

5.1. MATERIAL CHANGE OF USE FOR DWELLING HOUSE AT LOT 7 STEWART CREEK ROAD- REFUSAL

REPORT AUTHOR(S)	Daniel Lamond, Planning Officer
GENERAL MANAGER	Michael Kriedemann, Acting General Manager Operations
DEPARTMENT	Development Assessment and Coordination
PROPOSAL	Dwelling House
APPLICANT	Joe Berthelson C/- Brazier Motti Pty Ltd PO Box 1185 CAIRNS QLD 4870
LOCATION OF SITE	Stewart Creek Road STEWART CREEK VALLEY
PROPERTY	Lot 7 on RP741831

LOCALITY PLAN



Figure 1 - Locality Plan

ZONE	Rural
PLANNING SCHEME	2018 Douglas Shire Planning Scheme version 1.0
REFERRAL AGENCIES	None applicable
NUMBER OF SUBMITTERS	There were no submissions received. The application is code assessable.
STATUTORY ASSESSMENT DEADLINE	3 January 2018
APPLICATION DATE	6 November 2018

RECOMMENDATION

That Council refuse the development application for a material change of use for a dwelling house over land described as Lot 7 on RP741831, located at Stewart Creek Road, Stewart Creek Valley, having regard to the following:

1. The proposal does not achieve compliance with the Flood and Storm Tide Hazard Overlay Code insofar as:
 - a. The proposal is in conflict with AO1.3 of the code as the acceptable solution requires that new buildings are not located within the overlay area. The application has not demonstrated that despite being in the overlay area, the dwelling house can be developed and protected from the risk of flood inundation.
 - b. The proposal for a dwelling house is in conflict with PO1 of the code as the application has not demonstrated that the proposed dwelling house is located and designed to ensure the safety of all persons; minimise damage to the development and contents of the building; provide suitable amenity or minimise disruption to residents, recovery time and rebuilding or restoration costs after events. No flood study has been provided to define the 1 in 100 year flood event height and subsequently no detail has been provided to demonstrate that the proposed dwelling house can be protected from the velocity of flood waters.
 - c. The proposal for a dwelling house is in conflict with the purpose of the code as the overall outcomes from the purpose require that the proposal responds to the risk of the natural hazard and minimises risk to personal safety. The proposal is required to achieve an acceptable or tolerable risk level on a fit for purpose risk assessment. No flood study or risk assessment has been prepared and submitted in order to demonstrate compliance with the purpose of the code.

EXECUTIVE SUMMARY

Council is in receipt of a development application for a code assessable material change of use for a dwelling house at Lot 7 on RP741831, Stewart Creek Road, Stewart Creek Valley. Ordinarily, the establishment of a house on the Rural Zoned Land would be accepted development (self assessable). However, the proposal is triggered for code assessment as the allotment is covered within the floodplain assessment overlay area of the Flood and Storm Tide Hazard Overlay Code from the 2018 Douglas Shire Planning Scheme version 1.0 (the Planning Scheme).

The proposed house is compliant with the acceptable outcomes within the applicable codes of the Planning Scheme, with the exception of the Flood and Storm Tide Hazard Overlay Code.

Essentially the Flood and Storm Tide Hazard Overlay Code is designed to require that proposals can demonstrate that the establishment of development can occur on site on the basis that flood risk is understood and appropriately managed. The development application and subsequent information request response has not effectively addressed the requirements of the code. Council has no flood level records of the area as it is not within an urban area where development is expected and concentrated.

The site is a relatively flat and cleared lot with Stewart Creek bordering a significant proportion of the boundary. Risks from the 1 in 100 year flood event and the velocity of flows have not been established and are required in order to support the issue of a development permit. With the lack of a flood study, the application cannot be recommended for approval as the flood risks are unknown.

TOWN PLANNING CONSIDERATIONS

Background

Council is in receipt of a development application for a dwelling house as the result of a contract of sale. The sale condition relies on the applicant being able to attain a development approval for a house to be sited on the land. The owner of the land has made a separate request to Council to remove the Local Government Agreement over the land which binds the title to always be held in conjunction with neighbouring lot 2 on RP741831. This means that as long as the local government agreement is maintained, the site and lot 2 must always be owned by the same owner, rendering them one property. Lot 2 has areas which are particularly higher in elevation which are not affected by the flood overlay and could be suitable for the development of a house.

