

19 November 2025

Planit Consulting Pty Ltd
PO Box 1623
Kingscliff NSW 2487

Attention: Josh Townsend – Senior Project Planner

Dear Josh,

Re: Response to DPIRD Correspondence Dated 4 September 2025 – regarding the proposed ‘Cudgen Connection’ development at 741 Cudgen Road, Cudgen, New South Wales

Further to your request, please find as follows 1. our response to the Department of Primary Industries and Regional Development’s (DPIRD) correspondence dated 4 September 2025, regarding the proposed ‘Cudgen Connection’ located at 741 Cudgen Road, formally described as Lot 6 DP727425, Cudgen, New South Wales, and specifically, the Agricultural Land Assessment report prepared by Gilbert & Sutherland dated November 2023; and 2. clarification of salient land assessment considerations relevant to the applicable rezoning framework.

1. Response to DPI Submission

DPIRD’s comments are reproduced below in italic text, with our response to each item in normal Roman text.

Page 6. *Comments on agricultural reports concerning agricultural capability and BSAL*

- *Land capability is the inherent physical capacity of the land to sustain a range of land uses and management practices in the long term without degrading soil, land, air, and water resources. The Land and Soil Capability Assessment Scheme (LSC) (Second approximation) evaluates land according to eight biophysical features. The most limiting factor ultimately determines the final LSC Class. The subject site is mapped as LSC Class 3, with acidification, wind, and water erosion being the limiting factors for this area, while the other five*

characteristics are Class 1. Slope is not identified as an issue in this mapping scheme.

We confirm that the Agricultural Land Assessment has been prepared consistent to the Land and Soil Capability Assessment Scheme (LSC) criteria, and benefits from site-specific fieldwork and analysis. Whilst slope is not one of the specific limitations listed in the Land and Soil Capability Assessment Scheme criteria, it is used to determine water erosion hazard, as detailed in table 4 page 32 of the *land and soil capability assessment scheme – second approximation* (the Assessment Scheme¹). Whilst the modal terrain slope of the site is gently inclined (3-10%), due to the high level of disturbance experienced, including excavation/removal of soils, terracing and levelling for the establishment of structures, the site contains areas with higher slope classes as outlined in the slope analysis detailed in Drawing 12114.003 of the Gilbert & Sutherland Agricultural Land Assessment report. These include the eastern boundary (10-20%), portions of the northern boundary (10-20% and up to 33-50% slopes), the southeastern portion (10-20% slopes) and the central northern and northeastern portions of the site (10-20%, 20-33% and 33-50% slopes). This has been reflected in the derivation of the Unique Mapping Areas (UMAs) and ultimately the water erosion LSC subclasses for each UMA.

For completion purposes, table 16 on page 47 of the LSC assessment guideline also includes slope classes as a determinative land characteristic to assist in the assessment of mass movement hazard. Both tables 4 and 16 as extracts of the appropriate page (32 and 47) are attached at the back of this letter to assist for referencing purposes.

Additionally, the *interim protocol for site verification and mapping of biophysical strategic agricultural land* (i.e. BSAL) (NSW Govt, 2013²) identifies slope as one of the criteria for determining BSAL, with 'slope' mentioned on pages 3, 5, 6, 11, 13, 14, 21 and 32.

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- *The Department does not have the resources to verify or confirm the LSC analysis undertaken. However, we note that land with concrete at the surface (3 UMAs) was designated as 'rocky' and therefore relegated to LSC Class 6, and two UMAs with a pond and natural wetland were classed LSC Class 8 due to waterlogging, and another UMA as Class 6 on the 'possibility' of saturated soil due to vegetation clearing. This exercise then led to the reassignment of the site's land and soil capability.*

¹ The land and soil capability assessment scheme – second approximation - A general rural land evaluation system for New South Wales. Office of Environment and Heritage Department of Premier and Cabinet NSW 59-61 Goulburn Street, Sydney PO Box A290, Sydney South 1232

² Interim protocol for site verification and mapping of biophysical strategic agricultural land. State of NSW, 2013

The land and soil capability assessment was undertaken in accordance with the Assessment Scheme and, as such, included a physical and chemical assessment of soils on the site. As determined by the field assessment, the site contains a significant rock rubble layer at a shallow depth across much of the northern (lower slope) areas, including within UMAs 2 and 3. However, due to the rock layer being visible within the excavated cut profile on the boundary of UMA 2 and UMAs 1 and 3 and given the prevalence of subsurface rock on the adjacent agricultural land south of Cudgen Road, the likelihood of encountering sub-surface rock across the remainder of the site including UMA 1 is high.

