

18 December 2018

Enquiries: Daniel Lamond
Our Ref: MCUC2922/2018 (885374)

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

Joe Berthelson
C/- Brazier Motti Pty Ltd
PO Box 1185
CAIRNS QLD 4870

Dear Sir/Madam

**Development Application for Material Change of Use (Dwelling House)
Stewart Creek Road Stewart Creek Valley
Land Described as LOT: 7 on RP: 741831**

Thank you for lodging the above Development Application with Council on 5 November 2018.

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

Please quote Council's application number: MCUC2922/2018 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9456.

Yours faithfully

PAUL HOYE
Manager Sustainable Communities

encl.

- Decision Notice
- Refused Plans

DECISION NOTICE — REFUSAL
(GIVEN UNDER SECTION 63 OF THE PLANNING ACT 2016)

Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

1. Applicant's details

Name: Joe Berthelson C/- Brazier Motti Pty Ltd

Postal Address: PO Box 1185
CAIRNS
QLD 4870

2. Location details

Street Address: Stewart Creek Road STEWART CREEK VALLEY

Real Property Description: LOT: 7 on RP: 741831

Local Government Area: Douglas Shire Council

3. Details of proposed development

Material Change of Use (Dwelling House)

4. Decision

Date of decision: 18 December 2018

Decision details: Refused

5. Refused plans and specifications

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

Drawing/report title	Prepared by	Date	Reference no.	Plan No.
Aspect of development: Material Change of Use (Dwelling House)				
Site Plan	M Dunn	5 November 2018	Job No. Dain 01	Plan 01
Contour Plan	M Dunn	5 November 2018	Job No. Dain 01	Plan 02
Isometric	Ben Berthelsen	7 October 2018	Joes House	Not nominated
Floor Plan	Ben Berthelsen	7 October	Joes House	Not nominated

		2018		
Elevations	Ben Berthelsen	7 October 2018	Joes House	Not nominated

6. Reasons for Refusal

Under section 63(2)(f)(ii) of the *Planning Act 2016*, the Douglas Shire Council must set out reasons for the decision to refuse the application. At the Ordinary Council Meeting held 18 December 2018, it was resolved to carry the following resolution with reasons for refusal:

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

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

7. Properly made submissions

Not applicable — No part of the application required public notification.

8. Rights of appeal

The rights of applicants 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*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see Chapter 6, Part 2 of the *Planning Act 2016*).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

The timeframes for starting an appeal in the Planning and Environment Court are set out in Section 229 of the *Planning Act 2016*.

Schedule 1 is an extract from the *Planning Act 2016* that sets down the applicant's appeal rights.

SCHEDULE 1 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

CHAPTER 6, 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 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, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

SCHEDULE 1 APPEALS

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
 - (a) the P&E court; or
 - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
 - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—

- (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
- (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

Extract of Schedule 1 of the Planning Act 2016

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval. 			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application

**Table 2
Appeals to the P&E Court only**

2. Eligible submitter appeals
 An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—
 (a) any part of the development application for the development approval that required impact assessment; or
 (b) a variation request.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

