

Our Ref:
Your Ref:Principals
s.r. motti | p.j. murphy | r.j. melick | g.l. allwood

5 November 2018

The Chief Executive Officer
Douglas Shire Council
64-66 Front Street
MOSSMAN QLD 4873**Attention: Planning Approvals**

Dear Sir/Madam

**APPLICATION FOR MATERIAL CHANGE OF USE FOR DWELLING HOUSE
LOT 7 STEWART CREEK ROAD, STEWART CREEK VALLEY – LOT 7 ON RP741831**

We act on behalf of the Applicant, Joe Berthelsen in relation to the abovementioned.

On behalf of the Applicant we now submit to Council an application seeking a Development Permit for a Material Change of Use for a Dwelling House on land located at Lot 7 Stewart Creek Road, Stewart Creek Valley, being properly described as Lot 7 on RP741831. The following has been prepared to assist with Council's assessment of the proposed development:

THE SITE

The subject land is located at Lot 7 Stewart Creek Road, Stewart Creek Valley and is properly described as Lot 7 on RP74183. Figure 1 below identifies the site.

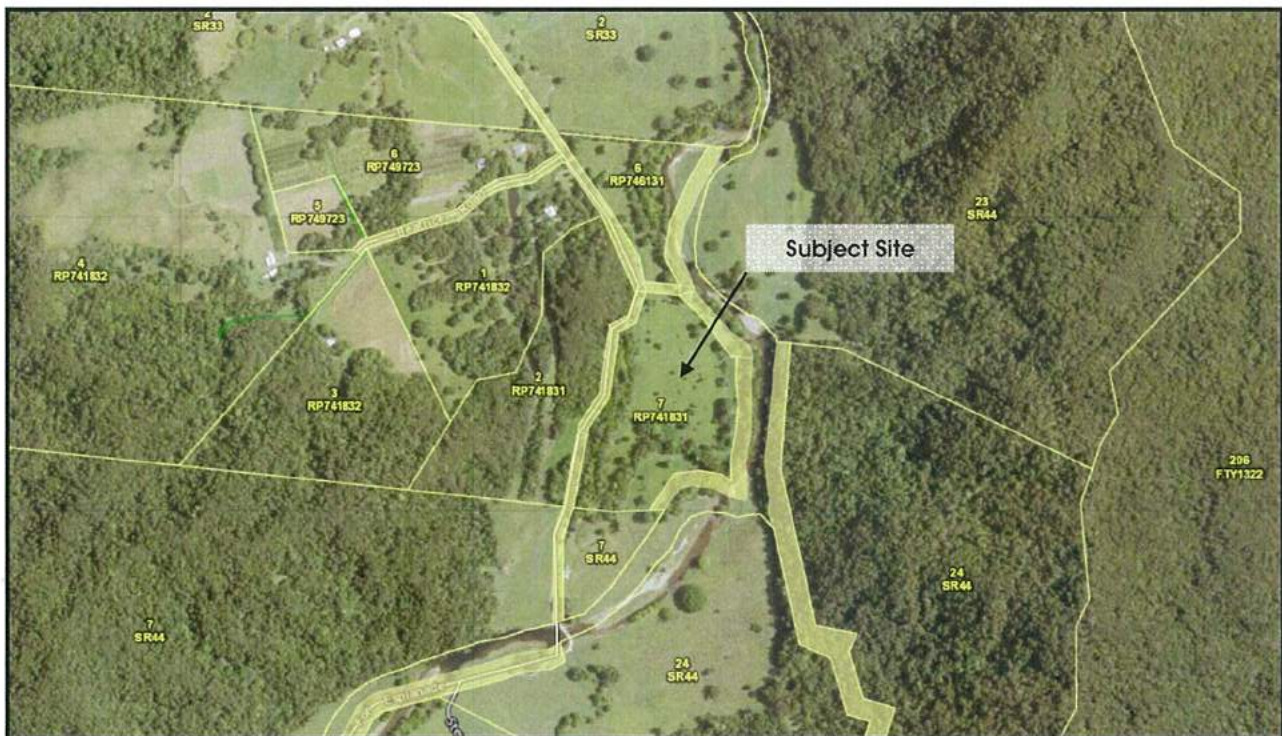


Figure 1: Satellite Imagery of the subject land (source Queensland Globe June 2018 – image date 5 August 2016)

The subject site is a reasonably irregular shaped allotment and contains a total land area of approximately 9.85 hectares. It is noted that the subject land has frontage to Stewart Creek Road. As identified in Figure 1 above, the site is currently vacant land and is sparsely vegetated.

PROPOSAL

Approval of the Development Application will authorise a Development Permit for a Material Change of Use for a Dwelling House on the subject land. Plans of development prepared by Bower Building are included in *Attachment B*.

As identified on the plans of development, the proposed Dwelling House is single story and has a total floor area of approximately 100m². The proposed dwelling comprises two (2) bedrooms, a combined kitchen and dining area, a living area, a bathroom and large deck. Sufficient on-site parking is provided on-site for the resident's vehicles.

The proposed Dwelling House is located quite centrally within the allotment, on the highest part of the subject land (RL 15m AHD). It is noted that the Dwelling House will be a timber frame house, on a one (1) metre high elevated platform supported by steel posts, on a one (1) metre high building pad.

As shown on the site plan the proposed Dwelling House is setback over 120 metres from Stewart Creek Road.

Overall, it is considered that the proposed Dwelling House is of a scale and design that is consistent with and complementary to the surrounding locality.

DOUGLAS SHIRE PLANNING SCHEME 2018

Under the Douglas Shire Planning Scheme 2018 the site is included in the Rural Zone. The Table of Assessment for the Rural Zone identifies that Dwelling House in this Zone is Self Assessable.

However, as the proposed development does not comply with some of the applicable Self Assessable acceptable outcomes of the relevant codes the development becomes Code Assessable development. Pursuant to section 5.4(1)(c)(ii)(A) the proposed Dwelling House is to be assessed against the acceptable outcomes that were not complied with or were not capable of being complied with under sub-section 5.4(1)(a).

The table below identifies the codes and assessment criteria that the proposed Dwelling House is to be assessed against:

	Applicable Code	Assessment Against Code
Zone	Rural Zone	<p>Complies with applicable Acceptable Outcomes.</p> <ul style="list-style-type: none"> • The proposed Dwelling House is not more than 8.5 metres in height. • The Dwelling House is setback in excess of 20 metres from Stewart Creek Road and in excess of 6 metres from the side and rear property boundaries. • The proposed Dwelling House does not have white or shining metallic finishes.
Overlays	Flood and Storm Tide Inundation Overlay Code	<p>Complies with Performance Outcome.</p> <p>The subject land is located within the Floodplain Assessment Overlay on the overlay mapping.</p> <p>The proposed Dwelling House is located quite centrally within the allotment, on the highest part of the subject land, being RL 15m AHD. It is noted that the Dwelling House will be a timber frame house, on a one (1) metre elevated platform supported by steel posts, on a one (1) metre high building pad.</p> <p>It is also noted that Statutory Declarations have been previously provided to Council's Property Services</p>



		<p>department regarding flood inundation of the subject land. One of the Statutory Declarations is from a resident who has been in the area for a significant length of time and confirms that in their time the subject land has not been significantly inundated, nor has the existing Dwelling House on the adjoining property (Lot 7 on SR44), which would be at a similar RL to where this Dwelling House is proposed.</p> <p>The other Statutory Declaration is from the Applicant, who inspected the subject land and the inundation level following the rain event in March 2018. It is confirmed in the Statutory Declaration that while the waterway broke the bank, the flood levels from this event did not rise to where the Dwelling House is proposed.</p> <p>It is noted that the proposed Dwelling House is setback approximately 200 metres from the adjoining waterway.</p> <p>Accordingly, it is considered that the proposed Dwelling House is located and designed to ensure that it is provided with appropriate flood immunity to ensure that safety of the residents.</p>
Development Codes	Dwelling House Code	<p>Complies with applicable Acceptable Outcomes.</p> <ul style="list-style-type: none"> • Sufficient on-site parking is provided on-site for the resident's vehicles. • The proposed Dwelling House complies with the acceptable outcome for building height for the Rural Zone.
	Access, Parking and Servicing Code	<p>Complies with applicable Acceptable Outcomes.</p> <ul style="list-style-type: none"> • Sufficient on-site parking is provided on-site for the resident's vehicles. • Access to the Dwelling House will be via a single access point from Stewart Creek Road. • The access point and driveway will be design to ensure that all vehicle movements to and from the site are safe and efficient.
	Filling and Excavation Code	<p>Complies with applicable Acceptable Outcomes.</p> <ul style="list-style-type: none"> • The proposed Dwelling House is located quite centrally within the allotment, on the highest part of the subject land, being RL 15m AHD. It is noted that the Dwelling House will be a timber frame house, on a one (1) metre elevated platform supported by steel posts, on a one (1) metre high building pad. • The filling for the building pad will not exceed 500m² and will not occur within 2 metres of a property boundary. • The filling for the building pad will not result in any changes in run off characteristics of the site. • The filling of the building pad will not result in a reduction of the water quality of receiving waters.
	Infrastructure Code	<p>Complies with applicable Acceptable Outcomes.</p> <ul style="list-style-type: none"> • The Dwelling House will be serviced by an on-site sewerage system, on-site rainwater tanks, reticulated electricity supply / solar electricity and telecommunications. The proposed Dwelling House will be safely and efficiently connected to this on-site infrastructure.

	Vegetation Management Code	Complies with applicable Acceptable Outcomes. <ul style="list-style-type: none"> The removal of vegetation for the construction of the Dwelling House will be reasonably avoided, however, if some vegetation removal is required it will be undertaken in a sustainable manner.
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PLANNING ACT 2016 CONSIDERATIONS

The table below provides an overview of the legislative context of the development application under the provisions of the *Planning Act 2016* and *Planning Regulation 2017*.

Assessable Development	The proposed development constitutes assessable development under the Douglas Shire Planning Scheme 2018. Accordingly, pursuant to Section 44(3) of the <i>Planning Act 2016</i> a development approval is required.
Assessment Manager	Pursuant to Schedule 8 of the <i>Planning Regulation 2017</i> the Assessment Manager for this development application is Douglas Shire Council.
Category of Assessment	The Douglas Shire Planning Scheme 2018 identifies that the proposed development is a Code Assessable development.
Public Notification	The Application is Code Assessable, therefore, in accordance with section 53 of the <i>Planning Act 2016</i> public notification is not required.
Referrals	The application does not trigger referral to any referral agencies.

CONCLUSION

Overall, it is considered that the proposed development for a Material Change of Use for a Dwelling House on land located at Lot 7 Stewart Creek Road, Stewart Creek Valley is consistent with the relevant provisions of the Douglas Shire Planning Scheme 2018.

The proposed Dwelling House is of a scale and nature that contributes to the proper and orderly development of the locality while ensuring that the character and amenity of the area is maintained and enhanced.

Accordingly, subject to the imposition of reasonable and relevant conditions, we request that Council provide a Development Permit for a Material Change of Use for a Dwelling House on land located at Lot 7 Stewart Creek Road, Stewart Creek Valley.

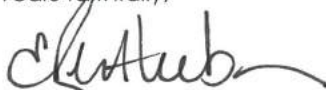
SUPPORTING DOCUMENTS

Please see enclosed the following attachments to assist with Council's assessment of the application:

- Attachment A: DA Form 1 and Contract (confirming owner's consent); and
- Attachment B: Plans of Proposed Dwelling House – prepared by Bower Building.

We trust that the enclosed documentation is sufficient to allow Council's assessment of the proposed development, however, should you have any further queries or wish to discuss please do not hesitate to contact this office.

Yours faithfully,



ERIN BERTHELSEN
Senior Planner
Brazier Motti Pty Ltd

Attachment A

DA Form 1 – Development application details

Approved form (version 1.1 effective 22 JUNE 2018) made under section 282 of the Planning Act 2016.

This form **must** be used to make a development application **involving code assessment or impact assessment**, except when applying for development involving building work.

For a development application involving **building work only**, use *DA Form 2 – Building work details*.

For a development application involving **building work associated with any other type of assessable development (i.e. material change of use, operational work or reconfiguring a lot)**, use this form (*DA Form 1*) and parts 4 to 6 of *DA Form 2 – Building work details*.

Unless stated otherwise, all parts of this form **must** be completed in full and all required supporting information **must** accompany the development application.

One or more additional pages may be attached as a schedule to this development application if there is insufficient space on the form to include all the necessary information.

This form and any other form relevant to the development application must be used to make a development application relating to strategic port land and Brisbane core port land under the *Transport Infrastructure Act 1994*, and airport land under the *Airport Assets (Restructuring and Disposal) Act 2008*. For the purpose of assessing a development application relating to strategic port land and Brisbane core port land, any reference to a planning scheme is taken to mean a land use plan for the strategic port land, Brisbane port land use plan for Brisbane core port land, or a land use plan for airport land.

Note: All terms used in this form have the meaning given under the Planning Act 2016, the Planning Regulation 2017, or the Development Assessment Rules (DA Rules).

PART 1 – APPLICANT DETAILS

1) Applicant details	
Applicant name(s) <i>(individual or company full name)</i>	Joe Berthelsen
Contact name <i>(only applicable for companies)</i>	
Postal address <i>(P.O. Box or street address)</i>	C/- Brazier Motti Pty Ltd PO Box 1185
Suburb	Cairns
State	Queensland
Postcode	4870
Country	Australia
Contact number	07 4033 2377
Email address <i>(non-mandatory)</i>	erin.berthelsen@braziermotti.com.au
Mobile number <i>(non-mandatory)</i>	
Fax number <i>(non-mandatory)</i>	
Applicant's reference number(s) <i>(if applicable)</i>	

2) Owner's consent
2.1) Is written consent of the owner required for this development application?
<input checked="" type="checkbox"/> Yes – the written consent of the owner(s) is attached to this development application Refer to Special Condition 1.3 of the enclosed Contract – <i>the seller consents to the Buyer making an application to Council for the construction of a Dwelling House.</i>
<input type="checkbox"/> No – proceed to 3)

PART 2 – LOCATION DETAILS

3) Location of the premises (complete 3.1) or 3.2), and 3.3) as applicable)

Note: Provide details below and attach a site plan for any or all premises part of the development application. For further information, see DA Forms Guide: Relevant plans.

