

DEVELOPMENT APPLICATION

DEVELOPMENT PERMIT:

OTHER CHANGE

Extended Operating Hours

3946 Kennedy Hwy. Mareeba Qld. 4880
Lot 2 on SP310235

PREPARED BY: SCOPE TOWN PLANNING

APRIL 2024



PLANNING FOR LOCALS

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APPLICATION SUMMARY	
DEVELOPMENT APPLICATION	Other Change
PROPOSED USE	Change of Operating Hours
ASSESSMENT LEVEL	Impact
STREET ADDRESS	3946 Kennedy Hwy. Mareeba Qld. 4880
REAL PROPERTY ADDRESS	Lot 2 on SP310235
LAND AREA	21,570m ²
APPLICANT	Scope Town Planning c/- Land Owner
LAND OWNER	C. and C. Pratt
LOCAL GOVERNMENT AREA	Mareeba Shire Council
PLANNING SCHEME	Mareeba Shire Planning Scheme
ZONE	Rural Zone
PRECINCT	Nil
EASEMENTS	ASP160169, BSP310235, CSP310235
IMPROVEMENTS	Food and Drink Outlet
APPLICABLE PLANNING CODES	Rural Zone Code
	Agricultural Land Overlay Code
	Airport Environs Overlay Code
	Bushfire Hazard Overlay Code
	Environmental Significance Overlay Code
	Community Activities Code
	Landscaping Code
	Parking and Access Code
APPLICABLE REFERRALS	Works, Services and Infrastructure Code
	SARA (Dept. Transport and Main Roads)

1 Proposal

1.1 Introduction

This application is for a Development Permit for an Other Change to an Existing Approval on Rural Zoned land located at 3946 Kennedy Hwy. Mareeba Qld. 4880 formally known as Lot 2 on SP310235. The site is burdened by Easements ASP160169 and BSP310235 and a beneficiary of Easement CSP310235 as listed in the Land Title attached as Appendix 4.

This development application is classified as **Impact Assessable Development** subject to the requirements of the relevant codes of the Mareeba Shire Planning Scheme for a Community Activity as prescribed by Table 5.5.9 – Material Change of Use in a Rural Zone.

1.2 Proposed Development Summary

The proposed development is a Other Change to the existing Approval, MCU/09/0005, Material Change of Use for a Restaurant (Negotiated Decision Notice, Approval dated 8 July 2009) within the existing building on Lot 2 on SP310235 currently used as a Food and Drink Outlet for The Emerald Creek Ice Creamery business. The Other Change concerns Condition 3.6 – Hours of Operation.



Figure 1: Development site – Lot 2 on SP310235 (Qld. Globe).

1.3 Site and Locality

The proposal site is located 11km East of Mareeba at 3946 Kennedy Hwy. Mareeba Qld. 4880 formally known as Lot 2 on SP310235. The site hosts the popular local Food and Drink Outlet, The Emerald Creek Ice Creamery. The generally flatly contoured site is otherwise mostly cleared of native vegetation with retained vegetation along the rear boundary.

The Rural zoned site has a 24m frontage to the Kennedy Highway with a total area of 21,570m² and is located amongst several other large Rural lots. The site is mapped with several overlays which are addressed in the Planning Code Assessment attached as Appendix 1. The site is burdened by and a beneficiary of 4 easements as listed in the Land Title attached as Appendix 4.

The site is improved with the Food and Drink Outlet building serviced by an array of photovoltaic electricity panels, an all-weather crushed stone car parking area and a sealed crossover directly accessing the Highway.



Figure 2: Development site Kennedy Highway frontage (Google Maps).



Figure 3: Development site improvements (Google Maps).



Figure 4: Existing facilities – external (Land Owner).



Figure 5: Existing facilities - internal (Land Owner).

