

29 August 2024

Enquiries: Daniel Lamond
Our Ref: MCUC 2024_5615/1 (1247775)
Your Ref: J001500:B:SM

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

Gilvear Planning Pty Ltd
PO Box 228
BABINDA QLD 4861

Dear Sir/Madam

**Development Application for Material Change of Use (Dwelling house)
At 4 Wharf Street PORT DOUGLAS and 6 Wharf Street PORT DOUGLAS
On Land Described as LOT: 22 TYP: PTD PLN: 20925 and LOT: 21 TYP: PTD PLN: 20925**

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

Please quote Council's application number: MCUC 2024_5615/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

encl.

- Decision Notice
 - Approved Drawing(s) and/or Document(s)
 - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



Decision Notice

Approval (subject to conditions)

Given under s 63 of the Planning Act 2016

Applicant Details

Name: Gilvear Planning Pty Ltd
Postal Address: PO Box 228
BABINDA QLD 4861
Email: selina@gilvearplanning.com.au

Property Details

Street Address: 4 Wharf Street PORT DOUGLAS and 6 Wharf Street PORT DOUGLAS
Real Property Description: LOT: 22 TYP: PTD PLN: 20925 and LOT: 21 TYP: PTD PLN: 20925
Local Government Area: Douglas Shire Council

Details of Proposed Development

Development Permit for Material Change of Use (Dwelling house)

Decision

Date of Decision: 29 August 2024
Decision Details: Development Permit- Approved subject to conditions

Approved Drawing(s) and/or Document(s)

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

Drawing or Document	Reference	Date
Existing Site Plan	Studio Ink Drawing No. DA02C	24 June 2024
Proposed Ground Floor Plan	Studio Ink Drawing No. DA03C	24 June 2024
Proposed Lower Ground Floor Plan	Studio Ink Drawing No. DA04C	24 June 2024
Proposed Elevations Sheet 1	Studio Ink Drawing No. DA053C	24 June 2024

Proposed Elevations Sheet 2	Studio Ink Drawing No. DA06C	24 June 2024
FNQROC Regional Development Manual Standard Drawing/s for Vehicle Access		
Rural Allotment Access	Standard Drawing S1105 Issue F	27 August 2020
Concrete driveway for allotment access	Standard Drawing S1110 Issue F	27 August 2020

Assessment Manager Conditions & Advices

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

Timing of Effect

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

Air-conditioning Screens

3. Air-conditioning units located above ground level and visible from external properties and the street must be screened with appropriate materials to improve the appearance of the building. Such screening must be completed prior to the Commencement of Use.

Damage to Council Infrastructure

4. In the event that any part of Council's existing sewer, water or road infrastructure is damaged as a result of construction activities occurring on the site, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at no cost to Council, to Council's satisfaction.

Vehicle Parking

5. The amount of vehicle parking must be as specified in Council's Planning Scheme which is a minimum of two (2) spaces located on site. In addition, all parking, driveway and vehicular manoeuvring areas must be imperviously sealed and drained.

Storage of Machinery and Plant

6. The storage of any machinery, material and vehicles must not cause a nuisance to surrounding properties, to the satisfaction of the Chief Executive Officer.

Landscaping Plan

7. The site must be landscaped in accordance with details included on a Landscaping Plan. The Landscaping Plan must detail the following:

- a. Planting of appropriate trees and shrubs with screening qualities within established gardens beds along the frontage of the site and adjoining land having regard to Planning Scheme Policy SC6.7- Landscaping;
- b. Deep planting of setback areas and planter beds within the development;
- c. Provide fencing details (materials and finishes), particularly with respect to any fencing fronting Wharf Street;
- d. Include any other relevant conditions included in this Development Permit. A copy of this Development Approval must be given to the applicant's Landscape Architect/Designer;
- e. A species list detailing all proposed vegetation.

