

9 February 2021

**Enquiries:** Daniel Lamond  
**Our Ref:** BW 2020\_3905/1 (995594)  
**Your Ref:** 20194017

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

M D Shearer  
C/- Patrick Clifton, GMA Certification  
PO Box 831  
PORT DOUGLAS QLD 4877

Dear Sir/Madam

**Development Application for Building Work Assessable Against the Planning Scheme  
(House Extension)  
At 36 Ocean View Road KILLALOE  
On Land Described as LOT: 14 RP: 745097**

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

Please quote Council's application number: BW 2020\_3905/1 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)
  - Concurrence Agency Response
  - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Preliminary Approval (with conditions)

*Given under section 63 of the Planning Act 2016*

#### Applicant Details

Name: M D Shearer  
Postal Address: C/- Patrick Clifton, GMA Certification  
PO Box 831  
PORT DOUGLAS QLD 4877  
Email: adminpd@gmacer.com.au

#### Property Details

Street Address: 36 Ocean View Road KILLALOE  
Real Property Description: LOT: 14 RP: 745097  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Preliminary Approval- Building Work Assessable Against the Planning Scheme (House Extension)

#### Decision

Date of Decision: 9 February 2021  
Decision Details: 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
Site Plan	Plan prepared by Danny Vos Architect, Rev D, Sheet 1	30 November 2020
Ground Floor Plan	Plan prepared by Danny Vos Architect, Rev D, Sheet 2	30 November 2020
Lower Ground Floor Plan	Plan prepared by Danny Vos	30 November 2020

	Architect, Rev D, Sheet 2.1	
Proposed Elevation 01 and 02	Plan prepared by Danny Vos Architect, Rev D, Sheet 3	30 November 2020
Proposed Elevation 03 and 04	Plan prepared by Danny Vos Architect, Rev D, Sheet 3.1	30 November 2020
Section 01 and 02	Plan prepared by Danny Vos Architect, Rev D, Sheet 4.0	30 November 2020
Section 03, 04 and 05	Plan prepared by Danny Vos Architect, Rev D, Sheet 4.1	30 November 2020
Section 06 and 07	Plan prepared by Danny Vos Architect, Rev D, Sheet 4.2	30 November 2020

### **Assessment Manager Conditions & Advices**

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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;
  - 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.

### **Damage to Council Infrastructure**

3. In the event that any part of Council's existing water or road infrastructure is damaged as a result of construction activities occurring on the site, including but not limited to; mobilisation of heavy construction equipment, the applicant/owner must notify Council immediately of the affected infrastructure and have it repaired or replaced at the developer's/owners/builders cost, prior to the commencement of use.

### **Vegetation Clearing**

4. Existing vegetation on the subject land must be retained in all areas except those affected by the construction of the extensions and self assessable allowances for vegetation damage.

### **Building Colours**

5. The extensions must be finished with external colours which are to be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work. External colours must be darker shades of colour consistent with the surrounding environment and must not be reflective.

### **Geotechnical Report**

6. The development must be carried out in accordance with all recommendations from the Geotechnical report G7503/R14557 dated 1 September 2020 performed & certified by Paul Posar RPEQ 5036. In particular, the structural design and certification must be undertaken in accordance with the recommendations of the report.

### **Erosion and Sediment Control**

7. All earthworks must be carried out in accordance with section CP1.13 and D5 of the FNQROC Development Manual and must comply with the following:
- a. A copy of the contractors Erosion and Sediment Control Plan (ESCP) is to be submitted to Council prior to commencement of work.
  - b. Measures nominated in the ESCP must be implemented prior to commencement of any earthworks.
  - c. The ESC Plan must address the Institution of Engineers' Australia Guidelines for Soil Erosion and Sediment Control and the Environment Protection (Water) Policy and Clauses CP1.06, CP1.13 and D5.10 of Council's FNQROC Development Manual.

