

20 February 2026

Enquiries: Jenny Elphinstone
Our Ref: MCUC 2018_2609/1 (Doc ID 1346807)
Your Ref: Extension Application

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Tibaldi Farming Company Pty Ltd
Unit 68
434-446 Kamerunga Road
REDLYNCH QLD 4870

Email: ptaust11.pt@gmail.com

Attention Mr Peter Tibaldi

Dear Sir

**Extension Application for Development Permit for a Material Change of Use for a Dwelling House at Lot 1 Finlayvale Road, Finlayvale
On Land Described as Lot 1 on RP740790**

Please find attached the Decision Notice for the above-mentioned extension application.

Please quote Council's application number: MCUC 2018_2609/2 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Jenny Elphinstone on telephone 07 4099 9444.

Yours faithfully



For
Leonard Vogel
Manager Environment & Planning

encl.

- Decision Notice
 - Reasons for Decision
- Copy of Existing Approval
- Advice For Appeals (Decision Notice)



Decision Notice

Approval

Given under s 63 of the Planning Act 2016

Applicant Details

Name: Tibaldi Farming Company Pty Ltd
Postal Address: Unit 68
434-446 Kamerunga Road
REDLYNCH QLD 4870
Email: ptaust11.pt@gmail.com

Property Details

Street Address: Lot 1 Finlayvale Road, Finlayvale
Real Property Description: Lot 1 on RP740790
Local Government Area: Douglas Shire Council

Details of Proposed Development

Extension application for the Development Permit for a Material Change of use for a Dwelling House for six years up to and including 30 May 2032.

Decision

Date of Decision: 20 February 2026
Decision Details: Approved.

Existing approval

Copy of the existing approval is enclosed.

Further Development Permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

- All Building Work

All Plumbing and Drainage Work must only be carried in compliance with the Queensland *Plumbing and Drainage Act 2018*.

Currency Period for the Approval

This approval, granted under the provisions of the *Planning Act 2016*, shall lapse on 30 May 2032 in accordance with the provisions of Section 85 of the *Planning Act 2016*.

Rights of Appeal

The rights of applicant to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provision is attached.



PO Box 723 Mossman Qld 4873
www.douglas.qld.gov.au
enquiries@douglas.qld.gov.au
ABN 71 241 237 800

30 May 2018

Enquiries: Daniel Lamond
Our Ref: MCUC2609/2018 (856304)
Your Ref: J000696

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

Tibaldi Farming Company Pty Ltd
C/- Patrick Clifton, Gilvear Planning
PO Box 228
BABINDA QLD 4861

Dear Sir/Madam

**Development Application for Material Change of Use (Dwelling house and domestic outbuildings)
Finlayvale Road, Finlayvale
Land Described as Lot 1 on RP740790**

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: MCUC2609/2018 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully

PAUL HOYE
Manager Sustainable Communities

encl.

- Decision Notice
- Approved Plans

DECISION NOTICE
APPROVAL (WITH CONDITIONS)
GIVEN UNDER SECTION 63 OF THE PLANNING ACT 2016

Thank you for your development application detailed below which was properly made on 24 April 2018. Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: Tibaldi Farming Company Pty Ltd
Postal Address: C/- Patrick Clifton, Gilvear Planning
PO Box 228
BABINDA QLD 4861

2. Location details

Street Address: Finlayvale Road FINLAYVALE
Real Property Description: LOT: 1 RP: 740790
Local Government Area: Douglas Shire Council

3. Details of proposed development

Material Change of Use (Dwelling house and domestic outbuildings)

4. Decision

Date of decision: 30 May 2018

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1.

Copies of the following plans, specifications and/or drawings are enclosed.

| Drawing/report title | Prepared by | Date | Reference no. | Version/issue |
|--|---------------------|-----------------|------------------------|----------------|
| Aspect of development: Material Change of Use (Dwelling house and domestic outbuildings) | | | | |
| (Sheds) Plan View, Front View, Rear View, Side View | Clarkeville Designs | 1 December 2017 | Drawing Number 1-12-17 | None nominated |
| (House) Floor Plan | Clarkeville Designs | 1 October 2017 | Drawing Number 1-10-17 | None nominated |

| | | | | |
|---|---------------------|----------------|------------------------|----------------|
| (House) Front View, Rear View | Clarkeville Designs | 1 October 2017 | Drawing Number 1-10-17 | None nominated |
| (House) Side View, Side View | Clarkeville Designs | 1 October 2017 | Drawing Number 1-10-17 | None nominated |
| Site Plan prepared by Clarkeville Designs is not approved as part of this decision notice | | | | |

5. Conditions

This approval is subject to the conditions in Schedule 1.

