

ENFORCEABLE UNDERTAKING

Given under section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* by Derek Merdith and Georgia Lane

1. This is an Enforceable Undertaking given under section 9.5 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* by the following individuals to the Secretary of the Department of Planning, Housing and Infrastructure (**Secretary**):
 - a. Mr Derek Merdith, date of birth 3 June 1963 (**DM**); and,
 - b. Ms Georgia Lane, date of birth 23 October 1970 (**GL**)(together, the **Owners**).

A. Persons giving the Undertaking

2. This Undertaking is given to the Department of Planning, Housing and Infrastructure (the **Department**) by the Owners for the purposes of s 9.5 of the EP&A Act.

B. Background

3. The Owners are the registered proprietors of the land at 7 Charbray Place, Tyalgum (legally known as Lot 3 in DP 1151138) (**Site**) as tenants in common in equal shares.
4. Tweed Shire Council (**Council**) has responsibilities regarding the administration and enforcement of the EP&A Act and its associated Regulations within the Tweed Local Government Area.
5. The Site is zoned RU2 – Rural Landscape pursuant to the *Tweed Local Environmental Plan 2014 (Tweed LEP)*.
6. At some time around 2015, a three (3) bedroom dwelling house (**Dwelling**) was built on the Site without development consent being sought, or granted, for the construction and use of the Dwelling, in circumstances where development consent for the Dwelling was required by the applicable environmental planning instruments.
7. On 21 March 2023, Council received a report that an illegal dwelling had been constructed at the Site, and that the Dwelling was being advertised for short term rental accommodation.
8. On or around 27 July 2023, Council commenced investigating the construction and use of the Dwelling.
9. On 1 August 2023, the Owners lodged Building Information Certificate application BC23/0152 (**BIC Application**) on the NSW Planning Portal in relation to the Dwelling.
10. On 2 August 2023, the Owners lodged Development Application DA23/0618 (**DA**) on the NSW Planning Portal in relation to the Dwelling.
11. On 3 October 2024, Council issued a Notice of Determination for Development Consent, granting consent to the for the use of the existing Dwelling, subject to conditions (**Consent**).
12. On 4 October 2024, Council issued notices to furnish information and records under s9.22 of the EP&A Act (**s9.22 notices**) regarding the construction of the Dwelling for the

purposes of the BIC Application.

13. Council conducted a directed interview of DM on 9 January 2025, and of GL on 4 February 2025, under s9.23 of the EP&A Act.
14. The BIC Application is currently under assessment by Council .

Alleged Contraventions of the EP&A Act

15. An investigation by Council revealed that the Owners contravened the EP&A Act in the following manner:
 - a. contrary to s4.2(1)(b) of the EP&A Act, which provides that a person must not carry out development which requires development consent unless such a consent has been obtained under the EP&A Act and is in force, DM undertook development without development consent by erecting the Dwelling at the Site. In circumstances where the applicable EPIs required consent to be obtained;
 - b. contrary to s4.3 of the EP&A Act, which provides that a person must not carry out development that is specified in an environmental planning instrument as being prohibited development, GL undertook prohibited development by letting out the Dwelling as short term accommodation where short-term rental accommodation was prohibited in the RU2 zone under the TLEP;
 - c. contrary to s6.3 of the EP&A Act, which provides that a person must not carry out building work without a certificate which is required by Part 6 of the EP& A Act for that work, DM caused the Dwelling to be constructed without a construction certificate; and 6.7 of the EP & A Act required a construction certificate for the erection of the Dwelling,
 - d. contrary to s6.3 of the EP&A Act, which provides that a person must not occupy or use a building without a certificate which is required by Part 6 of the EP& A Act for that activity, GL caused the Dwelling to be used without an occupation certificate and s6.9 of the EP & A Act required an occupation certificate before commencement of use or occupation of the Dwelling; and,
 - e. contrary to s9.25 of the EP&A Act, which provides that a person must not, without a reasonable excuse, fail to comply with a requirement made of the person by an investigation officer, the Owners failed to adequately respond to the s9.22 notices, (together, the **Alleged Contraventions**).
16. DM admits that his conduct contravened ss4.2(1)(a), 6.3(1), and 9.25(1) of the EP&A Act, as set out in clauses 14(a), (c), and (e) above.
17. GL admits that her conduct contravened ss4.3, 6.3(1), and 9.25(1) of the EP&A Act, as set out in clauses 14(b), (d), and (e) above.
18. The Owners have offered to enter an Enforceable Undertaking.