Council's Property Services Unit have received a request to remove the Local Government Agreement but have been issued advice from Development Assessment and Coordination to the effect that the agreement should not be removed if the applicant cannot demonstrate that Lot 7 can cater for the development of a flood immune house.

The development application was made in conjunction with the request to remove the Local Government Agreement binding the lots. The development application considered the experiences of residents that have lived near the site for decades who claimed that to their knowledge, the site has never been inundated. The application also claimed that in the

March 2018 flooding event, the site was not inundated. However, the March 2018 event was not a 1 in 100 year flood event in the Stewart Creek locality. Further, for Council to be satisfied that people and property can be protected from the natural hazard, an engineering flood study must be provided to quantify and qualify the risks and possible solutions to the requirements of the planning scheme overlay code. An information request was issued to the applicant requesting a flood study. The applicant responded with a number of arguments to support the proposal but did not submit a flood study supporting the argument to allow a house to be built in the flood plain assessment area of the overlay. It is likely that the commission of a local flood study of the nature required is cost prohibitive for the feasibility of a house development at the site.

Proposal

Proposed is a code assessable material change of use development application for a dwelling house at vacant lot 7 on RP741831. The house is proposed to be sited on a raised mounded area and consists of a raised stump footing design. The house proposed is single storey and complies with the benchmarks set by the relevant development codes of the 2018 Douglas Shire Planning Scheme with the exception of the Flood and Storm Tide Hazard Overlay Code. Attachment 1 shows the site layout as proposed.

State Planning Requirements

The State Planning Policy 2017 (SPP) outlines matters of State interest that must be considered in any planning scheme across Queensland. The Safety and Resilience to Hazards theme is reflected in the planning scheme's Flood and Storm Tide Hazard Overlay Code and was considered as part of the assessment of this development application.

Douglas Shire Planning Scheme Assessment

Douglas Shire World Heritage Areas and Environs Planning Locality		Code Applicability	Compliance
Zone Code	Rural Zone Code	✓	Complies
Defined Use	Dwelling House	✓	Complies
Development Codes	Flood and Storm Tide Hazard Overlay Code	✓	See comments below
	Filling and Excavation Code	✓	Complies
	Landscaping Code	✓	Complies
	Vehicle Parking and Access Code	✓	Complies
	Infrastructure Code	✓	Complies

Compliance Issues

Flood and Storm Tide Hazard Overlay Code

The proposal triggers assessment against the Flood and Storm Tide Hazard Overlay Code from the Planning Scheme. Acceptable Outcome AO1.3 requires that development is not sited within the overlay area. The entire site is covered within the floodplain assessment overlay area as the edge of the site is Stewart Creek. The corresponding Performance Outcome which must be addressed in the event that the Acceptable Outcome cannot be

achieved is PO1, which requires that development is located and designed to ensure the safety of all persons and minimise damage to the development and contents of buildings.

The site features a relatively flat surface of cleared grazing land with an irregular shaped boundary configuration running parallel with the alignment of Stewart Creek. The site features an area at the upstream side where previous scouring and river bed alignment appears to have been in the past.

Riverine flooding in rainfall events is characterised by the potential for high flow velocities. The risk of flood inundation is heightened by the potential for the house pad and footings to be scoured and swept away by high velocity flows as the site is high in the catchment and is adjacent to a section of the watercourse where flows are concentrated in a valley. When considering development applications within potential riverine floodplains the conservative approach to require a flood study is the only approach that can effectively qualify and quantify the associated risks. The purpose of the overlay code reflects the requirements of the performance outcome for development to demonstrate that the risk to people and property is effectively managed.

The proposal includes design features which attempt to mitigate flood water inundation. This is by way of mounding a building pad and siting the floor of the house on one metre high stump footings on top of the mounded pad. However, without a flood study to give a flood height level, the solution proposed has no benchmark to base these heights from. Information has been provided from residents who have lived in the surrounding area for a number of decades to the affect that to their knowledge, the site has not been inundated by Stewart Creek in an event. However, immunity from flood waters for dwelling houses must be given for the 1 in 100 year probability (1%) for a flood as per *Table 8.2.4.3.b Minimum Immunity (floor levels) for development* from the Flood and Storm Tide Hazard Overlay Code of the Planning Scheme.