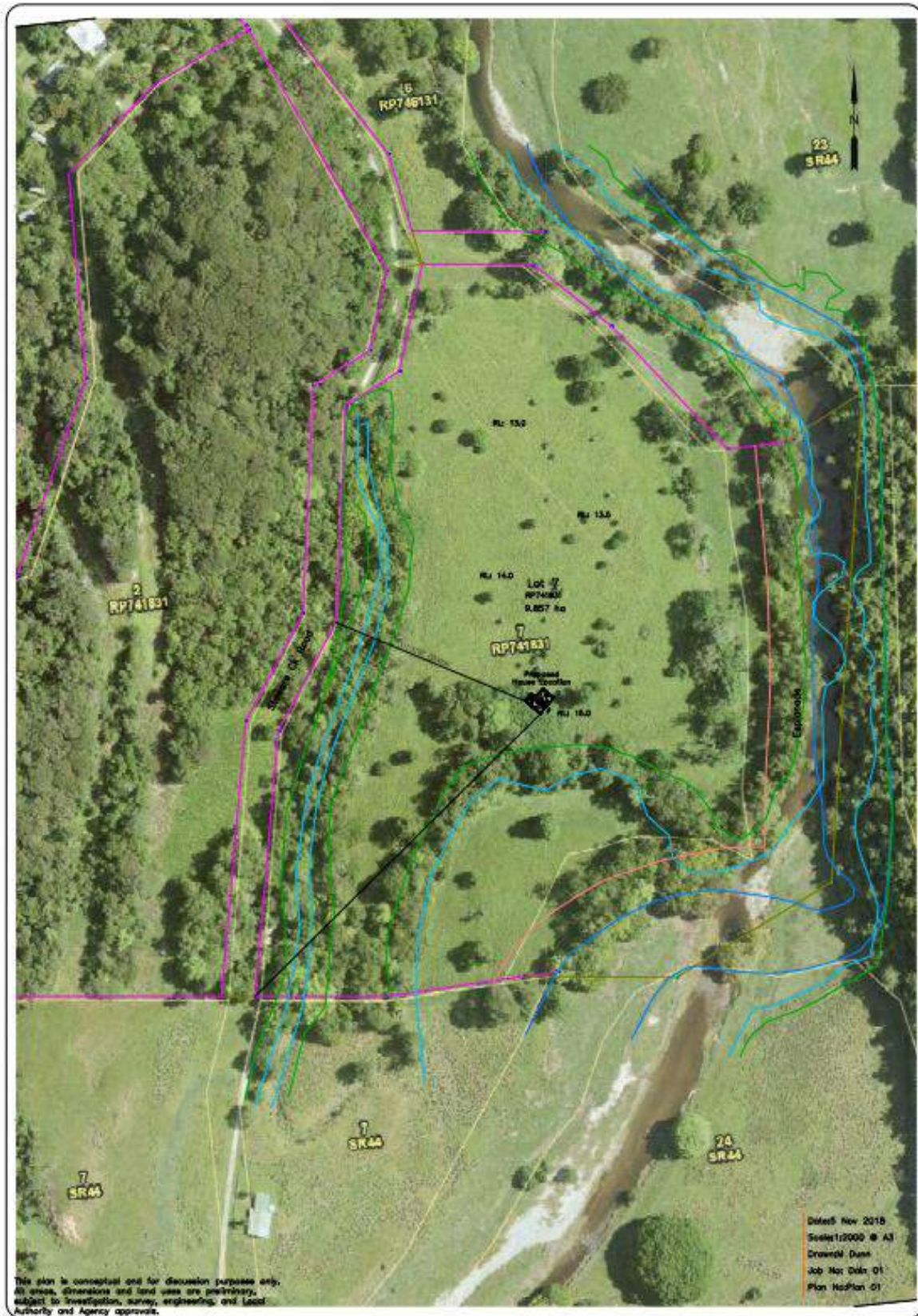
3. Eligible submitter and eligible advice agency appeals
 An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—
 (a) any part of the development application or the change application, for the development approval, that required impact assessment; or
 (b) a variation request.

