



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Milne

**Councillors:** P Allsop  
R Byrnes  
C Cherry (Deputy Mayor)  
R Cooper  
J Owen  
W Polglase

# Late Agenda

## **Planning Committee Meeting Thursday 3 October 2019**

held at  
**Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads**  
commencing at 5.30pm

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

(1) **Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
  - (i) any environmental planning instrument, and
  - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
  - (iii) any development control plan, and
  - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
  - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
  - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations, (e) the public interest.

**Note.** See section 75P(2)(a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

(2) **Compliance with non-discretionary development standards—development other than complying development.**

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note.** The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

(4) **Consent where an accreditation is in force**

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.

- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) **Definitions**

In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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## Items for Consideration of the Planning Committee:

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## REPORTS THROUGH THE GENERAL MANAGER

### LATE ITEMS

#### LATE ITEM FROM THE DIRECTOR PLANNING AND REGULATION

- 7            **LATE [PR-PC] Development Application DA18/0730 for the Use of Part of the Shed as a Rural Workers Dwelling at Lot 22 DP 1006926 & Lot 23 DP 1006926 Kanes Road, Cudgera Creek**

**SUBMITTED BY:**    **Development Assessment and Compliance**

mhm



Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2                    Making decisions with you
- 2.1                Built Environment
- 2.1.2             Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:**            **Advocate**

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#### SUMMARY OF REPORT:

Updated Summary since 5 September 2019

Council at its meeting of Thursday 5 September 2019 resolved as follows:

*"that Council grants in-principle support for the application and submit a further report to the November Planning Committee meeting with recommended conditions of consent."*

As such, this report has been prepared in accordance with the Council resolution, providing recommended conditions to apply on any consent issued.

The actual recommendation on this report remains to refuse the application. In particular, it is noted that the application submitted to Council did not satisfy two of the legislative requirements with respect to rural workers dwellings. Tweed Local Environmental Plan 2014 states the following:

***4.2C Erection of rural workers' dwellings in Zones RU1 and RU2***  
***Development consent must not be granted to the erection of a rural workers' dwelling on land to which this clause applies, unless the consent authority is satisfied that—***

- (c) *the agriculture or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*
- (d) *the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.*

This application has been assessed with respect to the relevant legislative controls and the legal precedence established in *Maschewski v Murray Shire Council* [2015] NSWLEC 1251. From this it is not considered that the consent authority can be satisfied that either an adequate need or economic capacity has been demonstrated in this instance. Therefore the Local Environmental Plan stipulates that 'development consent must not be granted'.

It is therefore recommended that the Development Application be refused.

Irrespective, of this, recommended conditions of consent have been provided in the Options section of this report.

#### Original Summary from 5 September 2019 Report

A development application has been received by Council in response to compliance action for the partial conversion of an existing shed to a rural workers dwelling on a site of 47.96ha at Kaners Road, Cudgera Creek.

The subject lot accommodates a single dwelling (approved under 0076/2001 CDC), the shed which has been converted and is subject to this application and a further agricultural shed in close proximity. The site is used for agricultural purposes by way of cane production (approximately 30ha) and cattle agistment (approximately 25 head).

The application was exhibited for a period of 14 days from Wednesday 3 October 2018 to Wednesday 17 October 2018. During this time no submissions were received with respect to the proposal.

As outlined in Clause 4.2C of the Tweed Local Environmental Plan 2014, development consent must not be granted to the erection of a rural workers' dwelling on land to which this clause applies, unless the consent authority is satisfied that:

- a) *the development will be on the same lot as an existing lawfully erected dwelling house, and*
- b) *the development will not impair the use of the land for agriculture or rural industries, and*
- c) *the agriculture or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*
- d) *the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.*

An assessment of the proposal against the provisions of Clause 4.2C is set out in detail later in this report. This concluded that the proposal does not meet the specific criteria for a Rural Workers Dwelling as set out in Subclauses 4.2C(c) and 4.2C(d) of the Tweed Local Environmental Plan 2014.

In an assessment of subclause 4.2C(c), the question is, whether the existing activities have demonstrated economic capacity to support the ongoing employment of a rural worker. The submitted information does not establish a demonstrated economic capacity to support the ongoing employment of rural workers at this site. Further supporting material on the financial and economic impact is included in Confidential Attachments 1 and 2.

In undertaking an assessment of subclause 4.2C(d), regard was had to the legal precedence established in *Maschewski v Murray Shire Council* [2015] NSWLEC 1251. In this case, it was found that the test is not about the personal circumstances of the applicant, but whether the nature of the work carried on the site necessitates a rural worker.

In this instance, the need for a rural workers dwelling is considered to be derived from the farm managers not living in close proximity to the site, rather than any necessity from the nature of the agriculture occurring on the land. It is further noted that there is an existing lawful dwelling on site (which could potentially accommodate rural workers if necessary) but that this has been rented to a third party in an economic decision by the landowner.

Based on this, it is not considered that a need for a rural workers dwelling, in accordance with the provisions of this clause or relevant NSW land and Environment Court case law has been established in this instance.

Therefore it is considered that the requirements of Subclauses 4.2C(c) and 4.2C(d) have not been met. As such the proposal is considered unacceptable and recommended for refusal.

Should the application be refused it is also recommended that Council seek legal advice in regards to the best way forward for compliance action to restore the site to its previous state prior to the construction of the unauthorised structure.

## **RECOMMENDATION:**

**That:**

- A. Development Application DA18/0730 for a rural workers dwelling at Lot 22 DP 1006926 & Lot 23 DP 1006926 Kaners Road, Cudgera Creek be refused for the following reasons:**
- 1. The development is not considered to satisfy Clause 4.2C(3)(c) – Erection of rural workers’ dwellings in Zones RU1 and RU2 as it has not been demonstrated that the agriculture being carried out on the land has the economic capacity to support the ongoing employment of rural workers; and**
  - 2. The development is not considered to satisfy Clause 4.2C(3) (d) – Erection of rural workers’ dwellings in Zones RU1 and RU2 as it has not been demonstrated that the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land.**
- B. The General Manager or delegate issues Orders in accordance with the NSW Environmental Planning and Assessment Act procedures to have the unauthorised works and use rectified.**



- C. ATTACHMENTS 1 and 2 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (d) commercial information of a confidential nature that would, if disclosed:**
    - (i) prejudice the commercial position of the person who supplied it, or**
    - (ii) confer a commercial advantage on a competitor of the council, or**
    - (iii) reveal a trade secret.**

## REPORT:

**Applicant:** Tamara Haulage Atf Pottsville Land Trust  
**Owner:** Tamara Haulage Pty Ltd  
**Location:** Lot 22 DP 1006926 & Lot 23 DP 1006926 Kanes Road, Cudgera Creek  
**Zoning:** RU1 - Primary Production, RU2 - Rural Landscape and 1(a) Rural  
**Cost:** \$30,000

## Background:

### Application details

The application seeks approval for the use of part of an existing shed as a rural workers dwelling. The application was lodged in response to compliance action undertaken by Council.

The existing shed (approved under DA13/0690) has a maximum height of approximately 5.9m and covers a total area of approximately 216m<sup>2</sup> (12m x 18m).

Within this, the rural workers dwelling consists of a kitchen/living room, shower/WC and a bedroom to the ground level and a further bedroom to the mezzanine level. The rural workers dwelling covers approximately 100m<sup>2</sup> to the ground level and 36m<sup>2</sup> to the mezzanine level.

External modifications to the shed structure have been provided, relating to the provision of windows and external doors.

