STILL LAWLESS

COUNCIL FAILS TO BRING LAWLESS INDUSTRY UNDER CONTROL
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## STILL LAWLESS

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EXECUTIVE SUMMARY

LAWLESS

How a lawless water mining industry and a corrupt council are undermining Tweed Shire

In the seven months since the first edition of Lawless was presented to Council as a formal complaint and request for investigation and compliance action, not a single prosecution has been initiated nor penalty imposed. Three of the four operators have continued to operate outside their consent conditions with impunity and indifference to the law. Additional breaches have been revealed and a new water mine has been approved while the inability of Council to manage the existing mines has become blindingly clear.

What is also clear is that Council is not going to enforce these rules but instead will seek to do what they have done for 15 years – legalise unlawful behaviour by issuing amended or new Development Applications.

The disgraceful performance of Council now stands alongside the disgraceful activities of the water miners. When Council becomes lawless and bends over backwards to ensure that lawless businesses continue to operate at the expense of the community, it reminds us that it is we, the citizens and residents of this shire, who must ensure that the beauty and lushness of this place is preserved.

Tweed Water Alliance (TWA) was formed in response to a proposed water mine on Rowlands Creek Road (Uki). Shortly after, the TWA began receiving reports from Tweed Shire residents alleging water mining ventures were breaching the conditions of their water extraction licences and/or development approvals.

In the absence of any monitoring by either the NSW Office of Water or the Tweed Shire Council, the TWA undertook to investigate these allegations. The investigation was motivated by water miners ruining the amenity of the shire, no evidence of sustainability around taking water from the aquifer on which a world heritage rainforest ecosystem depends and opposition to the environmentally toxic industry that sees groundwater sold in disposable plastic bottles for profit.

Water mining comprehensively fails the most rudimentary public interest test.

The independent research by members of the Tweed Water Alliance has found chronic, serious and systematic breaches by operators, water transporters and bottling companies at every one of the four properties investigated. Anecdotal information suggests there are more illegal operations.
These breaches include exceeding the number of permitted truck trips, operating outside permitted hours, extracting and transporting in bulk water trucks without or beyond authority, and prima facie evidence that the licence holders are exceeding extraction limits.

There is clear evidence that the water mining industry acts in open contempt of the law and the communities from which water is being taken. The evidence is such that not only are property owners of these water mines implicated but so are the bottling companies, to which excessive and out-of-hours deliveries are made, as well as the transport companies, one of which, Black Mount Pty Ltd, has been identified serving all four of the water mining ventures. Black Mount has also been operating B-double trucks on roads that were never built for them. The ongoing damage will be paid for by ratepayers. How can this be in the public interest?

One example is evidence at the Mount Warning Spring Water site between November 17 and November 21, 2017 inclusive. There were 25 water tankers moving outside authorised hours of operation. A total of 32 water trucks exceeded the approved number of trucks over the 5 day monitoring period. If such breaches continue over a year, the operation would be taking millions of litres to which they are not entitled and for which they have no licence.

This is water theft.

This lawlessness is not an accident. In every case in this report, the NSW Office of Water has utterly failed to properly assess licence applications, failed to monitor extraction, failed to ensure compliance with licence conditions, including meters and annual reports, and failed to undertake any enforcement.

The performance of Tweed Shire Council staff has been, if possible, even worse. It has ignored hundreds of complaints of breaches of allocation limits and truck sizes, failed to monitor or enforce development application (DA) conditions, failed to properly assess DAs, failed to assess the impacts of water extraction as required under its legislation, tried to shift sole responsibility for breaches to NSW Water and failed to protect the public interest in Tweed Shire. It has never interviewed a witness, taken a witness statement or asked for a statutory declaration.

Even in circumstances where Council staff have acknowledged breaches based on resident complaints (not independent investigations), instead of enforcement action it has approved an ex post facto amendment to DA conditions to make the breaches ‘legal’, effectively rewarding unlawful behaviour.

A recent media release from Council makes it clear that the operators of the unlawful water mines at Nobby’s Creek and Mt Warning Spring Water are going to submit new development applications, joining the recent DA from the Karlos (Urilup) water mine. It is extremely likely that these DAs – or even the prospect of these DAs – will serve as justification for terminating any investigations or enforcement action.
The Council recommendation to support Jack Hallam’s water mine in Rowlands Creek was dishonest, misleading, rife with errors and clearly biased in favour of an industry no one wants.

When Jack Hallam applied to the Office of Water for a water bottling licence in 2006, his neighbour was included in the application. They now have a 12 megalitre water bottling licence. Jack Hallam could at any time enter into a Water Trading Plan with them and augment his operation by fifty percent.

The doors are now wide open. We are already seeing – thanks to Tweed council staff – new water mining applications in Tweed Shire, in Ballina and Inverell.

The major parties, both within Council and as parties, have not – as usual – supported the community.

Instead, they have ignored the public and the public interest and misled the communities they are supposed to serve.

To date, facts, evidence, testimony and a clear signal from the public that we don’t want water mining in this shire, have not shifted council staff, the old political parties or operators. They need to be aware we are not going away.
INVESTIGATION 1
477 Urliup Road, Urliup
Lot 1 in DP 735658 & Lot 1 in DP 728217
Applicant: Larry Karlos (Eniflat Pty Ltd)

INVESTIGATION 2
Mt. Warning Spring Water
2574 Kyogle Road, Kunghur
Lot 1 & Lot 2 in D.P. 883113
DA05/0995, DA05/0995.01, DA05/0995.02, DA16/0579
Applicants: S & I Martin

INVESTIGATION 3
Comprador Pastoral Company Pty. Ltd
101 Bryens Road, Nobby’s Creek
Lot 2 DP 128866, Lot 66 DP 755715, Lot 1 DP 799355, Lot 121 DP 1111869
DA06/0603
Applicant: Appleby

INVESTIGATION 4
Kynnumboon
10 – 20 Edwards Lane & 308 Numinbah Road, Kynnumboon
Lot 5 in DP 1206755 & Lot B in DP 953668
Applicants: Walmsley, Brown and Lykapa Pty. Ltd (Clifford) & others
SUMMARY

This operation has been, for want of a better description, ‘dodgy’ from its inception. Council’s action with regard to repeated lawless behaviour by the operator is also highly questionable.