3.1) Street address and lot on plan

Street address **AND** lot on plan (all lots must be listed), **or**

Street address **AND** lot on plan for an adjoining or adjacent property of the premises (appropriate for development in water but adjoining or adjacent to land e.g. jetty, pontoon; all lots must be listed).

a)	Unit No.	Street No.	Street Name and Type	Suburb
		Lot 7	Stewart Creek Road	Stewart Creek Valley
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)
	4873	7	RP741831	Douglas
b)	Unit No.	Street No.	Street Name and Type	Suburb
	Postcode	Lot No.	Plan Type and Number (e.g. RP, SP)	Local Government Area(s)

3.2) Coordinates of premises (appropriate for development in remote areas, over part of a lot or in water not adjoining or adjacent to land e.g. channel dredging in Moreton Bay)

Note: Place each set of coordinates in a separate row. Only one set of coordinates is required for this part.

Coordinates of premises by longitude and latitude

Longitude(s)	Latitude(s)	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other:	

Coordinates of premises by easting and northing

Easting(s)	Northing(s)	Zone Ref.	Datum	Local Government Area(s) (if applicable)
		<input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56	<input type="checkbox"/> WGS84 <input type="checkbox"/> GDA94 <input type="checkbox"/> Other:	

3.3) Additional premises

Additional premises are relevant to this development application and their details have been attached in a schedule to this application

Not required

4) Identify any of the following that apply to the premises and provide any relevant details

In or adjacent to a water body or watercourse or in or above an aquifer

Name of water body, watercourse or aquifer:

Stewart Creek

On strategic port land under the *Transport Infrastructure Act 1994*

Lot on plan description of strategic port land:

Name of port authority for the lot:

In a tidal area

Name of local government for the tidal area (if applicable):

Name of port authority for tidal area (if applicable):

On airport land under the *Airport Assets (Restructuring and Disposal) Act 2008*

Name of airport:

<input type="checkbox"/> Listed on the Environmental Management Register (EMR) under the <i>Environmental Protection Act 1994</i>	
EMR site identification:	
<input type="checkbox"/> Listed on the Contaminated Land Register (CLR) under the <i>Environmental Protection Act 1994</i>	
CLR site identification:	

5) Are there any existing easements over the premises?
Note: Easement uses vary throughout Queensland and are to be identified correctly and accurately. For further information on easements and how they may affect the proposed development, see [DA Forms Guide](#).

Yes – All easement locations, types and dimensions are included in plans submitted with this development application

No

PART 3 – DEVELOPMENT DETAILS

Section 1 – Aspects of development

6.1) Provide details about the first development aspect	
a) What is the type of development? <i>(tick only one box)</i>	
<input checked="" type="checkbox"/> Material change of use	<input type="checkbox"/> Reconfiguring a lot <input type="checkbox"/> Operational work <input type="checkbox"/> Building work
b) What is the approval type? <i>(tick only one box)</i>	
<input checked="" type="checkbox"/> Development permit	<input type="checkbox"/> Preliminary approval <input type="checkbox"/> Preliminary approval that includes a variation approval
c) What is the level of assessment?	
<input checked="" type="checkbox"/> Code assessment	<input type="checkbox"/> Impact assessment <i>(requires public notification)</i>
d) Provide a brief description of the proposal <i>(e.g. 6 unit apartment building defined as multi-unit dwelling, reconfiguration of 1 lot into 3 lots):</i>	
Material Change of Use for Dwelling House	
e) Relevant plans	
Note: <i>Relevant plans are required to be submitted for all aspects of this development application. For further information, see DA Forms guide: Relevant plans.</i>	
<input checked="" type="checkbox"/> Relevant plans of the proposed development are attached to the development application	
6.2) Provide details about the second development aspect	
a) What is the type of development? <i>(tick only one box)</i>	
<input type="checkbox"/> Material change of use	<input type="checkbox"/> Reconfiguring a lot <input type="checkbox"/> Operational work <input type="checkbox"/> Building work
b) What is the approval type? <i>(tick only one box)</i>	
<input type="checkbox"/> Development permit	<input type="checkbox"/> Preliminary approval <input type="checkbox"/> Preliminary approval that includes a variation approval
c) What is the level of assessment?	
<input type="checkbox"/> Code assessment	<input type="checkbox"/> Impact assessment <i>(requires public notification)</i>
d) Provide a brief description of the proposal <i>(e.g. 6 unit apartment building defined as multi-unit dwelling, reconfiguration of 1 lot into 3 lots):</i>	
e) Relevant plans	
Note: <i>Relevant plans are required to be submitted for all aspects of this development application. For further information, see DA Forms Guide: Relevant plans.</i>	
<input type="checkbox"/> Relevant plans of the proposed development are attached to the development application	

6.3) Additional aspects of development

- Additional aspects of development are relevant to this development application and the details for these aspects that would be required under Part 3 Section 1 of this form have been attached to this development application
- Not required

Section 2 – Further development details

7) Does the proposed development application involve any of the following?

- | | |
|------------------------|---|
| Material change of use | <input checked="" type="checkbox"/> Yes – complete division 1 if assessable against a local planning instrument |
| Reconfiguring a lot | <input type="checkbox"/> Yes – complete division 2 |
| Operational work | <input type="checkbox"/> Yes – complete division 3 |
| Building work | <input type="checkbox"/> Yes – complete DA Form 2 – Building work details |

Division 1 – Material change of use

Note: This division is only required to be completed if any part of the development application involves a material change of use assessable against a local planning instrument.

8.1) Describe the proposed material change of use

Provide a general description of the proposed use	Provide the planning scheme definition (include each definition in a new row)	Number of dwelling units (if applicable)	Gross floor area (m ²) (if applicable)
Dwelling House	Dwelling House	1	100m ²

8.2) Does the proposed use involve the use of existing buildings on the premises?

- Yes
- No

Division 2 – Reconfiguring a lot

Note: This division is only required to be completed if any part of the development application involves reconfiguring a lot.

9.1) What is the total number of existing lots making up the premises?

9.2) What is the nature of the lot reconfiguration? (tick all applicable boxes)

- | | |
|--|--|
| <input type="checkbox"/> Subdivision (complete 10)) | <input type="checkbox"/> Dividing land into parts by agreement (complete 11)) |
| <input type="checkbox"/> Boundary realignment (complete 12)) | <input type="checkbox"/> Creating or changing an easement giving access to a lot from a construction road (complete 13)) |

10) Subdivision

10.1) For this development, how many lots are being created and what is the intended use of those lots:

Intended use of lots created	Residential	Commercial	Industrial	Other, please specify:
Number of lots created				

10.2) Will the subdivision be staged?

- Yes – provide additional details below
- No

How many stages will the works include?	
What stage(s) will this development application apply to?	

11) Dividing land into parts by agreement – how many parts are being created and what is the intended use of the parts?

Intended use of parts created	Residential	Commercial	Industrial	Other, please specify:
Number of parts created				

12) Boundary realignment

12.1) What are the current and proposed areas for each lot comprising the premises?

Current lot		Proposed lot	
Lot on plan description	Area (m ²)	Lot on plan description	Area (m ²)

12.2) What is the reason for the boundary realignment?

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13) What are the dimensions and nature of any existing easements being changed and/or any proposed easement? (attach schedule if there are more than two easements)

Existing or proposed?	Width (m)	Length (m)	Purpose of the easement? (e.g. pedestrian access)	Identify the land/lot(s) benefitted by the easement

Division 3 – Operational work

Note: This division is only required to be completed if any part of the development application involves operational work.

14.1) What is the nature of the operational work?

- | | | |
|--|---|--|
| <input type="checkbox"/> Road work | <input type="checkbox"/> Stormwater | <input type="checkbox"/> Water infrastructure |
| <input type="checkbox"/> Drainage work | <input type="checkbox"/> Earthworks | <input type="checkbox"/> Sewage infrastructure |
| <input type="checkbox"/> Landscaping | <input type="checkbox"/> Signage | <input type="checkbox"/> Clearing vegetation |
| <input type="checkbox"/> Other – please specify: | <input style="width: 100%;" type="text"/> | |

14.2) Is the operational work necessary to facilitate the creation of new lots? (e.g. subdivision)

<input type="checkbox"/> Yes – specify number of new lots:	<input style="width: 100%;" type="text"/>
<input type="checkbox"/> No	

14.3) What is the monetary value of the proposed operational work? (include GST, materials and labour)

\$ <input style="width: 100%;" type="text"/>
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PART 4 – ASSESSMENT MANAGER DETAILS

15) Identify the assessment manager(s) who will be assessing this development application

Douglas Shire Council

16) Has the local government agreed to apply a superseded planning scheme for this development application?

- Yes – a copy of the decision notice is attached to this development application
- Local government is taken to have agreed to the superseded planning scheme request – relevant documents attached
- No

PART 5 – REFERRAL DETAILS

17) Do any aspects of the proposed development require referral for any referral requirements?

Note: A development application will require referral if prescribed by the Planning Regulation 2017.

No, there are no referral requirements relevant to any development aspects identified in this development application – proceed to Part 6

Matters requiring referral to the **Chief Executive of the Planning Regulation 2017:**

- Clearing native vegetation
- Contaminated land (*unexploded ordnance*)
- Environmentally relevant activities (ERA) (*only if the ERA have not been devolved to a local government*)
- Fisheries – aquaculture
- Fisheries – declared fish habitat area
- Fisheries – marine plants
- Fisheries – waterway barrier works
- Hazardous chemical facilities
- Queensland heritage place (*on or near a Queensland heritage place*)
- Infrastructure – designated premises
- Infrastructure – state transport infrastructure
- Infrastructure – state transport corridors and future state transport corridors
- Infrastructure – state-controlled transport tunnels and future state-controlled transport tunnels
- Infrastructure – near a state-controlled road intersection
- On Brisbane core port land near a State transport corridor or future State transport corridor
- On Brisbane core port land – ERA
- On Brisbane core port land – tidal works or work in a coastal management district
- On Brisbane core port land – hazardous chemical facility
- On Brisbane core port land – taking or interfering with water
- On Brisbane core port land – referable dams
- On Brisbane core port land - fisheries
- Land within Port of Brisbane's port limits
- SEQ development area
- SEQ regional landscape and rural production area or SEQ rural living area – tourist activity or sport and recreation activity
- SEQ regional landscape and rural production area or SEQ rural living area – community activity
- SEQ regional landscape and rural production area or SEQ rural living area – indoor recreation
- SEQ regional landscape and rural production area or SEQ rural living area – urban activity
- SEQ regional landscape and rural production area or SEQ rural living area – combined use
- Tidal works or works in a coastal management district
- Reconfiguring a lot in a coastal management district or for a canal
- Erosion prone area in a coastal management district
- Urban design
- Water-related development – taking or interfering with water
- Water-related development – removing quarry material (*from a watercourse or lake*)
- Water-related development – referable dams
- Water-related development – construction of new levees or modification of existing levees (*category 3 levees only*)
- Wetland protection area

Matters requiring referral to the **local government:**

- Airport land
- Environmentally relevant activities (ERA) (*only if the ERA have been devolved to local government*)
- Local heritage places

Matters requiring referral to the chief executive of the distribution entity or transmission entity: <input type="checkbox"/> Electricity infrastructure
Matters requiring referral to: <ul style="list-style-type: none"> • The Chief executive of the holder of the licence, if not an individual • The holder of the licence, if the holder of the licence is an individual <input type="checkbox"/> Oil and gas infrastructure
Matters requiring referral to the Brisbane City Council: <input type="checkbox"/> Brisbane core port land
Matters requiring referral to the Minister under the <i>Transport Infrastructure Act 1994</i>: <input type="checkbox"/> Brisbane core port land (inconsistent with Brisbane port LUP for transport reasons) <input type="checkbox"/> Strategic port land
Matters requiring referral to the relevant port operator: <input type="checkbox"/> Land within Port of Brisbane's port limits (below high-water mark)
Matters requiring referral to the Chief Executive of the relevant port authority: <input type="checkbox"/> Land within limits of another port (below high-water mark)
Matters requiring referral to the Gold Coast Waterways Authority: <input type="checkbox"/> Tidal works, or work in a coastal management district in Gold Coast waters
Matters requiring referral to the Queensland Fire and Emergency Service: <input type="checkbox"/> Tidal works marina (<i>more than six vessel berths</i>)

18) Has any referral agency provided a referral response for this development application?		
<input type="checkbox"/> Yes – referral response(s) received and listed below are attached to this development application <input checked="" type="checkbox"/> No		
Referral requirement	Referral agency	Date of referral response
Identify and describe any changes made to the proposed development application that was the subject of the referral response and the development application the subject of this form, or include details in a schedule to this development application (<i>if applicable</i>).		

PART 6 – INFORMATION REQUEST

19) Information request under Part 3 of the DA Rules
<input checked="" type="checkbox"/> I agree to receive an information request if determined necessary for this development application <input type="checkbox"/> I do not agree to accept an information request for this development application
Note: <i>By not agreeing to accept an information request I, the applicant, acknowledge:</i> <ul style="list-style-type: none"> • that this development application will be assessed and decided based on the information provided when making this development application and the assessment manager and any referral agencies relevant to the development application are not obligated under the DA Rules to accept any additional information provided by the applicant for the development application unless agreed to by the relevant parties • Part 3 of the DA Rules will still apply if the application is an application listed under section 11.3 of the DA Rules. <i>Further advice about information requests is contained in the DA Forms Guide.</i>

PART 7 – FURTHER DETAILS

20) Are there any associated development applications or current approvals? (e.g. a preliminary approval)

- Yes – provide details below or include details in a schedule to this development application
 No

List of approval/development application references	Reference number	Date	Assessment manager
<input type="checkbox"/> Approval <input type="checkbox"/> Development application			
<input type="checkbox"/> Approval <input type="checkbox"/> Development application			

21) Has the portable long service leave levy been paid? (only applicable to development applications involving building work or operational work)

- Yes – a copy of the receipted QLeave form is attached to this development application
 No – I, the applicant will provide evidence that the portable long service leave levy has been paid before the assessment manager decides the development application. I acknowledge that the assessment manager may give a development approval only if I provide evidence that the portable long service leave levy has been paid
 Not applicable (e.g. building and construction work is less than \$150,000 excluding GST)

Amount paid	Date paid (dd/mm/yy)	QLeave levy number
\$		

22) Is this development application in response to a show cause notice or required as a result of an enforcement notice?

- Yes – show cause or enforcement notice is attached
 No

23) Further legislative requirements

Environmentally relevant activities

23.1) Is this development application also taken to be an application for an environmental authority for an **Environmentally Relevant Activity (ERA)** under section 115 of the *Environmental Protection Act 1994*?

- Yes – the required attachment (form ESR/2015/1791) for an application for an environmental authority accompanies this development application, and details are provided in the table below
 No

Note: Application for an environmental authority can be found by searching “ESR/2015/1791” as a search term at www.qld.gov.au. An ERA requires an environmental authority to operate. See www.business.qld.gov.au for further information.