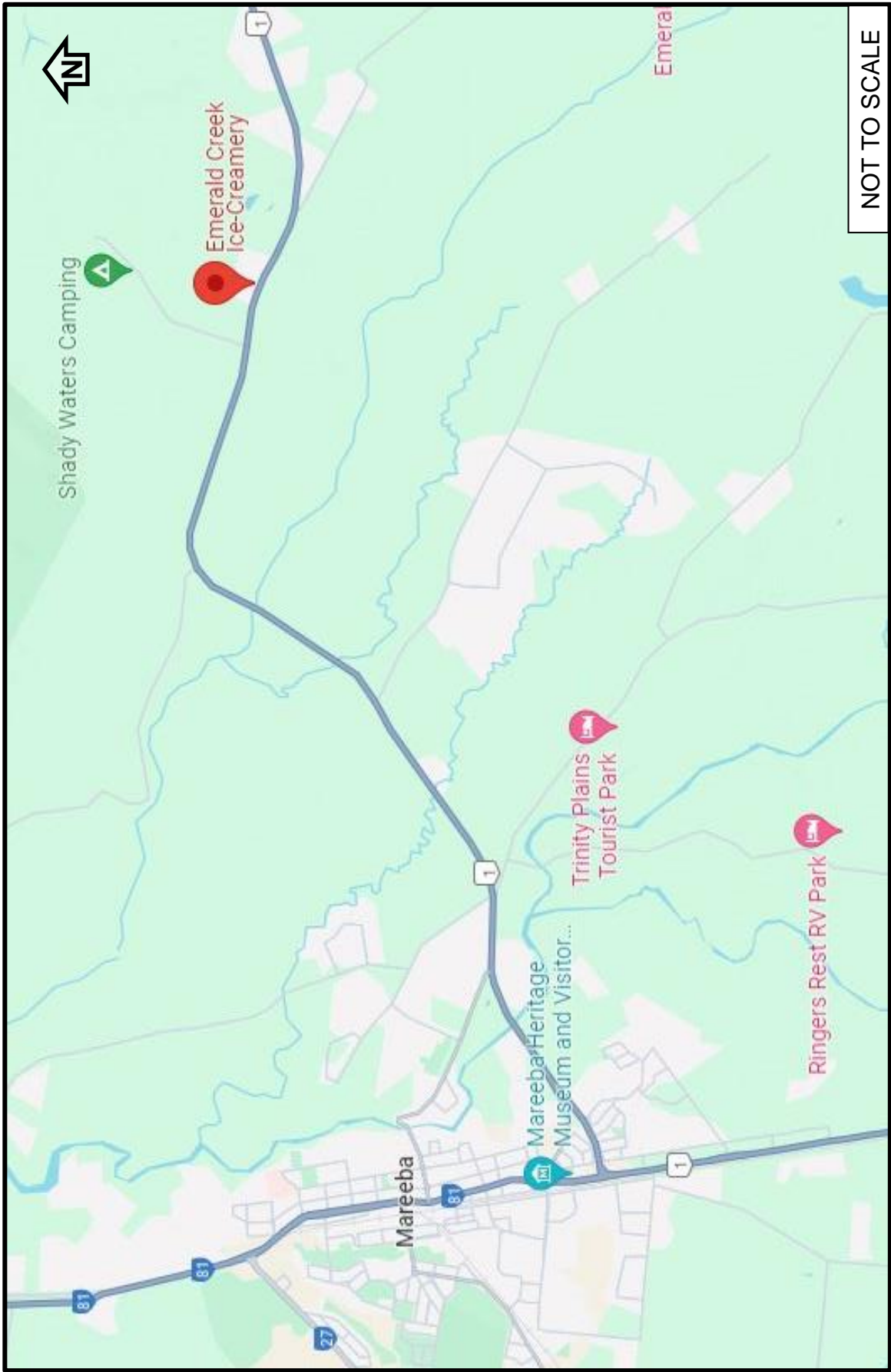


Figure 6: General location of development site. (Google Maps)