In 2012 Council advised the landholder that he was possibly in breach of his consent approval, both in relation to the size of trucks being used to transport water and the number of truck trips being undertaken daily.

Council suggested to the landholder that he either comply with his conditions or apply for a ‘minor’ amendment to his DA to correct these ‘operational inconsistencies’, effectively rewarding the landholder for his breaches.

When the landholder duly applied for this minor amendment, the landholder’s agent admitted that the applicant had been in breach of these approval conditions since 2002. Rather than 6 metre trucks he was operating 15 metre trucks and there were consistent complaints from residents that he was operating at all hours and running many more trips than the two a day he was permitted. Even 2 x 15 metre loads of water a day equates to 20.44 megalitres per year, more than 15 megalitres over the 5 megalitres permitted between 2003 and 2015.
Rather than cancel his licence and seek compensation for likely over 10 years of significant over-extraction, Council in 2015 authorised an increase in truck trips to 10 a day.

Breaches of Council & NSW Office of Water conditions are numerous.

Council Officers, in letters and reports, have suggested the modifications requested to the original consent are far too great a step to be considered a minor modification under The Environmental Planning & Assessment Act 1979, yet have been approved by Councillors. Councillors even voted to rescind a staff recommendation that Council officers act on non-compliance of consent conditions.

The reckless actions of Councillors of the day who voted to approve the huge expansion of what was supposed to be a small operation, as a minor modification, and then voted to stop Compliance Officers doing their job, needs to be explained.

In 2018 the operator applied for authorisation to operate 19 metre trucks, again through a Section 96 minor modification to the DA. The Council rejected this application following enormous pressure from the community. The landowner, Larry Karlos appealed the decision in the Land and Environment Court (LEC) and later amended the appeal to include a request to increase his allocation to 60 megalitres. That case was dismissed for lack of jurisdiction in October 2018.

Council’s lawyers began to investigate the operation in preparation for that court case. This is the only water mine in the seven months since the ‘Lawless” report was submitted that has resulted in an investigation, the results of which initiated moves towards enforcement.

The LEC laid out in stark detail the unlawful nature of the current operation, which is taking too much water, and using infrastructure that was never approved. These include the pumping station, several bores, water tanks and truck turning area. These unlawful activities have been occurring since the operation began in 2003.
As LEC Justice Moore noted, “As can be seen from a comparison of these plans with the earlier description of the present state of development at Mr Karlos’ site, there is no relevant coincidence between that which was approved in the 2003 consent and that which was observed during the course of the site inspection.”

The operation’s history, confirmed by the Court decision highlights the complete failure of the Tweed Shire Council to do basic monitoring, investigation and enforcement for more than a decade.

A majority of the Councillors voted in July 2018 to send the operator a Notice of intent to issue a Consent Order, followed 6 weeks later by the order itself, ordering the operators to operate within the approved consent and to stop using illegal infrastructure. The operation continued in defiance of the Order, which was subsequently put on hold pending the outcome of the LEC proceedings.

The Court’s decision means that Councillors will now consider – again – whether to bring enforcement proceedings against Larry Karlos.

The Karlos operation has now submitted a new Development Application and the Tweed Water Alliance is deeply concerned that this will be used to justify a dropping of the enforcement action.

Additionally, investigation by the Tweed Water Alliance determined that the original Development Consent in 2003 (which has only been amended by Section 96 Applications) gave consent for an operation contingent on the applicant securing a Commercial licence from the (then) NSW Office of Water for the relevant domestic and stock bore.

This never occurred.

Despite having only a 5 megalitre water allocation this operation was approved in 2016 for 6 x 6 metre trucks loads of water every day of the week, each load carrying 13,000 litres, calculating to 28.47 megalitres per year. Tweed Shire Council staff appears never to have done the sums. Much more water has been taken away than should be – almost 3 times the permitted amount. That calculation is based on an assumption that the landholder was operating lawfully, which has never been the case. While the Land and Environment Court recognised immediately that too much water was being taken, Council has refused to acknowledge that the allocation cannot be altered, or determined, by the number of approved truck movements.

Below are truck movements documented by the operation’s neighbours for the week following Council’s order that Larry Karlos cease operating unlawfully.

**TRUCK MOVEMENTS - AUGUST, 2018**

7th – 12 truck movements (i.e. 6 laden tankers)  
8th – 12 truck movements  
9th – 8 truck movements  
10th – 12 truck movements  
11th – 6 truck movements  
12th – 10 truck movements  
13th – 12 truck movements
APPLICATION SUMMARY

DA03/0445 lodged 26 March 2003 - Approved 14 Aug. 2003¹
DA03/0445.01 lodged 20 April 2006 - Withdrawn 24 Aug. 2012²
DA12/0167 lodged 26 April 2012 - Withdrawn 8 Nov. 2012³
DA03/0445.02 lodged 25 November 2013 - Approved 20 March 2015⁴
DA03/0445.04 lodged 27 October 2015 - Approved 3 June 2016⁵
DA03/0445.03 lodged 18 August 2015 - Refused 12 May 2017 - LEC hearing 23 March 2017⁶
DA15/0664 lodged 18 August 2015 - Refused 12 May 2017 - LEC hearing 23 March 2017⁷
DA18/0910 lodged 31 October 2018⁸

Council approved the transport of bulk water off site (DA03/0445.02), on 20th March 2015 as a modification to the original consent DA03/0445 approving on site bottling. Section 96 minor modifications to Development Consents under the Environmental Planning & Assessment Act 1979 can be approved by the consent authority if:

1. Tweed Shire Council Development Consent
2. Tweed Shire Council Development Application withdrawal of DA03/0445.01
3. Tweed Shire Council Development Application withdrawal of DA12/0167
4. Tweed Shire Council Development Consent DA03/0445.02
5. Tweed Shire Council Development Consent DA03/0445.04
6. Tweed Shire Council Development Application refusal DA03/0445.03
7. Tweed Shire Council Development Application refusal DA15 0664
(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).9

The original DA03/0445 permits extraction only “for the purpose of a rural industry comprising the harvesting & bottling of mineral water at Lot 1 DP 735658; No. 477 Urliup Road, Bilambil.