Proposed ERA number:		Proposed ERA threshold:	
Proposed ERA name:			

- Multiple ERAs are applicable to this development application and the details have been attached in a schedule to this development application.

Hazardous chemical facilities

23.2) Is this development application for a **hazardous chemical facility**?

- Yes – Form 69: Notification of a facility exceeding 10% of schedule 15 threshold is attached to this development application
 No

Note: See www.business.qld.gov.au for further information about hazardous chemical notifications.

Clearing native vegetation

23.3) Does this development application involve **clearing native vegetation** that requires written confirmation that the chief executive of the *Vegetation Management Act 1999* is satisfied the clearing is for a relevant purpose under section 22A of the *Vegetation Management Act 1999*?

Yes – this development application includes written confirmation from the chief executive of the *Vegetation Management Act 1999* (s22A determination)

No

Note: 1. Where a development application for operational work or material change of use requires a s22A determination and this is not included, the development application is prohibited development.

2. See <https://www.qld.gov.au/environment/land/vegetation/applying> for further information on how to obtain a s22A determination.

Environmental offsets

23.4) Is this development application taken to be a prescribed activity that may have a significant residual impact on a **prescribed environmental matter** under the *Environmental Offsets Act 2014*?

Yes – I acknowledge that an environmental offset must be provided for any prescribed activity assessed as having a significant residual impact on a prescribed environmental matter

No

Note: The environmental offset section of the Queensland Government's website can be accessed at www.qld.gov.au for further information on environmental offsets.

Koala conservation

23.5) Does this development application involve a material change of use, reconfiguring a lot or operational work within an assessable development area under Schedule 10, Part 10 of the Planning Regulation 2017?

Yes

No

Note: See guidance materials at www.des.qld.gov.au for further information.

Water resources

23.6) Does this development application involve **taking or interfering with underground water through an artesian or subartesian bore, taking or interfering with water in a watercourse, lake or spring, or taking overland flow water under the Water Act 2000**?

Yes – the relevant template is completed and attached to this development application and I acknowledge that a relevant authorisation or licence under the *Water Act 2000* may be required prior to commencing development

No

Note: Contact the Department of Natural Resources, Mines and Energy at www.dnrme.qld.gov.au for further information.

DA templates are available from <https://planning.dsdmip.qld.gov.au/>. If the development application involves:

- Taking or interfering with underground water through an artesian or subartesian bore: complete DA Form 1 Template 1
- Taking or interfering with water in a watercourse, lake or spring: complete DA Form 1 Template 2
- Taking overland flow water: complete DA Form 1 Template 3.

Waterway barrier works

23.7) Does this application involve **waterway barrier works**?

Yes – the relevant template is completed and attached to this development application

No

DA templates are available from <https://planning.dsdmip.qld.gov.au/>. For a development application involving waterway barrier works, complete DA Form 1 Template 4.

Marine activities

23.8) Does this development application involve **aquaculture, works within a declared fish habitat area or removal, disturbance or destruction of marine plants**?

Yes – an associated resource allocation authority is attached to this development application, if required under the *Fisheries Act 1994*

No

Note: See guidance materials at www.daf.qld.gov.au for further information.

Quarry materials from a watercourse or lake

23.9) Does this development application involve the **removal of quarry materials from a watercourse or lake** under the *Water Act 2000*?

- Yes – I acknowledge that a quarry material allocation notice must be obtained prior to commencing development
 No

Note: Contact the Department of Natural Resources, Mines and Energy at www.dnrme.qld.gov.au and www.business.qld.gov.au for further information.

Quarry materials from land under tidal waters

23.10) Does this development application involve the **removal of quarry materials from land under tidal water** under the *Coastal Protection and Management Act 1995*?

- Yes – I acknowledge that a quarry material allocation notice must be obtained prior to commencing development
 No

Note: Contact the Department of Environment and Science at www.des.qld.gov.au for further information.

Referable dams

23.11) Does this development application involve a **referable dam** required to be failure impact assessed under section 343 of the *Water Supply (Safety and Reliability) Act 2008* (the Water Supply Act)?

- Yes – the 'Notice Accepting a Failure Impact Assessment' from the chief executive administering the Water Supply Act is attached to this development application
 No

Note: See guidance materials at www.dnrme.qld.gov.au for further information.

Tidal work or development within a coastal management district

23.12) Does this development application involve **tidal work or development in a coastal management district**?

- Yes – the following is included with this development application:
 Evidence the proposal meets the code for assessable development that is prescribed tidal work (*only required if application involves prescribed tidal work*)
 A certificate of title
 No

Note: See guidance materials at www.des.qld.gov.au for further information.

Queensland and local heritage places

23.13) Does this development application propose development on or adjoining a place entered in the **Queensland heritage register** or on a place entered in a local government's **Local Heritage Register**?

- Yes – details of the heritage place are provided in the table below
 No

Note: See guidance materials at www.des.qld.gov.au for information requirements regarding development of Queensland heritage places.

Name of the heritage place:		Place ID:	
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Brothels

23.14) Does this development application involve a **material change of use for a brothel**?

- Yes – this development application demonstrates how the proposal meets the code for a development application for a brothel under Schedule 3 of the *Prostitution Regulation 2014*
 No

Decision under section 62 of the Transport Infrastructure Act 1994

23.15) Does this development application involve new or changed access to a state-controlled road?

- Yes - this application will be taken to be an application for a decision under section 62 of the *Transport Infrastructure Act 1994* (subject to the conditions in section 75 of the *Transport Infrastructure Act 1994* being satisfied)
 No

PART 8 – CHECKLIST AND APPLICANT DECLARATION

24) Development application checklist	
I have identified the assessment manager in question 15 and all relevant referral requirement(s) in question 17 <i>Note: See the Planning Regulation 2017 for referral requirements</i>	<input checked="" type="checkbox"/> Yes
If building work is associated with the proposed development, Parts 4 to 6 of <i>DA Form 2 – Building work details</i> have been completed and attached to this development application	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not applicable
Supporting information addressing any applicable assessment benchmarks is with development application <i>Note: This is a mandatory requirement and includes any relevant templates under question 23, a planning report and any technical reports required by the relevant categorising instruments (e.g. local government planning schemes, State Planning Policy, State Development Assessment Provisions). For further information, see DA Forms Guide: Planning Report Template.</i>	<input checked="" type="checkbox"/> Yes
Relevant plans of the development are attached to this development application <i>Note: Relevant plans are required to be submitted for all aspects of this development application. For further information, see DA Forms Guide: Relevant plans.</i>	<input checked="" type="checkbox"/> Yes
The portable long service leave levy for QLeave has been paid, or will be paid before a development permit is issued (<i>see 21</i>)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not applicable

25) Applicant declaration	
<input checked="" type="checkbox"/> By making this development application, I declare that all information in this development application is true and correct <input checked="" type="checkbox"/> Where an email address is provided in Part 1 of this form, I consent to receive future electronic communications from the assessment manager and any referral agency for the development application where written information is required or permitted pursuant to sections 11 and 12 of the <i>Electronic Transactions Act 2001</i> <i>Note: It is unlawful to intentionally provide false or misleading information.</i>	
<p>Privacy – Personal information collected in this form will be used by the assessment manager and/or chosen assessment manager, any relevant referral agency and/or building certifier (including any professional advisers which may be engaged by those entities) while processing, assessing and deciding the development application. All information relating to this development application may be available for inspection and purchase, and/or published on the assessment manager's and/or referral agency's website.</p> <p>Personal information will not be disclosed for a purpose unrelated to the <i>Planning Act 2016</i>, <i>Planning Regulation 2017</i> and the <i>DA Rules</i> except where:</p> <ul style="list-style-type: none"> such disclosure is in accordance with the provisions about public access to documents contained in the <i>Planning Act 2016</i> and the <i>Planning Regulation 2017</i>, and the access rules made under the <i>Planning Act 2016</i> and <i>Planning Regulation 2017</i>; or required by other legislation (including the <i>Right to Information Act 2009</i>); or otherwise required by law. <p>This information may be stored in relevant databases. The information collected will be retained as required by the <i>Public Records Act 2002</i>.</p>	

PART 9 – FOR OFFICE USE ONLY

Date received: Reference number(s):

Notification of engagement of alternative assessment manager	
Prescribed assessment manager	
Name of chosen assessment manager	
Date chosen assessment manager engaged	
Contact number of chosen assessment manager	

Relevant licence number(s) of chosen assessment manager	
---	--

QLeave notification and payment	
<i>Note: For completion by assessment manager if applicable</i>	
Description of the work	
QLeave project number	
Amount paid (\$)	
Date paid	
Date received form sighted by assessment manager	
Name of officer who sighted the form	

CONTRACT FOR SALE OF HOUSE AND LAND

(Note: Where there is insufficient space in any item place details in an Annexure and refer to the Annexure in the item - e.g. 'Refer Additional Expenses Annexure')

Item Item Schedule

1. CONTRACT DATE

THE 18th DAY OF October 20 18 (Note: Seller/Seller's Agent must complete)

2. SELLER'S AGENT

Name: FOREMDRE PTY LTD T/as Raine & Horne Mossman/Port Douglas
Address: 5/63 Front Street, Mossman QLD 4873
ABN: 16138579256 Phone: (07) 4098 3111 Mobile: _____
Email: _____
Licence Number: 3320511 Expiry Date: 31/07/2021

3. SELLER

Name: CHERRIL MEALING & FREDERICK CHARLES MEALING DOB: _____
Address: 17 VALLEYVIEW CT, BONOGIN
MUDGEERABA QLD 4213
ABN / AGN _____ Phone: (07) 5522 7255 Mobile: 0421 625 211
Email: _____
Solicitor / Self Acting FARRELLYS LAWYERS
Address: PO Box 604 Cairns QLD 4870
Phone: (07) 4051 4766 Mobile: _____
Email: _____ Contact: _____

4. BUYER'S AGENT (If Applicable)

Name: N/A
Address: _____
ABN: _____ Phone: _____ Mobile: _____
Email: _____

5. BUYER

Name: JOSEPH EDWARD BERTHELSEN
Address: 40 Langan Street
Earlville Qld 4870
ABN / AGN _____ Phone: _____ Mobile: 0438 764 499
Email: joeberthelsen@hotmail.com
Solicitor / Self Acting BOLT BURCHILL & TRANTER
Address: 53 FRONT STREET MOSSMAN QLD 4873
Phone: (07) 4020 4500 Mobile: _____
Email: mbolt@bbtranter.com.au Contact: MICHAEL BOLT

6. LAND

Address: Stewart Creek Road
Stewart Creek Valley QLD 4873
Lot No. L7 on Plan RP741831 Title Reference: 21299206 Area: 98570SQM (Approx.)
Freehold Leasehold (Complete as applicable. If neither checked, it is assumed to be Freehold)
Local Government: DOUGLAS SHIRE COUNCIL

7. PURCHASE PRICE Unless expressly provided any GST payable is included in the purchase price. Clauses 1(34) and 5

Purchase Price \$ 255,000

(WARNING: Some property sales may attract GST and require a tax Invoice to be issued separate to this Contract. Seek appropriate professional advice if unsure).

8. DEPOSIT Clause 4

Initial Deposit: 5,000

Payable: 2 Business day from contract date

Balance Deposit: nil

Payable by a date no later than:

9. DEPOSIT HOLDER Clauses 3, 4 and 5

PDREMDRE PTY LTD T/as Raine & Horne Mossman/Port Douglas, NAB BSB 084472 ACC 773227397

10. FINANCE Complete all details for Clause 5 to apply. Clauses 5(70) and 5(71)

Finance Amount: Sufficient to cover funds

Finance Date: 21 Days from Contract

Lender: Financial Institution

11. BUILDING / PEST / POOL SAFETY INSPECTIONS Only completed details will apply. Clause 4(27) and 34
Note: This item is not applicable where the Property is sold by Auction.

(a) Building Inspection: Yes / No

(b) Pest Inspection: Yes / No

(c) Pool Safety Inspection: Yes / No (Applicable only if Item 15.2(e) is ticked)

Inspection Date:

(Date to be completed by)

Note: If 'yes' is selected in Item 11(a), (b) or (c), an Inspection Date must be inserted.

Acknowledged Defects/Exclusions:

[Empty box for Acknowledged Defects/Exclusions]

12. SETTLEMENT Clauses 1(72), 1(73), 1(74), 1(75) and 5

12.1 Date: / / OR refer to special conditions days from the Date of Contract
OR

12.2 Settlement will be conducted by: (if neither (a) nor (b) is checked, e-conveyance will apply)

(a) e-conveyance (Clause 12.1) and:
the Electronic Workspace will be opened by the Seller unless otherwise agreed.

(b) Non e-conveyance (Clause 12.2) and the place of settlement will be:

13. ELECTRICITY SAFETY SWITCH Clause 1(76)

An Approved Safety Switch is is not installed for general purpose socket outlets.

14. SMOKE ALARMS Clauses 1(77) and 16(100)

Smoke alarms installed on the Property: Yes No

15. POOL SAFETY CERTIFICATE Clauses 1(78), 1(35), 1(36), 12(97) and 15(11)

15.1 A Regulated Pool forms part of the Property being sold or is on adjacent Regulated Land: Yes No
(if 'yes' complete Item 15.2 below)

15.2 For the Regulated Pool, at the Date of Contract, there is: (one box must be ticked)

(a) a current Pool Safety Certificate Certificate No.: Expiry: / /

(b) a current Form 17 - Final Inspection Certificate (issued for newly constructed or altered pools only)

(c) no current Pool Safety Certificate - Form 36 - Notice of no pool safety certificate provided by the Seller (see Clause 4.3(1)) (where Item 15.2(e) is ticked the Buyer must indicate an intention with respect to a Pool Safety Inspection in Item 11(c))

16. EXCLUDED IMPROVEMENTS Note: unless excluded, all improvements are included. Clauses 1(22), 1(35) and 15(9)

Nil

17. INCLUDED CHATTELS

(Clause 1(2), (3) and 15(2))

N/A

(eg. Dishwashers, microwaves)

18. RESIDENTIAL TENANCIES

(Clauses 8(1), 12(3), 15(1), 15(3) and 18)

18.1 Term: Options: Rent: Bond: \$0.00 Tenant/s: Commencement Date: Completion Date:

18.2 Managing Agent: Phone: Email:

19. PRESENT USE

Clause 25

Residential Rural Vacant Land Rural Residential Other:

20. WORK ORDERS / NOTICES / APPLICATIONS

(Clauses 1(2), (3), 15(1)(b), 15(2) and 35)

(a) 1. Local Government/Statutory Authorities: Date: 2. Date: 3. Date: (b) Copies of Applications or Orders given to the Buyer in accordance with Section 83 of the NDRA prior to the Date of Contract: 1. Date: 2. Date:

21. ENCUMBRANCES (If Property is sold subject to Encumbrances details must be inserted)

(Clauses 1(8) and 31)

Title: (eg. Easement)

Other:

(eg. Statutory Dealings; Unregistered Dealings; Licenses; Security Interests)

Ambiguous references similar to "searches will reveal" will not impose upon the Buyer an obligation to accept the Encumbrances.