In addition to natural rock, much of the area subject to previous disturbance contains a significant quantity of surface concrete/hardstand. As this material, along with any remaining structures would also require removal/clearing prior to any potential agricultural use, in line with removal/management of the natural rock layer, a suitability sub-class of 6 was also assigned to UMAs 3 and 5. However, given the amount of structures and hardstand also present on UMA 6, a suitability subclass of 6 with respect to rockiness could also reasonably have been applied to that UMA as well.

With respect to waterlogging, we consider the designation of Land and Soil Capability (LSC) Classes of 8 and 6 for UMAs 7 and 8 respectively, based on the presence of a pond (UMA 7) and observance of apparent waterlogging due to the proximity to the neighbouring coastal wetland (UMA 8) as valid.

Whether or not the Department has the resources to undertake their own assessment or sufficiently interrogate the information provided is not justification for not accepting our assessment. The mapping that DPI relies upon is of such a scale that it is largely irrelevant to the assessment of a site of this size (5.7ha). For example, the assessment procedure undertaken for eSpade did not include a slope assessment of this site. Nor has a soil assessment at the appropriate scale been undertaken. It also appears that no-one from DPI has visited the site to provide sufficiently informed comment nor presented any evidence which substantiates an error or flaw within our site-specific analysis and fieldwork.

- *We also understand that the site has not been used for agricultural purposes other than livestock grazing for some time, and agree that to prepare the site for more intensive agricultural activities, there would be potential investment in 'rehabilitation' activities such as cultivation, land formation, soil conditioners, irrigation equipment for example, etc.*
- *We disagree with the verification of BSAL as submitted on the basis that the criteria applied are not relevant to the North Coast. Areas outside the North Coast are required to meet criteria such as a minimum lot size of 20ha and the land being contiguous with other BSAL. The 20ha size constraint for BSAL applies to the areas covered by the New England/North West and Upper Hunter Strategic Regional Land Use Plans only.*

We understand that the 20Ha size constraint for BSAL originally applied to the areas covered by the New England/North West and Upper Hunter Strategic Regional Land Use Plans only. The excerpt from Page 5 of the Interim Protocol is reproduced below.

“The minimum area for BSAL is 20 hectares. If the area subject to assessment falls below 20 hectares at any point of the assessment because of exclusion of land that does not meet the criteria, then the land is not BSAL and there is no need to continue the assessment.”

Additionally, Section 9 Page 27 states:

“BSAL must have a contiguous area equal to or exceeding 20Ha which meets the verification criteria. The minimum area refers to the extent of the biophysical resource not the lot or holding size. Hence if the mining lease area or holding includes less than 20 Ha of BSAL but this BSAL is part of a larger contiguous mass that equals to or exceeds 20 Ha then the land is regarded as BSAL.”

“Determination of the minimum area is based on the area of land required to commercially produce a high value agricultural crop. The 20Ha size constraint for BSAL applies to the areas covered by the New England/North West and Upper Hunter Strategic Regional Land Use Plans only. The area constraint will be reviewed as subsequent plans are developed across NSW.”

The BSAL mapping for the remainder of NSW including the Far North Coast (applicable in this case) appears to have been undertaken in the absence of a specific Protocol with appropriate area limitations for each region, although this was recommended by the Interim Protocol gazetted on 9 April 2013. No minimum area for BSAL was identified or suggested within DPI’s submission, nor identified by us as adopted policy. Given the lack of an updated specific protocol for use in any other region, or any other NSW Government declaration which says otherwise, it is in our view reasonable to utilise the 20ha minimum area requirement as a leading guide. Alternatively, the policy and mapping are invalid and the application of the policy is frustrated.