The application material lacks an engineering flood study which would be required to give a flood level for the 1 in 100 year flood event and detail potential velocities and engineering solutions to mitigate the associated risks. Therefore, the application cannot be recommended for approval.

Referral Agency Requirements

The application did not trigger referrals.

Public Notification / Submissions

The application is code assessable and does not require public notification. No submissions were received in relation to the application.

ADOPTED INFRASTRUCTURE CHARGES

The proposed development does not trigger Adopted Infrastructure Charges.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

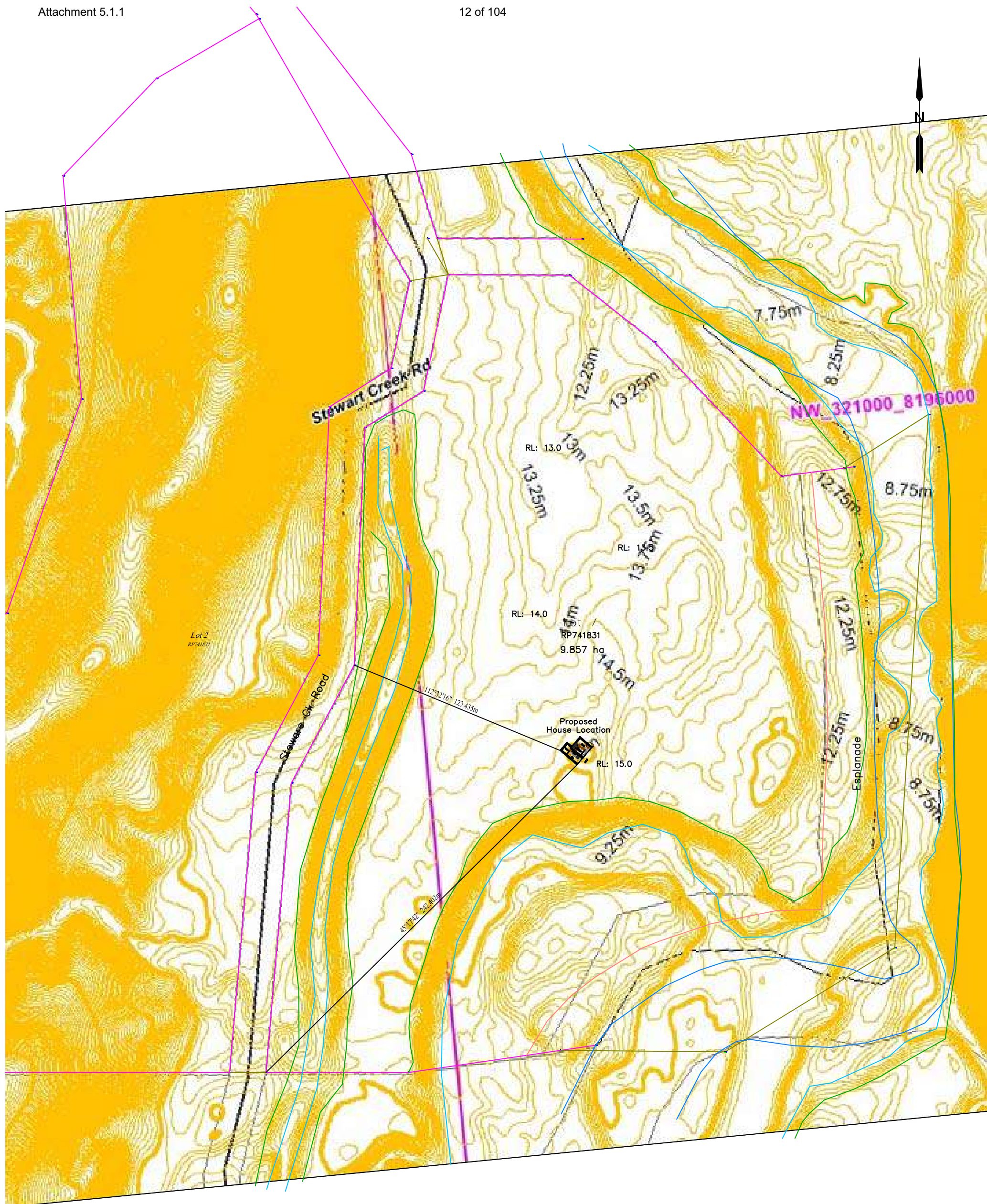
ATTACHMENTS

1. Attachment 1- Proposal Plans **[5.1.1]**



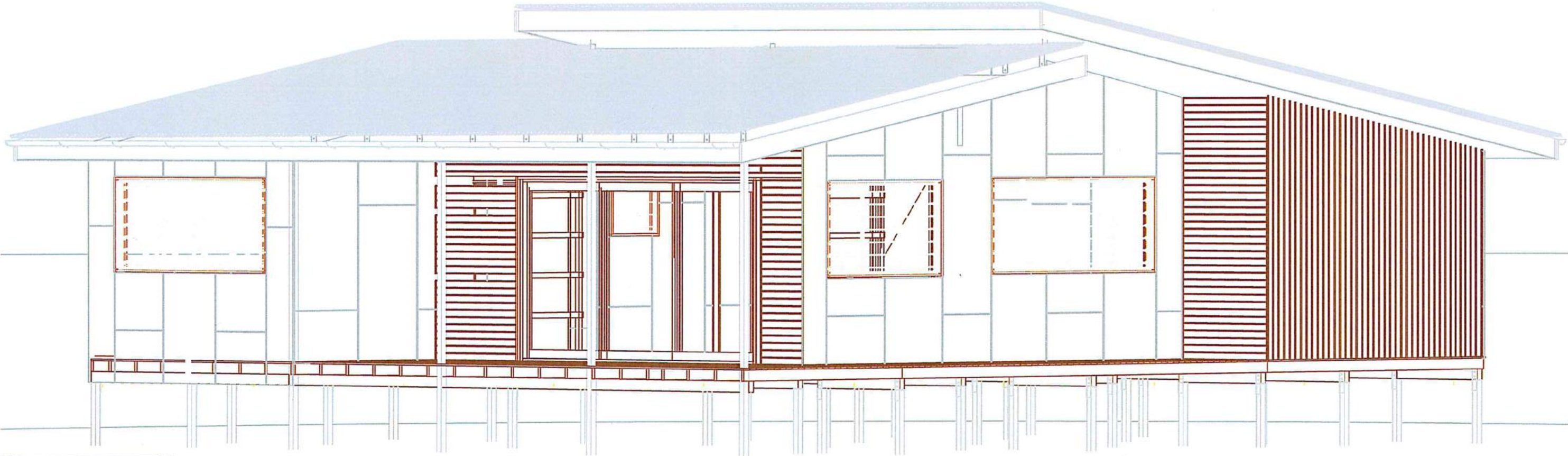
This plan is conceptual and for discussion purposes only. All areas, dimensions and land uses are preliminary, subject to investigation, survey, engineering, and Local Authority and Agency approvals.

Date: 5 Nov 2018
 Scale: 1:2000 @ A3
 Drawn: M. Dunn
 Job No: Dain 01
 Plan No: Plan 01



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All areas, dimensions and land uses are preliminary,
subject to investigation, survey, engineering, and Local
Authority and Agency approvals.

Date: 5 Nov 2018
Scale: 1:2000 @ A3
Drawn: M Dunn
Job No: Dain 01
Plan No: Plan 02



Bower Building 3 Ronald Road Forest Creek QLD 4873	
Mobile: 0437732286 Email: ben@bowerbuilding.net	
QBCC No: 1252754	
Job Name proposed house	
Job Address: Lot 7 Stewart Creek Road, Stewart Creek, Valley	
Date: 7/10/2018	Scale: 1:750
Drawing Description: isometric	Room Name: Joes house
Designed By: Ben Berthelsen	
This Drawing is the property of Bower Building and is not to be reproduced without the consent	

Construction :
The proposed building will be a timber framed house in a 1m high elevated platform supported by steel posts built on top of a 1m high building pad , veranda posts and veranda roof bearers the construction will be timber frame