22. INTEREST ON UNPAID MONIES

(Clauses 4(3) and 21)

(a) Rate: (If left blank, Item 22(b) is applicable) (b) Queensland Law Society Inc Standard Contract Default Interest Rate

23. GST WITHHOLDING

Clause 7

23.1 The Property is: (tick one of the following)

Existing Residential Premises New Residential Premises Potential Residential Land

23.2 (The Buyer is to complete this Item 23.2 where the purchase is of Potential Residential Land)

The Buyer is registered for GST and acquiring the Property for a 'creditable purpose' (as defined in the GST Act):

Yes No

Note: where the answer is 'yes' and the acquisition is for Potential Residential Land Item 23.3(2) is not required to be completed.

23.3 GST Withholding Notice (to be completed by Seller - section 14-255 Taxation Administration Act 1953 (Cth))

(1) The Buyer is/is not required to make a payment to the Australian Taxation Office in compliance with section 14-250 of the Taxation Administration Act 1953 (Cth) in relation to the Property.

(2) Only complete the following details where payment is required:

(a) Seller's Name: ASN:

(b) Payment amount: \$0.00

(c) When payable: Note: Where no date is inserted payment will be on the Settlement Date.

(d) Where the Purchase Price is not expressed as an amount of money insert the GST inclusive market value of the Property: \$0

Important Note to Buyer: Failure by the Seller to complete this Item does not affect the Buyer's obligation to make a payment under section 14-250 (Clause 7).

24. SPECIAL CONDITIONS

The Special Conditions are inserted under instruction from a party to this Contract and where not prepared by that party, were prepared by an Australian Legal Practitioner and not the Agent. No legal advice has been given or warranty provided by the Agent. Legal advice should be sought.

Refer Addendum A (Item A1)

25. SIGNING

Buyer's Acknowledgement

By signing below the Buyers/Buyers Agent acknowledges, prior to signing this Contract:

- a. having, where applicable, received copies of any Application or Order in accordance with Section 83 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 as more particularly set out in Item 20(b); and
- b. in the case of a Property with a Regulated Pool where no Pool Safety Certificate is current, received a Form 36 - Notice of no pool safety certificate.

WARNING: By signing this Contract the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent. The parties have been advised to seek legal advice with respect to this Contract.

IMPORTANT: COOLING-OFF PERIOD (SECTION 165(2))

Note: Cooling-off Period does NOT apply to a Contract for sale of house and land by auction.

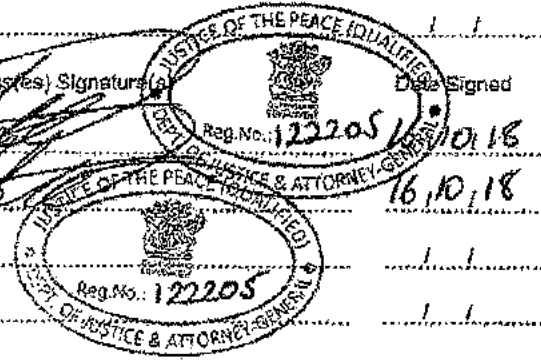
The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the buyer terminates the contract during the statutory cooling-off period. It is recommended the buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.

Buyer(s) Signature(s)	(*) Witness(es) Signature(s)	Date Signed
1.		12 OCT 2018

2. _____	_____	____/____/____
3. _____	_____	____/____/____
4. _____	_____	____/____/____

Seller(s) Signature(s)	(*) Witness(es) Signature(s)	Date Signed
1.		16/10/18

2.		16/10/18
3. _____	_____	____/____/____
4. _____	_____	____/____/____



Deposit Holder: _____ (To be signed on receipt of initial deposit)

(*) Witness Signature is not required where a party signs electronically (refer Clause 38.9)

IMPORTANT NOTE:

All Parties should sign annexures, initial any alterations to the Contract and, except where the Contract is signed electronically, initial at the bottom of each page of the Contract (Failure to do so does not invalidate this Contract)

Copies to be provided to all parties.

Terms and Conditions

1. Definitions

In this Contract (which includes the Item Schedule) the following terms mean:

- (1) **Adjustment Date:** The earlier of:
 - (a) the date possession being given to the Buyer; or
 - (b) the Settlement Date.
- (2) **Approved Safety Switch:** defined as a residual current device under Schedule 9 of the *Electrical Safety Regulation 2013*.
 Note: Where an Approved Safety Switch is not installed, advice should be obtained from a licensed electrician to ensure compliance with the *Electrical Safety Regulation 2013*.
- (3) **Balance Purchase Price:** Monies payable, by the Buyer, on Settlement after deducting the Deposit, if paid, from the Purchase Price and allowing for Adjustments as provided in this Contract.
- (4) **Bank:** A business carrying on a bank business as defined in section 5 of the *Banking Act 1959 (CTH)*, the Reserve Bank or Bank constituted under State law.
- (5) **Bank Bond/Guarantee:** Deposit Bond or Guarantee issued by a Bank or insurance company to secure the Deposit in accordance with Clause 3.4 of this Contract.
- (6) **Bank Cheque:** An unendorsed Cheque drawn by any Bank or, if authorised by the Seller, some other cheque.
- (7) **Bond:** Any Bond paid in accordance with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (8) **Business Day:** Any day other than a Saturday, Sunday or public holiday in the State of Queensland and excluding the period from 27th December to 31st December inclusive (unless otherwise agreed between the parties).
- (9) **Buyer:** The Buyer named in Item 5, including any additional Buyers listed in an attached annexure.
- (10) **Contract:** means this Contract including Item Schedule, Terms and Conditions, Special Conditions and attached annexures or documents referred to in the Item Schedule.
- (11) **Date of Contract:** The date as set out in Item 1 or the date of the last party signing, whichever is the later.
- (12) **e-conveyance:** means a conveyancing transaction to be completed using e-conveyancing.
- (13) **e-conveyancing:** means a system of land conveyancing that uses an ELN to lodge documents electronically for the purposes of the land titles legislation.
- (14) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions (Queensland) Act 2001* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (15) **Electronic Workspace (Workspace):** for an e-conveyance, means a shared electronic Workspace within an ELN that allows the participating subscribers to the e-conveyance:
 - (a) to lodge a document electronically under the National Law; and
 - (b) if relevant, to authorise or complete Financial Settlement of the e-conveyance.

Once opened such Electronic Workspace will be an electronic address designated by the parties in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.
- (16) **Electronically Signed:** means an electronically generated signature and includes a digital signature as defined in the National Law.
- (17) **ELN:** means an Electronic Lodgment Network under the National Law.
- (18) **Encumbrance:** means matters affecting title to the Property, both registered and un-registered, including statutory easements, rights referred to in the Certificate of Title and personal property security interests as defined in section 12 of the *Personal Property Securities Act 2009 (CTH)*.
- (19) **Financial Settlement:** of an e-conveyance, means the exchange of value, in an ELN, between financial institutions in accordance with the instructions of participating subscribers to the e-conveyance.
- (20) **GST:** Where used in this Contract has the meaning used in the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (21) **GST Act:** refers to the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)*.
- (22) **Improvements:** All fixed or permanent structures on the land and any items fixed to them, including domestic dwelling, sheds, car accommodation, pergolas, in-ground or fixed pools (regulated or otherwise), fixed carpets and tiles, curtains, blinds and fittings, stoves, hot water systems, fixed antennae, fixed satellite dishes, fixed security systems, fixed clothes lines and all in-ground plants, unless excluded in Item 15.
- (23) **Item:** means items detailed in the Item Schedule of this Contract.
- (24) **Land Tax Clearance Certificate:** A certificate issued by the Office of State Revenue that describes the land charged, and showing whether or not any land tax remains unpaid on the land described in the application and where land tax remains unpaid, the amount thereof. (section 80(5)(a), (b) of the *Land Tax Act 2010*)
- (25) **National Law:** means *Electronic Conveyancing National Law (Queensland)*.
- (26) **NDR:** means the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.
- (27) **New Pool Safety Standard:** means the compliance standard applicable under the *Building Act 1975* to a Regulated Pool from the earlier of the 30th November 2015 or the date a property is sold or leased.
- (28) **Nonconformity Notice:** means the Pool Safety Nonconformity Notice (Form 26) issued where the Pool Safety Inspector is not satisfied the pool complies with the New Pool Safety Standard.
- (29) **Outgoings:** All government and local government rates and charges assessed on the Land including water and sewerage rates, general rates, fire levy and all periodic charges up to and including the Adjustment Date.
- (30) **Participation Rules:** means the rules determined under section 23 of the National Law.
- (31) **Pool Safety Certificate:** means the certificate issued under the *Building Act 1975* with respect to a complying Regulated Pool.
- (32) **Pool Safety Standard:** means the compliance standard applicable to the Regulated Pool at the time the pool was constructed.
- (33) **Property:** The Land described in Item 6 together with improvements described in Clause 1(22) and the included chattels described in Item 17.
- (34) **Purchase Price:** The sum referred to in Item 7.
- (35) **Regulated Land:** means regulated land as defined under section 231A of the *Building Act 1975*.

- (36) **Regulated Pool:** Where used in this Contract has the same meaning as given to it by section 231B of the *Building Act 1975*.
Note: a Regulated Pool is a swimming pool as defined under the *Building Act 1975* which will include a spa pool.
- (37) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (38) **Seller:** The Seller named in item 3, including any additional Sellers listed in an attached annexure.
- (39) **Settlement:** The conveyance of the Property from the Seller to the Buyer.
- (40) **Settlement Date:** The appointed date specified in item 1.2 for Settlement to occur.
- (41) **Settlement Time:** of an e-conveyance, means the time of locking of the Workspace but not later than 4.00pm AEST on the Settlement Date.
- (42) **Tenancy Documents:** Tenancy Agreements, residential or otherwise, and documents ancillary thereto.
- (43) **Transfer Documents:** All those documents necessary to transfer title to the Property, as defined, to the Buyer, including Queensland Land Registry Transfer and Form 24.
- (44) **Work Order:** a valid notice or order issued by a court, tribunal or other competent authority or notice served or issued in compliance with an Act or Regulation that requires work to be done, or monies spent, on or in relation to the Property.

2. Interpretation

In this Contract, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa.
- (2) 'person' includes a firm, a body corporate together with executors, administrators, successors and assigns.
- (3) an agreement, representation or warranty:
 - (a) in favour of two or more persons is for the benefit of them jointly and severally.
 - (b) on the part of two or more persons binds them jointly and severally.
- (4) a reference to:
 - (a) an item number is a reference to an item in the Item Schedule.
 - (b) a person includes the person's executors, administrators, successors and assigns.
 - (c) a document includes any variation to that document.
 - (d) any law includes all regulations and other instruments under it and amendments or replacements of any of them.
- (5) the Item Schedule and any attached addendum pages and annexures shall form part of this Contract.

3. Deposit

- 3.1 The Buyer must pay the Deposit to the Deposit Holder as Stakeholder in the amount and at the times required in item 8.
- 3.2 Time is of the essence when making payment of the Deposit.
- 3.3 Failure to pay any monies on time, or by cheque which is not honoured on presentation, will be an act of default by the Buyer.
- 3.4 The Buyer may secure payment of the Deposit (in whole or in part) by Bank Bond/Guarantee in a form and on terms acceptable to the Seller, in which case on receipt of the Bank Bond/Guarantee the Buyer's obligation to pay the Deposit shall have been satisfied to the extent of the Bank Bond/Guarantee.

3.5 The Deposit is payable to the Seller:

- (1) on Settlement; or
- (2) in case of the Buyer's Default on default.

3.6 Should this Contract be properly terminated by the Buyer, the Deposit will be refunded to the Buyer in which case the Buyer shall have no further claim under this Contract unless there has been a breach of the provisions of this Contract by the Seller, giving rise to a claim for damages.

3.7 Investment of the Deposit: (*Note: see section 17 of the Agents Financial Administration Act 2014*)

Where the Stakeholder is instructed by the parties to invest the Deposit, subject to any legislative requirements, then (except in the case of Bank Bond/Guarantee):

- (1) the Deposit Holder will invest the Deposit in its name as trustee for the Buyer and Seller in an interest bearing account with a Bank, Building Society or Credit Union until the Settlement Date or as otherwise instructed by the parties.
- (2) the parties will supply to the Deposit Holder, prior to the investment of the Deposit, their tax file numbers and acknowledge that if the tax file numbers are not provided then they accept that the interest earned on the Deposit may be taxed at the highest rate allowable.
- (3) the Deposit and the interest are at the risk of the party who is ultimately entitled to the Deposit.
- (4) the interest on the Deposit will be paid to the party who becomes, and is, entitled to the Deposit at Settlement and such party will be solely responsible for any tax liability on such monies.
- (5) where the Contract does not proceed to Settlement, the interest is payable to the party entitled to the Deposit in accordance with Clauses 3.6 and 3.8.
- (6) all costs in relation to this investment will be borne by the party referred to in Clause 3.7(4).
- (7) a Stakeholder, being a licensed Agent, may not invest the Deposit if the sale is to be completed on a contractually ascertainable day less than 60 days after the Deposit is received.

4. Property Inspections

4.1 The Contract is subject to and conditional upon the Buyer obtaining, at their own expense, by the Inspection Date (or such extended date as may be agreed) the relevant inspection report/s:

- (1) as specified in item 11(a) and (b) (excluding Acknowledged Defects/Exclusions) satisfactory to the Buyer.
- (2) where item 11(c) applies, a report, satisfactory to the Buyer, that the Regulated Pool:
 - (a) complies with the New Pool Safety Standard (Pool Safety Certificate Issued); or
 - (b) does not comply with the New Pool Safety Standard (Nonconformity Notice given).

4.2 In compliance with this clause the Buyer will promptly, after the signing of this Contract by the Seller, take all reasonable steps to obtain the inspection report/s in compliance with Clause 4.1.