The application requested approval of car trailer loads of bottled water per day to be transported. The change of use from bottling on site to transporting bulk water off site has never been requested and yet Councillors approved, in a Section 96 modification, 10 trips per day of 6 metre trucks for bulk extraction. This was despite a recommendation by council officers to refuse the application10. Bottling water on site is a substantially different development to transporting bulk water off site, particularly given the difference in scale, that is, two car trailer loads per day “modified” to 5 x 6 metre trucks per day.

A Council letter dated 6th November. 2015 states that: DA03/0445 was approved on the basis that one bore provided water for extraction to be bottled on site, thus limiting intensity of operations in practice and on the development consent.11

The use of the three existing (approved) bores represents a large increase in the 5ML extraction limit that was originally approved for the purpose of a low intensity, ‘home industry’ - type operation.12

A table prepared by Council officers illustrates the immense jump in scale in the modifications sought.13

9 Environmental and Planning Assessment Act 1979
10 Tweed Shire Council Extraordinary Meeting Agenda – page 7
11 Tweed Shire Council letter to Applicant dated 6th November 2015 – page 1
12 Ibid – page 2
13 Ibid – page 3
IDENTIFIED BREACHES & POTENTIAL BREACHES

1. Tweed Shire Council Development Consent DA 03/0445.04 (approved 3rd June 2016) permits 12 total trips of 6 metre trucks, 7 days a week, each truck having a capacity of 13,000 litres. This amounts to a total of 28.47 megalitres per year (6 x 13,000 x 365). However, that same approval under the Department of Infrastructure, Planning and Natural Resources General Terms of Approval for a licence under the Water Act 1912 for Development Application 03/0445, Conditions relating to water entitlements, states:

The authorised annual entitlement will not exceed 5 megalitres

1. Breaches of Bore licence # 30BL183219, converted to 30WA320429 under the Water Management Act

   • Failure to install a meter as required under Condition 3 of Conditions Statement for bore 30BL183219 issued by Department of Natural Resources (NSW Office of Water) (DNR OoW) on 24th Jan 2016

   • Failure to provide a return showing the meter reading of hours pumped, the extraction rate for each month during each 12 month period as required in Condition 5 of Conditions Statement for bore 30BL183219 issued by (DNR OoW) on 24th Jan 2016

   • Failure to measure & record both pumping & non-pumping water levels in the bore at least twice each year, in both January & June (or July), and forward a copy of these records with the annual groundwater return as per Condition 6 of Conditions Statement for bore 30BL183219 issued by (DNR OoW) on 24th Jan 2016

   It should be noted that in all three cases in this report, the NSW Office of Water has not enforced these conditions and there has been no compliance by the operator.

2. Breaches of Bore licence # 30BL207356 converted to 30WA320429 under the Water Management Act

   • Failure to install a meter as required under condition 12 of Conditions Statement for bore 30BL207356 issued by (DNR OoW)

   • Failure to provide a return showing the meter reading of hours pumped, the extraction rate for each month during each 12 month period as required in Condition 14 of Conditions Statement for bore 30BL207356 (DNR OoW)

   • Failure to measure & record both pumping & non-pumping water levels in the bore at least twice each year, in both January & June (or July), and forward a copy of these records with the annual groundwater return as per Condition 15 of Conditions Statement for bore 30BL207356 issued by (DNR OoW)

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14 Licence and conditions for Bore #30BL207356 converted to 30WA320429 - Licence - page 1
15 Ibid – page 2 Condition # 3
16 Ibid – page 2 Condition # 5
17 Ibid – page 2 Condition # 6
18 Conditions of Bore # 30BL207356 converted to 30WA320429 – Condition # 12
19 Ibid – Condition # 14
20 Ibid – Condition # 12
3. Breaches of Bore licence # 30BL184761 converted to 30WA320494 under the Water Management Act\textsuperscript{21}

- Failure to install a meter as required under Condition 7 of Conditions Statement for bore 30BL184761 issued by (DNR OoW) on 4th June 2013\textsuperscript{22}

- Failure to provide a return showing the meter reading of hours pumped, the extraction rate for each month during each 12 month period as required in Condition 8 of Conditions Statement for bore 30BL184761 issued by (DNR OoW) on 4th June 2013\textsuperscript{23}

- Failure to measure & record both pumping & non-pumping water levels in the bore at least twice each year, in both January & June (or July), and forward a copy of these records with the annual groundwater return as per Condition 9 of Conditions Statement for bore 30BL184761 issued by (DNR OoW) on 4th June 20\textsuperscript{24}

These failures by the operator have resulted in the potential over-extraction beyond the permitted 5 megalitre allocation.\textsuperscript{25}

Council has received numerous allegations breaches, most of which have never been investigated. A complete list of alleged breaches by local residents up until 1st June 2016 can be found on pages 14, 15 & 16 of the Planning Committee Meeting agenda, 2nd June 2016.\textsuperscript{26}

Family member Matthew Karlos, acting on behalf of the applicant, provided a statutory declaration in May, 2016 giving a “personal guarantee” of ensuring compliance with Council & Office of Water conditions and regulations.\textsuperscript{27}

Since that date there have been a number of out-of-hours breaches and exceedances of the number of permitted truck movements per day i.e. 12 trips (6 in, 6 out) reported to us by local Urliup residents, they have advised that they will provide statutory declarations to support this information. Just a few of these are listed below. Urliup residents are compiling a complete list for The Land and Environment Court hearing regarding Council’s refusal of DA03/0445.03 and DA15/0664 on the 23rd March 2018. These will be available following the hearing.