Under the Tweed Local Environmental Plan 2014, a rural workers dwelling means '*a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.*'

A rural workers dwelling also must satisfy the provisions of Clause 4.2C of Tweed Local Environmental Plan 2014 which includes assessment criteria relating to the economic capacity of a development to accommodate rural workers and the need for the rural workers dwelling. In this instance the subject application is not considered to satisfy these criteria and the application is recommended for refusal.

### Site details

The application has been submitted over Lot 22 & 23 of DP 1006926, Kanes Road, Cudgera Creek and is located approximately 3km from Pottsville. The site has an overall area of 47.96ha. The subject site is located on the eastern side of the Pacific Motorway which adjoins the site while the remaining site boundaries are bordered by rural zoned land.

The site contains land identified as being Regional Significant Farmland. Approximately 30ha of the site is used for cane farm production, with the remainder being used for cattle grazing.

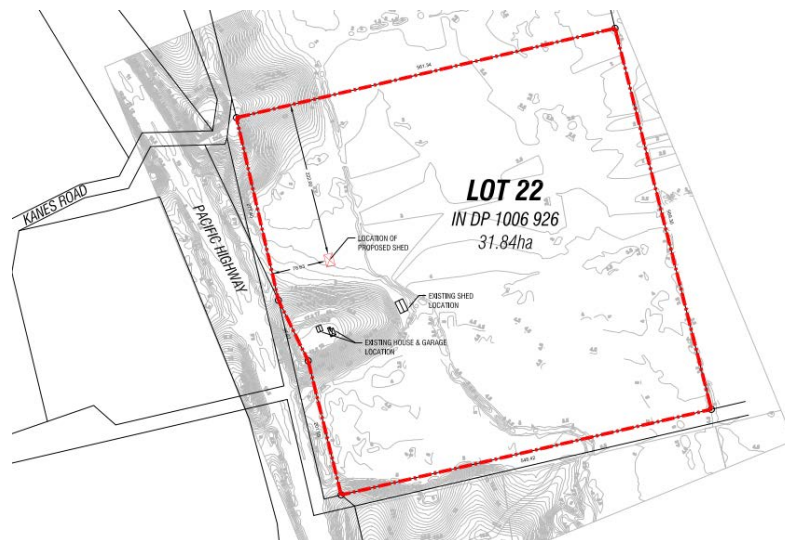
The site is generally undulating, falling from the north east at the site entrance (Kanes Road). The site is bush fire prone with areas, mainly to the east also subject to flooding.

There is an existing dwelling on the site which was approved under 0076/2001CDC. There is also an agricultural shed on the site.

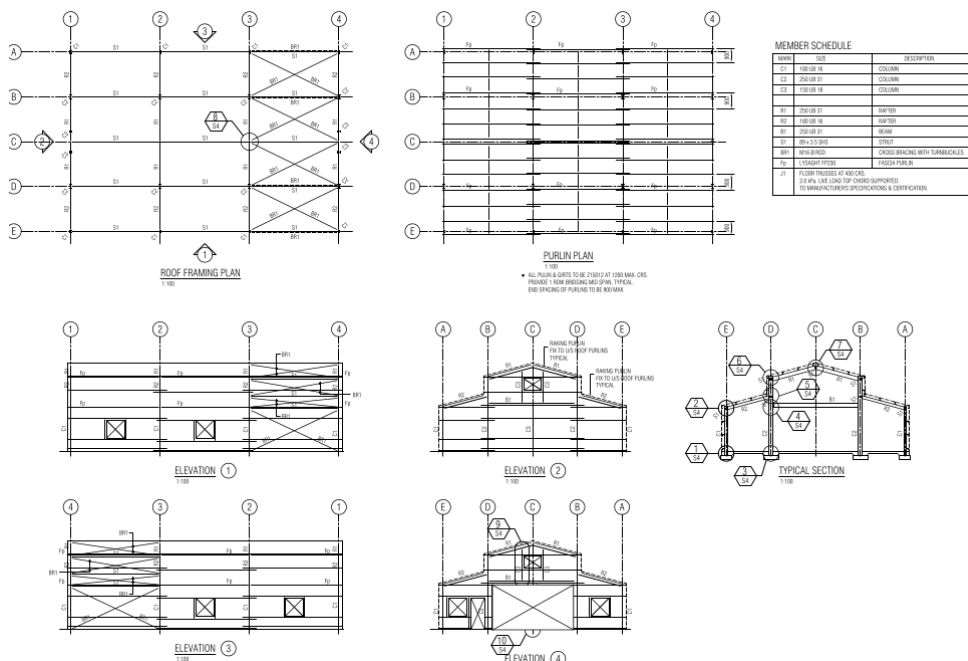
Site History

A search of Council records indicate the following development history with respect to the development site:

DA13/0690: Shed. Approved 18 December 2013. This shed was approved as per the below plans:



Approved Site Plan DA13/0690



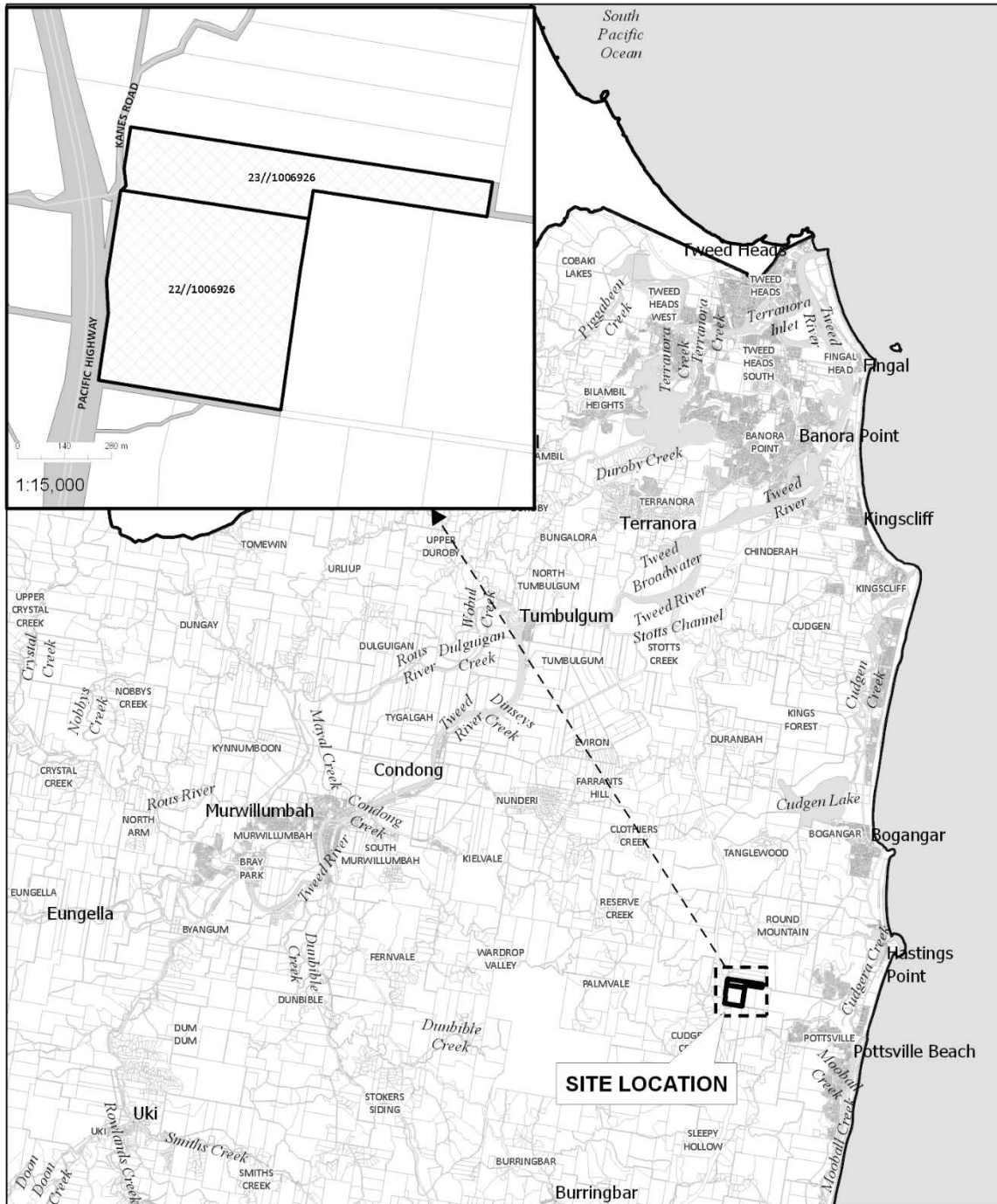
Approved Shed Plans DA13/0690

Council subsequently received a complaint that this shed was being used for habitable purposes which was investigated under ILL18/0283. This development application has been lodged in response to this compliance action.

DA03/0475: erection of a sign board for awareness & promotion of service. Withdrawn.

0076/2001CDC: erection of a dwelling. Approved 1 March 2001.

**SITE DIAGRAM:**



**Site Plan**

Lots 22 and 23 DP 1006926  
Kanes Road, CUDGERA



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**GDA** Cadastre: 21/08/2019  
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Coordinate System - MGA Zone 56  
Datum - GDA 94

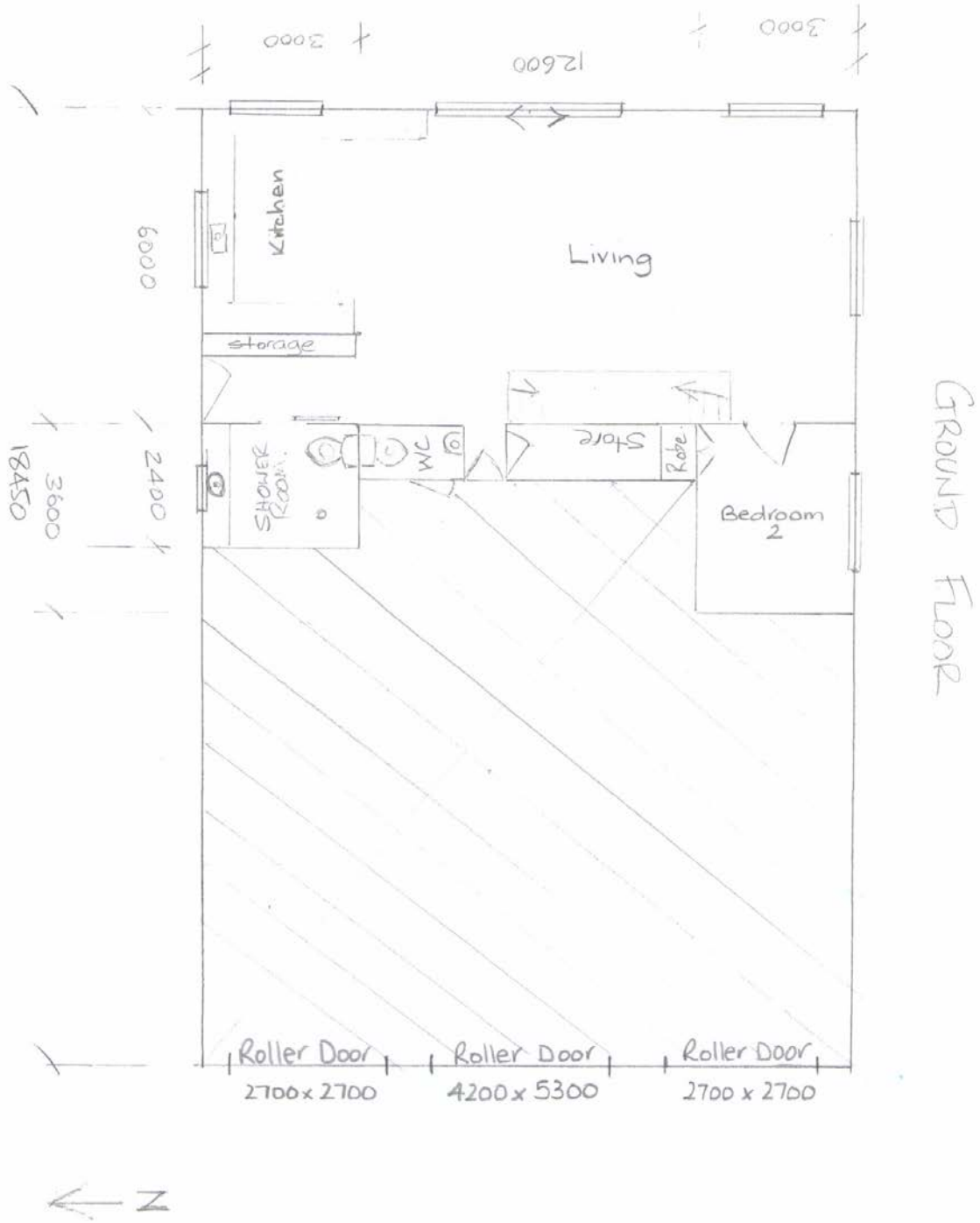
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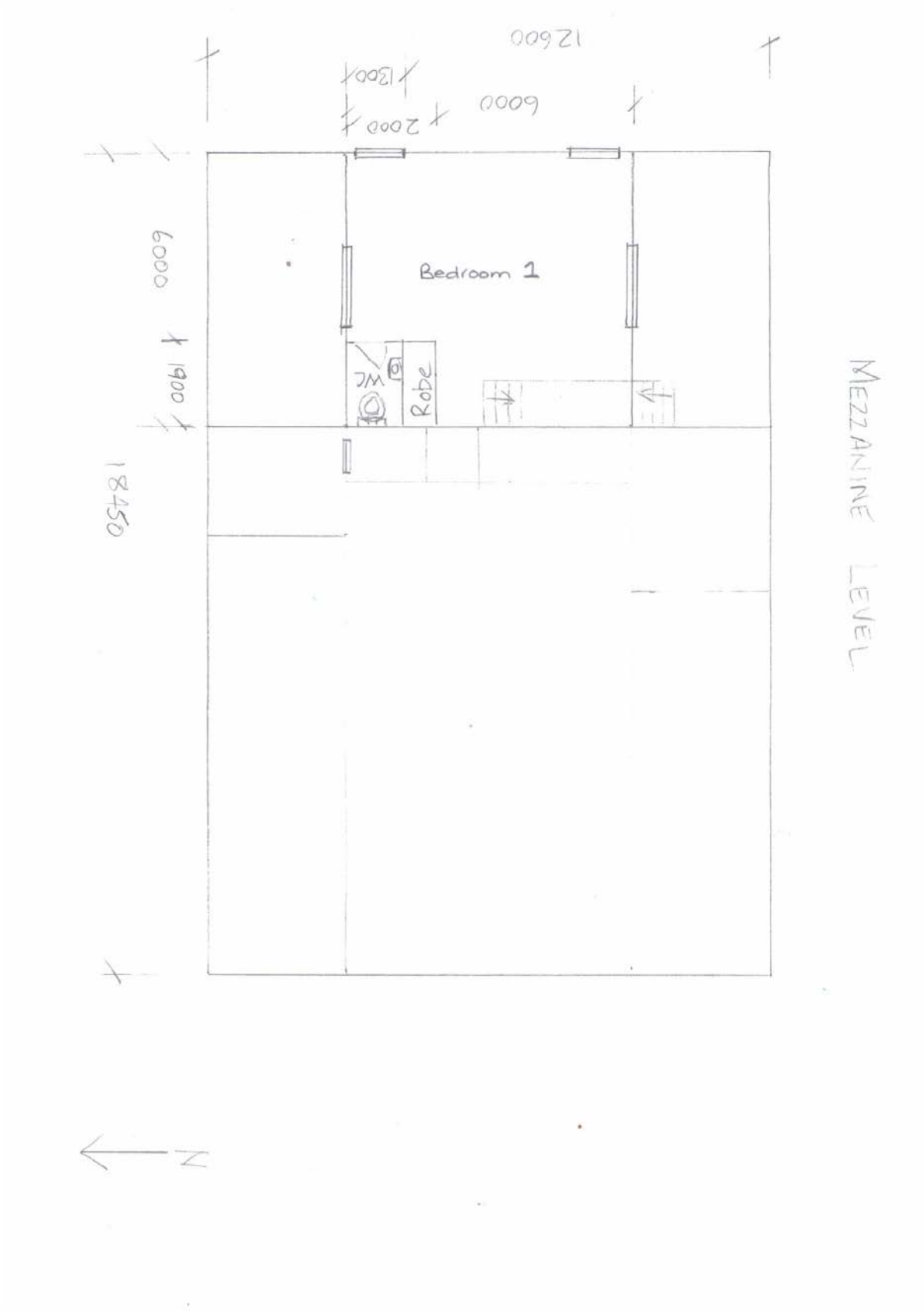