4.3 (1) Where there is no Pool Safety Certificate and the Buyer has indicated an intention to obtain a Pool Safety Inspection in item 11(c), the Seller authorises the Buyer to appoint a licensed Pool Safety Inspector for the purposes of carrying out the inspection and to receive the results of such inspection.

(2) The Buyer will be deemed satisfied with the Pool Safety Inspection where a Pool Safety Certificate issues on or before the Inspection Date.

Note to Buyer: *Building Act 1975* - If no Pool Safety Certificate is received and the Contract proceeds to Settlement, it shall be the Buyer's responsibility to, at its own cost, obtain such certificate within 90 days (the usual period) or such further period after Settlement where section 246ATJ(2)(b) of the *Building Act 1975* applies. The Buyer is referred to section 4 of the Form 36.

Note to Seller: Where a Pool Safety Inspection has been carried out resulting in a Nonconformity Notice Issuing and the Contract does not proceed to Settlement, the local authority may require the pool owner, at its cost, to carry out works to comply with the relevant Pool Safety Standard.

4.4 Upon receipt of any inspection report the Buyer must promptly but no later than 5pm on the Inspection Date, give notice to the Seller:

- (1) that the Buyer is satisfied with the inspection reports; or
- (2) that the Buyer is not satisfied with the inspection reports and terminates the Contract.

4.5 The Buyer must at all times act reasonably.

4.6 Should the Buyer not give notice to the Seller in accordance with Clause 4.4 by 5.00 p.m. on the Inspection Date the Seller may, by notice, terminate this Contract.

4.7 In respect to Clause 4.4(2) and 4.6, this Contract is not terminated until written notice is given and the Buyer may at any time up to termination, by written notice, waive the benefit of Clause 4.4 or give notice in accordance with Clause 4.4(1), where upon this Contract will be in full force and effect.

However, with respect to Item 11(c) Pool Inspection, a party may not terminate after receiving a Pool Safety Certificate.

4.8 Where the Buyer has given notice of termination in accordance with Clause 4.4(2) but has failed, when requested by the Seller, to provide a copy of the relevant inspection reports (or in the case of a Regulated Pool any Nonconformity Notice issued as a result of the Pool Safety Inspection), the termination will not take effect until such copy has been provided to the Seller.

4.9 Should this Contract be terminated in accordance with the provisions of Clause 4, Clause 3.8 will apply.

4.10 In respect of white-ants, risk in itself will not constitute a reason for termination of this Contract.

4.11 Inspectors who conduct building and/or pest inspections for the purposes of this Contract must be licensed as an Inspector holding a complete residential building inspection licence in accordance with the *Queensland Building and Construction Commission Act 1991* and Regulation there to.

4.12 Inspectors who conduct Pool Safety Inspections for the purposes of this Contract must be licensed as Pool Safety Inspectors by the Pool Safety Council.

4.13 Clause 4 does not apply where the Property is sold by auction.

5. Finance

This clause shall not apply unless all details in Item 10 are completed.

5.1 This Contract is subject to and conditional upon the Lender approving a loan to the Buyer in the Finance Amount, on terms and conditions satisfactory to the Buyer, for the purchase of the Property by the Finance Date (or such extended date as may be agreed). See Item 10.

5.2 In complying with this clause the Buyer will promptly, after the signing of this Contract by the Seller, make application to the Lender for the Loan and take all reasonable steps to obtain the Finance approval by the Finance Date.

5.3 The Buyer must give notice to the Seller immediately upon approval/rejection of Finance in accordance with Clause 3.8 and in any case, not later than the Finance Date.

5.4 If the Buyer, after complying with Clause 5.2, has not obtained the Finance approval by the Finance Date then the Buyer may by giving notice to that effect to the Seller:

- (1) terminate this Contract; or
- (2) prior to the Seller terminating the Contract, waive the benefit of this condition.

5.5 Should the Buyer not give notice to the Seller in accordance with Clause 5.4(1) or (2) by 5.00 p.m. on the Finance Date the Seller may, by notice, terminate this Contract.

5.6 The Buyer will, if required by the Seller, provide details of compliance with Clause 5.2 or written proof of rejection of the Buyer's application for finance.

5.7 This Contract is not terminated until notice is given in accordance with either Clause 5.4 or 5.5.

5.8 Should the Buyer not obtain Finance Approval by the Finance Date and not give notice in accordance with Clause 5.4, and then subsequently obtains Finance Approval and notifies the Seller prior to the Seller giving notice to terminate this Contract in accordance with Clause 5.5, then the Buyer will have complied with the requirement to obtain a loan in the Finance Amount and this Contract will be in full force and effect.

5.9 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this clause.

6. GST

6.1 Unless expressly provided in the Contract the Purchase Price includes any GST liability in respect of the sale of the Property.

6.2 Any GST incurred by the Seller in respect of a taxable supply under this Contract must be paid or reimbursed by the Buyer on provision of a tax invoice.

7. GST Withholding

7.1 Where the Property the subject of this Contract is, within the meaning of the GST Act a 'new residential premises' or 'potential residential land' the Seller must give to the Buyer a GST Withholding Notice (Item 23.3) in accordance with section 14-255 of the *Taxation Administration Act 1953 (Cth)*.

7.2 Where an amount is required to be paid to the Australian Taxation Office (ATO) in accordance with the GST Withholding Notice (Item 23.3) the Buyer is authorised to withhold from the Balance Purchase Price and remit to the ATO the amount as required in Item 23.3(2) in accordance with section 14-250 of the *Taxation Administration Act 1953 (Cth)*.

7.3 Where the GST Withholding Notice (Item 23.3) is not completed by the Seller, the Buyer is authorised to withhold from the Balance Purchase Price and remit to the ATO, in compliance with the GST Act, an amount calculated in accordance with section 14-250(8) of the *Taxation Administration Act 1953 (Cth)*.

7.4 Where the Buyer is required to make a payment in accordance with section 14-250 (*Taxation Administration Act 1953 (Cth)*) the Buyer must lodge with the ATO the following forms:

- (1) not less than 14 days prior to Settlement a GST Property Settlement Withholding Notification; and
- (2) at or before Settlement, a GST Property Settlement Date Confirmation.

7.5 Prior to Settlement the Buyer must provide to the Seller a copy of:

- (1) the response received from the ATO following lodgement of the GST Property Settlement Withholding Notification showing the lodgement and payment reference numbers; and
- (2) the GST Property Settlement Date Confirmation form lodged with the ATO.

8. Adjustments

- 8.1 The Seller is entitled to the Rents and Income and is liable for and will make payment of all Outgoings on the Property up to and including the Adjustment Date. Thereafter the Buyer shall be entitled to Rents and Income and be liable for all Outgoings.
- 8.2 All Outgoings under Clause 8.1 must be apportioned as at the Adjustment Date.
- 8.3 All Rents and Income received by the Seller in relation to periods subsequent to the Adjustment Date must be apportioned between the parties as at the Adjustment Date.
- 8.4 Apportionment of Outgoings with respect to those which have been paid will be adjusted on the amount paid and for those assessed but not paid on the non discounted assessment.
- 8.5 All Outgoings paid and Rents and Income received (including post Settlement reassessments) by either party must be apportioned based on the Adjustment Date and paid or received at Settlement or as otherwise appropriate. This excludes water rates charges based on usage.
- 8.6 Unpaid Rent, as at Settlement, will not be adjusted until paid.
- 8.7 Land tax will be apportioned as if the Land were the Seller's only land in Queensland and the Seller is a natural person resident in Queensland.
- 8.8 (1) Should the Office of State Revenue not have issued a Land Tax Clearance Certificate to the Buyer by the Adjustment Date, then in such case the parties agree the Buyer will retain in his Solicitor's Trust Account such sum from the settlement monies, as the Office of State Revenue specifies in writing would be prudent to cover any land tax liability outstanding for the period up to and including 30th June immediately preceding the Adjustment Date.
Upon a Land Tax Clearance Certificate issuing, the Buyer undertakes and agrees to direct the Solicitor to pay from the funds held in the Trust Account so much of those funds as may be necessary to obtain for the Buyer a Land Tax Clearance Certificate. Any balance funds remaining shall be paid to the Seller.
This obligation is a continuing obligation and does not lapse at Settlement.
- (2) Where the Land described in Item 6 forms part of a larger lot and no separate assessment of Land Tax is issued in respect to the Land, Land Tax will be adjusted, using the site or unimproved value of the lot, based on the proportion the area of the Land bears to the area of the whole of the lot. Site value and unimproved value have the meaning given them in section 7 of the *Land Valuation Act 2010*.
- 8.9 (1) Where Outgoings have not been assessed at the Adjustment Date any apportionment will be based on the sum advised by the relevant authority or where no such information is available, on the latest assessment.
- (2) Outgoings on a "per lot" basis shall be adjusted by dividing the total assessment by the number of lots included in the assessment.
- 8.10 Any amount other than Land Tax, adjustable under this provision which relates to land other than that included in the Property shall be (where no specific assessment is issued) adjusted proportionately based on the area of the whole of the land relative to the area of the Land included in the Property.
- 8.11 Should the Seller be entitled to any discount on Outgoings then, for the purpose of this clause, the discount shall not be taken into account, unless already received.
- 8.12 Adjustments will be made with respect to water rates when the rates charged are based on the average daily usage using the following formula:
Adjustment = TC/RD x AD
Where:
TC = Total Usage Charge as at the Adjustment Reading Date
RD = Days between the previous reading and Adjustment Reading Date
AD = Adjustment Days. The number of days between the Adjustment Reading Date and Settlement Date.
(ie, Settlement Date minus Adjustment Reading Date. The Adjustment Reading Date is the date the water meter was read for the purpose of issue of Local Government water usage assessment)
- 8.13 The Buyer is responsible for:
- (1) obtaining an accurate water meter reading within a reasonable time period prior to Settlement for the purpose of Clause 8.12;
 - (2) determining an Adjustment amount to be paid in accordance with Clause 8.12; and
 - (3) disclosing the information in Clause 8.13(1) and (2) to the Seller not less than 48 hours prior to the Adjustment Date.
- 8.14 The Seller may direct the Buyer to provide on Settlement a cheque payable to the relevant authority for Outgoings assessed but unpaid at the Adjustment Date. It shall be the Buyer's responsibility to forward such cheque to the relevant assessing authority forthwith. This will be an adjustment for the purposes of Clause 8.1.
- 8.15 It shall be the Buyer's responsibility to obtain at its own cost all details of Outgoings from relevant government and local government authorities.
- 8.18 Where information regarding Outgoings, Rents and Income details are not otherwise available, the Seller will, upon request, provide details from records in the Seller's possession.
- ## 9. Preparation and Completion of Documents
- 9.1 The Buyer will have delivered to the Seller, at a reasonable time before Settlement for execution by the Seller, Transfer Documents for the Land and any assignment or other document reasonably necessary for Settlement of this Contract.
- 9.2 Upon compliance by the Buyer with the provisions of this Contract and where the Seller is legally represented (payment by the Buyer of the Seller's reasonable legal expenses), the Seller will upon request, produce the Transfer Documents (prior to Settlement or payment of the Balance Purchase Price) for the purposes of assessment and payment of transfer duty.
- 9.3 It is agreed to by the parties hereto that the Buyer shall be under no obligation to pay any production fee to the Seller pursuant to Clause 9.2 if the Seller is not represented by a solicitor.
- ## 10. Release of Security Interest
- 10.1 Should any of the assets, being personal property, be subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies:
- (1) such assets will be transferred free of the security interest.
 - (2) where required to perfect the release of the security interest the Seller will ensure that prior to Settlement the Buyer receives from the secured party a written undertaking to register a financing change statement with respect to the personal property the subject of the security interest.
 - (3) words and phrases which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning in Clause 10 unless the context requires otherwise.

11. Handover

- 11.1 (1) The Seller must maintain the Property in the condition as at the Date of Contract and must hand over the Property at Settlement without damage or loss to the condition as at the Date of Contract (fair wear and tear excepted).
- (2) The Seller will not be liable for loss or damage to the Property unless caused by the Seller's neglect or fault. Should there be damage or loss to the condition of the Property the Buyer may not delay Settlement or withhold monies.
- 11.2 The Seller will, prior to Settlement, remove all chattels and other property not included in the sale, and repair damage, if any, caused by such removal.
- 11.3 Property not removed in accordance with Clause 11.2 shall be deemed abandoned and may be dealt with by the Buyer in any way the Buyer considers appropriate without obligation to account to the Seller.
- 11.4 Where the Seller has not satisfied its obligations under Clauses 11.1, 11.2 and 11.3 the Buyer may serve a notice on the Seller giving details of the failure to comply and requiring rectification prior to Settlement.
- 11.5 The Buyer may claim from the Seller the reasonable costs of effecting rectification of any damage or failure to maintain the Property in relation to Clauses 11.1 and 11.2 and costs incurred in dealing with property not removed in accordance with Clause 11.3 as liquidated damages notwithstanding Settlement may have taken place.
- 11.6 With respect to Clauses 11.1 and 11.2, the Buyer must notify the Seller prior to Settlement, of its intention to make a claim. A notice provided in accordance with Clause 11.4 and not complied with will satisfy this obligation.
- 11.7 Where a dwelling house which forms part of the Property the subject of this Contract is before the date of possession or completion, whichever earlier occurs, so destroyed or damaged as to be unfit for occupation as a dwelling house, the Buyer may, at the Buyer's option, rescind the Contract by notice in writing given to the Seller or the Seller's solicitor not later than the date of completion or possession whichever the earlier occurs.

12. Settlement

12.1 Settlement by Electronic Conveyancing (e-conveyance)

- (1) Where Item 12.2(a) specifies settlement by e-conveyance this Clause (12.1) will apply and Settlement including lodgment of transfer documents and payment of Balance Purchase Price monies will proceed electronically in accordance with the National Law.
- (2) Where an inconsistency exists between this and other clauses in the Contract this clause will apply.
- (3) Where a party, acting reasonably, is not able to proceed with e-conveyance written notice, including advice regarding the reason for such inability must be given as soon as possible prior to Settlement Date and the provisions of Clause 12.1(10)(b)(ii) will apply with regard to Settlement.
- (4) Each party must:
- (a) be, or engage a representative who is a Subscriber for the purposes of the National Law, and
- (b) conduct this transaction in accordance with the National Law and Participation Rules.
- (5) Once the Contract has become unconditional the party designated in Item 12.2(a) must promptly cause a Workspace to be opened and populated with all necessary information and documents to facilitate Settlement and advise all relevant parties, including relevant financial institutions, and invite them to join the Workspace.