<table>
<thead>
<tr>
<th>DATE</th>
<th>FIRST TRUCK ARRIVAL</th>
<th>TRUCK MOVEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 Dec 2017</td>
<td>N/A</td>
<td>8 laden trucks (16 trips)</td>
</tr>
<tr>
<td>28 Dec. 2017</td>
<td>N/A</td>
<td>8 laden trucks (16 trips)</td>
</tr>
<tr>
<td>30 Dec 2017</td>
<td>5.30 a.m.</td>
<td>9 laden trucks (18 trips)</td>
</tr>
<tr>
<td>31 Dec. 2017</td>
<td>5.44 a.m.</td>
<td>Not recorded</td>
</tr>
<tr>
<td>3 Jan 2018</td>
<td>N/A</td>
<td>9 laden trucks (18 trips)</td>
</tr>
<tr>
<td>6 Jan 2018</td>
<td>6.25 a.m.</td>
<td>9 laden trucks (18 trips)</td>
</tr>
<tr>
<td>19 Feb 2018</td>
<td>6.39 a.m.</td>
<td>10 laden trucks (20 trips)</td>
</tr>
<tr>
<td>20 Feb 2018</td>
<td>6.37 a.m.</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{21} Licence & Conditions for Bore #30BL184761 – Licence – page 1
\textsuperscript{22} Ibid – Condition # 7
\textsuperscript{23} Ibid – Condition # 9
\textsuperscript{24} Ibid – Condition # 10
\textsuperscript{25} Ibid – Condition # 12
\textsuperscript{26} Tweed Shire Councils Planning Committee Meeting agenda 2nd June 2016 – pages 14, 15 & 16
\textsuperscript{27} Ibid – page 25
Tweed Water Alliance has photographic evidence of truck movements on the 19 & 20 February 2018.

RECOMMENDATIONS

1. Fully investigate all breaches including historical ones that Councillors have previously refused to investigate (see note below)
2. Investigate with NSW Office of Water the extent of over extraction that has occurred.
3. Investigate whether the export of bulk water in any of these applications is in fact allowable, given there has never been a change to the original DA’s approved use for on-site harvesting & bottling of water only.
4. Seek legal advice on whether the DA approval permits bulk transport of water. If not, cancel the DA.
5. If chronic breaching of conditions or over extraction is confirmed, cancel the DA and the commercial licence.

Note: 12 Feb 2015 - Extraordinary Council Meeting councillors voted:

That the proponent is to comply with the conditions of existing consent and if there is non-compliance that council officers to act on this.

be rescinded

The Rescission Motion was Carried

Effectively, this meant that Council afforded Larry Karlos the opportunity to continue to breach permitted DA conditions without investigation or penalty.

EXPANDED APPLICATION SUMMARY

14 August 2003 – DA03/0445 – Tweed Shire Council approved harvesting and bottling of mineral water at 477 Urliup Road, Urliup. Delivery trucks were limited to 6 metres in length. Truck movements were restricted to 2 trips per day & not permitted to run during school bus hours.

24 August 2012 – DA03/0445.01 – Section 96 (2) Modification - amendment to Development Consent DA03/0445 to pump bore water from a neighbouring property (Lot 3 in DP 735658) to the subject property. This application was withdrawn because Council are not able to include a second property in a Section 96 application.

Application withdrawn 24 August 2012.

26 April 2012 – DA12/0167 – This application involved a neighbouring property - 483 Urliup Road, Urliup. It is unclear how the operation would be connected to the Karlos operation. Application withdrawn 8 November 2012.

20 March 2015 – DA03/0445.02  Tweed Shire Council approval to increase truck movements from 2 trips per day to 10 trips per day.

28 Tweed Shire Council Extraordinary Meeting minutes – page 4
2A. Deliveries are not permitted during bus hours of operation on Urliup Road, which are 7.30-8.30am and 3.30-4.30pm, Monday to Friday.

4A. Daily delivery movements are restricted to ten (10) trips per day (weekdays only) for twelve (12) months (trial period) from the date of this amended consent. Upon cessation of the trial period the daily delivery movements revert back to two (2) trips per day (weekdays only). The proponent may lodge a further Section 96 amended application prior to the cessation of the trial period seeking a further amended trip rate.

3 June 2016 – DA03/0445.04 Tweed Shire Council approval to increase hours of operation & trucks to 12 total trips per day including weekends. 6 metre truck limit remained.

2B. The hours of operation and deliveries are:
- Monday to Friday 7.00am to 6.00pm.
- Saturday and Sunday 8.00am – 6.00pm

4B. Daily delivery movements are restricted to 12 trips per day.

12 May 2017 – DA03/0445.03 TSC refused S96 Modification that sought permission to use 19m trucks instead of the already allowed 6m trucks for the same number of trips per day (6 deliveries a day i.e. 12 trips).

12 May 2017 - DA15/0664 – TSC refused the proponent’s proposal to contribute to the cost of the upgrade of Urliup Road to facilitate DA03/0445.

31 October 2018 - DA18/0910 – Application lodged for water bottling facility and use of existing structures for the purposes of commercial water extraction.29

NSW OFFICE OF WATER BORE LICENCES

- Bore # 30BL183219 – 30WA320492 Water Access Licence (WAL) 40789 = 30 megalitres – Stock and Domestic Use only
- Bore # 30BL207356 – 30WA320492 Water Access Licence (WAL) 40789 = 25 megalitres - Stock and Domestic Use only
- Bore # 30BL184761 – 30WA320494 (WAL) 40790 = 5 megalitres - Stock and Domestic Use only
Total allocation of 60 megalitres

For all Development Applications submitted to Tweed Shire Council, use the following link: http://s1.tweed.nsw.gov.au/Pages/XC.Track/SearchProperty.aspx?id=22168

NOTE: Legal advice received by Tweed Water Alliance indicates that Tweed Shire Council, along with the NSW Office of Water, is responsible for water licence conditions to the extent that they form part of the DA consent.