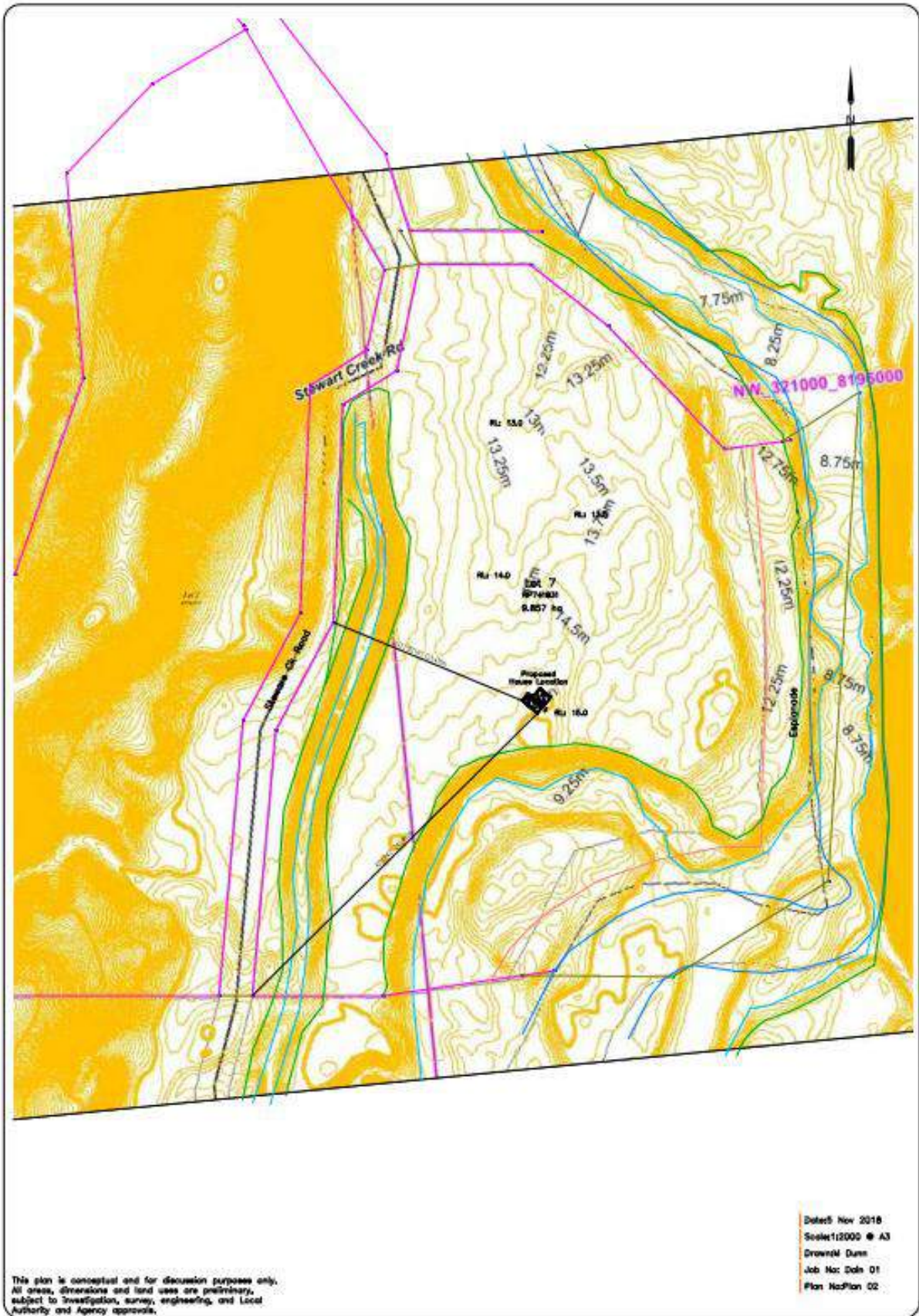
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