Date Printed: 21 August, 2019

DEVELOPMENT PLANS:



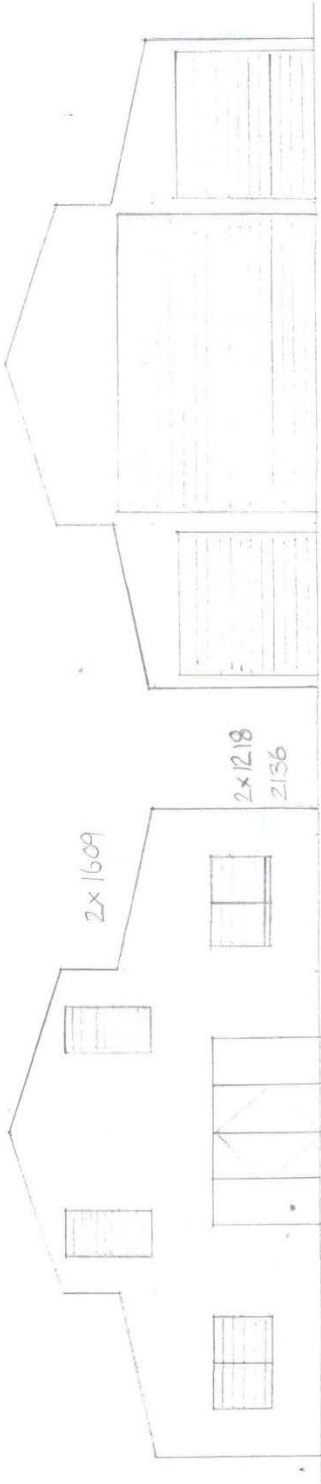






Scale 1:100





WEST ELEVATION

SCALE 1:100

EAST ELEVATION

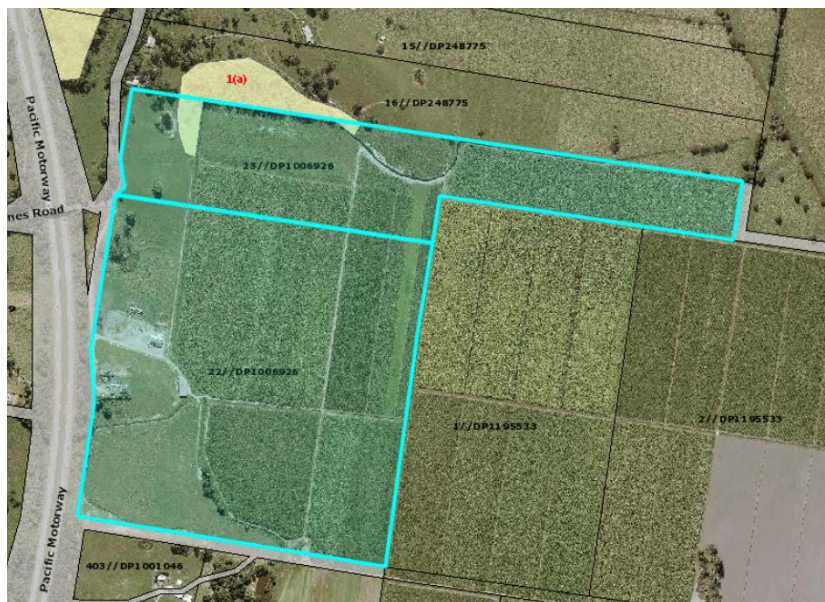
**Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2000**

As demonstrated on the below figure, the site has an area identified as 'deferred matters' under TLEP 2014, meaning these areas default to the zoning provisions that were applicable under TLEP 2000. In this case, the zoning under the previous instrument was Rural 1(a). It is acknowledged that Rural Workers Dwellings are allowed with consent in the 1(a) zone, and are generally consistent with the zone objectives.

Full assessment against TLEP 2000 has not been undertaken since the development itself is wholly located within TLEP 2014 zoned land.



**Tweed Local Environmental Plan 2014**

**Clause 1.2 – Aims of the Plan**

This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

The particular aims of this Plan are as follows:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,

- (b) to encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,
- (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,
- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The provisions for the Rural Workers Dwelling in Clause 4.2C have been adopted to ensure that any such dwellings are genuinely related to the employment needs of the land and that the land can support the employment of the occupants. Non-agricultural related dwellings which do not meet this criteria have the potential to reduce the agricultural capability of the land and to erode the capacity of land to absorb genuine agricultural related development.

As such, the application is not consistent with the aims of this plan specifically with regards to promoting the responsible sustainable management and conservation of Tweed's natural areas.

### Clause 2. 3 – Zone objectives and Land use table

The objectives of the RU2 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*

- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

A rural workers dwelling would be considered to be generally in accordance with the objectives of the RU2 zone by virtue of encouraging sustainable primary industry production. In this instance, the assessment under Clause 4.2C of the LEP (see elsewhere in this report) raises issues with other aspects of the rural workers dwelling, specific to this development however.

#### Clause 4.2C - Erection of rural workers' dwellings in Zones RU1 and RU2

The objective of this clause is to ensure the provision of adequate accommodation for employees of existing agricultural or rural industries, with the clause applying to land in the following zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape.

Subclause 3 states that development consent must not be granted to the erection of a rural workers' dwelling on land to which this clause applies, unless the consent authority is satisfied that:

- (a) *the development will be on the same lot as an existing lawfully erected dwelling house, and*
- (b) *the development will not impair the use of the land for agriculture or rural industries, and*
- (c) *the agriculture or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*
- (d) *the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.*

In summary of the above, this clause enables the provision of on farm accommodation for rural workers where there is a genuine need for them and it has been demonstrated that the farm can support their employment.

An assessment of (a) – (d) is provided below:

#### Item (a)

Council records indicate that under 0076/2001CDC approval was issued for erection of a dwelling in March 2001 on Lot 22 DP1006926 which is the same lot as the subject rural workers dwelling. This CDC was issued by Council's Building Unit. The subject application would be compliant with this control.