SUMMARY

At 31 October 2018, Mount Warning Spring Water’s operational conditions state:

- Permitted truck movements - 8 trips per day, weekdays only (4 in, 4 out), and
- Permitted operating hours 9am – 3pm, Monday – Friday, as per DA06/0995.01 approval and consent conditions.30

This extractor operated for up to 11 years on a 3 megalitre licence under the Department of Natural Resources, General Terms of Agreement granted for water bottling (on site). In 2015, a Section 96 modification, granted permission to sell bulk and bottled water. In that approval, truck movements were limited to 8 trips per day between 9.00a.m and 3.00p.m, Monday to Friday. This operation has grossly exceeded those limits at least since February 2017, running semi-trailer tankers throughout the day and night, seven days a week. The maximum extraction limit of 3 megalitres was increased to 50 megalitres on 27th June 2016.

Since Tweed Water Alliance’s ‘Lawless’ report was presented to Council in March 2018, Council staff prepared confidential reports for Councillors regarding the four operators known to be breaching their conditions. These were considered at a Council Meeting on 2nd August, 2018. Minutes from that meeting state that legal advice would be sought on the interpretation of the consents and that Mount Warning Spring Water were to be advised that they can submit a Section 4.55 (a minor amendment to an existing approval, known formerly as Section 96). This would have the effect of “legalising” the ongoing breaches. Further, the owners were required to pay outstanding Section 94 Contributions.31

We have been advised by Council staff that a Section 4.55 modification was submitted and refused by Council and that a new Development Application is to be submitted.

Even though Council have acknowledged that they informed Mt Warning Spring Water they are to comply with their Development Consent conditions, Council are still unable to inform us of exactly what they consider to be the current Conditions of consent. Specifically they cannot confirm:

- how many trucks trips per day they are permitted
- what size trucks are permitted, and
- what hours and days they are permitted to have tankers operate.

To recap, DA05/0995.01, approved October 2015, documents that truck movements permitted are 8 trips (4 in, 4 out), during Monday – Friday, 9am – 3pm.

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30  Tweed Shire Council Development Consent DA05/0995.01 dated 15th October 2015 Condition 3A
31  Tweed Shire Council minutes date 2nd August 2018 - page 28
DA 16/0579, approved in November 2016, for the construction of a larger bottling shed on Lot 2 of their property, had applied for:

- an increase in truck movements per day
- an increase in operating hours, and
- to be able to operate 7 days a week including public holidays.

However, it should be noted that these conditions do not come into effect until an Occupation Certificate is issued on the completion of the building. This has not happened.

This applicant continues to breach the approved Development Consent conditions of truck movements and hours of operation almost every day with tankers running day and night.

No water miner in the Tweed Shire has Development Consent to travel at night.

Council have been informed of these breaches and still nothing has been done. Tweed Water Alliance has ceased submitting regular reports of breaches as they are neither acknowledged nor investigated.

BREACHES

Tweed Water Alliance has photographic evidence of trucks entering and leaving Mount Warning Spring Water's site on more than one occasion and the tankers travelling through Uki that have been listed below and often photographed are the very same tankers entering and leaving the site.

Just a few of the many water tanker movements witnessed and documented:

2018

- Monday 14 May      Tanker travelling through Uki at 3:35 am
- Tuesday 15 May     Tanker travelling through Uki at 4:47 am
- Saturday 3 June    Tanker travelling through Uki at 7:00 am
- Saturday 10 June   Tanker travelling through Uki at 3:55 am
- Saturday 16 June   Tanker travelling through Uki at 5:15 am
- Saturday 30 June   Tanker travelling through Uki at 3:34 am
- Saturday 30 June   Tanker travelling through Uki at 3:37 am
- Saturday 30 June   Tanker travelling through Uki at 4:20 am
- Saturday 30 June   Tanker travelling through Uki at 4:42 am
- Saturday 30 June   Tanker travelling through Uki at 4:54 am
- Tuesday 21 August  Tankers travelling through Uki at 5 am, 5.30 am & 7.30 am
- Monday 3 September Tankers travelling through Uki at 2.45 am & 3.30 am
- Monday 10 September Tankers travelling through Uki at 4.30 am, 5.15 am & 6.11 am
Fig. 4: Saturday 20th October 2018, 11.40am. One of the many water tankers fully loaded and leaving from 2574 Kyogle Road, Kunghur, Mount Warning Spring Water on that day.

BREACHES AND POTENTIAL BREACHES

- Prima facie evidence that the allocated extraction amount of 3 megalitres has been exceeded, potentially since 2015

- Prima facie evidence that the allocated extraction limit of 50 megalitres has been exceeded, likely since 2016

- Failure to install a meter as required under condition 9 of Conditions Statement for bore 30BL184342, now converted to 30WA310276 under the Water Management Act issued by Department of Natural Resources (NSW Office of Water) (DNROoW) on 27th November 2011.

- Failure to provide a return showing the meter reading of hours pumped, the extraction rate for each month during each 12 month period as required in Condition 11 of Conditions Statement for bore 30BL184342 issued by DNROoW on 27th November 2011.

- Failure to measure & record both pumping & non-pumping water levels in the bore at least twice each year, in both January & June (or July), and forward a copy of these records with the annual groundwater return as per Condition 12 of Conditions Statement issued for bore 30BL184342 issued by DNROoW on 27th November 2011.