### **Bushfire Hazard**

8. The dwelling extensions must be designed in accordance with AS3959- 2009.

### **Landscaping Plan**

9. The new building works must be screened with landscaping in accordance with a landscaping plan prepared in accordance with Planning Scheme Policy SC6.7. In particular, the retaining walls and pool walls must have landscaping plantings established at their base with native shrub species with screening qualities. The plan must be endorsed by the Chief Executive Officer prior to commencement of use and plantings must be established within 3 months of receiving the final building inspection certificate.

### **Further Development Permits**

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

- All Building Work

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

### **Currency Period for the Approval**

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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*.

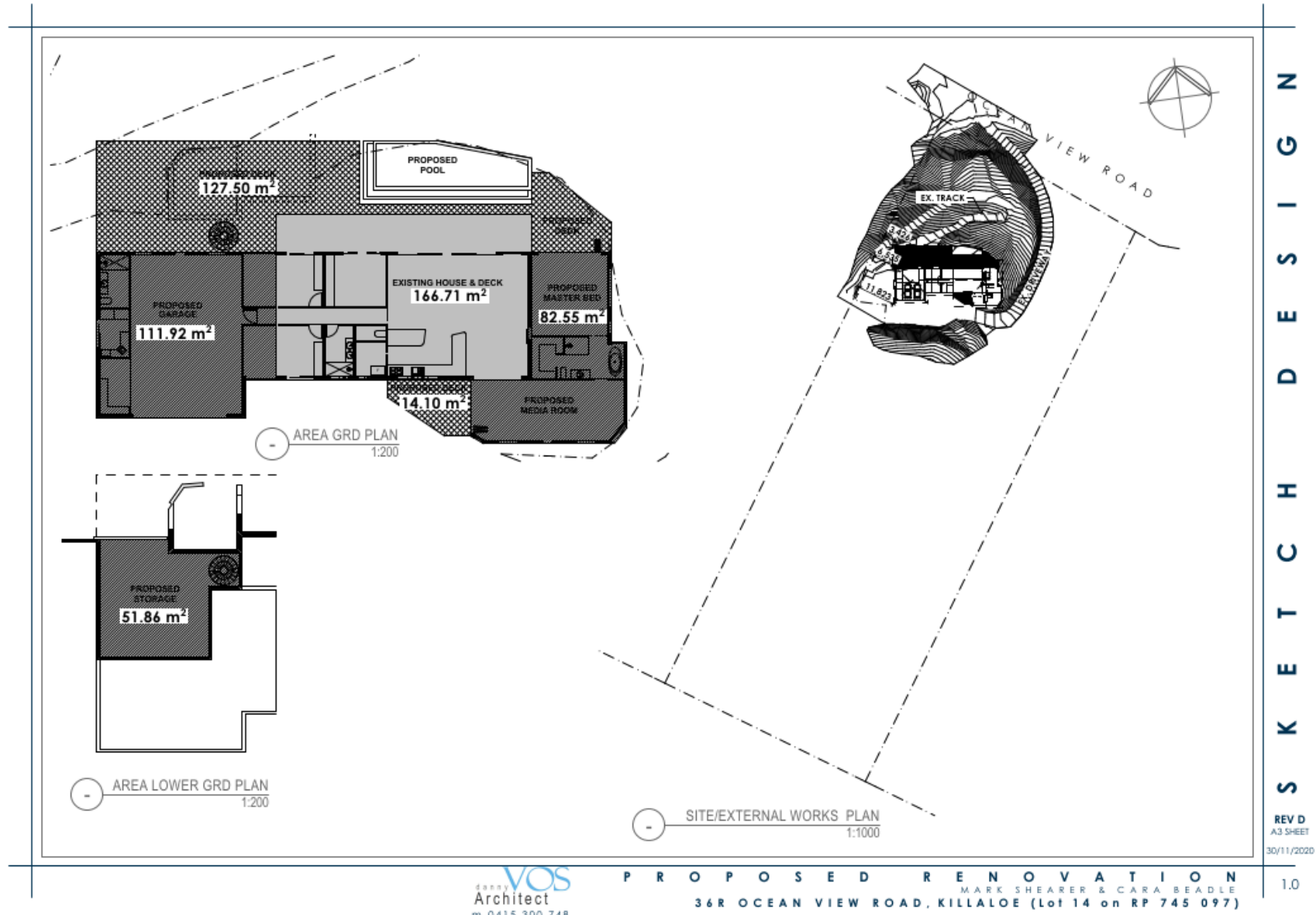
### **Rights to make Representations & Rights of Appeal**