#### Item (b)

The rural workers dwelling is to be located within an existing approved shed structure. While this would reduce the area of useable space within the shed for

agricultural use, within the context of a 47 ha site it is not considered to significantly impair the use of land for the purpose of any agricultural use.

Item (c)

A key element in this part of the test is that applicant must demonstrate the economic capacity of 'current' or 'existing' activities. The objective of the clause relates to the accommodation of employees of existing agricultural or rural industries and this item refers to the agriculture or rural industry being carried out on the land.

Agricultural industry is not defined in the Dictionary to the Tweed Local Environmental Plan 2014.

The question is therefore not whether the existing use of the land requires employees (which in this case it would as a result of the applicant's intermittent absences from the farm) but whether the existing activities has demonstrated economic capacity to support the ongoing employment of a rural worker.

The applicant has submitted details on the economic capacity of the agriculture or rural industry being carried out on the land to support the ongoing employment of rural workers.

Details of this assessment are included in Confidential Attachment 2.

The information as outlined in Confidential Attachment 2 is not considered to establish a demonstrated economic capacity to support the ongoing employment of rural workers at this site.

As a consequence, the applicant has not satisfied the requirements of this part.

Item (d)

In undertaking an assessment under this part, regard was had to the legal precedence established in *Maschewski v Murray Shire Council* [2015] NSWLEC 1251 with the circumstances of the case being similar to this application.

In summary, this case related to the appeal of a decision by Murray Shire Council to refuse development consent for the use of an existing building as a rural workers' dwelling. The application related to the use of a building that was erected without consent. The intended use of the building was as a rural worker's dwelling. The existing approved dwelling house would be used by the applicant and owner of the land approximately once per month when he attended the site with his primary residence being in Melbourne. At the time of the application, the land was used for the agistment of sheep and cattle.

The contentions in the case were whether the application satisfied the provisions of Rural Workers Dwelling clause of the Murray Shire Local Environmental Plan and was consistent with the aims of the plan. There is much discussion in the judgement on the economic capacity of the rural activity – the applicant submitted a business plan, estimated profits, etc. It was agreed that neither extensive grazing (sheep or cattle) or future planned cropping would provide full-time employment opportunities

on a farm of this size (10.48ha) but such enterprises would require some form of employment.

The court found that for consent to be granted, the Court must be satisfied the provisions of clause 4.2B of the Local Environmental Plan are met. The objective of the clause is to ensure the provision of adequate accommodation for permanent or temporary employees of existing agricultural or rural industries. Any hypothetical or planned future use of the site is not relevant to determination of this issue.

In assessing whether *the development is necessary considering the nature of the agricultural or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land*, it was found that:

*'It is the applicant's submission that the rural worker's dwelling is necessary because the owner of the land does not reside at the property. I do not accept this proposition. The test is not about the personal circumstances of the applicant. It is to consider whether the development is necessary because the nature of the agricultural and rural industry land use lawfully occurring on the land. Having regard to the evidence, I cannot be satisfied that that land use requires the development. From the evidence it is apparent that the land use only demands a person working on the site for a short period of time and on a seasonal basis. Such work does not demonstrate that it would be necessary to provide any further accommodation on the site than is currently available.'*

*'The test is whether the nature of the work carried on the site necessitates a rural worker. The evidence is that it would not, only the circumstances of the absentee owner require that worker.'*

With respect to this clause, the submitted application initially advised that a rural workers dwelling is required for Ian & Rhonda Tagget who were employed by Tagget Earthmoving Pty Ltd as farm managers and are:

*'required from time to time to reside at the Cuderga Creek property in order to carry out their function as managers with the agricultural property producing Sugar Cane and Cattle operations.'*

And;

*'they are only required to attend the farm during cane harvesting season and to attend to cattle from time to time on an adhoc basis.'*

Further information was sought from the applicant as to the tasks which are required to be undertaken on site which require the provision of a rural workers dwelling and a response was provided which advised that the following jobs were required to be undertaken:

*"Slashing paddocks, slashing headlands, weed control, spraying, fertilising, hoeing, harrowing, ratooning, maintenance to machinery and implements, fencing, ground preparation before planting. Night work in preparation for planting. The sugar mill runs from June till December. All these jobs happen in and around this time frame 6-8 months per year."*

It is noted that *'as part of the leasing arrangements with the occupants of the existing dwelling the tenants keep an eye on the cattle situation for the landlord and advise the rural workers if their presence is required in order to deal with the farms cattle herd.'*

Further justification was also provided on the basis that *the rural workers only attend the farm on a seasonal and adhoc (sic) basis which makes casual accommodation an expensive proposition.*

The need for a rural worker's dwelling in this application is considered to be based on the farm managers not living in close proximity to the site, and the choice to rent an existing lawful dwelling to a third party is an economic decision rather than any necessity from the nature of the agriculture occurring on the land.

It is furthermore not considered that there is any need for a rural workers dwelling at this location arising from it being in a remote or isolated location.

Based on this, it is not considered that a need for a rural workers dwelling, in accordance with the provisions of this clause or legal precedence has been established in this instance.

#### Conclusion

The application fails to satisfy the requirements for a rural workers dwelling as set out in subclauses 4.2C(c) and (d). The approval of this application would be contrary to the Tweed Local Environmental Plan 2014 and undermine the provisions of this clause with respect to the need for a rural workers dwelling in Tweed Shire and its economic capacity to support rural worker(s) or the agricultural activities that are being undertaken on the site.

As such refusal of the application is recommended.

#### Clause 4. 3 - Height of Buildings

The site is subject to a maximum 10 metre building height limit under the provisions of this Clause. The proposed rural workers dwelling is to be located in an existing, previously approved structure with a height of approximately 5.9m, thereby complying with this clause.

#### Clause 4. 4 – Floor Space Ratio

Not applicable –Floor Space Ratio controls do not apply to this rural site.

#### Clause 5. 10 - Heritage Conservation

Pursuant to Clause 5.10, the proposed development must have regard to the potential for damage or disturbance to any heritage item, Aboriginal object or building, work or relic within a Heritage Conservation Area.

The site is not listed in Schedule 5 as a Heritage Item, and is not within a Heritage Conservation Area.

Council's mapping system does identify that the site is within close proximity to a known Aboriginal site as identified below:

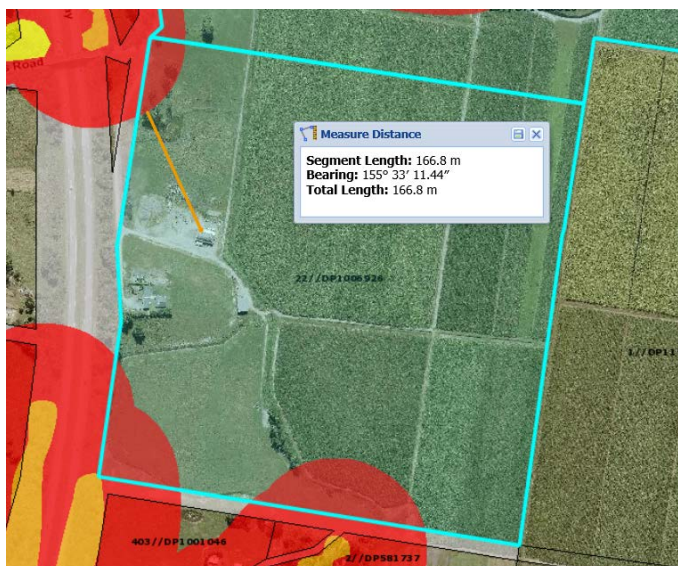


*Known Aboriginal Site mapping*

It is noted that this application relates to the use and internal alterations to an existing shed which was previously approved by Council. In this regard, there is not considered to be any impacts on the Aboriginal Cultural Heritage given the proposal does not result in any ground disturbance beyond what was previously approved. This Clause is thus considered satisfied.