One A3 copy of the landscape plan must be endorsed by the Chief Executive Officer. All landscaping plans must be endorsed prior to the issue of a Development Permit for Building Works. Landscaped areas must be maintained at all times to the satisfaction of the Chief Executive Officer. The owner must take responsibility for the maintenance of any on-street landscaping at all times.

Ponding and/or Concentration of Stormwater

8. The proposed development is not to create ponding nuisances and/or concentration of stormwater flows to adjoining properties.

Sediment and Erosion Control

9. Soil and water management measures must be installed/implemented prior to discharge of water from the site, such that no external stormwater flow from the site adversely affects surrounding or downstream properties (in accordance with the requirements of the Environmental Protection Act 1994, and the FNQROC Development Manual).

External Works

10. Undertake the following works external to the land at no cost to Council:
 - a. Provide a vehicle crossover and apron to Wharf Street for both crossovers in accordance with FNQROC Development Manual Standard Drawing S1015.
 - b. Repair any damage to existing roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drain lines) that may occur during and works carried out in association with the construction of the approved development.

Sewer Works Internal

11. Provide details demonstrating how the development complies with the Queensland Development Code (QDC) MP1.4, with respect to undertaking building works within close proximity to the sewer. In the event QDC MP1.4 cannot be complied with, an alternative solution, endorsed by an RPEQ must be approved by the Chief Executive Officer prior to the issue of a Development Permit for Building Work. This solution once endorsed can be taken as the concurrence agency response for the purpose of the building works referral triggered by proposed development within the zone of influence under the QDC MP1.4.

Sewer Easements

12. Provide easements in favour of Council over the sewer main at the side of the lots at no cost to Council. The sewer easement documents must be submitted for endorsement by the Chief Executive Officer prior to making a development application for Operational Works.

Amalgamation of lots

13. Amalgamate the two titles to form one title prior to the issue of a final building inspection certificate.

Further Development Permits

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

- Building Work (house works)
- Operational Work (sewer works)