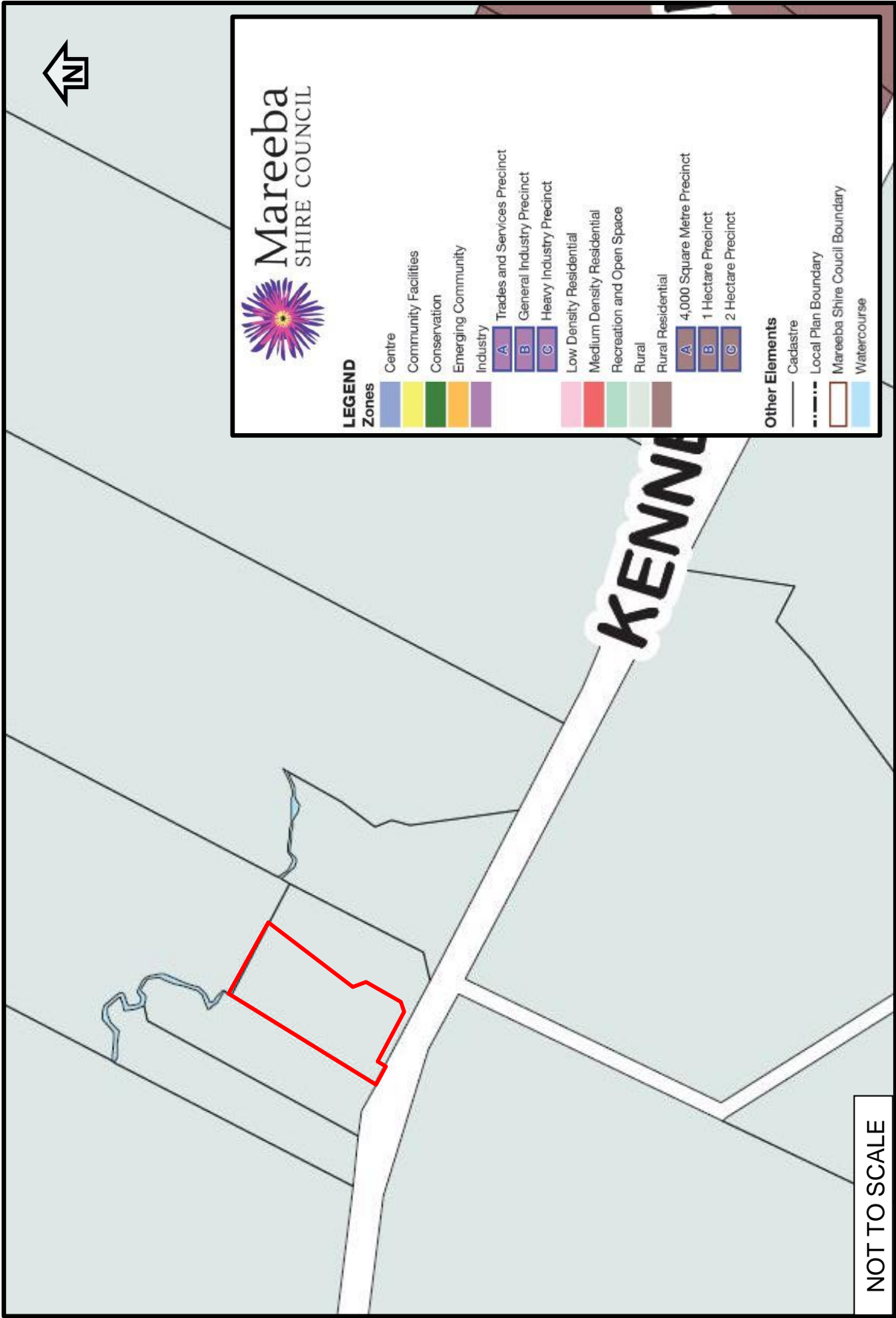


Figure 7: Development Site Rural Zoning (MSC).

2 Proposed Development Detail

The proposed Other Change application seeks to increase the regular business operating hours of the Ice Creamery business to cater for the increased demand of locals and visitors alike. The extended hours would open the facility later on Thursday, Friday and Saturday nights and cater for visitors and small private functions, serving the Ice Creamery Menu, drinks and nibbles/tapas. The venue will not cater for large functions such as weddings but may cater for small private events such as birthday and anniversary parties.