#### Clause 5.11 - Bush fire hazard reduction

A minor portion of the site to the south and north-west is mapped as being bushfire prone by virtue of being within the 100m buffer area. This is demonstrated below:



Land mapped as being bushfire affected is mapped as being approximately 160m from the rural workers dwelling.

A Bushfire Risk Assessment Certificate has been prepared by a BPAD – Level 3 Accredited Bushfire Certifier and submitted as part of this application. This identifies that the development would have a Low Bushfire Attack level given the distance of the rural workers dwelling from the bushfire threat on site.



In this regard, the proposal is not considered to necessitate any specific bushfire protection measures. The proposal is considered to be acceptable with respect to this clause.

#### Clause 7. 1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The development site exhibits Class 3 and Class 5 Acid Sulfate Soils as per Council's GIS system. The proposed Rural Workers Dwelling itself is located on Class 5 land.

The application has been reviewed by Council's Environmental Health Unit who have advised the following with respect to acid sulphate soils:

*“Acid sulfate soil Planning Maps prepared by the Department of Infrastructure, Planning and Natural Resources (1997) show that the subject site resides within Class 3 and 5 land area. Although the shed in question lies wholly within Class 5 land, the disturbance footprint spans across both Class 3 and 5 land areas. Works more than 1 metre below the natural ground level within Class 3 land would require an acid sulfate soil management plan.*

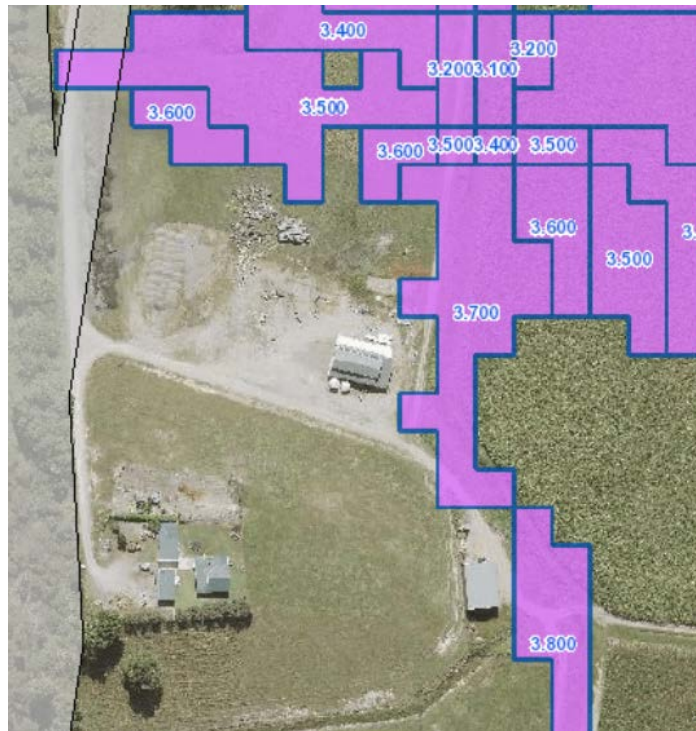
*An existing onsite sewage management system has been partially installed at the subject site but has not been connected. This existing system comprises a 3550 litre septic tank and ETA bed (20m x 5m x 450mm). An Onsite Sewage Management Design Report has been developed for the proposal which recommends oversizing and rebuilding of the existing system. A section of the existing ETA bed recommended for rebuilding lies within Class 3 ASS. A review of the report shows that maximum excavation depths associated with recommended works would be 700mm.*

*As the recommended works would not extend beyond 1 metre below the natural ground level, an acid sulfate soil management plan is not required in this instance.”*

The proposal is considered to be acceptable in this regard.

#### Clause 7. 3 – Flood Planning

The site is mapped as being partially within an area that is affected by flooding in the 1 in 100 year (Q100) flood event. However the Rural Workers Dwelling is located outside the area to which this applies and so the proposal is considered to be compliant in this regard.



Q100 Flood liable land

Clause 7. 6 - Stormwater Management

Not applicable as the subject site is rural land to which this clause does not apply.

Clause 7. 9 - Development in areas subject to aircraft noise

The development is not located in an area subject to aircraft noise.

Clause 7. 10 - Essential Services

As noted above, there is no issue with the applicant's proposals to the management of stormwater on the site.

Council's piped effluent disposal infrastructure is not available within the area. As such, an On-site Sewage Management Report has been submitted, proposing to treat and dispose of the waste from the dwelling in a lawful manner. Council's On-site Sewage Management Officer has advised that the design is considered adequate to minimise potential public health and environmental concerns.

Potable water supply for the proposed dwelling is via rainwater tank. Drinking water suppliers are required to ensure that safe water is provided.

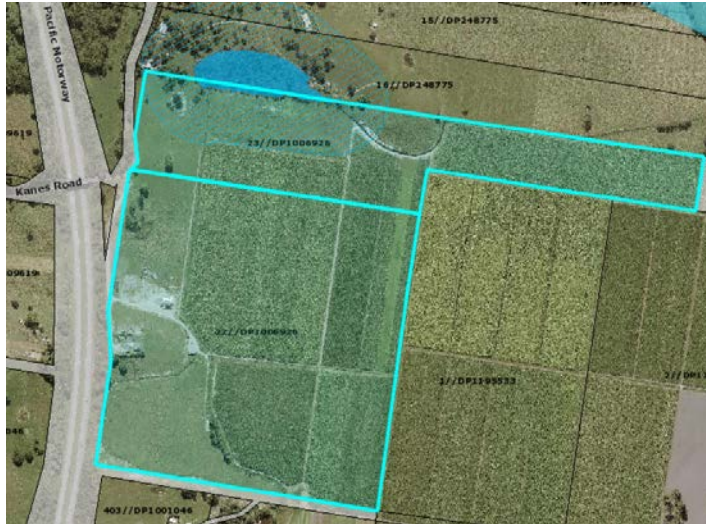
Electricity services and telecommunication services would be currently provided to the area via Country Energy infrastructure and Telstra infrastructure respectively.

The proposal is considered to be acceptable with respect to the provisions of this Clause.

## State Environmental Planning Policies

### SEPP (Coastal Management) 2018

A minor portion of the subject site is mapped as being within the Coastal Wetlands and Littoral rainforest area, as identified below. It is noted that this area is located away from any development proposed under this application.



The objectives of each clause are as follows:

#### **10 Development on certain land within coastal wetlands and littoral rainforests area**

- (1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
  - (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
  - (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
  - (c) the carrying out of any of the following:
    - (i) earthworks (including the depositing of material on land),
    - (ii) constructing a levee,
    - (iii) draining the land,
    - (iv) environmental protection works,
  - (d) any other development.

#### **Note.**

Clause 17 provides that, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or

- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.
- (2) Development for which consent is required by subclause (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.
- (3) Despite subclause (1), development for the purpose of environmental protection works on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map may be carried out by or on behalf of a public authority without development consent if the development is identified in:
  - (a) the relevant certified coastal management program, or
  - (b) a plan of management prepared and adopted under Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993, or
  - (c) a plan of management approved and in force under Division 6 of Part 5 of the Crown Lands Act 1989.
- (4) A consent authority must not grant consent for development referred to in subclause (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.
- (5) Nothing in this clause requires consent for the damage or removal of a priority weed within the meaning of clause 32 of Schedule 7 to the Biosecurity Act 2015.
- (6) This clause does not apply to the carrying out of development on land reserved under the National Parks and Wildlife Act 1974 if the proposed development is consistent with a plan of management prepared under that Act for the land concerned.