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

Currency Period for the Approval

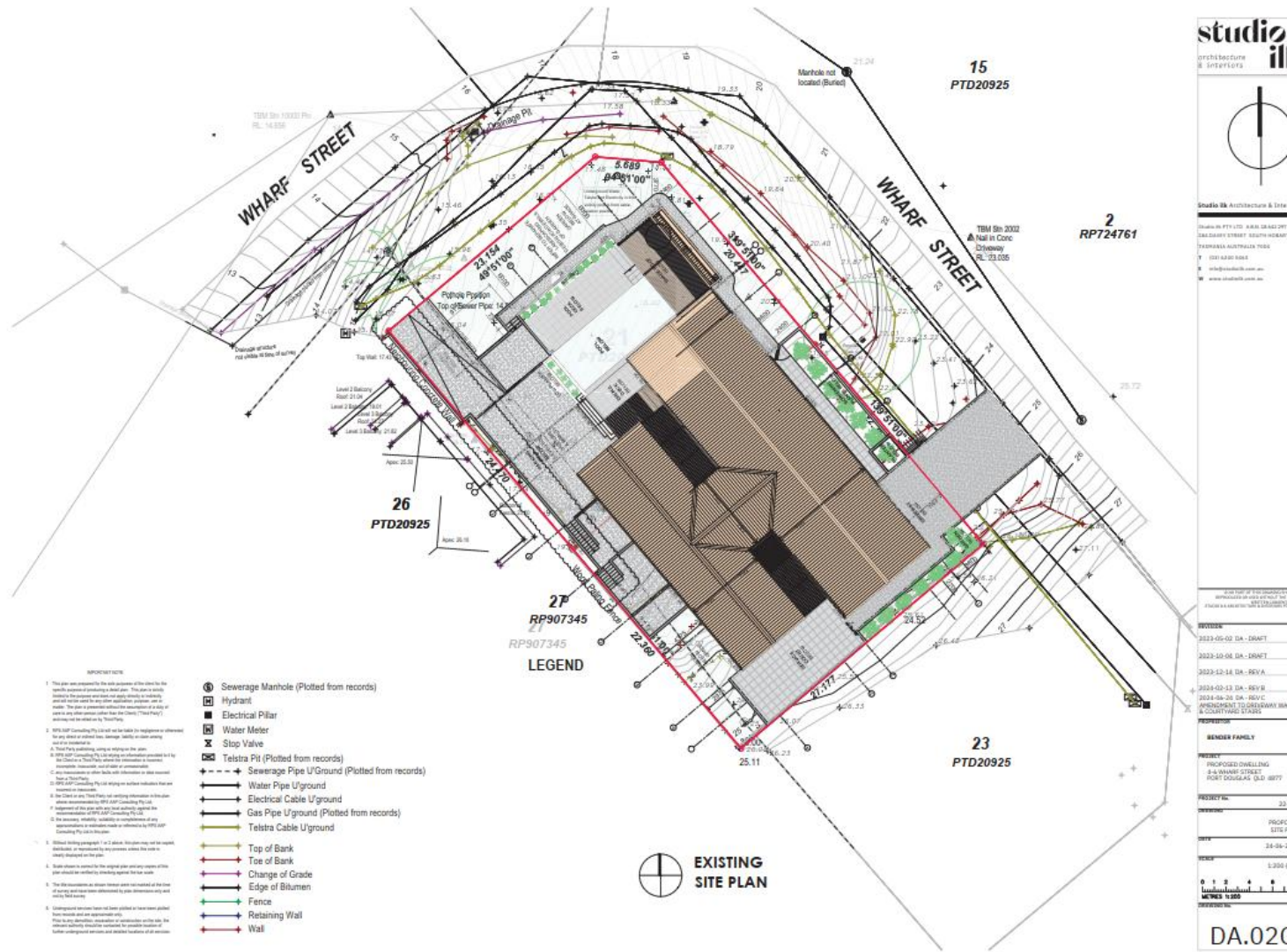
This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