- (6) Upon being invited to join the Workspace the remaining parties together with relevant financial institutions must promptly join the Workspace and cause the Workspace to be populated with all necessary information and documents, to facilitate Settlement.
- (7) A party will not be in default where it is prevented from complying with an obligation under this clause due to failure by the other party or a financial institution to comply with an obligation under this Clause (12.1).
- (8) The parties will confirm through the Workspace a Settlement Time. Neither party may terminate this Contract while the Workspace is locked for settlement.
- (9) Settlement occurs when the Workspace for the e-conveyance records that:
- (a) Financial Settlement occurs; or
- (b) if there is no Financial Settlement, the documents necessary to transfer title have been accepted for electronic lodgment by the registrar.
- (10) Each party must do everything reasonably necessary and in a reasonable timeframe to ensure:
- (a) Settlement (including Financial Settlement) occurs electronically on the Settlement Date; or
- (b) where the parties have complied with the provisions of Clauses 12.1 and 12.2(6) and Settlement cannot occur by e-conveyance and neither party is in default, Settlement including Financial Settlement will be completed:
- (i) by e-conveyance on the next Business Day after the Settlement Date; or
- (ii) if the parties agree, in accordance with Clause 12.2, in which case Settlement must be within 3 Business Days of the Settlement Date,
- and in either case, time remains of the essence.
- (11) Should deposit monies held by the agent be required for settlement purposes the agent is authorized and directed, if instructed by the Seller, to release the deposit monies less any commission to the Trust Account of the Seller's Solicitor. The Seller's Solicitor will hold the monies as Deposit monies under the Contract and is authorized to pay the monies as directed by the Seller in accordance with the directions of the parties.
- (12) All monies required for e-conveyance settlement must be cleared funds prior to Settlement Time.
- (13) Where monies have been paid to an incorrect account the parties must take all reasonable steps to recover such monies for payment to the intended recipient.
- (14) Each party will be responsible for their own costs in respect to e-conveyance.
- (15) Where an Outgoing or other financial obligation is to be discharged or paid at Settlement, if such payment cannot be facilitated through the e-conveyance the parties will make suitable arrangements to discharge or pay the Outgoing or other financial obligation by means other than through e-conveyance.

12.2 Settlement by a Method other than Electronic Conveyancing (Non e-conveyance)

- (1) Where Item 12.2(b) specifies settlement by non e-conveyance or Clause 12.1(3) applies or the parties agree in accordance with Clause 12.1(10)(b)(ii), this Clause (12.2) will apply.
- (2) Settlement shall take place on the Settlement Date between 10.00am and 4.00pm AEST:
- (a) at the settlement office of the Seller's mortgagee or solicitor; or
- (b) as otherwise agreed upon by the parties; or
- (c) failing agreement, at the nearest office to the nominated place for Settlement at which land title documents may be lodged for registration.

- (3) Notwithstanding the completion of Item 12 the parties may agree to e-conveyance at any time, at which point the provisions of Clause 12.1 will apply.
- (4) On the Settlement Date:
- (a) the Buyer must, pay the Balance Purchase Price, adjusted as provided in this Contract, by Bank Cheques (as directed by the Seller or its Solicitors in writing).
- (b) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer) Transfer Documents free from Encumbrances, unless detailed in Item 21, executed by the Seller in a form capable of immediate registration (save for stamping) in accordance with the *Land Title Act 1994*.
- (5) The Buyer shall be required to bear the cost of no more than four Bank Cheques in payment of the Balance Purchase Price.

12.3 Settlement - Other Provisions

On Settlement in accordance with Clause 12.1(3) or 12.2(4) (whichever is applicable) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer):

- (1) the instrument of title, if any, for the Land. Provided however the title documents with respect to the Land relate also to other land, the Seller must, unless otherwise agreed to by both parties at the time of Settlement produce those documents at the nearest office at which land title documents may be lodged to enable registration of the transfer. The Buyer shall provide at or before Settlement such undertakings as the Seller may reasonably require in relation to the production of the title documentation. Cost of production and any new title will be borne by the Buyer.
- (2) all the Seller's keys and other devices and codes for entry, exit and security unless an alternative time and place for delivery is agreed to in writing.
- (3) all Tenancy Documents, including all documents and forms required to comply with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* including Bond transfers and notices to Tenants advising of the sale, provided however section 117 of the *Property Law Act 1974* does not apply insofar as it assigns to the Buyer the right to recover rent arrears.
- (4) a properly completed property transfer information form in accordance with the *Fire and Emergency Services Act 1990*.
- (5) title to any chattel forming part of the Property including assignable warranties and documentation relating thereto to which the Buyer may be reasonably entitled.
- (6) in compliance with Clause 18, all documentation necessary to effect release of any Encumbrances over the Property, except as detailed in Item 21, including where applicable, property subject to a security interest to which the *Personal Property Securities Act 2009* (GTH) applies.
- (7) documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular, but not exclusively, those relating to prior transfers, tenancies, licenses, warranties, relevant certificates relating to pool safety compliance, noncompliance or exemption, and any unregistered dealings and in so doing assigns to the Buyer the benefit of such tenancies, licenses and warranties.
- (8) vacant possession of the Land (except if tenanted) and title to all the Property.

13. Buyer's Default

- 13.1 If the Buyer does not pay any monies due or is otherwise in default then, providing the Seller is not in default, the Seller may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Buyer specifying the default, terminate or affirm this Contract.
- 13.2 Should the Seller terminate this Contract in accordance with Clause 13.1 the Seller may, without prejudice to any other rights:
- (1) claim forfeiture of the Deposit or call up any Bank Bond or Bank Guarantee provided in accordance with Clause 3.4;
 - (2) resell the Property and provided such resale is completed within 12 months, any deficiency, including the expense of such resale, shall be recoverable by the Seller from the Buyer as liquidated damages;
 - (3) retain the Property and sue the Buyer for damages for breach of this Contract;
 - (4) claim any Deposit monies that are in arrears as a liquidated debt; and
 - (5) appropriate the profit, if any, on resale.
- 13.3 Should the Seller affirm this Contract in accordance with Clause 13.1 the Seller may, without prejudice to any other rights:
- (1) sue the Buyer for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract; and
 - (2) recover from the Buyer, the Deposit or any part thereof the Buyer has failed to pay as a liquidated debt.
- 13.4 Damages will include:
- (1) professional fees and costs incurred to satisfy the terms of this Contract.
 - (2) legal costs on an indemnity basis.

14. Seller's Default

- 14.1 If the Seller is in default under this Contract then, providing the Buyer is not in default, the Buyer may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Seller specifying the default, terminate or affirm this Contract.
- 14.2 Should the Buyer affirm this Contract the Buyer may, without prejudice to any other rights, sue the Seller for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract.
- 14.3 Should the Buyer terminate this Contract in accordance with Clause 14.1 the Buyer may, without prejudice to any other rights:
- (1) recover from the Seller/Stakeholder the Deposit and any other monies paid by the Buyer under the Contract;
 - (2) be entitled to any interest earned on a Deposit invested in accordance with Clause 3.7;
 - (3) in addition be entitled to claim interest on any monies paid by the Buyer under the Contract (other than the Deposit) at the rate prescribed in Item 22 to be calculated from and including the date of payment by the Buyer up to, but excluding the date on which the money is repaid; and
 - (4) sue the Seller for damages.
- 14.4 Damages will include:
- (1) professional fees and costs incurred to satisfy the terms of this Contract.
 - (2) legal costs on an indemnity basis.
- ### 15. Seller's Warranties
- 15.1 The Seller warrants, unless otherwise disclosed in this Contract, that at the time of Settlement:
- (1) the Seller will be the Registered Owner in the case of freehold land or the Lessee in the case of leasehold land.

- (2) it is the owner of all the Property.
- (3) there is no impediment to the Seller completing the sale.
- (4) the Seller is not insolvent or bankrupt.
- (5) and except as provided in Clause 15.3, the Seller has no knowledge of any legal actions affecting or which may affect the Property or any part of it.
- (6) except as disclosed in Item 20(a) and 20(b), the Seller has no knowledge of any outstanding or unsatisfied judgments, Work Orders, demands or writs with respect to any Act, Regulation or By-Law:
- (a) required to be complied with by the Seller, which have not been fully complied with; or
- (b) which may adversely affect the Property or the Seller's ability to complete this Contract; or
- (c) which may bind the Buyer.
- (7) the Seller has complied with the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008* with respect to the Tenancies as set out in Item 18.
- (8) the details set out in Item 18.2 are correct and the Seller has caused notice of sale of the Property to be given to the Managing Agent mentioned in Item 18.2.
- (9) any Improvements to the Property not excluded in Item 18 will not have been removed by the Seller.
- (10) the Seller has complied with Division 5A of the *Fire and Emergency Services Act 1990* with respect to smoke alarms.
- Note: From the 1st July 2007 owners of all houses and units (domestic dwellings) in Queensland must install and maintain smoke alarms in compliance with the *Fire and Emergency Services Act 1990* as amended.
- (11) where there is a current Pool Safety Certificate, no alterations or additions have been made to the Regulated Pools or its surrounds prior to Settlement which would affect the Pool Safety Certificate.
- (12) in the case of vacant land, the Property has been provided with a separate sewerage connection, unless otherwise disclosed in Item 24 (Special Conditions). This clause shall not apply to Property where other disposal systems are required and permissible by the local authority or council.
- (13) the Seller has complied with all relevant environmental legislation in respect to the Property. The Land is not subject to any notice or order under the *Environmental Protection Act 1994*, nor are particulars of the Land recorded under the Environmental Management Register or Contaminated Land Register.
- 15.2 It is acknowledged and agreed by the parties hereto that any building approval defect listed as a requisition in the local authority's building records does not constitute a Work Order as contemplated by Clause 15.1(6).
- 15.3 The Seller warrants as at the Date of Contract, unless disclosed prior to entering into this Contract in accordance with Section 83 of the NDRA (refer to Item 20(b)), the Land is not subject to or affected by an Application or Order under Chapter 3 of the NDRA.
- 15.4 If a warranty set out in Clause 15.1(1) to (7) (excluding matters disclosed in Item 20 or Item 24) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller, terminate this Contract.
- 15.5 If a warranty set out in Clause 15.1(8) to (13) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller given within 14 days after the Buyer's copy of the Contract is received by the Buyer:
- (1) forthwith terminate this Contract; or
- (2) elect to complete this Contract and reserve its right to claim compensation.
- 15.6 If the warranty set out in Clause 15.3 is incorrect or is breached by the Seller, the Buyer may terminate the Contract at any time before the Contract settles by giving a signed, dated notice of termination to the Seller or the Seller's Agent stating that the Contract is terminated under section 86 of the NDRA.
- 15.7 Any notice given to the Seller under Clauses 15.4 and 15.5 must set out clearly, details of the incorrect or breached warranty.
16. **Foreign Investment Approval**
The Buyer warrants:
- (1) it is not required to obtain consent to this purchase under the *Foreign Acquisitions and Takeovers Act 1975*; or
- (2) it has obtained any and all consents under the *Foreign Acquisitions and Takeovers Act 1975* to this purchase.
17. **Consent**
- 17.1 If the Seller must obtain consent to transfer the Property, as is the case with Leasehold Property, the Seller shall at his own cost promptly take every reasonable action to obtain such consent.
- 17.2 The Buyer will, if required, do all things as may reasonably be necessary to assist in obtaining such consent.
- 17.3 If consent is not obtained by the Settlement Date, providing neither party is in default, either party may by written notice to the other party terminate this Contract.
18. **Encumbrance**
The Property is sold free of Encumbrances and Tenancies except as notified in Items 18 and 21 (But subject to all reservations in favour of the Crown).
19. **Further Acts**
Each party must do whatever is reasonably necessary, at that party's own expense, to carry out its obligations under this Contract.
20. **Inspection (Pre Settlement)**
On giving of reasonable notice to the Seller, the Buyer and/or designated representative may, at reasonable times prior to Settlement, inspect the Property for the purposes of:
- (1) inspections in accordance with Clause 4;
- (2) valuation, if required (under Clause 5 or otherwise);
- (3) reading of the water meter;
- (4) one pre-settlement inspection in addition to Clauses 20(1) and 20(2); and
- (5) survey in accordance with Clause 24.
21. **Interest on Unpaid Monies**
Any monies payable under this Contract (or any judgment given in respect of this Contract) not paid when due will attract interest from the due date, to the date of payment, at the rate prescribed in Item 22 and the party, to whom those monies are owed, when such monies are paid, may recover the interest thereon from the other party as liquidated damages.
22. **Possession Prior to Settlement**
- 22.1 Should possession be given before the Settlement Date set out in Item 12 it shall be given solely at the Seller's discretion and then only on terms agreed between the parties in writing.
- 22.2 Such possession shall not give rise to a tenancy (unless otherwise agreed) but is a licence only.
- 22.3 The Buyer accepts the Property in the condition it is in at the date of possession.
- 22.4 The Buyer must maintain and not alter the Property, fair wear and tear accepted.
- 22.5 The Buyer must not part with possession of the Property.
- 22.6 Occupation of the Property shall be at the Buyer's risk.
- 22.7 The Buyer indemnifies the Seller against any loss or damage the Seller may incur arising from the Buyer's occupancy of the Property.

22.8 The Buyer will insure the Property for risks as specified by the Seller (including property for full replacement value and public liability), in a sum and on terms approved by the Seller, in both the Buyer's and Seller's names.

23. Planning/Building Notices

Should there be outstanding Notices at the Date of Contract under:

- (1) sections 166 (show cause notice) or 167 (enforcement notice) of the *Planning Act 2018*; or
- (2) sections 246AG (show cause notice - cancellation), 247 (show cause notice) or 248 (enforcement notice) of the *Building Act 1975*.

The Buyer may terminate the Contract by written notice to the Seller.

24. Property Survey

The Buyer may inspect the Property and in so doing cause a survey to be made of the Land and fixed and permanent structures thereon and should there be an error or misdescription with respect to the dimensions of the Land or an encroachment onto or from the Land the Buyer:

- (1) may in the case of an error, misdescription or encroachment, any one of which is of a material nature, elect (in writing to the Seller) to complete this Contract or terminate before Settlement; or
- (2) in the case of an error, misdescription or encroachment, any one of which is of an immaterial nature, disclosed by survey or otherwise, must complete the purchase in accordance with the terms of this Contract.

Should the Contract be terminated in accordance with Clause 24(1), all monies by way of Deposit shall be refunded to the Buyer.

25. Property Description

In the case of a material or immaterial error or misdescription of the Property, including the Seller's title thereto, the Buyer:

- (1) may in the case of an error or misdescription, either of which are material, elect (in writing to the Seller) to complete this Contract or terminate before Settlement.
- (2) in the case of an error or misdescription, either of which are immaterial, must complete the purchase in accordance with the terms of the Contract.