The proposed development is small in scale, is not foreseen to result in security issues and will utilize the existing car parking facilities which, as traffic generation is outside of the existing approved hours of operation, will not intensify and will be less impactful than that generated during current operating hours.

2.1 Other Change - Hours of Operation

This development application seeks approval for the extension of the existing operating hours of the Food and Drink outlet, The Emerald Creek Ice Creamery, with the intent of capturing additional business and hosting the proposed Club meetings.

The proposed Other Change applies to existing approval MCU/09/0005, Material Change of Use for a Restaurant. The Other Change concerns MCU/09/0005 Negotiated Decision Notice dated 8 July 2009, Condition 3.6 – Hours of Operation.

The current opening hours of the Ice Creamery are 10am – 4:30pm Monday to Sunday with the existing approval allowing 9am – 5pm Monday to Friday and 9am to 6pm on Weekends and Public Holidays. Table 1 below outlines the proposed changes to the hours of operation.

Table 1: Proposed changes to current operating hours

	Current approved hours		New proposed hours	
	Open	Close	Open	Close
Monday	9am	5pm	9am	5pm
Tuesday	9am	5pm	9am	5pm
Wednesday	9am	5pm	9am	5pm
Thursday	9am	5pm	9am	11pm
Friday	9am	5pm	9am	11pm
Saturday	9am	6pm	9am	11pm
Sunday	9am	6pm	9am	6pm
Public Holidays	9am	6pm	9am	6pm

2.2 Amenity

It is understood that the proposed extended hours will raise concerns regarding the increase of traffic, light and noise pollution and security. In respect of the amenity and comfort of adjoining property residents, strict mitigation measures will be put in place.

The following mitigation measures are proposed options only and any Council Conditions requiring specific mitigation measures will be complied with.

The proposed optional mitigation measures are as follows:

Acoustic Pollution Mitigation

- Acoustic suppressant devices may be installed along the western boundary adjacent to the car park in the form of dense vegetation planting
- Acoustic suppressant devices may be installed where required including Earth Mounds (retained or non-retained) and/or cost viable fencing
- Club and Ice Creamery patrons visiting after regular business hours (5pm) will be required to comply with the business owners and Council conditions of entry
- Activities and events occurring after regular business hours (5pm) will be conducted within the facilities and outdoor seating area
- The entry doors will be closed after regular business hours (5pm) until Close of business (11pm), Thursdays, Fridays and Saturdays
- No live music or loud music will be allowed at the venue. Should a special event be booked, any related music after hours will gain Council approval

Light Pollution Mitigation

- Illumination suppressant devices will be installed along the western boundary adjacent to the car park in the form of dense vegetation planting.
- Other illumination suppressant devices may be considered in negotiation with Council requirements including Earth Mounds (retained or non-retained) and/or cost viable fencing.
- All existing outdoor illumination will continue to be operated under the current approval conditions (MCU/09/0005 Condition 7 – Lighting).

2.3 Community Benefits

The proposed extended operating hours will serve to increase visitation hour options for locals and visitors and add value to the local economy by supporting local businesses.

It is of note that under the current business operation, visitors frequent the Ice Creamery outside of operating hours seeking to visit the attraction especially as regional visitors travel past the site following a visit to the tablelands. As such, the proposed increase in operating hours will capture additional patronage to the business and further promote the local attraction.

3 Planning Considerations

3.1 Compliance with Planning Scheme

This development site is located within the Rural Zone. The proposed Club use is classified as a Community Activity and is Impact Assessable under the Mareeba Shire Council Planning Scheme 2016. Compliance with the relevant Codes is demonstrated in **Appendix 1**.

Table 2: Relevant codes applicable to the proposed development.