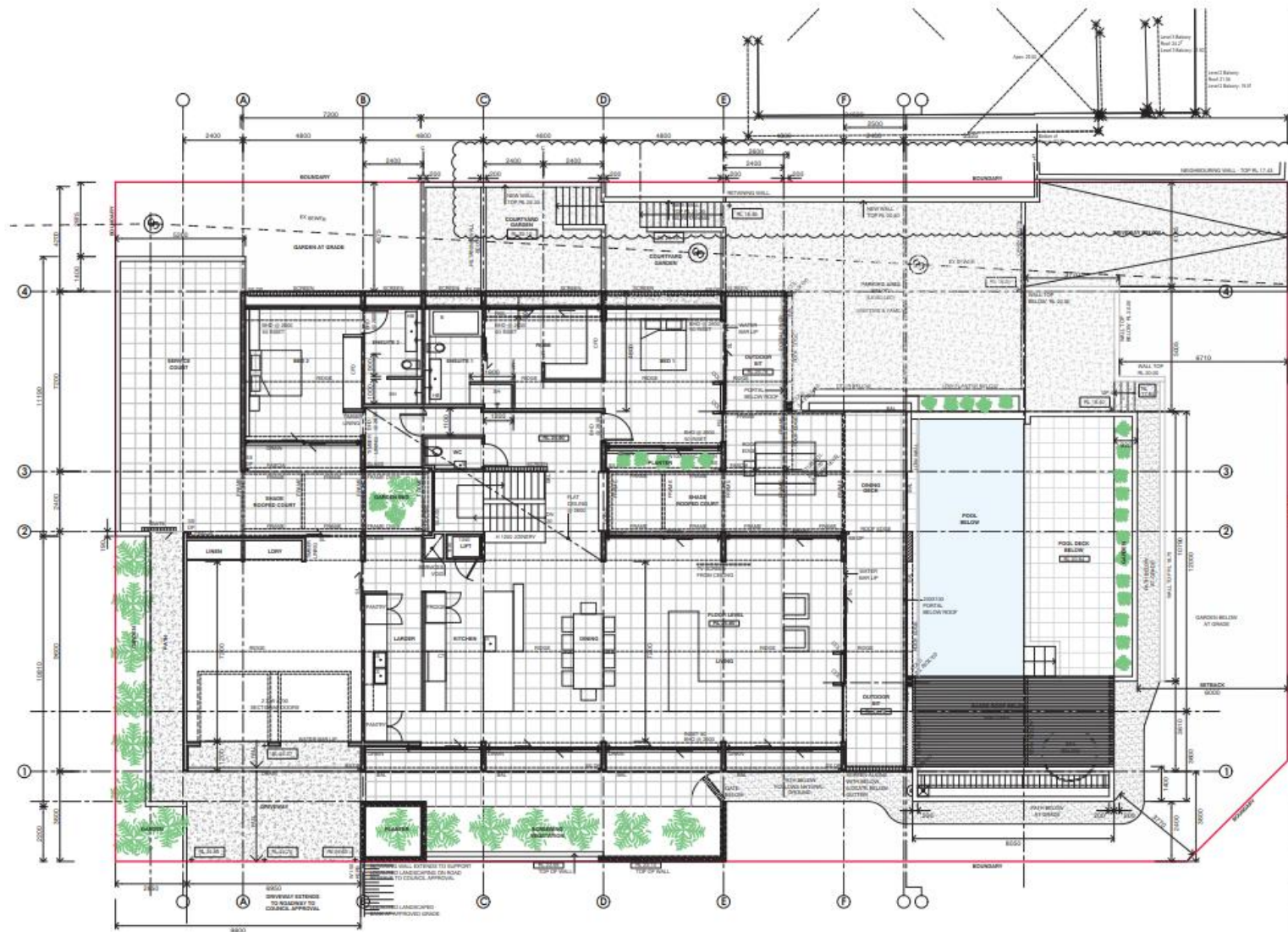
Rights to make Representations & Rights of Appeal

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

A copy of the relevant appeal provisions is attached.

Doc ID: 1247775





**PROPOSED GROUND
FLOOR PLAN**

studio ilk
architecture
& interiors

Studio ilk Architecture & Interiors
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REVISIONS

2023-05-02 DA - DRAFT
2023-10-04 DA - DRAFT
2023-12-14 DA - REV A
2024-02-13 DA - REV B
2024-06-28 DA - REV C AMENDMENT TO DRIVEWAY WALL & COURTYARD STAIRS