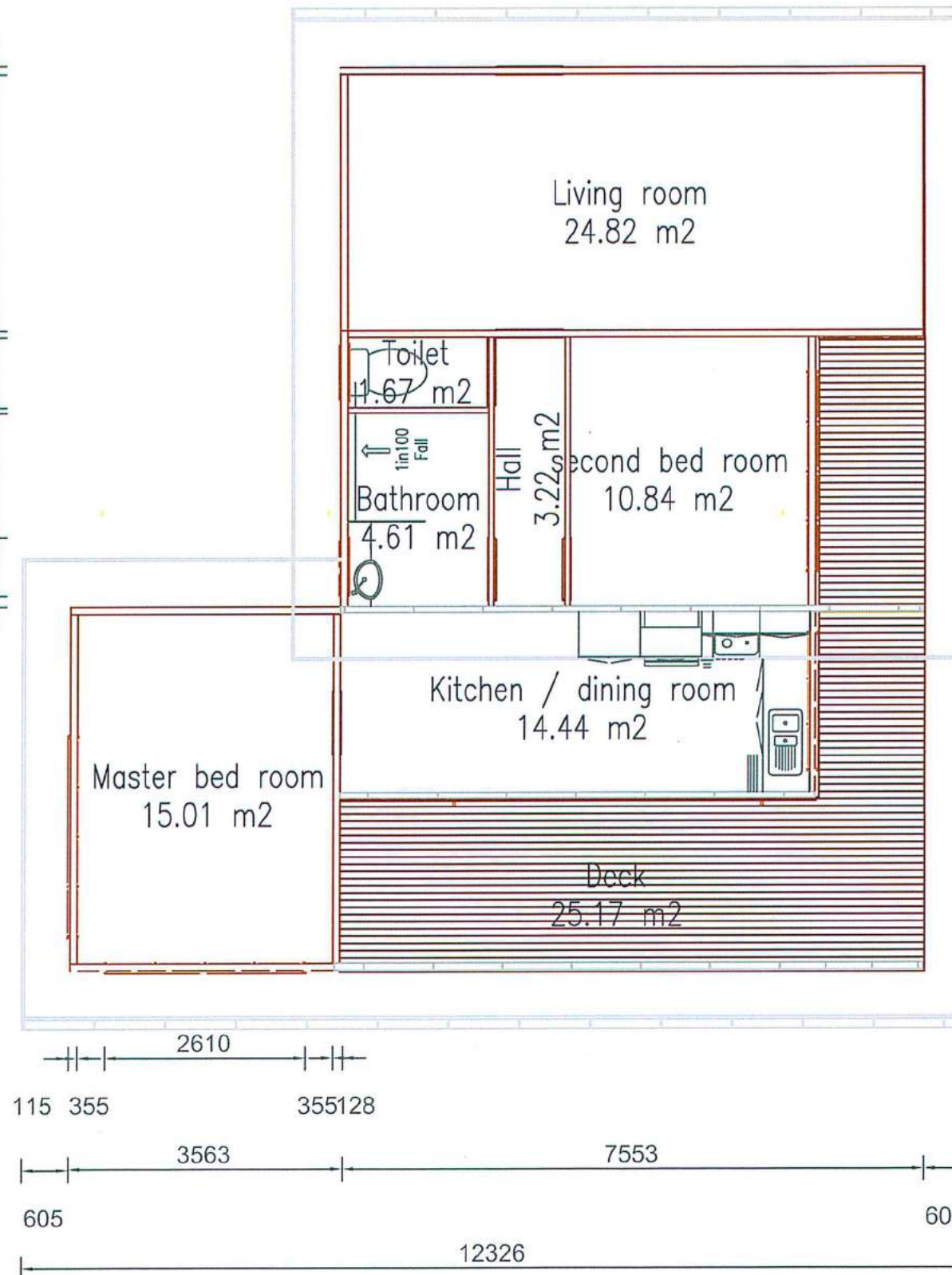
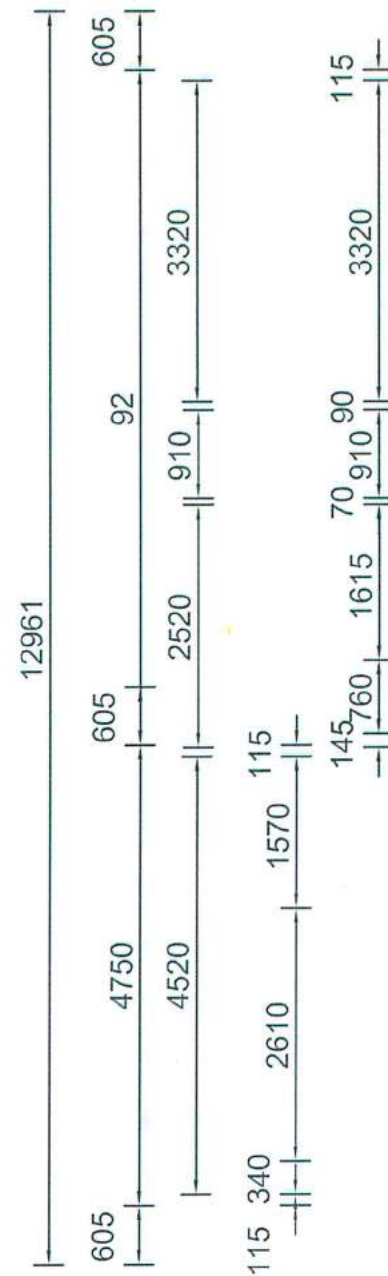
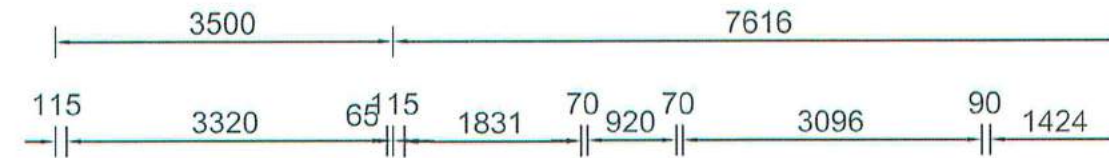
Roof :
The proposed buildings roof will be custom orb set on a 10o angle with half moon gutters