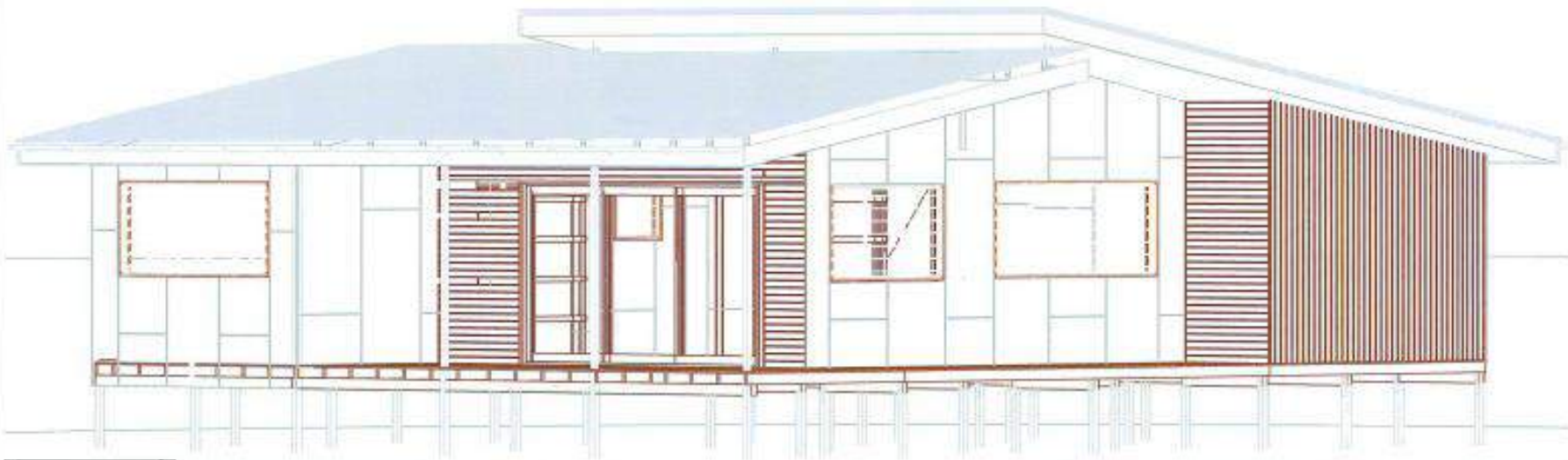
Note:

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waive the 20 day appeal period available under the *Planning Act 2016*

REFUSED PLANS (ATTACHING TO THE DECISION NOTICE)







Bower Building 3 Ronald Road Forest Creek QLD 4873 Mobile: 0437732285 Email: ben@bowerbuilding.net QBCC No: 1252754	
Job Name: proposed house	
Job Address: Lot 7 Stewart Creek Road, Stewart	
Date: 7/10/2018	Scale: 1:750
Drawing Description: isometric Joes house	
Designed By: Ben Berthelsen	
<small>This Drawing is the property of Bower Building and is not to be reproduced without the consent.</small>	

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 beams the construction will be timber frame

Roof:
 The proposed buildings roof will be custom cut set on a 15o angle with half moon gutters