PROPOSER
BENDER FAMILY

SUBJECT
PROPOSED DWELLING
44 VERNAR STREET
PORT DOUGLAS QLD 4877

PROJECT No. 22-131

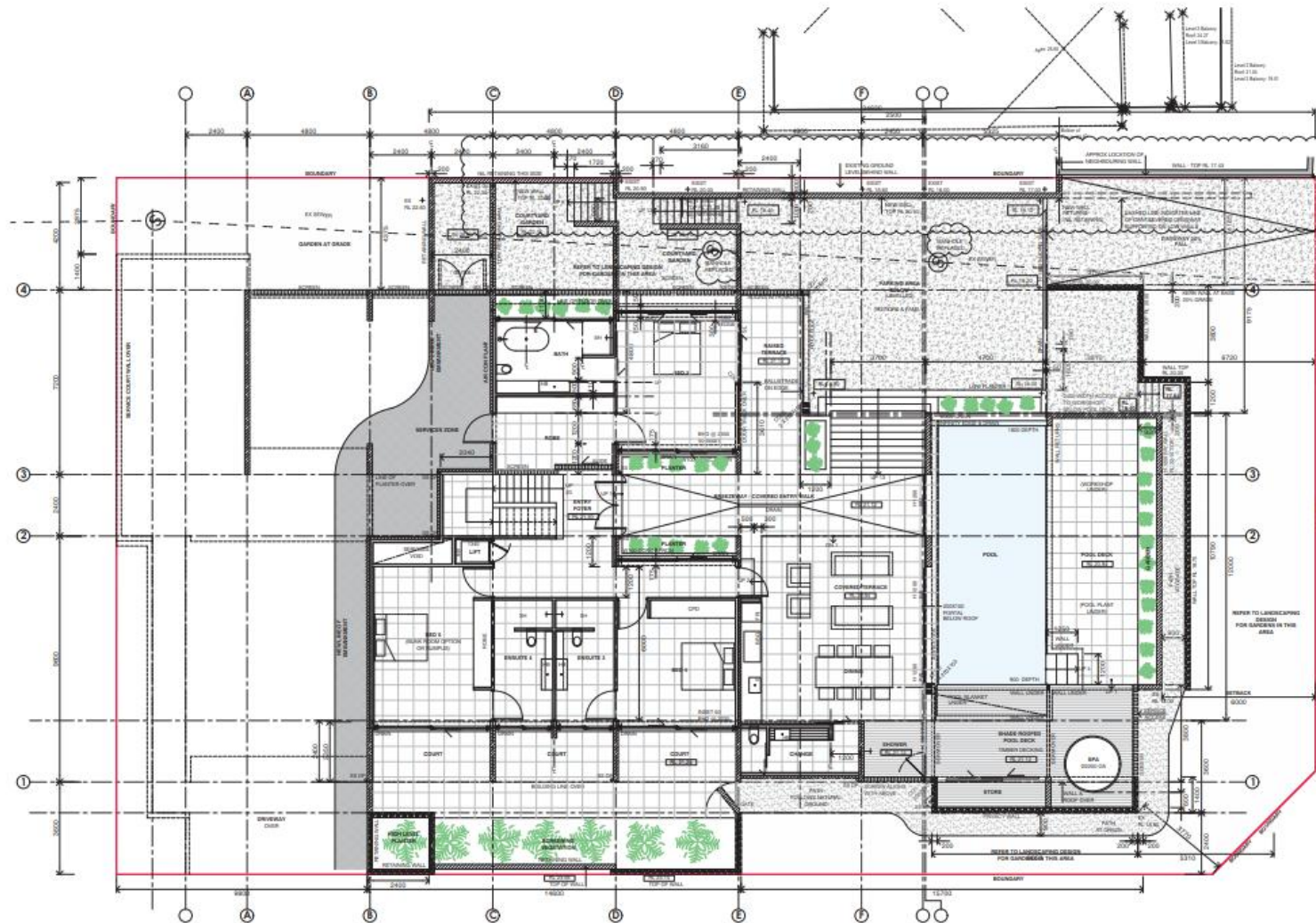
PROPOSED PROPOSED GROUND FLOOR PLAN

DATE 26 Oct 2024

SCALE 1:100 @ A2

REVISION No.