Windows :
The proposed building will have clear glass windows as showing in plan

Decks :
The proposed building will have a deck constructed from spotted gum

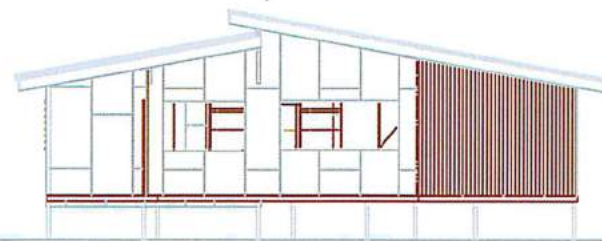
Walls :
The proposed building will me clad in Scyon Matrix cladding apart from three feature walls clad in horizontal ship lap clad timber

Colours :
Roof and gutter- colour bond paperbark
Walls - scyon matrix walls will be painted in dulux exterior matt (paperbark) with gaps formed by cladding painted in a dark timber colour to match oiled two feature walls clad in horizontal ship lap clad timber
Colours have been chosen to increase the energy efficiency of the building by reducing

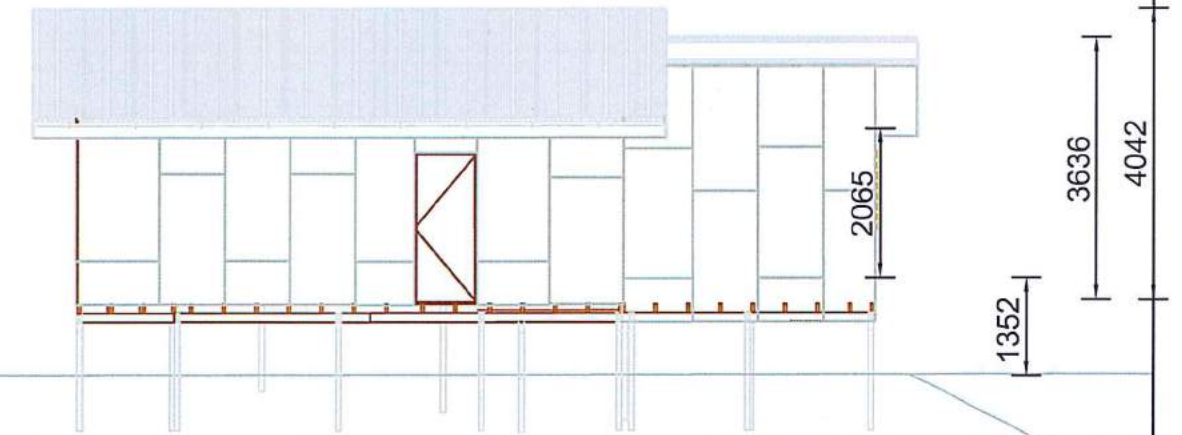


Total floor area 100 m²

Bower Building 3 Ronald Road Forest Creek QLD 4873	
Mobile: 0437732286 Email: ben@bowerbuilding.net	
QBCC No: 1252754	
Job Name proposed house	
Job Address: Lot 7 Stewart Creek Road, Stewart Creek Valley	
Date: 7/10/2018	Scale: 1:750
Drawing Description: floor plan	Room Name: Joes house
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South east view



North east view

Bower Building
3 Ronald Road Forest
Creek
QLD 4873

Mobile: 0437732286
Email:
ben@bowerbuilding.net

QBCC No: 1252754

Job Name
proposed house

Job Address:
Lot 7 Stewart Creek Road, Stewart Creek Valley

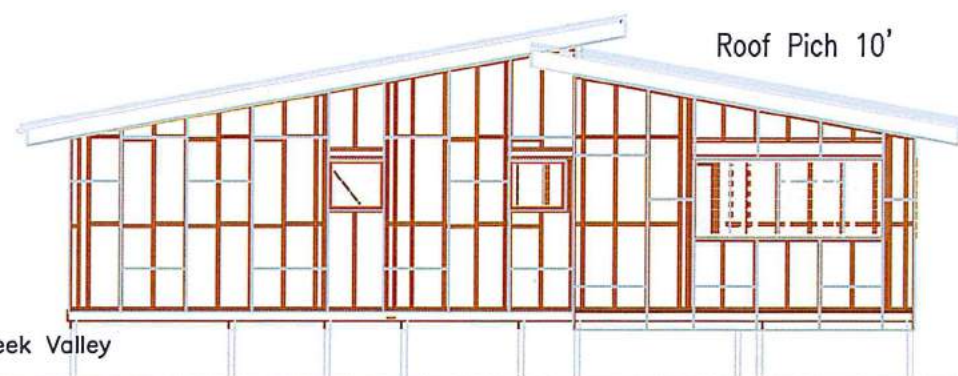
Date: 7/10/2018 Scale: 1:750

Drawing Description: elevations
Room Name: Joes house

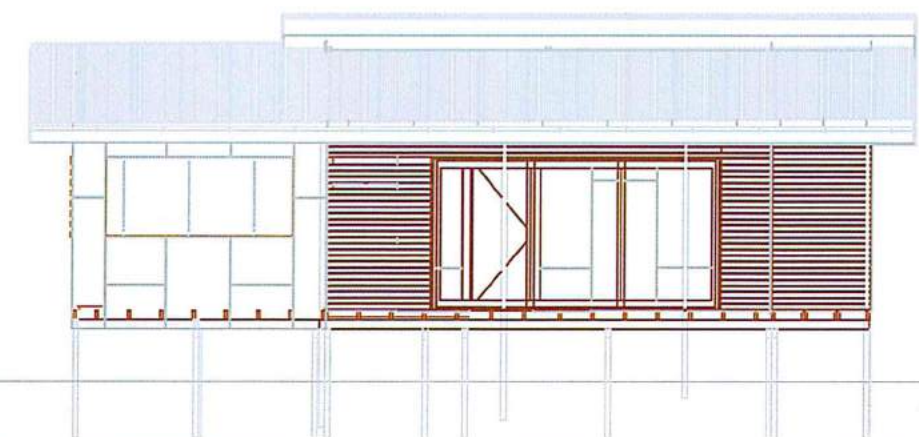
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floor level to be 17 m above sea level



North west view



south west view