6. Further development permits

Please be advised that the following development permits are required to be obtained before the development can be carried out:

- All Building Work
- All Plumbing Work

7. Properly made submissions

Not applicable — No part of the application required public notification.

8. Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016*. This is a six (6) year period from the date the approval takes effect.

9. Rights of appeal

The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

A copy of the relevant appeal provisions are included in Schedule 2.

SCHEDULE 1 – CONDITIONS AND ADVICE

PART 1A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:-
 - a. The specifications, facts and circumstances as set out in the application submitted to Council;
 - b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

Timing of Effect

2. The conditions of the Development Permit must be effected prior to Commencement of Use, except where specified otherwise in these conditions of approval.

On-Site Effluent Disposal

3. The method of on-site effluent disposal must be in accordance with the waste water reports prepared by Earth Test, QBSA Lic No. 1017941, SI511.F2-17, SI511.F1-17 & SI511.F1-17 and must be in accordance with the Queensland Plumbing & Wastewater Code. Details of the wastewater treatment system to be installed must be approved by the Chief Executive Officer prior to any plumbing work commencing.

Geotechnical Assessment

4. A geotechnical risk assessment of the site is required to be undertaken in accordance with the AGS 2007 guidelines. The assessment and report must be prepared by a suitably qualified and experienced geotechnical engineer (RPEQ) and certify that:
 - a. the stability of the site, including associated buildings and infrastructure, will be maintained during the course of the development and will remain stable for the life of the development;
 - b. development of the site will not increase the risk of landslide hazard activity on other land, including land above the site;
 - c. the site is not subject to the risk of landslide activity on other land;
 - d. the development and adjacent existing slopes can achieve a low to very low risk in accordance with the AGS Guidelines. In locations where the identified risk levels are not either "low" or "very low", the RPEQ must identify if the risk can be reduced to the acceptable levels and provide design on the remedial works to be implemented to achieve this;
 - e. on-site waste water disposal is able to be accommodated on the site without increasing the risk of landslip.

The geotechnical assessment is to be submitted and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Works and any required stabilising measures are undertaken prior to the commencement of use.

Vegetation Clearing

5. Existing vegetation on the subject land must be retained in all areas except those affected by the installation of services or access driveways.

Building Colours

6. The exterior finishes and colours of Buildings must be non-reflective and must blend with the natural colours of the surrounding environment to the satisfaction of the Chief Executive Officer.

Site Plan

7. A site plan drawn to an appropriate scale must be prepared and submitted to Council to the satisfaction of the Chief Executive Officer prior to the issue of a development permit for building works. The site plan must show:
 - a. Exact building locations with regard to the tops of the batters on existing benches;
 - b. details of any retaining walls required;
 - c. locations of the existing internal driveways;
 - d. extent of existing vegetation;
 - e. practical access from the unformed part of Finlayvale Road;
 - f. surveyed cadastral boundaries to the extent relevant.

Assessment of Access Driveway

8. Prior to the approval of a Development Permit for Building works, a detailed design of the proposed driveway and access shall be submitted and endorsed by the Chief Executive Officer. The driveway and access shall be:
 - a. designed to be no steeper than the gradients outlined in Planning scheme policy SC6.5 – FNQROC Development Manual;
 - b. designed such that where there is a grade shift to 1 in 4 (25%), there is an area with a grade of no more than 1 in 6 (16.6%) prior to this area, for a distance of at least 5 metres;
 - c. on gradients greater than 1 in 6 (16.6%) driveways are designed to ensure the cross-fall of the driveway is one way and directed into the hill, for vehicle safety and drainage purposes;
 - d. designed such that the transitional change in grade from the road to the lot is fully contained within the lot and not within the road reserve;
 - e. designed to include all necessary associated drainage that intercepts and directs storm water runoff to the storm water drainage system;
 - f. designed to ensure that any excavation or fill does not exceed 1.8 metres in height for each batter or retaining wall;

- g. designed in accordance with the Planning scheme policy SC6.5 – FNQROC Development Manual and AS2890.1- 2004. In particular, the grade, width, opportunity for passing bays and resulting earthworks are to be confirmed.