DA.03C



**PROPOSED
LOWER GROUND
FLOOR PLAN**

studio ilk
ARCHITECTURE & INTERIORS

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REVISIONS

2023-05-02	DA - DRAFT
2023-10-04	DA - DRAFT
2023-12-14	DA - REV A
2024-02-13	DA - REV B
2024-04-24	DA - REV C

PROJECT

BENDER FAMILY

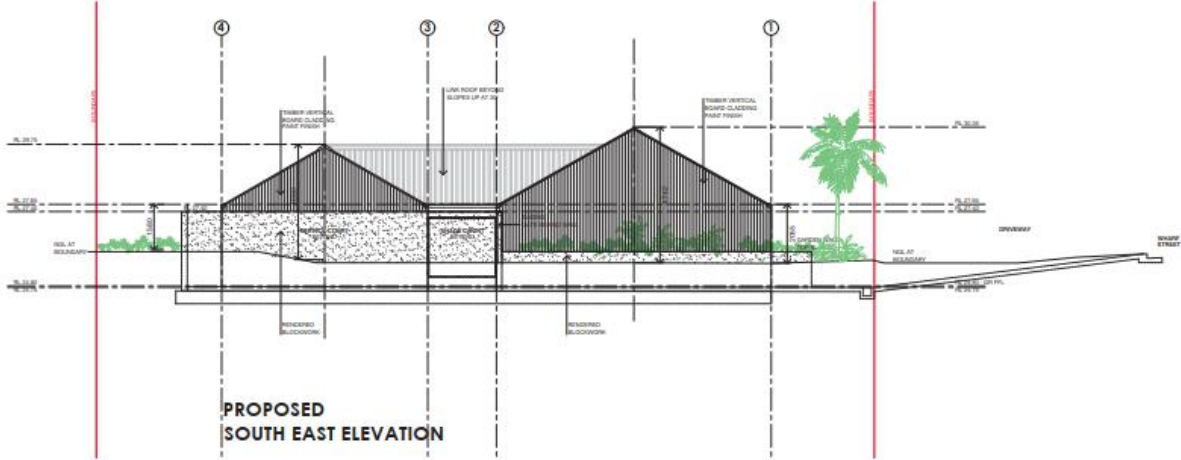
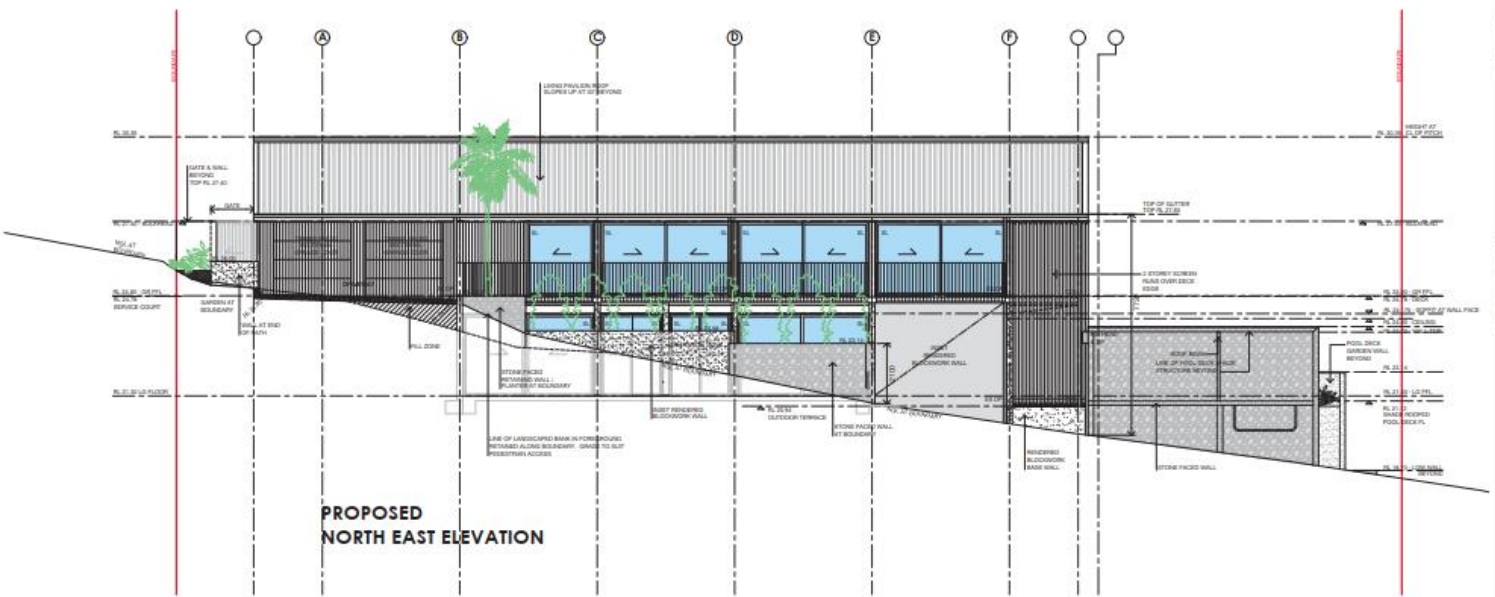
PROPOSED DWELLING
4-6 WHARF STREET
PORT DOUGLAS QLD 4877