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32 Tweed Shire Council Development Consent DA05/0995 Page 5
33 Tweed Shire Council Development Consent DA05/0995.02 Page 3
34 NSW Office of Water Conditions Statement for bore # 30BL184342. NB that new conditions may be issued once the bore licence conversion occurs under the Water Management Act 2000, but no new conditions have yet been posted on the Office of Water’s website
36 Ibid
• Failure to install a meter as required under condition 12 of Conditions Statement for bore 30BL207349, now converted to 30WA320432 under the Water Management Act issued by DNROoW on 13th July 2016.37

• Failure to provide a return showing the meter reading of hours pumped, the extraction rate for each month during each 12 month period as required in Condition 14 of Conditions Statement for bore 30BL207349 issued by DNROoW on 13th July 2016.38

• Failure to measure & record both pumping & non-pumping water levels in the bore at least twice each year, in both January & June (or July), and forward a copy of these records with the annual groundwater return as per Condition 15 of Conditions Statement for bore 30BL207349 issued by DNROoW on 13th July 2016.39

• Operating truck movements out of hours permitted (9am-3pm). Tweed Water Alliance has photographic evidence of tankers leaving & arriving at the site throughout the day & night at least since February 2017 (see images below).

Fig. 5: Tanker Leaving Mount Warning Spring Water property already loaded at 6.15am

37 NSW Office of Water Conditions Statement for bore # 30BL207349
38 NSW Office of Water Conditions Statement for bore # 30BL207349
39 Ibid
CONSENT CONDITIONS BREACHES

Photographic evidence has been obtained by Tweed Water Alliance between the dates of Friday 17th November and Tuesday 21st November 2017 observing day and night truck movements.

1. Condition 3A of DA05/0995.01 of consent granted 15th Oct. 2015: (Daily truck movements (bottled & bulk water) are limited to a maximum of 8 trips per day calculated out to 24 allowable trips for that period.

   For that 5 day period (3 weekdays) the number of trips recorded for that period was 72. This means that during that 5 day period the permitted number of trips was exceeded by 48. This is a gross breach of the Development Consent conditions.

2. Two of those 5 days, Saturday & Sunday, are outside the allowable days specified in the consent. The Section 96 application for DA05/0995.01 changed the number of truck movements to 8 per day, but did not alter the hours of operation or the operation days (i.e. Monday- Friday).

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40 Tweed Shire Council Development Consent DA05/0995.01 dated 15th October 2015 Condition 3A
41 Ibid
42 Information submitted within original application, DA05/0995
43 Tweed Shire Council Development Consent DA05/0995.01 dated 15th October 2015 Condition 3A
WATER ALLOCATION BREACH

During that 5 day period 31, 15 metre tankers carrying 28,200 litres each were recorded leaving the site. Extrapolated to a year this equates to 63.8 megalitres, 13.8 megalitres over and above the current licence allocation of 50 megalitres. It should be noted that this calculation is conservative as the 5 bottled water truckloads exported from the site in both 6 and 15 metre trucks have been excluded from the calculations due to the unknown capacity therein which would mean the 13.8 megalitres would increase by that amount.

Calculations showing discrepancies between allowable truck trips and Water Allocation

When the licence allowed 3 megalitres extraction, the Conditions of Consent permitted 8 trips for bottled and bulk water (4 in, 4 out), Monday to Friday only.

Presuming trucks at that time were 6 metre trucks (conservative estimate), each load would be 13,000 litres. Allowing for operation only on weekdays, this extrapolates to 13.52 megalitres for a year, 10.52 megalitres over the allocated amount of 3 megalitres. If half of those loads were bulk and half bottled, the bulk water alone would still be 2.52 megalitres over the allocation.

Anecdotal information however, indicates that during this time the property owners were in fact using 15m trucks, with a load of 28,200 litres, breaching the 3 megalitre allocation by even more. Complying with the condition of 8 trips per day (4 in, 4 out) with 15 metre trucks over a year, again allowing for operation only on weekdays would mean the extraction of 29.33 megalitres per annum. An image (shown above) taken in February 2017 shows a tanker of 15m length exiting the property. Even a conservative estimate of 2 full loads per day, would mean the extraction of 14.66 megalitres per annum.

What size trucks were being used and the number of trips is information that will be available in the financial and other records of the licence holder, the transport company and the bottling company.

RECOMMENDATIONS

1. The NSW Office of Water & Tweed Shire Council investigate whether the property owner’s 3 megalitre allocation was exceeded from October 2015 – June 2016.
2. The NSW Office of Water and Tweed Shire Council investigate whether the property owner’s 50 megalitre allocation has been exceeded since June 2016.
3. If over extraction has occurred, revoke the DA and/or licence.
4. Request financial and other records from transport company Black Mount Pty. Ltd., the landholders and the bottling company to determine the amount of water removed.
5. Seek compensation from property owners, Black Mount Pty. Ltd. and the bottling company for any water unlawfully removed.
6. Impose significant penalties and fines in order to ensure such unlawful conduct does not recur in the Shire.

Tweed Shire Council Development Consent DA05/0995.02 - Page 3
Tweed Shire Council Development Consent DA05/0995.01 - Page 5 of attached pdf
Ibid - Condition 3A
Tweed Shire Council Development Consent DA05/0995.02 Page 3
EXPANDED APPLICATION SUMMARY

6th February 2006 - DA05/0995 Consent granted for bottling, permitting 2 trips per day. As part of the Conditions of Consent, the Department of Natural Resources imposed General Terms of Approval for the extraction licence, one of which was: The volume of groundwater extracted as authorised must not exceed 3 megalitres in any 12 month period commencing 1 July.

15th Oct. 2015 – DA05/0995.01 S96 Modification Consent granted with Condition: 3A Daily truck movements (bottled & bulk water) are limited to a maximum of 8 trips per day. Under Department of Natural Resources General Terms of Approval for a licence under the water Act 1912 for Development Application 05/0995 The volume of groundwater extracted as authorised must not exceed 3 megalitres in any 12 month period commencing 1 July.