It appears that the access driveway is not wholly contained within the site and encroaches on lot 100 on SP243341. The driveway and access design shall demonstrate, by cadastral survey, that the driveway and access is wholly contained within the subject site.

NOTE: Douglas Shire Planning Scheme 2018 Version 1.0 identifies filling and excavation greater than 50m³ as requiring an Operational Works development approval from Council. Should driveway construction excavation and fill exceed this threshold, development approval may be required.

Batter Treatment on Pads and Driveways

9. The height of additional batters / retaining structures shall be generally limited to 1.8 metres with a total maximum height of 3.6 metres in successive batters unless specifically approved by Council. All batters must be constructed in a manner that minimises the construction footprint and has the ability to be screened.

Compliance with this condition must be detailed at the time of operational works development application submission, if triggered.

Drainage Plan

10. Provide a certified drainage plan which demonstrates protection of earthworks batters, drainage of pads and site driveway access.

PART 1B—ADVICE NOTES

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.
2. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.
3. For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>.
4. To access the FNQROC Development Manual, Douglas Shire Local Laws and other applicable Policies log on to www.dsc.qld.gov.au.

PART 1C—REASONS FOR DECISION

- The proposal generally complies with the 2018 Douglas Shire Planning Scheme version 1.0.
- Conditions have been imposed to require further technical assessments to demonstrate compliance with the benchmarks of the 2018 Douglas Shire Planning Scheme version 1.0.

SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, PART 1 APPEAL RIGHTS

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the appellant); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note — See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—

- (a) is in the approved form; and
- (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

SCHEDULE 1 APPEALS

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
 - (a) the P&E court; or
 - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or

- (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—
 - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
- (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

Extract of Schedule 1 of the Planning Act 2016

| Table 1 | | | |
|---|------------------------|--|--|
| Appeals to the P&E Court and, for certain matters, to a tribunal | | | |
| 1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| The applicant | The assessment manager | If the appeal is about a concurrence agency's referral response—the concurrence agency | 1 A concurrence agency that is not a co-respondent 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application |

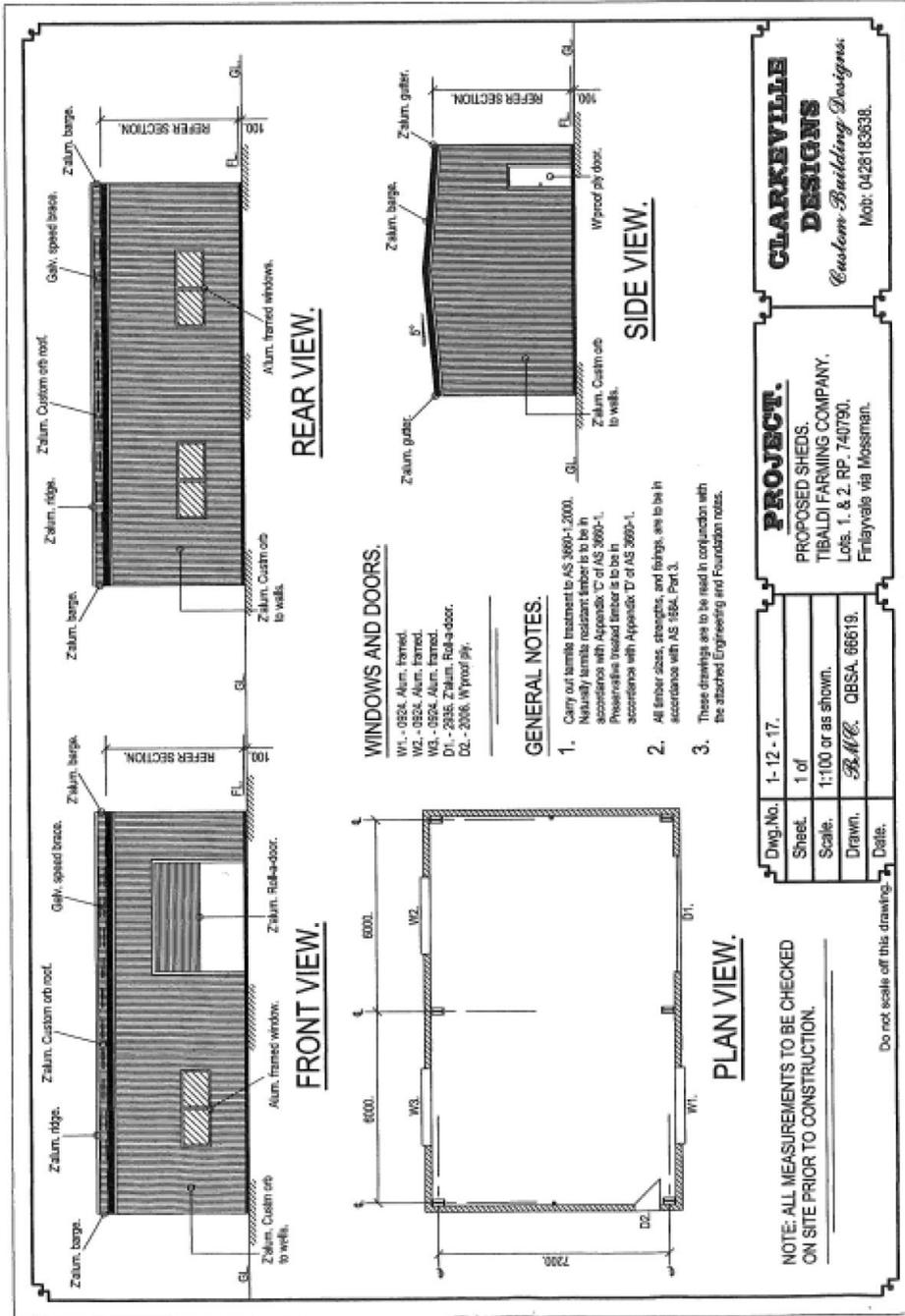
**Table 2
Appeals to the P&E Court only**