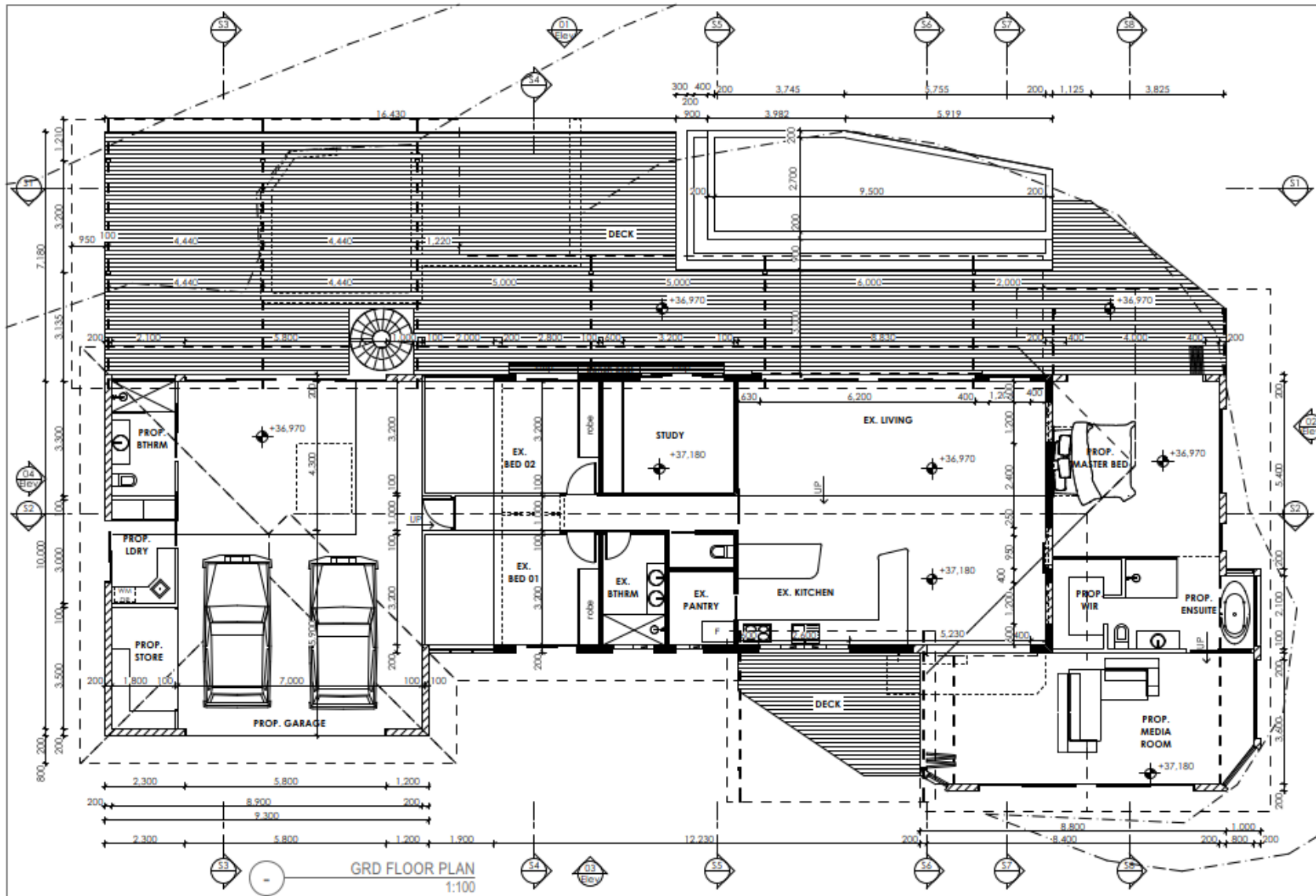
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The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

A copy of the relevant appeal provisions are attached.