27th June 2016 – DA05/0995.02 S96 Modification Consent granted under new General Terms of Approval Version 1.1 stating: 24. The volume of groundwater extracted as authorised must not exceed 50 megalitres in any 12 month period commencing 1 July. There were no changes to the number of trucks movements in this application, it remains at 8 trips per day for bulk & bottled water (4 in & 4 out) and no change in the allocation granted by Council.

18th November 2016 – DA16/0579 – This Development Application sought approval for a bottling plant to be constructed on Lot 2 in DP 883113, adjoining the original allotment, the majority of the operations would be relocated to the new building, the existing bores on Lot 1 would continue to be used and the existing bottling plant on Lot 1 would be used for water filtration & piped to the new bottling plant. All of the transportation of bulk & bottled water off the property presumably would be from Lot 2. The proposed bottling plant has yet to be constructed and as such, an Occupation Certificate has not been issued. As a result, none of the terms of the conditions of consent DA16/0579 (see Conditions 73 & 83 below) can be considered to be in force. This means that the conditions of the former Development Application DA05/0995.01 in relation to truck trips and operating hours applies until such time as the Occupation Certificate is issued. Condition 3A of that consent states: Daily truck movements (bottled & bulk water) are limited to a maximum of 8 trips per day.

Condition 73 - Hours of operation of the business are restricted to the following hours 7am to 7pm - Mondays to Sunday and Public Holidays

Condition 83. Daily truck movements (bottled and bulk water) are limited to a maximum of 12 trips per weekday and 8 trips per day on Saturday, Sunday and public holidays

NOTE: Legal advice received by Tweed Water Alliance indicates that Tweed Shire Council, along with the NSW Office of Water, is responsible for water licence conditions to the extent that they form part of the DA consent.
NSW Office of Water Bore Licences

- Bore licence # 30BL184342 – 30WA310276 (WAL) 38162 = 25 megalitres
- Bore licence # 30BL207349 – 30WA320432 (WAL) 40306 = 25 megalitres

Total allocation 50 megalitres

An Industrial (low) & Irrigation licence # 30CA307570 granted to take from Upper Tweed Water source WAL 21729 = 180 megalitres

56 NSW Office of Water Conditions Statement for bore # 30BL184342. Note that new conditions may be issued once the bore licence conversion occurs, but no new conditions have yet been posted on the Office of Water’s website.
57 NSW Office of Water conditions for 30BL207349
58 NSW Office of Water permit for 30CA307570
SUMMARY

The applicant began selling bottled water in 2006, (to be bottled on site) under a 12 megalitre allocation, claiming in the Statement of Environmental Effects that the only increase in traffic would be workers cars & 1) five (5) tonne delivery truck per week.

In or around 2017, the licence holder began removing bulk water in what is at least 15m but possibly 19m trucks. Photographic evidence obtained by Tweed Water Alliance on and between the dates of 16th Feb to 21st Feb. 2018 a period of 6 days, observed 11 full tanker movements. These tankers fully laden weigh 43 tonnes, considerably more than the approved 5 tonnes, and operated each night of the 6 day period, not once a week as specified in the consent.

11 full tankers in 6 days extrapolated over a period of 1 year using 15 metre trucks with a capacity to carry 28,200 litres per truck load equates to roughly 18 megalitres, not 12 megalitres as per DA06/0603 consent permits. This does not include water bottled on site.

Since Lawless was published, the TWA has uncovered that none of the infrastructure currently used to service these tankers has been authorised. This includes:

- The pumping facility on the property boundary, clearly visible from Bryens Road, is not authorised.
- Four (4) storage tanks used for the bulk water extraction, again clearly visible from Bryens Road, are not authorised.
- The road reserve at the property entrance has been modified to accommodate bulk tankers, and no such road works have been authorised.

Since our initial report of this operator using 15 metre (43 tonne) tankers we have received reports and photographs that B-double (50 tonne) trucks are also used to transport water from this site.

Numerous reports of ongoing movements of trucks – at all hours – have been submitted.

Council are aware that this unauthorised activity can be confirmed simply by driving down Bryens Road.

In addition, evidence of damage to the Bryens Road/Nobbys Creek Road intersection is obvious and ongoing.

In the seven months since the TWA made a formal complaint, not a single enforcement or compliance action has been taken.
BREACHES & POTENTIAL BREACHES

- Potential extraction beyond allocated amounts of 12 megalitre limit
- Unauthorised truck sizes – pictured truck is 43 tonnes fully loaded (breaches s. 76A (1) of the Environmental Planning and Assessment Act 1979)
- Excessive truck movements
- Installation and use of an unauthorised pumping station
- Amendment of the road reserve to permit turning of tankers and b-doubles without authorisation
- Installation of 4 additional water tanks without authorisation (breaches s. 76A(1) of the Environmental Planning and Assessment Act 1979)

Witnesses to these breaches have prepared statutory declarations that will be provided on request. Anecdotal information suggests bulk water extractions have been occurring since mid-2017.

26th Sept. 2006 – Consent granted by Tweed Shire Council for bottling of mineral water & bulk mineral water supplies (Quest Water Pty. Ltd).
Conditions of the Development Consent DA06/0603 states:

4. *The development is restricted to the number of trips as specified in the submitted Statement of Environmental Effects.*\(^60\)

**STATEMENT OF ENVIRONMENTAL EFFECTS**

**Part 2.3 DETAILS OF OPERATIONS** states:

*The water bottling plant would have a maximum production level of 2400 x 600 ml. This would equate to 100 cartons which would be loaded on one (1) 5 tonne truck per week.*

Tweed Shire Council DA06/0603 restricts truck movements to “one (1) five (5) tonne delivery truck per week”\(^61\)

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60 Development Application DA 06/0603 Statement of Environmental Effects, p. 6
61 Ibid

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Fig. 8: B-double water tanker filling up at 101 Bryen’s Road, Nobby's Creek. Also showing pumping facility, storage tanks & road works which are all unauthorised.
RECOMMENDATIONS

1. Investigate whether the property owner’s authorised 12 megalitres allocation has been exceeded in conjunction with the NSW Office of Water.

