise,

Thank you for your follow up response.

- We note there is still no site notice on display
For us, this is just more evidence for the Tweed Shire Council's ongoing and systemic failure to hold this landowner accountable for the compliance conditions for development applications.
- What steps has the Tweed Shire Council taken to ensure the legal entity that is the landowner for 477 Urliup Road is sufficiently resourced to compensate for any damages arising out their water mining operation or is this of no concern to the Planning Department?
- If the Tweed Shire Council is to accept evidence of non-compliance from the public, what standard of evidence would the Council require to take action? We are trying to overcome the situation where legitimate complaints from the public have been ignored by the Tweed Shire Council allowing this business to continue operating outside of the consent conditions without enforcement or penalty.

Regards,

Peter McIlveen

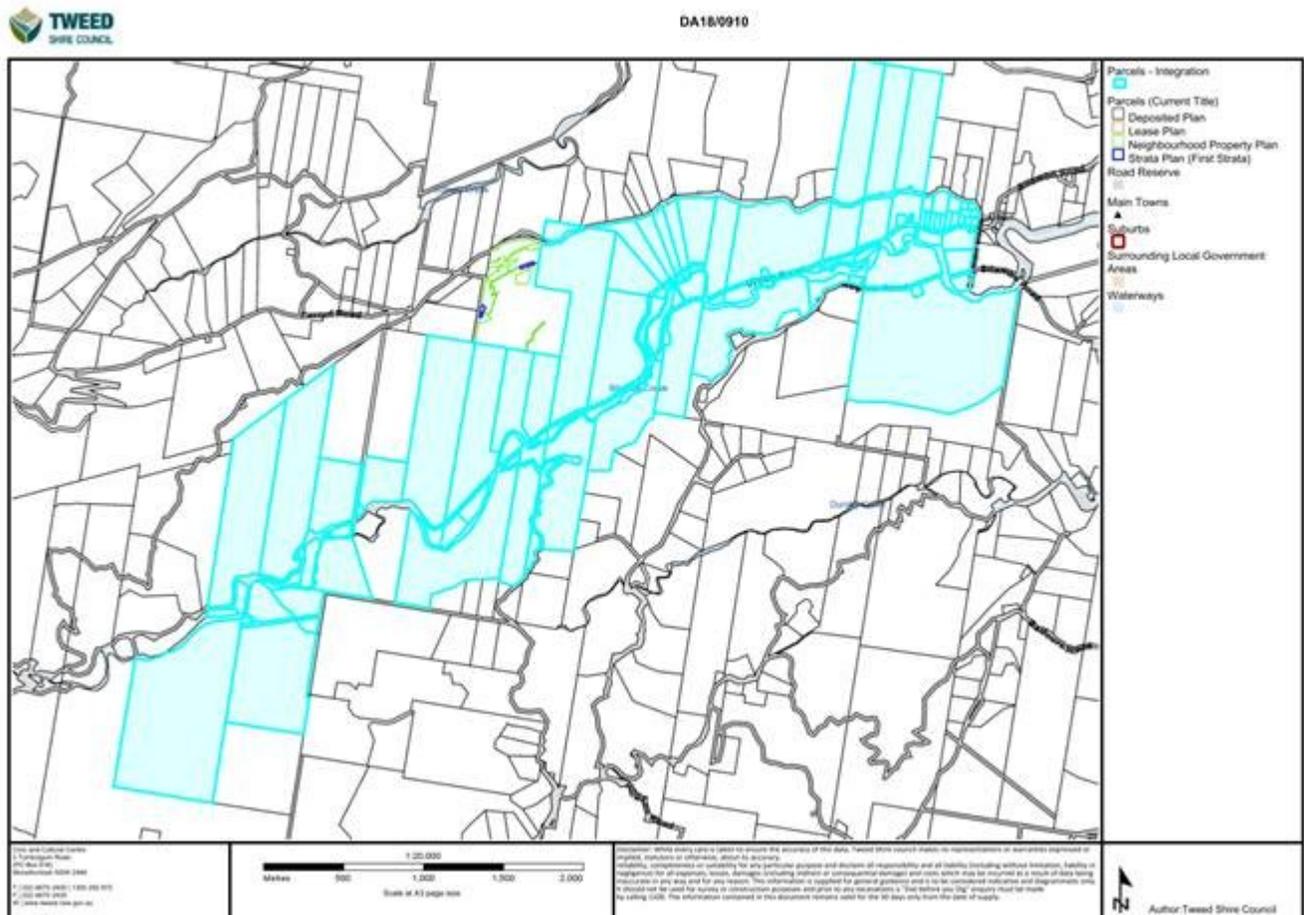
President, Bilambil Urliup Alliance Group Inc

From: Denise Galle <DGalle@tweed.nsw.gov.au>
Sent: Tuesday, November 20, 2018 10:19:33 AM

Hi again Peter & Bilambil Urikup Alliance Group & Others,

I will respond to each of your questions as below:

DA18/0910 was widely notified based on the below map. Additionally an ad was placed in a public paper to alert anyone in the shire with an interests in the matter to make a submission.



A site notice was definitely placed at the site by 5 November 2018 as follows by Council's Rangers:



An extension to the notification period is not required and the assessment will proceed. It is possible that the matter could be reported to either the Planning Committee Meeting of 6 December 2018 or the Council Meeting of 12 December for determination as I have already received all outstanding officer comments on the application.

The structural adequacy of pre constructed structures is dealt with as a Building Certificate. A building information certificate is a certificate that states that the council will not make an order or take proceedings for a period of seven years.