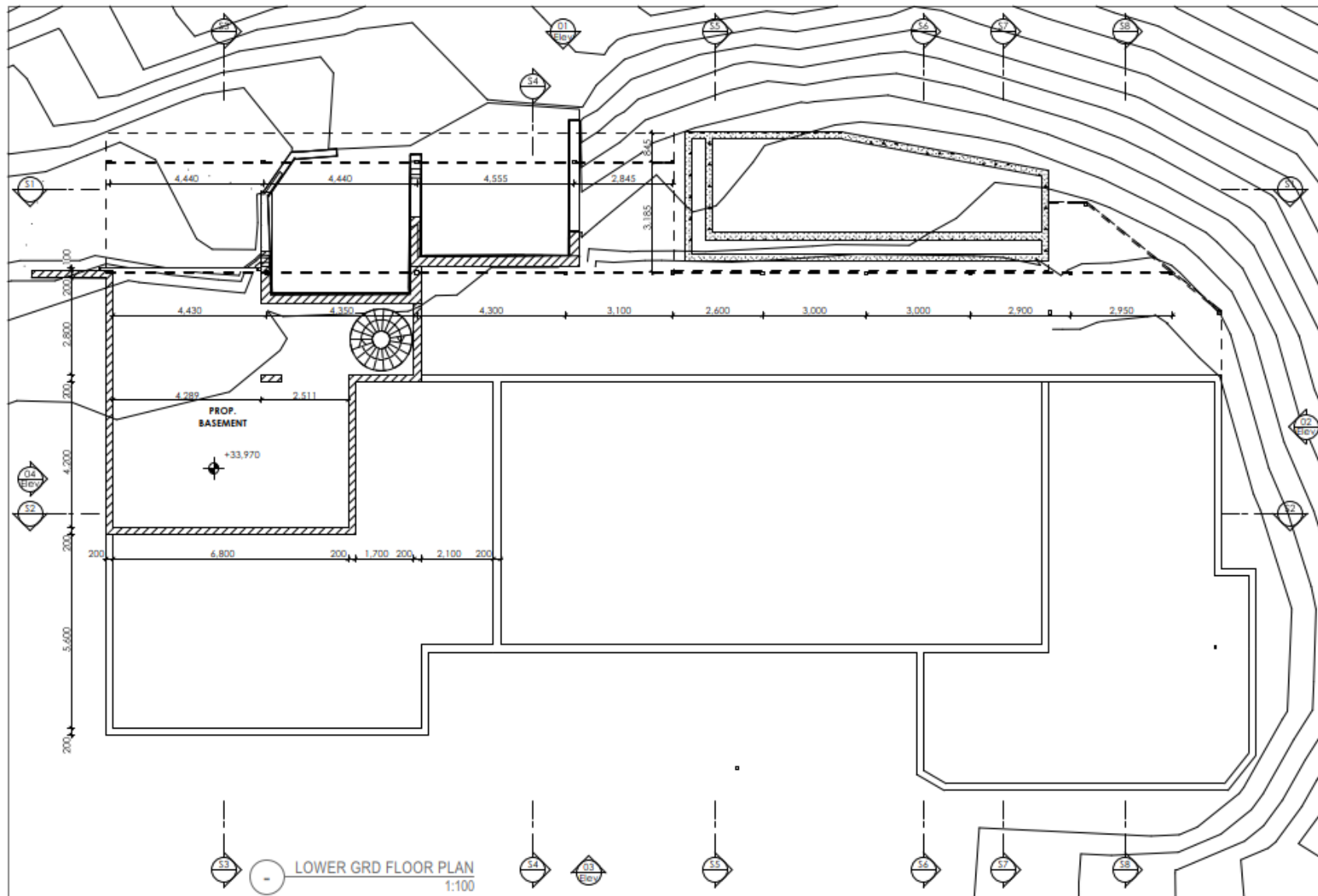
Approved Drawing(s) and/or Document(s)