## **11 Development on land in proximity to coastal wetlands or littoral rainforest**

### **Note.**

The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.
- (2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

The proposal is considered to be acceptable having regard to the above controls.

#### SEPP No. 55 - Remediation of Land

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *It has considered whether the land is contaminated, and*
- (b) *If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The Environmental Health Unit has reviewed the subject application and provided the following advice with respect to contamination:

*‘The former and current use of the site and shed to support farming activities requires further contamination consideration due to the potential for contamination from fuels, pesticides and other chemicals. Further information is required in the form of a Preliminary Contaminated Land Assessment prepared by a suitably qualified and experienced consultant.*

**Further Information:** *The applicant is requested to engage a suitably qualified and experienced consultant to prepare a preliminary contaminated land assessment to assess the potential contamination from historical and current land uses.’*

A Statutory Declaration from Ian Tagget has been submitted in response to the above request. The document declares that the site has not been used to grow cane, no fuel is stored on the property, and that chemicals for weed control are stored in a separate shed on the property identified in aerial photos by the applicant.

It is considered that the Statutory Declaration satisfies the information request.

Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land.

SEPP (Rural Lands) 2008

This SEPP was in force when the DA was lodged and as such, the application is being assessed against the provisions of this SEPP. The aims of this policy are to facilitate the orderly and economic use and development of rural lands for rural and related purposes; reduce the potential for land use conflicts by identifying Rural Planning and Rural Subdivisions Principles; and the identification of State Significant Agricultural Land.

The site is not identified as State Significant Agricultural Land.

The SEPP sets out eight (8) Rural Planning Principles which are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Clause 10 of the policy applies to rural subdivisions and rural dwelling in rural and environmental protection zones and states that the following matters are to be taken into account:

- (a) *the existing uses and approved uses of land in the vicinity of the development,*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

The proposal is considered to be generally compliant with the provisions of the Rural Lands SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

The proponent has provided an acceptable BASIX certificate (Certificate No. 939706S) and any approval would be conditioned for compliance.

SEPP (Primary Production and Rural Development) 2019

This SEPP commenced on 28 February 2019, after the subject DA had been lodged with Council for assessment. Clause 9 of this SEPP contains a savings provision for development applications made before the commencement of this policy and states the following:

*“If a development application has been made before the commencement of this Policy in relation to land to which this Policy applies and the application has not been finally determined before that commencement, the application must be determined as if this Policy had not commenced.”*

This development application falls under the above criteria and as such this SEPP does not apply to the proposal.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

The subject site is mapped as being affected by LEP Amendment 17 – Short term rental accommodation. This amendment does not have any significant impacts on the proposed development.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

DCP Section A1-Residential and Tourist Development Code

An assessment against the objectives and development controls of DCP A1 has been undertaken and is saved as a separate document in ECM. The proposal is satisfactory with no significant variations to the standards for dwelling houses.

DCP Section A2 - Site Access and Parking Code

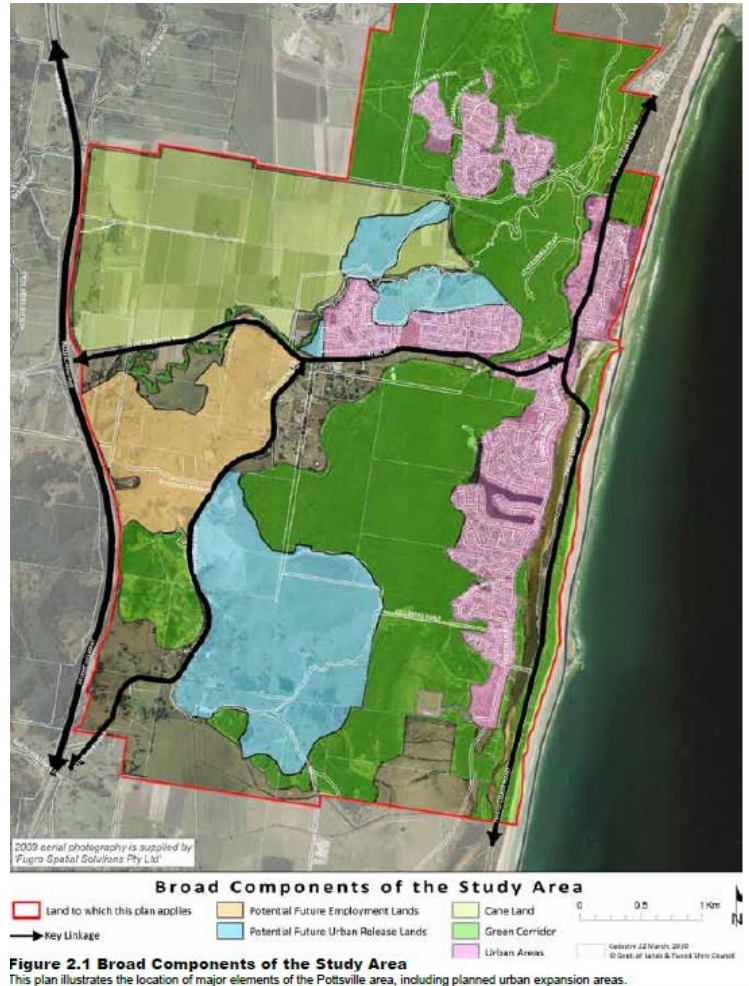
The rural workers dwelling would utilise the existing lawfully established access arrangements established on the site. There is also sufficient space within the curtilage of the Rural Workers Dwelling for provision of uncovered car parking. The proposal is considered to be acceptable having regard to the requirements of this DCP.

A3-Development of Flood Liable Land

As outlined earlier, the 1 in 100 year flood level affects the site, however the Rural Workers Dwelling is outside of any flood areas. The proposal is not considered to contravene the provisions of this DCP.

B21-Pottsville Locality Based Development Code

The subject site is mapped as being within land to which this DCP relates, with the site being mapped as 'Cane Land'. This is identified on the below map.



Under Section 1.2 Strategy – Urban Structure, the following is advised with respect to this land:

*All existing land under cane production is retained in its present use.*

The subject application is considered to be generally consistent with the provisions of this DCP, with the majority of the site being preserved for cane production purposes.

**(a) (iia) Any planning agreement or any draft planning agreement under section 7.4**

Not applicable to the subject application.



**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(1)(b) Applications for demolition

Not applicable to the subject application as no demolition is proposed as part of this application.

Clause 93 Fire Safety Considerations & Clause 94 Buildings to be upgraded

As the applicant has converted the dwelling without consent, a Building Information Certificate is required. The application has been referred to Council's Building Unit who have raised no concerns with respect to the proposal subject to the imposition of appropriate conditions of consent. The approval of this DA would need to be conditioned to ensure compliance with these clauses.

**(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The site is approximately 4.5km from the coast and not located within a specific area identified under that Plan.

The site is not located adjacent to any coastal estuaries covered by this plan.

**Tweed Coast Estuaries Management Plan 2004**

The site is not located adjacent to any coastal estuaries covered by this plan.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The site is not located with the Cobaki or Terranora Broadwater areas to which this plan applies.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Context and Setting

The development of rural worker's dwelling which was demonstrated to be linked to the use of the land as required by Clause 4.2C of the Local Environmental Plan would not be considered to be an issue at the location proposed. It is not anticipated that the operation of the dwelling would have an adverse impact on the natural environment.