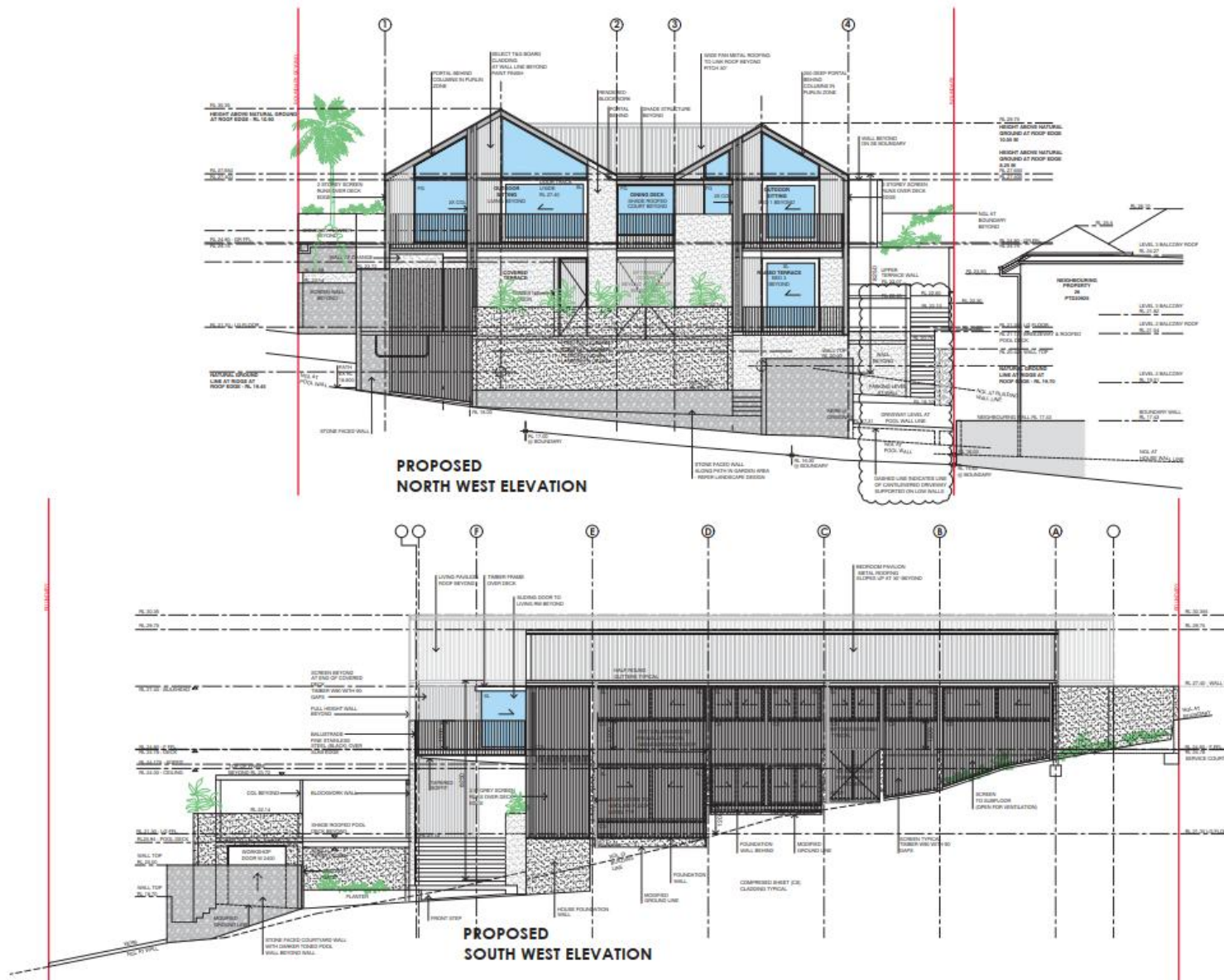
PROJECT NO. 22-111

DATE 26-04-2024

SCALE 1:100 @ A2

DA.04C





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 ARCHITECTURE
 & INTERIORS

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REVISION

2023-05-02	DA - DRAFT
2023-10-04	DA - DRAFT
2023-12-14	DA - REV A
2024-02-12	DA - REV B
2024-04-24	DA - REV C

AMENDMENT TO DROVWAY WALL & COURTYARD STAGES

PROPOSER

BENDER FAMILY

PROJECT

PROPOSED DWELLING
 4/4 WINDY STREET
 PORT COULAS - QLD 4877

PROJECT No. 22-113

DATE 29-04-2024

SCALE 1:100 @ A2

DATE 29-04-2024

SCALE 1:100 @ A2

PROPOSED ELEVATIONS

SHEET 2

DATE 29-04-2024

SCALE 1:100 @ A2

DATE 29-04-2024

SCALE 1:100 @ A2

DA.06C

Reasons for Decision

1. The reasons for this decision are:
 - a. Sections 60, 62 and 63 of the *Planning Act 2016*;
 - b. to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
 - c. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
 - a. the development application was properly lodged to the Douglas Shire Council 24/05/2024 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
 - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment against the 2017 State Planning Policy and the 2018 Douglas Shire Planning Scheme Version 1.0 in making its assessment manager decision.
3. Evidence or other material on which findings were based:
 - a. the development triggered assessable development under the Assessment Table associated with the Environmental Management Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. Subject to conditions, the development satisfactorily meets the Planning Scheme benchmarks.

Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Planning Act 2016
Chapter 3 Development assessment

[s 74]

relevant preliminary approval means a preliminary approval given under the old Act by an entity other than a private certifier.

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
 - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
 - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
 - (c) as if a reference in section 76 to a development application were a reference to a change application; and
 - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
 - (e) with any other necessary changes.

75 Making change representations

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—

-
- (a) a matter in the development approval, other than—
 - (i) a matter stated because of a referral agency's response; or
 - (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
 - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
- (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
 - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
 - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
 - (ii) the assessment manager gives the applicant the decision notice for the change representations; or
 - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) If the applicant makes the change representations during the appeal period without giving a notice under subsection (2), the appeal period is suspended from the day the representations are made until—

- (a) the applicant withdraws the change representations by notice given to the assessment manager; or
 - (b) the assessment manager gives the applicant the decision notice for the change representations; or
 - (c) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (6) Despite subsections (4) and (5), if the decision notice mentioned in subsection (4)(b)(ii) or (5)(b) is a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

- (1) The assessment manager must assess the change representations against and having regard to the matters that must be considered when assessing a development application, to the extent those matters are relevant.
- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
 - (a) the applicant; and
 - (b) if the assessment manager agrees with any of the change representations—
 - (i) each principal submitter; and
 - (ii) each referral agency; and
 - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
 - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
 - (v) another person prescribed by regulation.

- (3) A decision notice (a ***negotiated decision notice***) that states the assessment manager agrees with a change representation must—
 - (a) state the nature of the change agreed to; and
 - (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or

- (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
- (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
- (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
 - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
 - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or
 - (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or
 - (iv) otherwise—20 business days after the day the notice is given; or
- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

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

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.

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

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
 - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

- (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
 - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

- (1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.

- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
decision includes—
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

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

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

232 Rules of the P&E Court

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