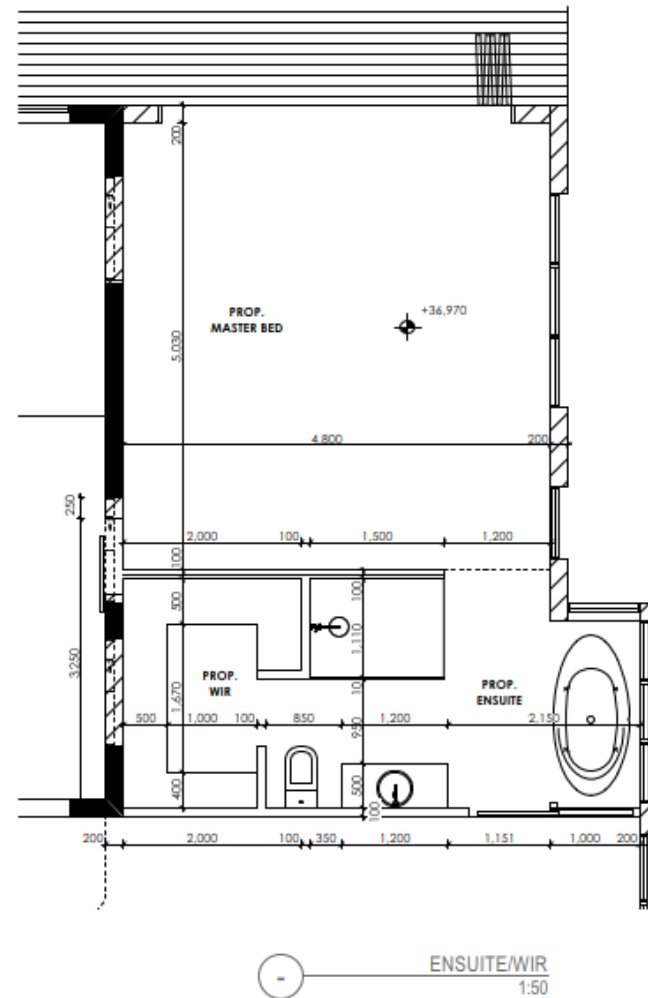
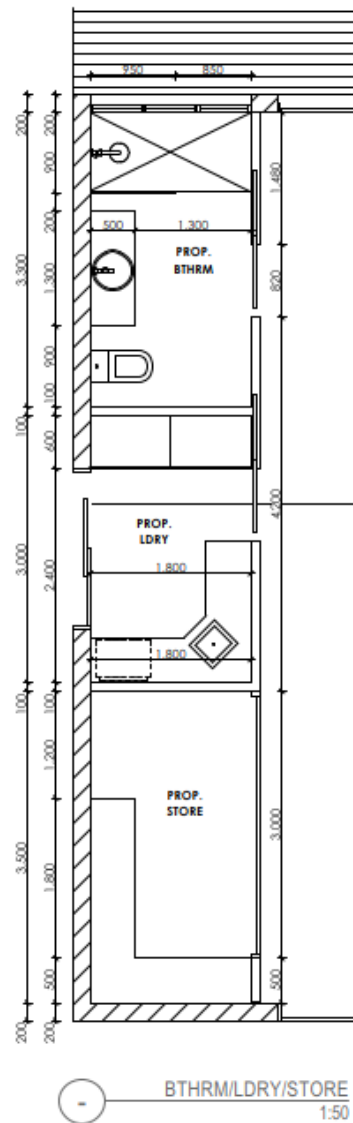
**VOS**  
Architect  
m 0415 300 748