2. Request financial records from property owner, bottling company & Black Mount Pty Ltd to determine the amount of water removed.

3. If over extraction has occurred, revoke the DA and/or licence.

4. Seek compensation from property owners, bottling company and water Transport Company for any water unlawfully removed.

5. Ensure that all DAs contain limitations on hours of operation.

NOTE: No information is available on Tweed Shire Council’s web site for this DA

NSW OFFICE OF WATER BORE LICENCES

- Bore Licence # 30BL184009, converted to 30WA314331 under the Water Management Act.
- Water Access Licence (WAL) 38387 - current allocation from the NSW Office of Water
- Under the Water Management Act 2000 is 38 megalitres (ML) Tweed Shire Council consent for DA06/0603 General terms of approval under section 116 of the Water Act states: “the volume of groundwater extracted as authorised must not exceed 12 megalitres.”

NOTE: Legal advice received by Tweed Water Alliance indicates that Tweed Shire Council, along with the NSW Office of Water, is responsible for water licence conditions to the extent that they form part of the DA consent.
Kynnumboon 10 – 20 Edwards Lane & 308 Numinbah Road, Kynnumboon
Lot 5 in DP 1206755 & Lot B in DP 953668
Applicants: Walmsley, Brown and Lykapa Pty. Ltd (Clifford) & others

SUMMARY

Council granted consent to install fibreglass tanks for the use of water on-site and a subsequent approval was sought to remove water from the site. This was refused by Council, yet water was being removed on a daily basis. The applicant was then asked to submit a new DA applying to remove the water which they did, Council took no action for the previous breaches. Since this consent was granted alleged breaches of both the permitted number of trucks and the volume of water extracted were reported to NSW Office of Water and a compliance case was opened & finalised in March 2016. After the Office of Water received further complaints another case was opened in September 2017 and investigative action is still taking place.

As this report shows, the same patterns are consistently repeated; a small extraction and operation is approved. The conditions are ignored and larger trucks, increased trips and increased extraction all follow. As residents report breaches, Council recommends a s96 Modification (now s4.55) or an application to amend a DA to legalise the unpunished illegal behaviour. The approval is granted and breaches continue to occur.

On August 2, Four months after the TWA submitted Lawless as a formal complaint to Council, a majority of the Councillors resolved to reinforce the need for compliance by all four operators of bulk water extraction in terms of their Conditions of Consent.

Kynnumboon’s, The Harris Group - Pristine Water Supplies were requested to report on their operations for the last 7 years as required by their Conditions on Consent, in particular 4.2 of DA06/1023.03. Council stated reports could include:

- Log books of water extraction from the site.
- Truck movements, including dates and times to and from the site.
- Water supply records from the water bottling company detailing total volume received.

To our knowledge this company has been the only water miner that Council have requested such information from and it is unknown whether they complied, whether the information was reviewed and whether any breaches were found. Certainly, no breaches have been acted on.

62  Tweed Shire Council Planning Committee Meeting 23rd Jan 2007 – Page 94 - Response #3
63  Tweed Shire Council Planning Committee Meeting 23rd Jan 2007 – Page 89 - Penultimate paragraph
64  Email from NSW Office of Water
65  Email from NSW Office of Water
66  Council Minutes 2nd August 2018 – page 29
APPLICATIONS SUBMITTED TO COUNCIL

9th Feb. 2006 (DA05/1507) – Tweed Shire Council consent for installation of fibreglass water tanks. Condition 20 states: “The water from the bore and the tanks is purely for the use on the subject land being Lot B DP 853668. No water from the tanks or bore is to be transported from the land. A separate development application will need to be submitted and approved by Council prior to any water being transported from the land.”

45 megalitres is permitted to be extracted annually.

27th July 2006 DA05/1507.02 – Application to remove Condition 20 was rejected.

25th Jan. 2007 (DA06/1023) – Tweed Shire Council consent granted for the transportation of water, allowing 4 trips per day (2 in & 2 out), operating between the hours of 7am – 7pm, Mondays to Fridays (excluding public holidays). Permitted truck sizes weren’t stated in this application.

1st Sept. 2010 (DA06/1023.02) – Council consent to modification of DA to increase number of truck movements to 8 total trips per day (4 in & 4 out) Mondays to Fridays (excluding public holidays) from 7am – 7pm.

20th June 2016 (DA06/1023.03) – Council consent to modification of increase in permitted truck movements to 10 total trips per day weekdays (5 in & 5 out) entering & leaving site from 7am to 7pm (excluding public holidays) and 4 total trips (2 in & 2 out) per weekend days entering & leaving site from 8am – 12pm.

For information on this DA use the following link:

Removal of water outside allocated hours within conditions of Tweed Shire Council’s Consent dated 20th June 2016. Property owners, bottling company and Black Mount Pty. Ltd are all in breach. It is acknowledged that truck movements recorded just outside allocated hours are minor breaches.
If B-doubles are used exclusively the permitted number of 5 full tanker loads (@38,000 litres) would result in an unauthorised over extraction of 12 million litres beyond the approved amount of 45 million litres.
RECOMMENDATIONS

6. Council inspect log books belonging to the property owner
7. Council request financial information from Black Mount Pty Ltd relating to this property in order to determine the amount of water removed;
8. Council request financial information from the bottling company relating to this property in order to determine the amount of water removed.
9. Should the property owner be in exceedance of its permitted allocation, the DA should be cancelled and the matter reported to NSW Water for enforcement action
10. A report on its investigations be publicly released

NSW OFFICE OF WATER BORE LICENCES

Bore licence # 30BL183384

Water Access Licence (WAL) 41042 = 45 megalitres (ML)