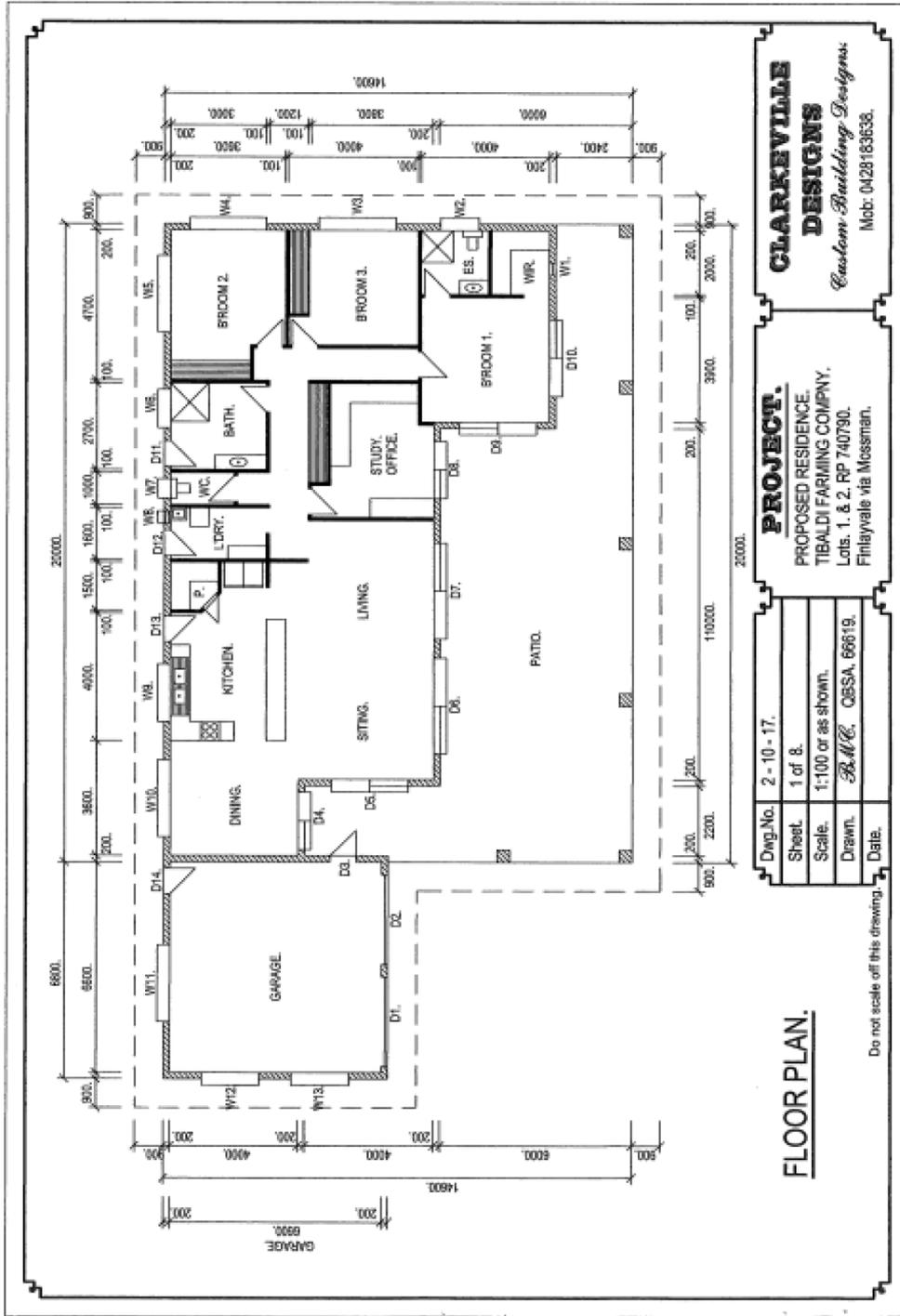
| | | | |
|---|--|--|---|
| <p>2. Eligible submitter appeals</p> <p>An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—</p> <p>(a) any part of the development application for the development approval that required impact assessment; or</p> <p>(b) a variation request.</p> | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| <p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> | <p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p> | <p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p> | <p>Another eligible submitter for the application</p> |
| <p>3. Eligible submitter and eligible advice agency appeals</p> <p>An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—</p> <p>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</p> <p>(b) a variation request.</p> | | | |
| Column 1 Appellant | Column 2 Respondent | Column 3 Co-respondent (if any) | Column 4 Co-respondent by election (if any) |
| <p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p> | <p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p> | <p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p> | <p>Another eligible submitter for the application</p> |