See:

<https://www.legislation.nsw.gov.au/> and

The applicant has lodged BC18/0108 which was accompanied by;

- a Structural Assessment and Certification for the Tank Slab and Filling Station Steel Structure
- Statutory Declarations from Larry Karlos pertaining to the work undertaken

- Site Plan showing bores, slabs, shelter
- Letters from SN Pumps regarding pipework
- Paperwork on NSW Department of Land & Water Conservation (later NSW DIPNR, later NSW Dept Water & Energy) templates regarding the bore construction from 2002, 2007, and 2016 with licenced drillers details

Council's Robert Noaks Building Surveyor assesses this application (and attended the site yesterday) and the findings of that assessment will be reported to Council when DA18/0910 is reported.

I can not provide ownership details to a third party. The landowner is responsible for compliant site operations.

In regard to any over length tolerance Council would refer to its Complince Policy which requires risk assessments. If an approval relates to a 6m truck and the proponent starts using 19m trucks without consent this could pose immediate risks which requires immediate action. However if the proposnent uses a 6.5 -6.9m truck instead of a 6m truck the risk on such matter would be considered low and may not require further acton.

The public can definetly provide evidence for complince matters. However,Council is also required to obatin its own admissible evidence.

Older consents often do not have detailed conditions which are easily enforcable. New water extraction consnets could have clear conditions which detail matter ssuch as:

- The authorised truck size
- The authorised trip numbers
- The authorised hours of operation
- The authorised extraction volume (and all four of the above should relate to one another to ensure consistency)
- The dates from which the extraction voluem is measured eg calender year or consent date
- The applicant is to have water metres monitored by TSC annually and upon request
- The appliant is to keep log books from all drivers and verified by stat dec's to match the water metre and provided to Council annually and upon request

- Any noise mitigation measures etc

Regards,

Denise Galle

Team Leader Development Assessment
Planning and Regulation Division

Murwillumbah Office

NSW Time



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Sent: Sunday, 18 November 2018 11:55 AM

Dear Denise,

Thank you for your email, please see further questions we have noted under your responses.

Regards,

Peter McIlveen

From: Denise Galle <DGalle@tweed.nsw.gov.au>

Sent: Saturday, 17 November 2018 6:43 AM

Subject: RE: DA18/0910 LN24276 Request for Information

Hello Bilambil Urliup Alliance Group & Other,

I refer to your letter dated 13 November 2018 (sent 14 November 2018).

At point 1 you ask for an extension to the submission period. This 14 day period is a statutory submission period and does not get extended for Development Applications unless statutorily required.

At point 2 you query the mailing list for notification based on past objectors. DA18/0910 is a brand new application (not a modification). It was widely notified to nearby residents with an ad also displayed in a local paper.

There are nearby residents who did not receive a notice and many received it very late.

At point 3 you query whether there is a site notice. Council has photographic evidence of a site notice being placed at the site. If this has been removed Council will replace it with another.

Here is the photographic evidence for the lack of a site notice as of 17 November 2018. Any sign placed must have been immediately removed.



We now formally request an extension to the period for objections as the requirements for this notice have not been met.

At point 4 you question whether this DA is a retrospective authorisation for unapproved infrastructure. No there is no retrospective authorisations. This application seeks approval for the use of structures looking forward. Those structures are subject to a Building Certificate assessment for structural adequacy.

Please more fully describe the assessment process for determining structural adequacy in this case.

At point 5 you query the applicant. The applicant for DA18/0910 is Larry Karlos. However all development applications rest with the land so therefore the landowner has the authorisation to act on any development consent issued over their land.

Who is the legal entity responsible for the compliant operation of this business and liable for any damage? Please confirm the identity of the landowner.

At point 6 you query how a truck size is measured. Council measures the entire length of the vehicle front to back.

What is the over-length tolerance?

At point 7 you ask about the explicit evidence needed to prove non compliance. This is a matter for Council's legal representative depending on the circumstances. Council must obtain its own admissible evidence that proves beyond any doubt of any breach.

Is that to say the public can play no role in contributing admissible evidence?

At point 8 you ask about Council's future enforcement regimes, at this stage this question as premature as the Council has not determined the DA to establish what any parametres could be.

The concern is that the Council over a period of 14-years has been derelict in its responsibilities to enforce DA consent conditions on this landowner, the Council needs to commit to upholding the regulations in relation to this business and act on resident complaints to investigate and obtain the necessary admissible evidence for non-compliance. For an informed assessment of this DA, it is a reasonable question to ask what conditions the Tweed Shire Council will request in order to monitor and verify compliance.

At point 9 you query the licence held under the Water Management Act 2000. These can be viewed at <https://waterregister.> The applicant has applied for 28.5ML which is below their current licence allocation. The 5ML limit was via DA03/0445 issued by Council. Licences for beyond this limit have been in place for more than 10 years.

At point 10 you query the description of the development as water "bottling". The Tweed LEP 2014 defines water bottling as a building or place at which groundwater from land in Zone RU2 Rural Landscape is extracted, handled, treated, processed, stored or packed for commercial purposes.

Please proceed to make your formal submission before the end of the exhibition period and if you have any question e-mail me and I will assist where I can.

Regards,

Denise Galle

Team Leader Development Assessment
Planning and Regulation Division

Murwillumbah Office



p [\(02\) 6670 2459](tel:(02)66702459)

e dgalle@tweed.nsw.gov.au

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Sent: Wednesday, 14 November 2018 12:43 PM
To: Corporate Email
Cc: Bilambil Urliup Alliance Group Inc; Peter McIlveen
Subject: DA18/0910 LN24276 Request for Information

Attention: Lindsay McGavin

Please see attached pdf

All official correspondence requiring a formal written response should be addressed to the General Manager, PO Box 816, Murwillumbah, 2484; or emailed to tsc@tweed.nsw.gov.au; or faxed to 02 6670 2429.

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