Nevertheless, in order to determine the existence of BSAL at the site of potential development, a site verification process was developed under the State Environmental Planning Policy (Resources and Energy) 2021. Having completed the verification process, the site is not considered BSAL because it:

- is isolated from other BSAL by the presence of urban infrastructure and other land types;
- does not meet the minimum size criteria of greater than 20 ha;
- exhibits inconsistent slopes that do not always meet the BSAL criteria of being less than or equal to 10%; and
- is not consistent with the BSAL classification’s intent, which is to be based on land and soil capability classes 1, 2 or 3.

In any case and assuming no minimum size requirement, the site would not meet the BSAL requirements in many of the UMAs due to the slope requirement and the LSC assessment which indicates the site is not wholly LSC 1, 2 or 3.

Page 6. Comments on agricultural reports concerning agricultural capability and BSAL

- *The site is part of a large contiguous area (715ha) of BSAL that is also mapped as SSF and, as such, is not isolated. Further, the site is accessed by Cudgen Road, as are other BSAL agricultural holdings, evidenced in recent imagery (Nearmap).*

The NSW SEED mapping³ relied upon by DPI is reasonable for broadscale mapping and planning. However, it is inappropriate to rely upon such a data source, when assessing an individual site.

Whilst the BSAL and State Significant Farmland (now Important Farmland) mapping shows the site as contiguous with other mapped BSAL/IF, the site, in reality, is isolated due to its location abutting Cudgen Road to the south, Tweed Coast Road and residential development to the west, Coastal Wetland and environmental protection zone to the north and the new hospital to the east. The site is located on the fringe of the BSAL and other agricultural land.

The following responses fall within a general overview of the practical and practicability issues for any operator to undertake farming of the site. The underlying premise of such assessment is based on the concept of the “prudent agricultural purchaser”. The essential issue is - what is the likelihood of the subject site being a viable contributor to the agricultural production system or alternatively what is the impact of the loss of this land to the agricultural production of the locale? In considering the Land Assessment, with awareness of the Agricultural Capacity Assessment prepared by Pinnacle, and noting the locality’s competitive advantages, we conclude sustainable agricultural production is not achievable/available for the subject site.

Page 7. DPIRD response

Access is not a factor in the site's agricultural capability.

We acknowledge that access is not a criteria in LSA, however is a direct factor to the practicality of farming, inclusive of the subject site. In this case, the site is bounded by Cudgen Road to the south and Tweed Coast Road to the west. As detailed in the

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<https://geo.seed.nsw.gov.au/vertigisstudio/web/?app=cabd04d595ec43c1aaf4298e80e83ec2>

agricultural capability report, due to the large number of traffic movements projected and already occurring on these roads, the traverse of heavy and slow agricultural machinery will pose a traffic hazard. The exit from the site is constrained to eastward towards Kingscliff along Cudgen Road and entry is only from the western approach. This characteristic of the site fragments it from surrounding agricultural land and poses an impediment to its integration with other farming lots in the vicinity.

Page 3

Attachment 1 provides detailed evidence countering the proposal's justification for removing the site's State Significant Farmland designation via Appendix B.

This is summarised as:

- Despite the claims made in the two agricultural reports and the utility of the LSC classification exercise, which limits the LSC Class 3 land to 2.6ha (45%), we find there is no conclusive evidence that the site cannot be used for agriculture. The reports acknowledge there is agricultural capability due to both biophysical and non-biophysical features.*
- The limitations outlined are not uncommon in agricultural settings and can be effectively managed with standard practices. Suggesting that such constraints render the site unviable or create unavoidable land use conflict is unsubstantiated.*
- The cited site constraints are subjective and overstated, describing the inability to use machinery, apply chemical sprays, and implement 'mandatory' chemical buffers (greatly reducing the arable area), and access the site from Cudgen Road. It is also suggested that the site is heavily compromised and that agriculture will create land use conflict with adjoining land.*
- These arguments are not supported given the availability of alternative technologies that enable effective farmland management and chemical application where necessary, subject to regulation by the APVMA. Furthermore, access via Cudgen Road is already utilised by multiple agricultural operations in the immediate vicinity, demonstrating that the site is not uniquely constrained. As such, these assertions do not substantiate the proposal or diminish the site's agricultural capability.*