Should the Contract be terminated in accordance with Clause 25(1), all monies by way of Deposit shall be refunded to the Buyer.

26. Compensation

Where the Buyer elects to complete under Clause 24(1) or 25(1) or must complete under Clause 24(2) or 25(2):

- (1) the Buyer shall only be entitled to claim compensation if notice of such claim is given at or before Settlement and such notice clearly details the error, misdescription or encroachment giving rise to such claim. Any claim for compensation shall be limited to monetary compensation only.
- (2) any such claim for compensation does not entitle the Buyer to delay Settlement or withhold any of the purchase monies.

27. Property Information

27.1 The Seller must, if requested by the Buyer, at a reasonable time prior to Settlement, provide to the Buyer current copies of all relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those referred to in Clauses 12.3(5) and 12.3(7).

27.2 The Seller by this Contract consents to and authorizes the Buyer to inspect the records of relevant authorities relating to the Land, improvements and chattels if any included in this sale.

28. Property Use

28.1 As far as the Seller is aware, the Present Use of the Property is legal but the Seller gives no warranty in respect thereof. See Item 19.

28.2 If at the Date of Contract:

- (1) under the Local Authority planning provisions the Present Use is unlawful; or
- (2) access and utilities to the Land or utilities on the Land servicing adjoining land are not legally secured; or
- (3) compliance with or application of any Government or local Government requirements or proposals, statutory or otherwise (including Transport Infrastructure and notice of intention to resume), with respect to the Land or adjoining land will materially adversely affect the Property; or
- (4) the Land and improvements are affected by the *Queensland Heritage Act 1992* or included in the WORLD HERITAGE LIST; or
- (5) the Land or part of it is declared as acquisition land under the *Queensland Reconstruction Authority Act 2011*.

and these matters have not been disclosed in this Contract, the Buyer may by notice to the Seller, given not less than 2 days before Settlement, terminate this Contract. If such notice is not given at all or as required, the Buyer will be deemed to have accepted the Land.

29. Requisitions

The Buyer is not entitled to deliver requisitions on title.

30. Rights After Settlement

Notwithstanding the sale has settled and registration of the transfer occurred, each party shall retain the benefit of any provisions of this Contract, which may require the other party to do something or take some action.

31. Risk

From 5.00pm on the next Business Day after the signing of this Contract the Property shall be at the risk of the Buyer, however as long as the Seller remains in possession of the Property the Seller shall maintain any current insurance policies and will use and maintain the Property with reasonable care (As provided in Clause 11).

32. Special Conditions

Any Special Conditions to this Contract shall form part of this Contract. Should there be any inconsistency between the Terms and Conditions and the Special Condition, the Special Condition shall apply.

33. Stamp Duty

Payment of Stamp Duty on this Contract is the responsibility of the Buyer.

Note: The Buyer may incur penalties if stamp duty is not paid within 30 days of the conditions of this Contract being satisfied.

34. Time

34.1 Time shall be of the essence. Settlement must take place:

- (1) in the case of e-conveyance, at any time on the Settlement Date in accordance with Clause 12.1(1); or
- (2) otherwise at any time between the hours specified in Clause 12.2(2) of this Contract.

34.2 Any event that must occur on or before a specified date, in respect to this Contract, which date does not fall on a Business Day shall be extended to the next Business Day following the specified date.

35. Work Orders

- 35.1 (1) The Seller must, by Settlement, comply with any Work Orders affecting the Property:
 - (a) issued on or before the Date of Contract; or
 - (b) requiring compliance by Settlement.

- 41.5 The parties have the right to access such personal information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 41.6 The Agent may from time to time provide information to a data collection agency such as RP Data Limited. Data collection agencies provide information to the real estate, finance and valuation industries to enable accurate valuations of properties.
- 41.7 The Agent will provide (where applicable), on request, a copy of its Privacy Policy.
42. **Materially Adverse Event**
- 42.1 Where a party to this contract (Relevant Party) is unable to reasonably carry out an Essential Obligation due to a Materially Adverse Event (MAE) then for the Relevant Period of the MAE the parties agree time will cease to be of the essence and a failure by a party to perform its obligations during the Relevant Period will not be a breach of the contract.
- 42.2 The Relevant Party must:
- (1) promptly when able notify the other party of the MAE and how it prevents performance of a particular Essential Obligation;
 - (2) take reasonable steps to mitigate the effect of the MAE with respect to its obligations; and
 - (3) as soon as possible, give notice advising when it is no longer prevented from carrying out the Essential Obligation. Such notice may also include the matters detailed in Clause 42.3.
- 42.3 At the end of the Relevant Period, or where a notice served in accordance with Clause 42.2(3) does not contain the matters set out in paragraphs (1) to (4) of this sub-clause, either party may serve notice on the other party:
- (1) advising that the Relevant Period/MAE is over;
 - (2) requiring performance of or compliance with the Essential Obligation;
 - (3) giving a specific time and date for the performance or compliance being not less than 7 days and not more than 14 days from the date of delivery of the notice; and
 - (4) advising that, on delivery of the notice, time is again of the essence,
- such notice will be a settlement notice where the particular Essential Obligation notified in accordance with Clause 42.2(1) relates to settlement.
- 42.4 The times and dates for compliance with other contractual obligations where time is of the essence shall be extended to correspond with the extension of time to the Essential Obligation originally notified.
- 42.5 For the purposes of this Clause 42:
- (1) *Essential Obligation* means any one of the obligations set out in Clauses 3.1, 4.1, 4.4, 4.6, 5, 9.1, 12.1, 12.2, 12.3 and 24.
 - (2) *Materially Adverse Event or MAE* means a disaster as defined in section 13 of the *Disaster Management Act 2003* or an event as defined in section 16(1)(a) of the *Disaster Management Act 2003*.
 - (3) *Relevant Party* means a party to this contract prevented from carrying out an Essential Obligation as the direct result of a Materially Adverse Event for the Relevant Period.
 - (4) *Relevant Period* means the time during which a Relevant Party is unable to carry out an Essential Obligation as a result of a Materially Adverse Event.
43. **Withholding - Capital Gains**
- 43.1 The parties acknowledge (subject to Clause 43.2) where the Purchase Price of the Property is seven hundred and fifty thousand dollars (\$750,000) or more, the Buyer will on or before Settlement, in compliance with the foreign resident capital gains withholding payments provisions of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* (Schedule 1) be required to:
- (1) withhold from the purchase monies a sum equal to 12.5% of the Purchase Price or such lesser sum as determined in a notice of variation provided in accordance with section 14-235 of Schedule 1; and
 - (2) pay the withheld monies to the Australian Taxation Office (ATO) in accordance with Schedule 1 and, in addition,
 - (3) promptly provide evidence of payment made in accordance with Clause 43.1(2) to the Seller.
- 43.2 Where the Seller has, not less than 3 Business Days (or such shorter time as the parties may agree) prior to Settlement, provided a clearance certificate from the ATO in accordance with Schedule 1, valid at the time of Settlement, the Buyer's obligation under Clause 43.1 will not apply.
- 43.3 Payment made in accordance with Clause 43.1 will, for Settlement:
- (1) using e-conveyance, be treated as a financial obligation in respect of Clause 12.1(15); and
 - (2) for non-e-conveyance treated as an adjustment (Clause 12.2(4)(a)).

Addendum A

A1. Special Conditions

1. Release of Local Government Agreement

1.1 The property is subject to a Local Government Agreement preventing access separate to adjoining parcel Lot 2 on RP741831.

1.2 The Buyer has made enquiries of the Council and has been informed that the Buyer can present plans to the Council which can be approved by Council for the construction of a dwelling on the property that will be immune from flood. The Council will agree to lift the Local Government Agreement.

1.3 The Sellers consent to the Buyer making an application to the Council for the construction of a dwelling on the property that will be immune from flooding.

1.4 The costs of the application to the Council will be paid by the Buyer.

1.5 The Buyer shall lodge the application within 21 days of the date of the contract and shall advise the seller as to the approval being provided by Council.

1.6 This contract is subject to and conditional upon the Seller registering a release of the Local Government Agreement over the Title prior to settlement. The Seller shall be responsible for the release of Local Government Agreement and shall be liable for all costs associated therewith.

2. Settlement

Settlement shall occur 14 days following notification being given by the Seller to the Buyer that the Local Government Agreement has been released from the Title provided that such notification must not be given to the Buyer by the seller no earlier than the Buyer communicating approval of finance or otherwise to the Seller.

3. Road Re-alignment

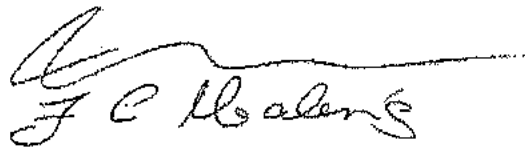
(a) The Buyer acknowledges receipt of a copy of the google earth map as attached to this contract depicting the location of the road severing Lot 2 and Lot 7 which reveals the road is not entirely within the gazetted road area.

(b) The Buyer acknowledges that in the event that the road were to be re-surveyed, that part of Lot 7 would be opened as road reserve as indicated on the attached plan and shaded in blue and further that part of the existing road reserve which does not contain the road be allocated to Lot 2 as indicated in orange on the attached plan.

(c) The Buyer shall make no objection to such a re-alignment occurring should an application for the re-alignment be made by the owner of Lot 2 at any stage in the future and the buyer shall provide the buyer's consent to the application if the buyer's consent is required.

(d) It is acknowledged by the parties that in order for a boundary re-alignment defining the road to occur, an application first has to be made to the Douglas Shire Council accompanied by the survey plan.

(e) The application will have to be made by an interested party, either the owner of Lot 2 or the owner of Lot 7 and at the cost of the applicant.

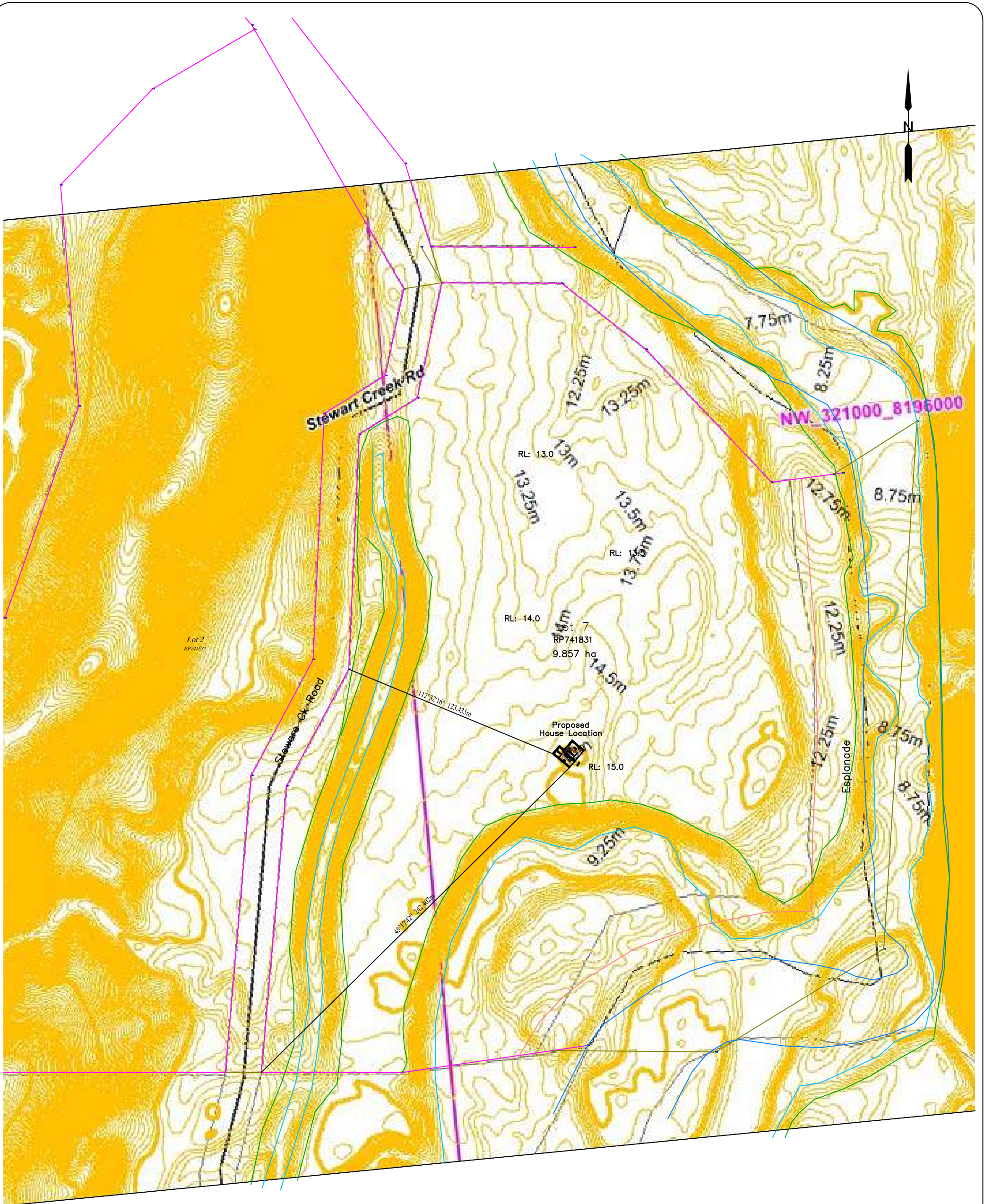

J C McAlister
C. Mealing

Attachment B



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

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.