**(c) Suitability of the site for the development**

Site location / Surrounding Landuses/Development

The development of rural worker's dwelling which was demonstrated to comply with the provisions of Clause 4.2C of the Local Environmental Plan would not be considered to be an issue at the location proposed.

Availability of Utilities and Services

Though not serviced by reticulated water supply or sewerage, no issues were raised with regard to the potential for servicing the site.

**(d) Any submissions made in accordance with the Act or Regulations**

No submissions have been made with respect to this Development Application.

**(e) Public interest**

The application fails to meet with the Local Environmental Plan requirements for a rural workers dwelling, and physical works have occurred without prior approval.

The approval of this application would be contrary to the Tweed Local Environmental Plan 2014 and undermine the provisions of this clause with respect to the need for a rural workers dwelling in Tweed Shire and its economic capacity to support rural worker(s) or the agricultural activities that are being undertaken on the site.

The long term cumulative impact of separating the need for a rural workers dwelling from both the demonstrated economic capacity of a holding to support the ongoing employment of rural workers and the nature of the agricultural or rural industry land use must be considered. Increasing the number of additional dwellings in rural Tweed which are unrelated to needs of the landholding will have 'flow on' impacts on a broad range of services and facilities such as waste collection, rural fire services where dwellings are permitted in high threat area, demand for access to health services, employment, etc.

As such the proposal is considered not to be in the overall public interest.

**OPTIONS:**

1. Refuse the application in accordance with the recommendation and commence the Orders procedure to rectify the unauthorised works and use; or
2. Approve the application in accordance with A - C below:
  - A. The development proposal has been considered in accordance with the relevant provisions of the NSW Environmental Planning and Assessment Act 1979 and on balance is suitable to be determined by way of approval.

Community views were considered as part of the assessment in accordance with Council's Development Control Plan and the NSW Environmental Planning and Assessment Act 1979 requirements for public notification.

- B. Development Application DA18/0730 for a rural workers dwelling at Lot 22 DP 1006926 & Lot 23 DP 1006926 Kaners Road, Cudgera Creek be approved subject to the following conditions:

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate** until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within six months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

**SCHEDULE "A"**

**Conditions imposed pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.**

- A. Lot 22 DP 1006926 and Lot 23 DP 1006926 are to be consolidated into one lot under one title. The plan of consolidation shall be registered with the Land and Property Information (LPI) (formerly the Lands Titles Office).

**SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:

- Site Plan, prepared by Planit Consulting and dated September 2013;
- Ground Floor Plan, prepared by the applicant;
- Mezzanine Level Plan, prepared by the applicant;
- South & North Elevation, prepared by the applicant; and
- East & West Elevation prepared by the applicant,

except where varied by the conditions of this consent.

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

3. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device and adequately maintained to ensure a safe and suitable drinking water supply, where applicable. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be to the satisfaction of the General Manager or delegate. This storage is independent to any required for fire-fighting purposes.

[GEN0310]

### **PRIOR TO COMMENCEMENT OF WORK**

4. An application to carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

5. Prior to the commencement of any work on site the applicant shall obtain approval to install an onsite sewage management system under Section 68 of the Local Government Act 1993. Any approval to install an on-site sewage treatment system and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the On-site Sewage Management Design Report Proposed Farm Building for Lot 22 DP 1006926, 148 Kaners Road, Cudgera Creek prepared by HMC Environmental Consulting (ref: HMC2018.105) and dated May 2018 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[PCWNS01]

### **DURING CONSTRUCTION**

6. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

7. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
  - Noise, water or air pollution.
  - Dust during filling operations and also from construction vehicles.
  - Material removed from the site by wind.

[DUR1005]

8. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

9. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management.

[DUR2195]

10. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

11. Install smoke detectors in the dwelling in accordance with part 3.7.2 of the National Construction Code and Australian Standard AS3786. The smoke detectors must be energised by the energy supply system which is available to the dwelling and shall be interconnected.

Provide certification from the licensed Electrician after installation of the smoke detectors which confirms compliance with AS 3786.

[DURNS01]

12. The exportation or importation of waste (including VENM & ENM) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environmental Protection Authority "Waste Classification Guidelines".

[DURNS02]

## **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

13. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

14. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

15. Prior to occupation or commencement of use a drinking water quality management plan or drinking water quality assurance program prepared in accordance with the Private Water Supply Guidelines, NSW Health 2016 and the Public Health Regulation 2012 shall be prepared and maintained on site. All activities shall comply with the adopted assurance program and the

program shall be made available to Council's Authorised Officer upon request.

[POC0950]

16. Prior to occupation the applicant or business operator is to be registered in Council's Private Water Supply Register and pay the appropriate fee under Council's schedule of fees and charges.

[POC0955]

17. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

18. Prior to the occupation and prior to the issue of any occupation certificate for the dwelling, the applicant shall obtain approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993.

[POC1040]

19. Prior to the issue of an occupation certificate for the Rural Workers cottage the Applicant shall obtain a Building Information Certificate from Council. The Building Information Certificate will not be released until the following matters have been satisfied:

1. Provide a Certificate from a practising Structural Engineer which states that the shed, as constructed, is structurally stable for its intended use,
2. Provide a Statutory Declaration from the property owner which confirms that:
  - i. a barrier, installed to prevent transfer of moisture from the ground into the dwelling, has been installed beneath the floor slab,
  - ii. a barrier has been provided in wet areas such as bathrooms and laundry which will prevent water penetrating into concealed spaces.
3. Install smoke detectors in the dwelling in accordance with part 3.7.2 of the National Construction Code and Australian Standard AS3786.

The smoke detectors must be energised by the energy supply system which is available to the dwelling and shall be interconnected.

Provide certification from the licensed Electrician who installed the smoke detectors which confirms compliance with AS 3786.

4. Provide an overflow relief gully to the septic drainage line which satisfies Australian Standard AS 3500.
5. Provide a "works as completed" plan of the internal and external sanitary drainage for the dwelling and a 'Compliance Certificate' which has been signed by the licensed Plumber who carried out the sanitary plumbing & drainage installation for the dwelling.

6. Provide certification from the Glazier who manufactured the windows, glass doors and shower screen which states that these building elements have been designed & constructed in accordance with Australian Standard AS 2047-1999 & AS 1288-2006

[POCNS01]

## USE

20. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

21. The rural workers dwelling is to be occupied only by a person engaged in agricultural pursuits on the property in accordance with this consent.

[USE0425]

22. All wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or delegate.

[USE0875]

23. Subdivision of the development, including strata subdivision, is not permitted.

[USE1255]

24. In the event that untreated or untested water is supplied for rural worker or tourist type accommodation a warning sign shall be displayed at all fixtures. Such signs shall state the source of raw water and method of treatment, if any.

[USE1475]

- C. That a Penalty Infringement Notice (\$6,000) be issued to the applicant being Tamara Haulage Pty Ltd for undertaking development without consent.

Option 1 is recommended.

## CONCLUSION:

It is considered that the development does comply with the requirements of Clause 4.2C(c) and (d) of the Tweed Local Environmental Plan 2014 and that the approval of this proposal could establish an undesirable precedent in terms of satisfying the need for a rural workers dwelling.

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Legal costs will be incurred for Option 1.

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

**c. Legal:**

Legal advice will be required to inform the recommended actions of Option 1. Also the applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Confidential Attachment Financial Statements (ECM 6022952)

*(Confidential)* Attachment 2. Confidential Attachment Economic Assessment (ECM 6076312)