The prudent agricultural purchaser would recognise significant land use conflict constraints. We agree based on our assessment that 2.6ha of the site may be considered LSC 3 land, suitable for cropping. However, the remainder of the site was deemed to be LSC 4 to 8 land of moderate to extremely low capability. Indeed LSC class 4, 5 and 6 may have some utility as orchards, however, the extent of the bulk earthworks from previous land use and the resultant land degradation seriously impedes the practicability of such development. As per previous, we have considered the Sustainable Agricultural Production heads of consideration detailed in the NCRP 2041, concluding that the site does not meet the established criteria.

The application of necessary buffers to existing uses would reduce the likelihood of land use conflict. We accept that the existing rural block is not subject to the mandatory

agricultural buffer requirements of the Tweed Shire LEP, DCP and specifications outlined in the Tweed subdivision manual. We also accept that Tweed Shire appears to be somewhat capricious in its application of the mandatory buffer for developments adjacent to farming land. We also confirm that the site is not utilised for agricultural purposes, and as such, any instigation of agricultural operations would comprise the 'agent of change' within the immediate locale. Nevertheless, the need for a buffer to the residences to the west would be a prudent management practice for this site and would be required no matter what part of the site may be used for intensive agricultural pursuits. Although there may be some consideration of the concept of "right to farm", the fact of the matter is that if complaints of nuisance relating to odour, noise or perceived chemical spray drift are made such a concept gives no protection.

With regard to the multiple farms accessing the Cudgen Road, we can only identify one farming operation (Cudgen Road Farms) that accesses Cudgen Road in the same locale as the site. We have been unable to identify what was in the mind of DPI, but to infer that the farms accessing Cudgen Road west of Tweed Valley Way have the same traffic conditions as the road east of the Tweed Valley Way is incorrect and does not support DPI's assertions that access to and from this site is not a limitation.

Whilst the potential use of new farm management practices and technology (such as drones) may be available, the very reason they would be necessary is still a limitation to the management options that an agricultural land user has available to use the land. Similarly, DPI's suggestion of Bio-dynamic farming (page 7 of response) relegates the site use to the fringes of agricultural practice and not within the broadscale normal operations of the farming community. This is in itself a limitation to the use of the site. It is therefore reasonable in this case to assume limitations to cropping-based normal farming practices, machinery and technology widely used in the region on similar soils.

- *The site's BSAL status remains valid when confirmed through the appropriate verification process. Assertions to the contrary in the reports are misleading.*

DPI has not provided evidence of having undertaken an appropriate assessment or verification with respect to the site's BSAL status, commenting only with respect to the site's area and supposed continuity with other regional BSAL.

- *Long-standing regional mapping consistently identifies the site as having exceptional agricultural potential. This is further reinforced by the favourable northern coastal climate and reliable rainfall, which support intensive agricultural activity on the surrounding land. These factors provide strong justification for retaining the site for agricultural use.*

As indicated above, the mapping that DPI relies upon is of such a scale (1:100,000) that it is largely irrelevant to the assessment of a site of this size (5.7 ha). To gain perspective, at 1:100,000 the whole site would be approximately a 2mm square on the map. A limitation of using the available online maps is that they were produced at a state/ regional scale with varying accuracies and degrees of confidence. As

such, site verification assessments are required to confirm the mapping. In this case, the assessments have indicated the site consists of a mix of LSC 3 to 8 land.

- *The absence of historic agricultural investment does not equate to a lack of suitability. Agricultural potential is determined by capability, not past land use decisions. It is also not demonstrated that the site is 'more suitable' for alternative (urban) uses.*

Finally, the provisions in Appendix B do not provide objective minimum or measurable thresholds concerning agricultural capability and as such, we regard the proposal does not satisfy the Urban Growth Area Variation Principles. Due to this and the lack of strategic alignment and justification, and the risk of the permanent loss of agricultural land, the Department does not support the planning proposal.