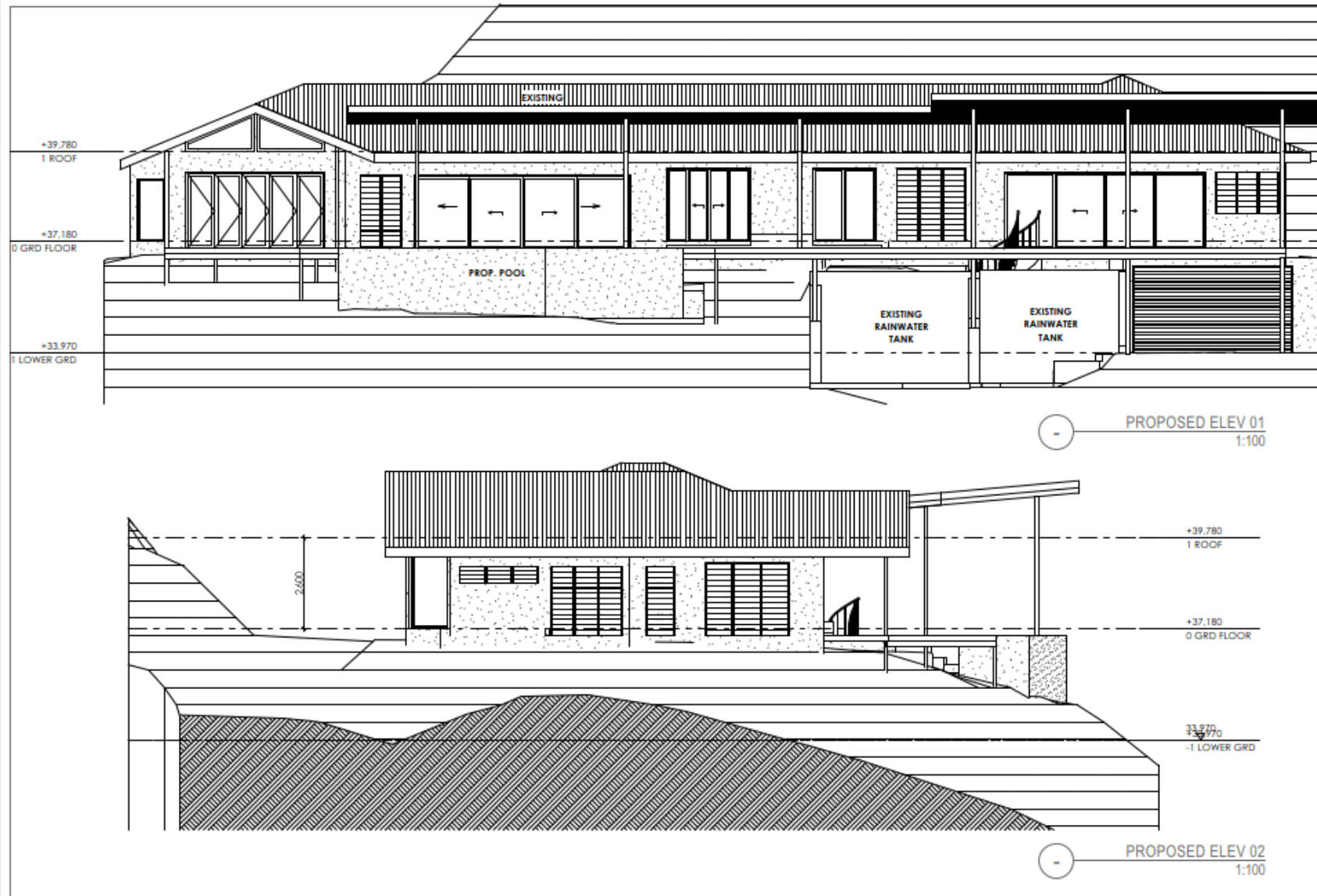
**PROPOSED RENOVATION**  
MARK SHEARER & CARA BEADLE  
36R OCEAN VIEW ROAD, KILLALOE (Lot 14 on RP 745 097)