C. Commencement of this Undertaking

19. This Undertaking comes into effect when both:
 - a. this Undertaking is executed by the Owners, and
 - b. this Undertaking so executed is accepted by the Planning Secretary of the Department or delegate.

(the **Commencement Date**).

D. Terms of the Undertaking

20. For the purposes of section 9.5 of the EP&A Act, the Owners jointly and severally undertake to do the following:

- a. within 28 days of the Commencement Date, pay to Council the amount of \$20,000.00, for Council's investigation and legal costs associated with this matter (**Legal Costs**). This payment is to be made to the following account:

Institution: Commonwealth Bank

Account Name: Tweed Shire Council General Fund

BSB: 062 580

Account Number: 00000048

- b. make a financial contribution in the sum of \$15,000.00 to Council, which is to be wholly contributed to Council's public education program, being the 'Public Education Campaign for Illegal and Unauthorised Building and Development under the NSW Environmental Planning and Assessment Act and related legislation in the Tweed Shire'. The sum is to be paid in the following three (3) payments:

- i. \$5,000.00 within 6 months of the payment of the Legal Costs;
- ii. \$5,000.00 within 9 months of the payment of the Legal Costs; and
- iii. \$5,000.00 within 12 months of the payment of the Legal Costs.

This payment is to be made to the following account:

Institution: Commonwealth Bank

Account Name: Tweed Shire Council General Fund

BSB: 062 580

Account Number: 00000048

- c. within 30 days of the Commencement Date, pay to the Department the amount of \$1,000.00 for legal costs associated with accepting this Undertaking (**Departmental Costs**).

The Departmental Costs are to be paid to the following account:

Institution: Westpac

Account Name: DPIE Operating ACC No. 2

BSB: 032-001

Account Number: 114428

- d. implement the following to satisfy Council that the undertakings in clauses 20a. – 20c. have been complied with:

- i. Email to the Manager Development Assessment Compliance of Council at tsc@tweed.nsw.gov.au enclosing a copy of the bank statement/s or transaction receipt/s that confirms that each of the payments in clauses 20a and 20b have been made, within seven (7) days of making each of those payments.
- ii. Email to the Director – Planning Compliance of the Department at compliance@planning.nsw.gov.au enclosing a copy of the bank statement or

transaction receipt that confirms that the payment in clause 20c has been made, within seven (7) days of making that payment.

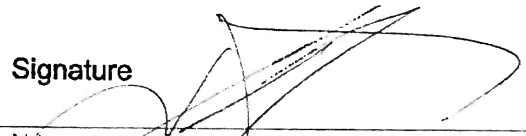
- e. unless otherwise approved or authorised through a development consent (if it became a permissible land use on the Site), to not permit the Dwelling to be used for short-term rental accommodation (as that term is defined under the *State Environmental Planning Policy (Housing) 2021*), or to be used, contrary to the Consent.
 - f. that they have the capacity to comply with the terms of this Undertaking.
 - g. that they commit to ensuring that the **Alleged Contraventions** will not reoccur. This will involve seeking advice from relevant experts and Council.
21. The Owners agrees that that the terms in clause 20 are enforceable.

E. Acknowledgments

22. The Owners acknowledge that:
- a. the Department will make this Undertaking publicly available including by publishing it on the Department's public register of section 9.5 undertakings on its, or Council's, website,
 - b. the Department will, from time to time, make public reference to this Undertaking including in news media statements and in Department's publications, and
 - c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
23. The Planning Secretary and the Owners acknowledge that Council has agreed not to commence any prosecution proceedings in relation to the **Alleged Contraventions** following the acceptance of this Undertaking by the Planning Secretary, and the execution of this Undertaking by the parties.


F. Executed as an Undertaking


Executed by the Owners:

Signature 
Name _____ Derek Merdith
Date 9.6.2025

Signature of
Witness


Name
Date


Name Kyle Pratt
Date 9.6.2025

Signature 
Name _____ Georgia Lane
Date 6 June 2025

Signature of
Witness

Name
Date


Name Kyle Pratt
Date 9.6.2025

Council has negotiated the Undertaking with the Owners in relation to Council's functions under the *Environmental Planning and Assessment Act 1979 (NSW)* and recommends that the Planning Secretary accepts the Undertaking:

Date: 17/06/2025

Signature of General Manager, Tweed Shire Council



Accepted by the Planning Secretary of the Department of Planning, Housing and Infrastructure pursuant to s 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* on:

Date: 23/06/2025

Planning Secretary or their delegate:

 Deputy Secretary,
Development Assessment and Sustainability