In this instance, unfortunately, the previous land use has had an impact on the productive use of the site. The earthworks undertaken have caused land degradation of the site that has diminished the LSC assessment class. The agricultural potential assessment does not fulfill the function of assessing the alternate uses such as urban purposes. That is undertaken by the planner.

However, what is interesting is DPI's statement that there are no "objective minimum or measurable thresholds concerning agricultural capability". It is difficult to interpret the meaning of this statement but, it would appear that it is not possible for the Department to make a decision based on site evidence alone. We make no comment about "*strategic alignment and justification*" because this is within the expertise of the planners, not agricultural experts.

However, we note that "assessment: is based on Agricultural capability as indicated by the extract of Appendix B below.

The Planning area is contiguous with existing zoned urban Land and the need and justification is supported by a sound evidence base addressing agricultural capability and sustainability and is either:

- *a minor adjustment to 'round off an urban boundary', or*
- *if demonstrated through a Department approved local strategy that no other suitable alternate land is available, and if for housing, that substantial movement has been made towards achieving required infill targets within existing urban growth area boundaries.*

page 119⁴

It is our view given the small area in total (5.7ha), the land degradation caused by previous use, potential for land use conflict, the cost of necessary conflict mitigation and remediation of the site, and the general inconvenience of the points of ingress

⁴ North Coast Regional Plan 2041 NSW Department of Planning and Environment 2022

and egress from the site make it unlikely this site would be put to farming purposes. The existing farming production from this site is near zero. The site represents 0.051% of the farmed land in the Shire. As such the consequence of permanent alienation of this land from rural uses is of no material impact to rural production locally, regionally or statewide.

2. Clarification of Agricultural Land Assessment Considerations

As per Table 1 below, our report has considered the following matters, and specific to soil assessment, the following summary conclusions are made.

Table 1 – ALA considerations

Matter	Where matter is considered in ALA
1. location, extent and type of agriculture	Section 8.1.1
2. biophysical advantages for agriculture	Section 8.2
3. economic contribution of agriculture	Section 9.1
4. infrastructure, services and resources established to support agriculture and the flow on economic and social contributions	Section 8.1.3
5. value adding enterprises that are supported by agricultural producers	Section 10.1
6. trends in agriculture such as intensification, increase in scale, tenure, employment and changes in technology	Section 8.1
7. future agricultural industry development needs	Section 8.1
8. factors required to retain or expand local food production	Section 8.1.2
9. factors required to protect environmental assets and catchment water quality.	Section 8.1.4

We trust this is acceptable. Please do not hesitate to contact this office if you require any further details or elaboration.

Yours faithfully,



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Director/Principal Environmental Scientist
BSC AES Grad Dip SustLanMan

Attachment 1 – Extracts from LSC assessment guideline

Table 4. Slope class for each LSC class used to determine water erosion hazard

NSW division	Slope class (%) for each LSC class							
	Class 1	Class 2	Class 3	Class 4 ¹	Class 5 ²	Class 6	Class 7	Class 8
Eastern and Central divisions	<1	1 to <3	3 to <10 or 1 to <3 with slopes >500 m length	10 to <20	10 to <20	20 to <33	33 – <50	>50
Western Division ³	<1	1 to <3 or <1 for hardsetting red soils	1–3	3–5	3–5	5–33	33–50	>50

Sand bodies are classified as Class 1 for water erosion hazard.

¹ No gully erosion or sodic/dispersible soils are present.

² Gully erosion and/or sodic/dispersible subsoils are present.

³ Western CMA provided advice on the slope classes.]

Table 16. LSC class for mass movement hazard

Mean annual rainfall (mm)	Mass movement present	Slope class (%)	LSC class
<500	No	n/a	1
	Yes	n/a	8
>500	No	n/a	1
	Yes	<20	6
		>20–50	7
		>50 or any scree or talus slope	8

Note that scree or talus slopes go automatically into Class 8.

Authors Dr Phil Matthew and Greg Holland

Our Reference 12203_Cudgen Connection DPIRD Response_CGHPM1F.docx

Your Reference –

By ☐ Courier ☒ Email ☐ Facsimile ☐ Post

Enclosures – Attachment 1 – guideline extracts