Lot 2
RP741831

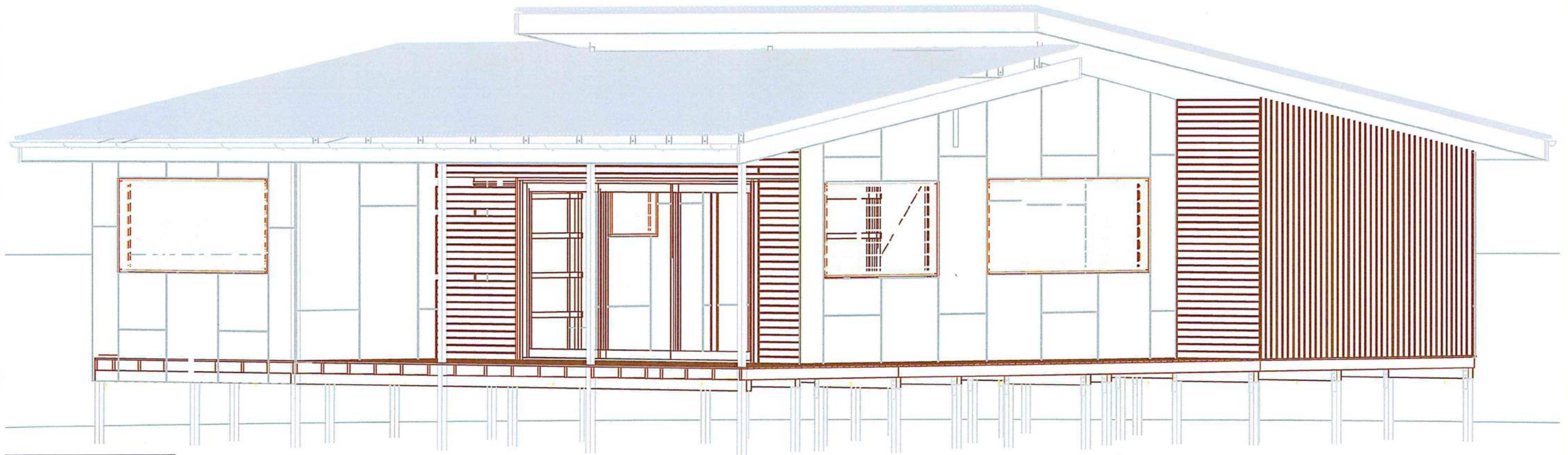
St 7
RP741831
9.857 ha

Proposed House Location

NW_321000_8195000

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

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.



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

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

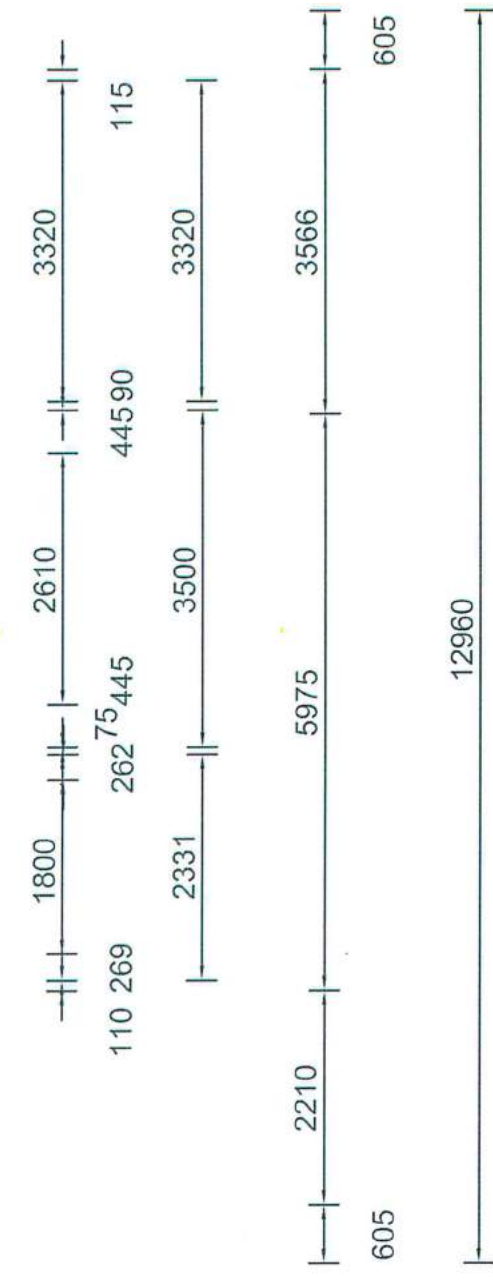
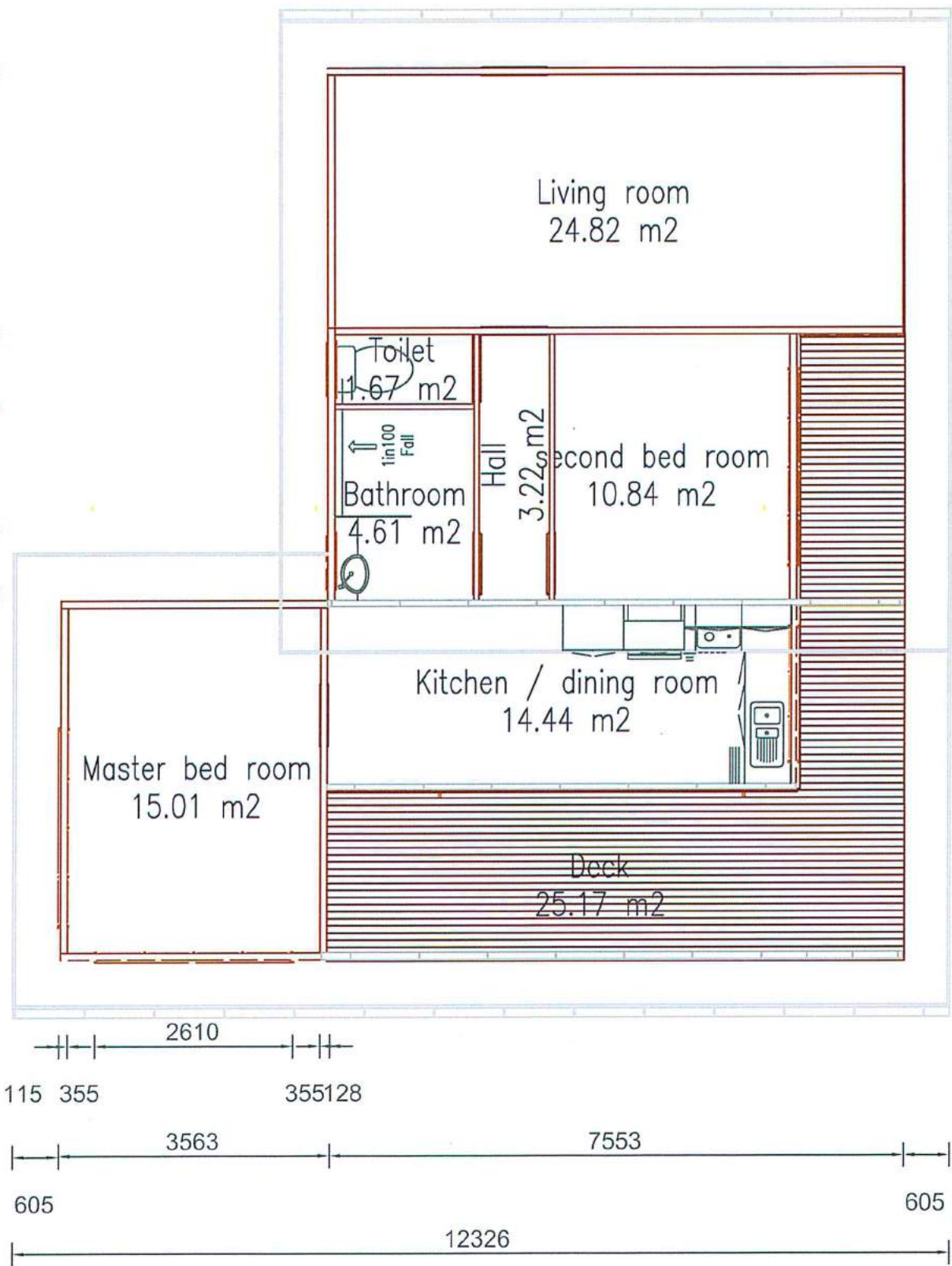
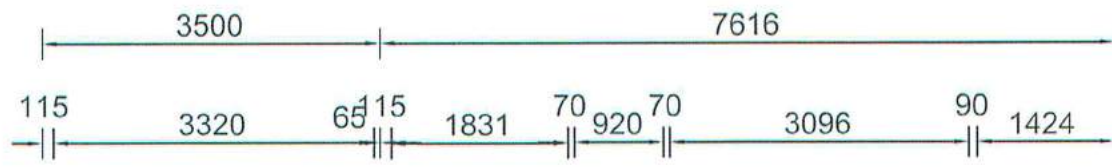
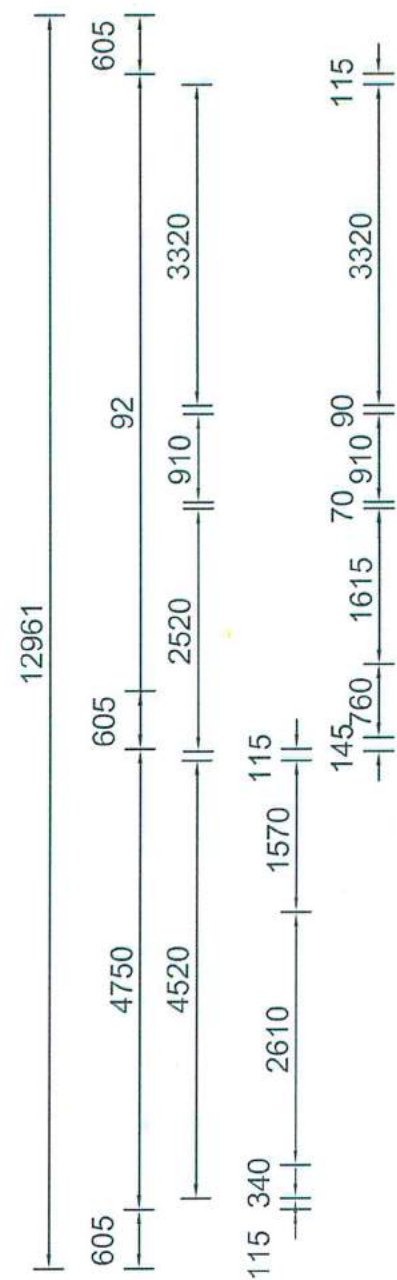
Colour:

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

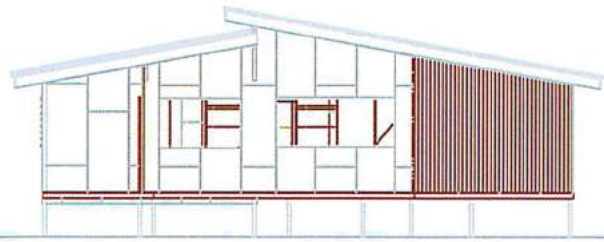
Bower Building
 3 Ronald Road Forest Creek
 QLD 4873
 Mobile: 0437732286
 Email: ben@bowerbuilding.net
 QBCC No: 1252754

Job Name	proposed house
Job Address:	Lot 7 Stewart Creek Road, Stewart Creek Valley
Date:	7/10/2018
Scale:	1:750
Drawing Description	Room Name
floor plan	Joes house
Designed By:	Ben Berthelsen

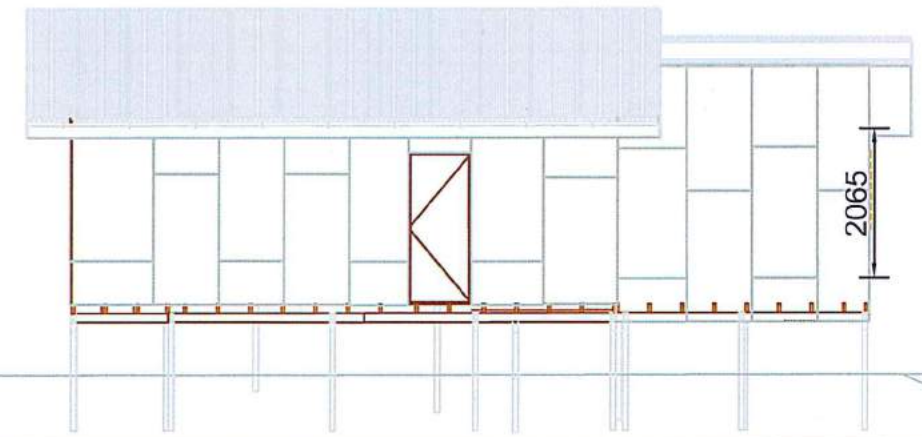
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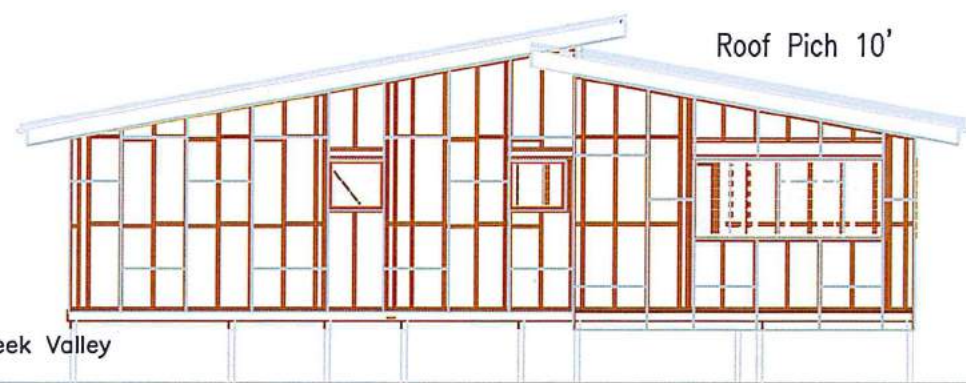
Total floor area 100 m2



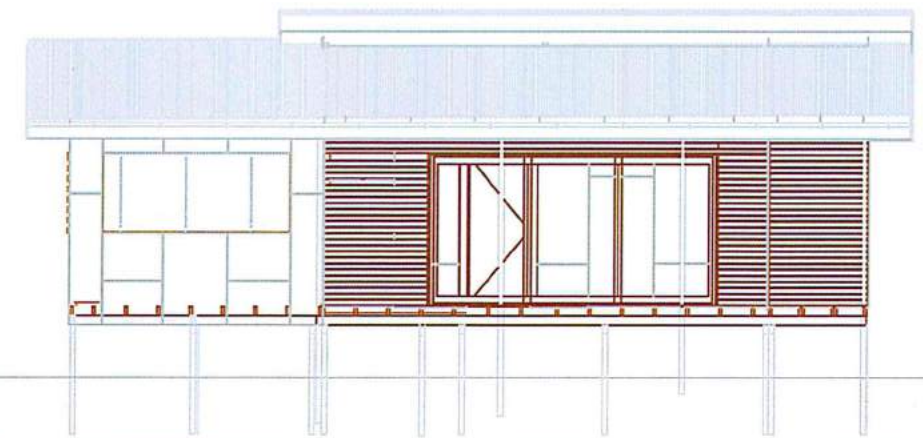
South east view



North east view



North west view



south west view

floor level to be 7 m above sea level

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

Designed By:
 Ben Berthelsen

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