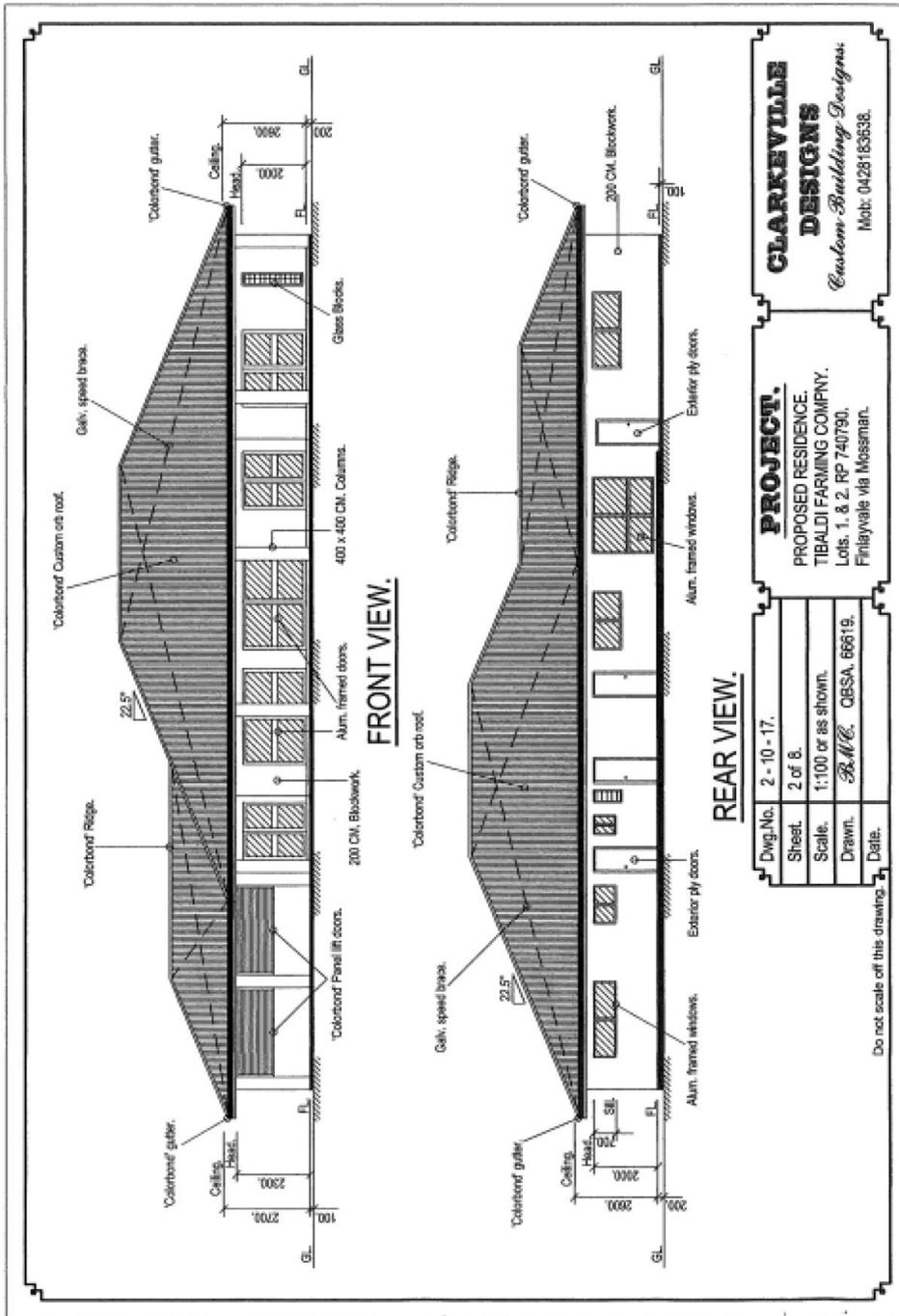
Note:

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waive the 20 day appeal period available under the *Planning Act 2016*

APPROVED PLANS (ATTACHING TO THE DECISION NOTICE)







CLARKEVILLE
DESIGNS
Custom Building Designs.
 Mob: 0428183638.

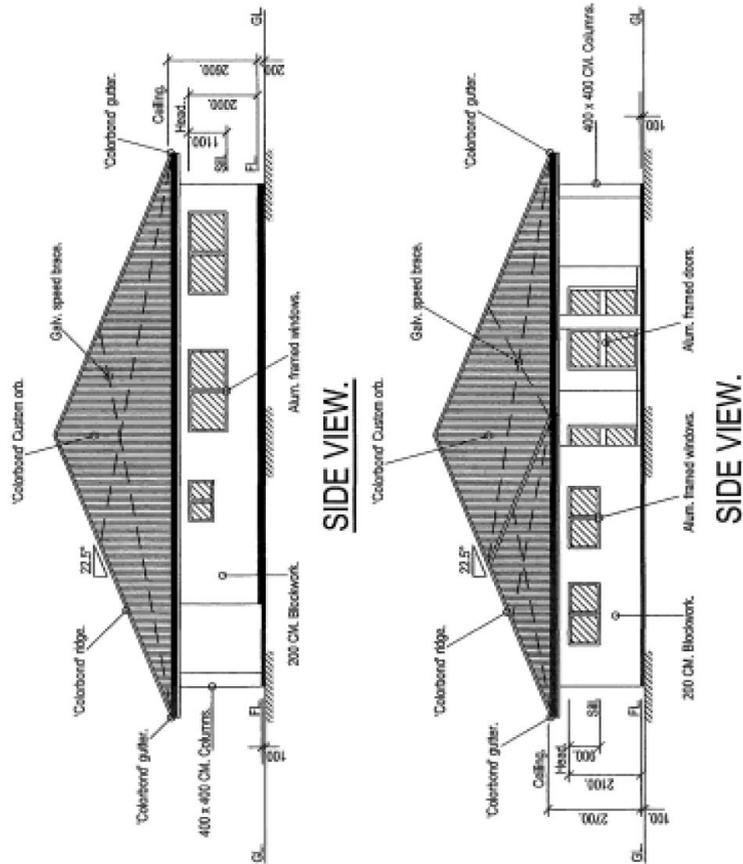
PROJECT.
 PROPOSED RESIDENCE.
 TIBALDI FARMING COMPANY.
 Lots. 1. & 2. RP 740790.
 Finlayvale via Mossman.