Mareeba Shire Council Planning Scheme		CODE APPLICABILITY
Zone Code	Rural	✓
Local Plan Code	Mareeba Local Plan	n/a
Overlay Codes	Agricultural Land	✓
	Airport Environs	✓
	Bushfire Hazard	✓
	Environmental Significance	✓
Use Code	Community Activities Code	✓
Development Codes	Landscaping	✓
	Parking and Access	✓
	Works, Services and Infrastructure	✓

3.2 Strategic Framework

The proposed development satisfies the MSPS Strategic Framework (Part 3), the most pertinent elements of which are addressed below.

3.7 Economic Development

Strategic Outcome 3.7.1 (9) outlines the purpose of the strategy to achieve a flexible and responsive reaction to support economic diversity and innovation throughout the Shire which generate employment opportunities and meet the changing needs of the community and economy.

The proposed development is consistent with the intent of this outcome as is proposed in response to the economic demand on the existing, established business and adds a small scale event location which is diverse and innovative in nature. Additionally, the proposed development continues to strengthen the local employment opportunities provided by the existing business and facility.

3.3 State Agency Referral

This development triggers referral to SARA for a Material Change of Use on land within 25m of a State Road (Kennedy Highway). Referral will be undertaken upon receipt of the Confirmation Notice to be provided by Mareeba Shire Council following lodgement of the application.

4 Planning Summary

This application is for a Development Permit for an Other Change to an Existing Approval on Rural Zoned land located at 3946 Kennedy Hwy. Mareeba Qld. 4880 formally known as Lot 2 on SP310235. The site is burdened by and a beneficiary of the easements listed in the attached Land Title.

This application is classified as **Impact Assessable Development** subject to the requirements of the relevant codes of the Mareeba Shire Planning Scheme for a Material Change of Use in a Rural Zone.

The proposed Other Change seeks to extend the operating hours of the Ice Creamery business and concerns MCU/09/0005, Negotiated Decision Notice dated 8 July 2009, Condition 3.6 – Hours of Operation and will serve to increase visitation hour options for locals and visitors and add value to the local economy by supporting local business.

This development triggers referral to SARA for a Material Change of Use on land within 25m of a State Road (Kennedy Highway).

The proposed use is able to comply with the desired outcomes of the Strategic Framework and applicable Planning Codes of the Mareeba Shire Council Planning Scheme (2016).

5 Recommendation

It is the professional opinion of Scope Town Planning that the proposed Other Change to an Existing Approval MCU/09/0005 on land located at 3946 Kennedy Hwy. Mareeba, satisfies the desired outcomes and requirements of the Mareeba Shire Planning Scheme (2016) and is of economic and social benefit to the local community and surrounding area. As such, it is recommended that this application should be fairly assessed and approved by Mareeba Shire Council with reasonable conditions.



Johnathan Burns

Senior Town Planner | **Scope** Town Planning

Change application form

Planning Act Form 5 (version 1.2 effective 7 February 2020) made under Section 282 of the Planning Act 2016.

This form is to be used for a change application made under section 78 of the *Planning Act 2016*. It is important when making a change application to be aware of whether the application is for a minor change that will be assessed under section 81 of the *Planning Act 2016* or for an other change that will be assessed under section 82 of the *Planning Act 2016*.

An applicant must complete all parts of this form, and provide any supporting information that the form identifies as being required to accompany the change application, unless stated otherwise. Additional pages may be attached if there is insufficient space on the form to complete any part.

Note: All terms used in this form have the meaning given under the *Planning Act 2016*, the *Planning Regulation 2017*, or the *Development Assessment Rules (DA Rules)*.

PART 1 – APPLICANT DETAILS

1) Applicant details	
Applicant name(s) (individual or company full name)	C and C Pratt c/- Scope Town Planning
Contact name (only applicable for companies)	Johnathan Burns, STP
Postal address (P.O. Box or street address)	225 Walsh St
Suburb	Mareeba
State	Qld.
Postcode	4880
Country	Australia
Email address (non-mandatory)	jburns@scopetownplanning.com.au
Mobile number (non-mandatory)	0450 781 841
Applicant's reference number(s) (if applicable)	24003