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

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

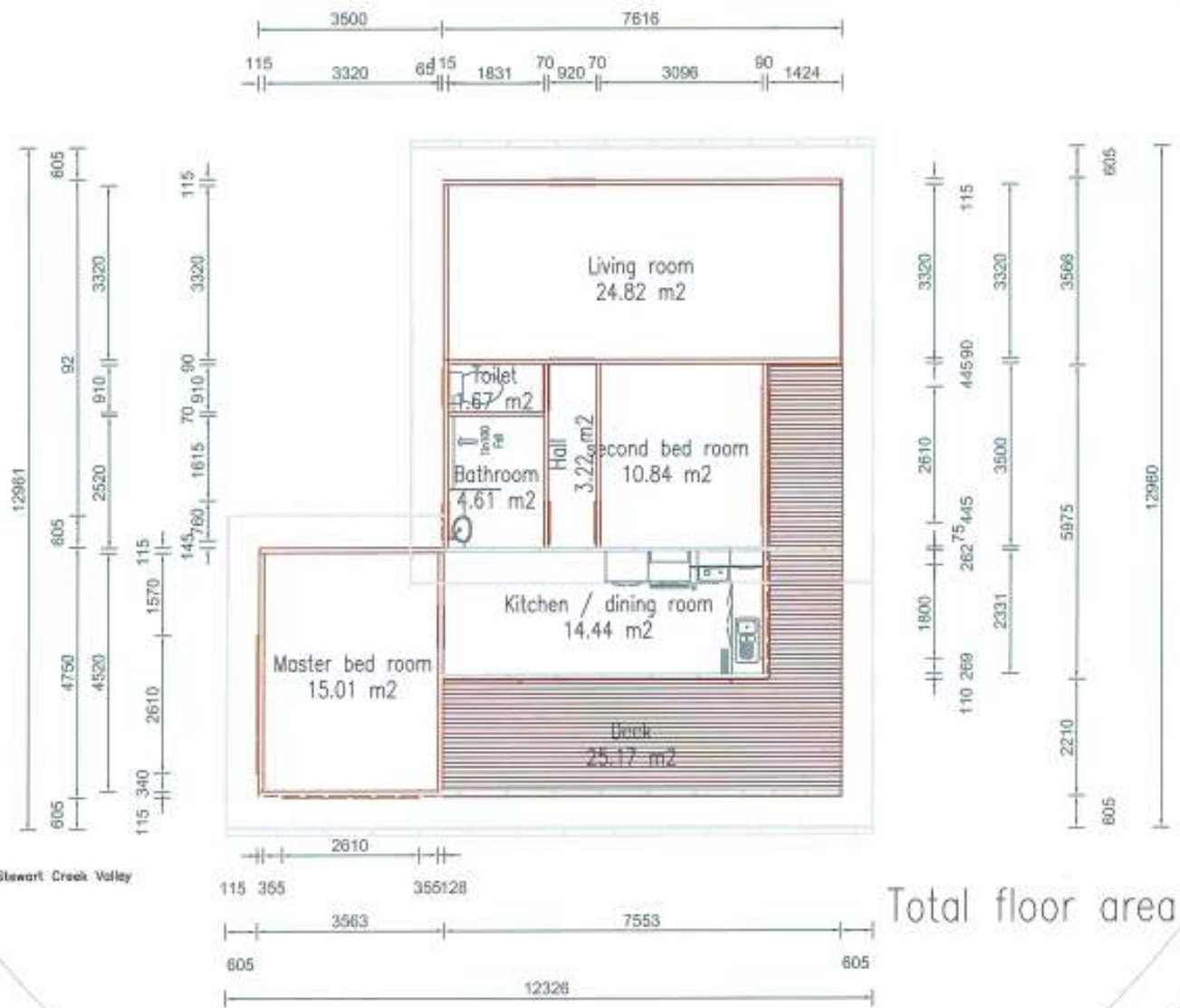
Walls:
 The proposed building will be clad in Sycor Melra cladding apart from three feature walls clad in horizontal ship lap clad timber

Colour: Valley
 Roof and gutter - colour bond paperback
 Walls - sycor melra walls will be painted in blue exterior matt (paperback) with gaps formed by cladding painted in a dark timber colour to match clad 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

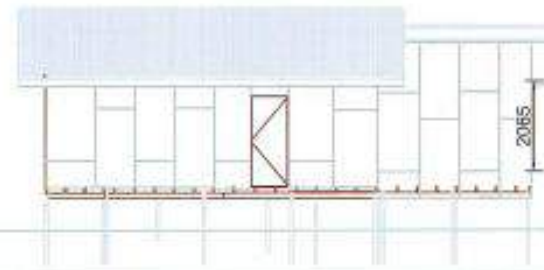
Job Name	proposed house
Job Address:	Lot 7 Stewart Creek Road, Stewart Creek Valley
Date:	7/10/2018
Scale:	1:750
Drawing Description:	Name floor plan Joes house
Designed By:	Ben Berthelsen

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South east view



North east view



North west view



south west view

Bower Building 3 Ronald Road Forest Creek QLD 4873	
Mobile: 0437732286 Email: ben@bowerbuilding.net	
QBCC No: 1252794	
Job Name proposed house	
Job Address: Lot 7 Stewart Creek Road, Stewart Creek Valley	
Date: 7/10/2018	Scale: 1:750
Drawing Description: elevations Joes house	
Designed By: Ben Bethelsen	
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