WINDOW AND DOOR SCHEDULE.

- W1. - 1604. Glass Blocks.
- W2. - 0712. Alum. framed.
- W3. - 1124. Alum. framed.
- W4. - 1124. Alum. framed.
- W5. - 0728. Alum. framed.
- W6. - 0712. Alum. framed.
- W7. - 0718. Alum. framed.
- W8. - 0904. Glass Louvers.
- W9. - 0918. Alum. framed.
- W10. - 1604. Alum. framed.
- W11. - 0604. Alum. framed.
- W12. - 0918. Alum. framed.
- W13. - 0918. Alum. framed.
- D1. - 2008. Panel LH door.
- D2. - 2008. Panel LH door.
- D3. - 2008. W/proof ply.
- D4. - 2018. Alum. framed.
- D5. - 2024. Alum. framed.
- D6. - 2030. Alum. framed.
- D7. - 2030. Alum. framed.
- D8. - 2018. Alum. framed.
- D9. - 2024. Alum. framed.
- D10. - 2024. Alum. framed.
- D11. - 2008. W/proof ply.
- D12. - 2008. W/proof ply.
- D13. - 2008. W/proof ply.
- D14. - 2008. W/proof ply.
- Internal Doors. - 2008 Internal Ply.

GENERAL NOTES.

1. Carry out termite treatment AS 3690-1:2000. Naturally termite resistant timber is to be in accordance with Appendix C of AS 3690-1. Pressure treated timber is to be in accordance with Appendix D of AS 3690-1.
2. All timber strengths, sizes, and fittings, are to be in accordance with AS 1884, Part 3.
3. These drawings are to be read in conjunction with the attached Engineering and Foundation notes.



CLARKEVILLE
DESIGNS
Custom Building Designs
 Mob: 0428163638.

PROJECT.
 PROPOSED RESIDENCE.
 TIBALDI FARMING COMPANY.
 Lots. 1 & 2. RP 740790.
 Finlayville via Messman.

| | |
|---------|----------------------|
| Dwg.No. | 2 - 10 - 17. |
| Sheet | 3 of 8. |
| Scale | 1:100 or as shown. |
| Drawn | B.M.C. CB&SA, 66619. |
| Date | |

Do not scale off this drawing.

Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 86 and 87 of the *Planning Act 2016*:
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council **4 February 2026** under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Rural Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 86 and 87 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions of the continuing approval, the development satisfactorily meets the Planning Scheme benchmarks.

Non-Compliance with Assessment Benchmarks

None. Through the conditions of the continuing approval the development meets the Assessment Benchmarks.

Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016
Chapter 6 Dispute resolution

[s 229]

(2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.

(3) In this section—

conduct means an act or omission.

representative means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

state of mind, of a person, includes the person's—

- (a) knowledge, intention, opinion, belief or purpose; and
- (b) reasons for the intention, opinion, belief or purpose.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 states—

(a) matters that may be appealed to—

- (i) either a tribunal or the P&E Court; or
- (ii) only a tribunal; or
- (iii) only the P&E Court; and

(b) the person—

- (i) who may appeal a matter (the *appellant*); and
- (ii) who is a respondent in an appeal of the matter; and

- (iii) who is a co-respondent in an appeal of the matter; and
- (iv) who may elect to be a co-respondent in an appeal of the matter.

Note—

For limitations on appeal rights in relation to a development approval for development requiring social impact assessment, see section 106ZJ.

- (2) An appellant may start an appeal within the appeal period.
- (3) The ***appeal period*** is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against a decision of the Minister, under chapter 7, part 4, to amend the registration of premises to include additional land in the affected area for the premises—20 business days after the day a notice is published under section 269A(2)(a); or
 - (e) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (f) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (g) for an appeal relating to the *Plumbing and Drainage Act 2018*—
 - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and*

Drainage Act 2018, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or

- (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
 - (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
 - (iv) otherwise—20 business days after the day the notice is given; or
- (h) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
 - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.

- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
 - (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department’s website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—

decision includes—

 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and

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- (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

Part 2 Development tribunal

Division 1 General

233 Appointment of referees

- (1) The Minister, or chief executive, (the **appointer**) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—