2) Owner's consent - Is written consent of the owner required for this change application?	
Note: Section 79(1A) of the <i>Planning Act 2016</i> states the requirements in relation to owner's consent.	
<input checked="" type="checkbox"/> Yes – the written consent of the owner(s) is attached to this change application	
<input type="checkbox"/> No	

PART 2 – LOCATION DETAILS

3) Location of the premises (complete 3.1) or 3.2), and 3.3) as applicable)				
3.1) Street address and lot on plan				
<input checked="" type="checkbox"/> Street address AND lot on plan (all lots must be listed), or				
<input type="checkbox"/> Street address AND lot on plan for an adjoining or adjacent property of the premises (appropriate for development in water but adjoining or adjacent to land e.g. jetty, pontoon. All lots must be listed).				
a)	Unit No.	Street No.	Street Name and Type	Suburb
		3946	Kennedy Hwy.	Mareeba
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)
	4880	2	SP310235	Mareeba Shire Council
b)	Unit No.	Street No.	Street Name and Type	Suburb
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)



**Queensland
Government**

3.2) Coordinates of premises (appropriate for development in remote areas, over part of a lot or in water not adjoining or adjacent to land e.g. channel dredging in Moreton Bay)

Note: Place each set of coordinates in a separate row.

☐ Coordinates of premises by longitude and latitude

Longitude(s)	Latitude(s)	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

☐ Coordinates of premises by easting and northing

Easting(s)	Northing(s)	Zone Ref.	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56	<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other: <input type="text"/>	

3.3) Additional premises

☐ Additional premises are relevant to the original development approval and the details of these premises have been attached in a schedule to this application

☒ Not required

PART 3 – RESPONSIBLE ENTITY DETAILS

4) Identify the responsible entity that will be assessing this change application

Note: see section 78(3) of the Planning Act 2016

Mareeba Shire Council

PART 4 – CHANGE DETAILS

5) Provide details of the existing development approval subject to this change application

Approval type	Reference number	Date issued	Assessment manager/approval entity
<input checked="" type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval	MCU/09/0005	8 July 2009	Tablelands Regional Council
<input type="checkbox"/> Development permit <input type="checkbox"/> Preliminary approval			

6) Type of change proposed

6.1) Provide a brief description of the changes proposed to the development approval (e.g. changing a development approval for a five unit apartment building to provide for a six unit apartment building):

Change of operating hours, Thursday, Friday and Saturday

6.2) What type of change does this application propose?

☐ Minor change application – proceed to Part 5

☒ Other change application – proceed to Part 6

PART 5 – MINOR CHANGE APPLICATION REQUIREMENTS

7) Are there any affected entities for this change application		
<input checked="" type="checkbox"/> No – proceed to Part 7 <input type="checkbox"/> Yes – list all affected entities below and proceed to Part 7 Note: section 80(1) of the Planning Act 2016 states that the person making the change application must give notice of the proposal and the details of the change to each affected entity as identified in section 80(2) of the Planning Act 2016.		
Affected entity	Pre-request response provided? (where a pre-request response notice for the application has been given, a copy of the notice must accompany this change application)	Date notice given (where no pre-request response provided)
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	
	<input type="checkbox"/> No <input type="checkbox"/> Yes – pre-request response is attached to this change application	

PART 6 – OTHER CHANGE APPLICATION REQUIREMENTS

Note: To complete this part it will be necessary for you to complete parts of DA Form 1 – Development application details and in some instances parts of DA Form 2 – Building work details, as mentioned below. These forms are available at <https://planning.dsdmip.qld.gov.au>.

8) Location details - Are there any additional premises included in this change application that were not part of the original development approval?
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes

9) Development details
9.1) Is there any change to the type of development, approval type, or level of assessment in this change application? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – the completed Sections 1 and 2 of Part 3 (Development details) of DA Form 1 – Development application details as these sections relate to the new or changed aspects of development are provided with this application.
9.2) Does the change application involve building work? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – the completed Part 5 (Building work details) of DA Form 2 – Building work details as it relates to the change application is provided with this application.

10) Referral details – Does the change application require referral for any referral requirements?
Note: The application must be referred to each referral agency triggered by the change application as if the change application was the original development application including the proposed change. <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – the completed Part 5 (Referral details) of DA Form 1 – Development application details as it relates to the change application is provided with this application. Where referral is required for matters relating to building work the Referral checklist for building work is also completed.

11) Information request under Part 3 of the DA Rules
<input checked="" type="checkbox"/> I agree to receive an information request if determined necessary for this change application <input type="checkbox"/> I do not agree to accept an information request for this change application Note: By not agreeing to accept an information request I, the applicant, acknowledge:

- that this change application will be assessed and decided based on the information provided when making this change application and the assessment manager and any referral agencies relevant to the change application are not obligated under the DA Rules to accept any additional information provided by the applicant for the change application unless agreed to by the relevant parties
 - Part 3 of the DA Rules will still apply if the application is an application listed under section 11.3 of the DA Rules.
- Further advice about information requests is contained in the [DA Forms Guide: Forms 1 and 2](#).

12) Further details

- ☒ Part 7 of *DA Form 1 – Development application details* is completed as if the change application was a development application and is provided with this application.

PART 7 – CHECKLIST AND APPLICANT DECLARATION

13) Change application checklist

I have identified the:

- responsible entity in 4); and
- for a minor change, any affected entities; and ☒ Yes
- for an other change all relevant referral requirement(s) in 10)

Note: See the *Planning Regulation 2017* for referral requirements

For an other change application, the relevant sections of [DA Form 1 – Development application details](#) have been completed and is attached to this application ☒ Yes
☐ Not applicable

For an other change application, where building work is associated with the change application, the relevant sections of [DA Form 2 – Building work details](#) have been completed and is attached to this application ☐ Yes
☒ Not applicable

Supporting information addressing any applicable assessment benchmarks is attached to this application ☒ Yes
Note: This includes any templates provided under 23.6 and 23.7 of *DA Form 1 – Development application details* that are relevant as a result of the change application, a planning report and any technical reports required by the relevant categorising instrument(s) (e.g. the local government planning scheme, State Planning Policy, State Development Assessment Provisions). For further information, see [DA Forms Guide: Planning report template](#).

Relevant plans of the development are attached to this development application ☒ Yes
Note: Relevant plans are required to be submitted for all relevant aspects of this change application. For further information, see [DA Forms Guide: Relevant plans](#).

14) Applicant declaration

- ☒ By making this change application, I declare that all information in this change application is true and correct.
- ☒ Where an email address is provided in Part 1 of this form, I consent to receive future electronic communications from the responsible entity and any relevant affected entity or referral agency for the change application where written information is required or permitted pursuant to sections 11 and 12 of the *Electronic Transactions Act 2001*.

Note: It is unlawful to intentionally provide false or misleading information.

Privacy – Personal information collected in this form will be used by the responsible entity and/or chosen assessment manager, any relevant affected entity or referral agency and/or building certifier (including any professional advisers which may be engaged by those entities) while processing, assessing and deciding the change application.

All information relating to this change application may be available for inspection and purchase, and/or published on the assessment manager's and/or referral agency's website.

Personal information will not be disclosed for a purpose unrelated to the *Planning Act 2016*, *Planning Regulation 2017* and the DA Rules except where:

- such disclosure is in accordance with the provisions about public access to documents contained in the *Planning Act 2016* and the *Planning Regulation 2017*, and the access rules made under the *Planning Act 2016* and *Planning Regulation 2017*; or
- required by other legislation (including the *Right to Information Act 2009*); or
- otherwise required by law.

This information may be stored in relevant databases. The information collected will be retained as required by the *Public Records Act 2002*.

PART 8 – FOR COMPLETION OF THE ASSESSMENT MANAGER – FOR OFFICE
USE ONLY

Date received: Reference number(s):

QLeave notification and payment			
<i>Note: For completion by assessment manager if applicable</i>			
Description of the work			
QLeave project number			
Amount paid (\$)		Date paid (dd/mm/yy)	
Date receipted form sighted by assessment manager			
Name of officer who sighted the form			