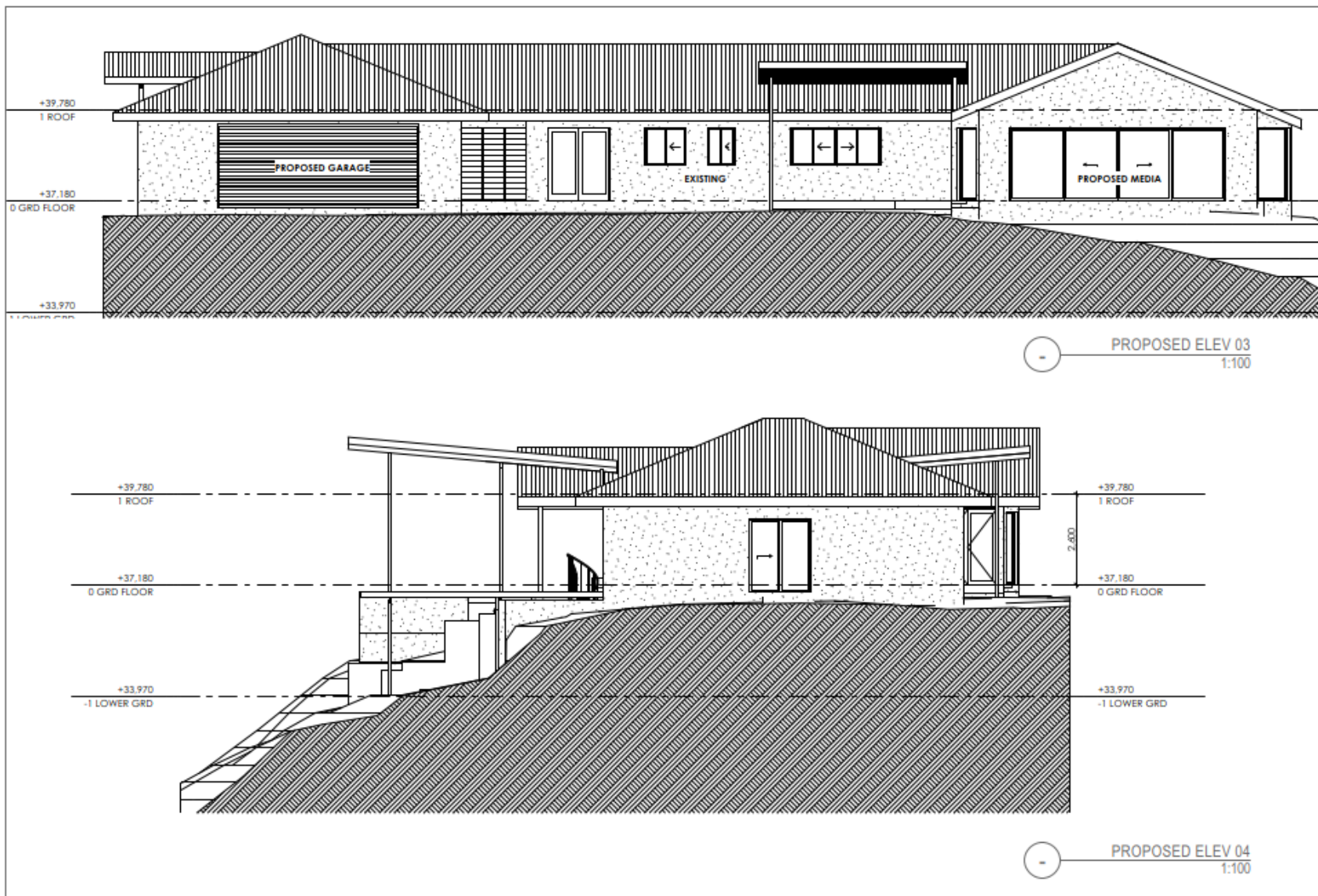


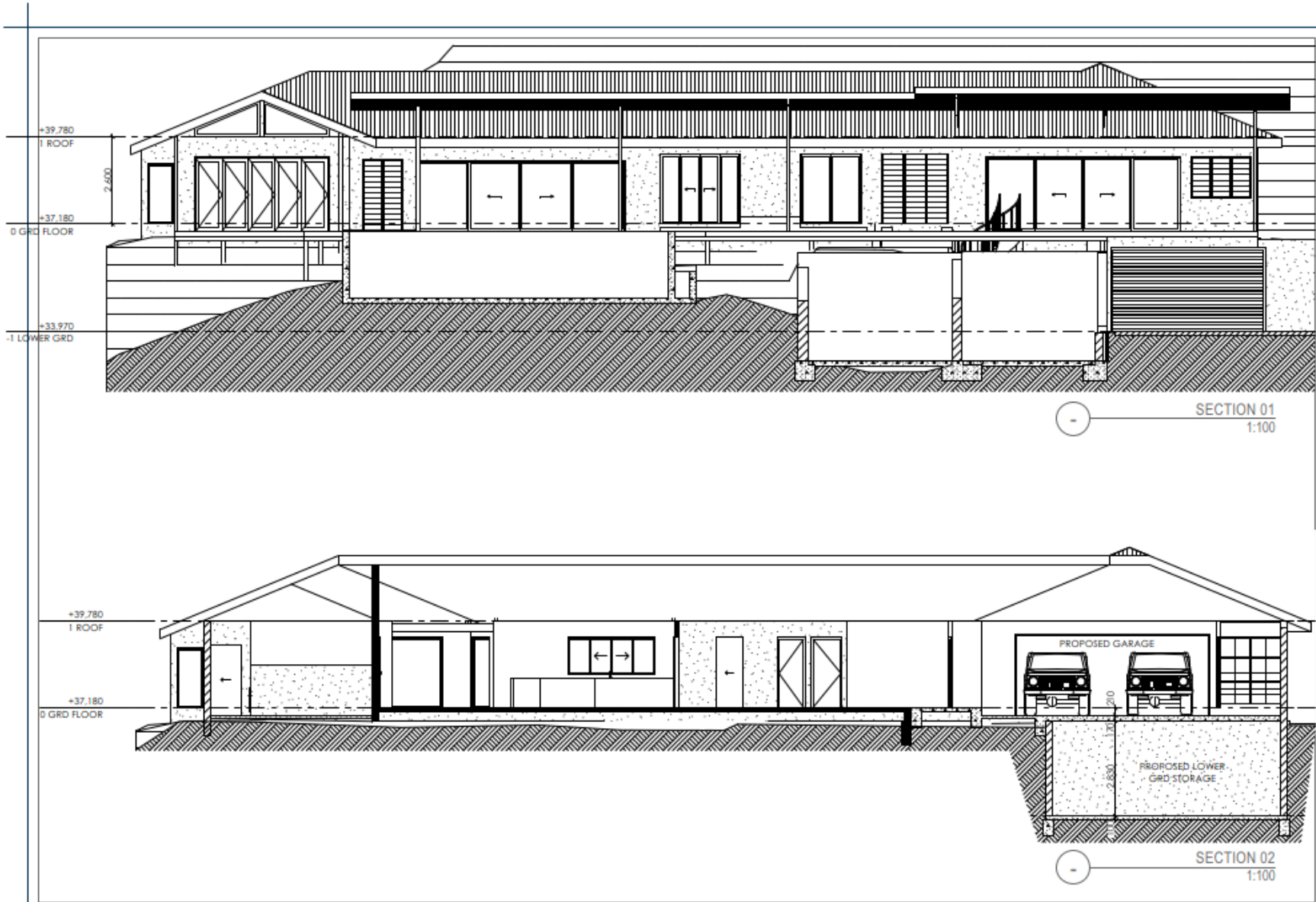
**VOS**  
danny  
Architect  
m 0415 300 748

P R O P O S E D R E N O V A T I O N  
MARK SHEARER & CARA BEADLE  
36R OCEAN VIEW ROAD, KILLALOE (Lot 14 on RP 745 097)









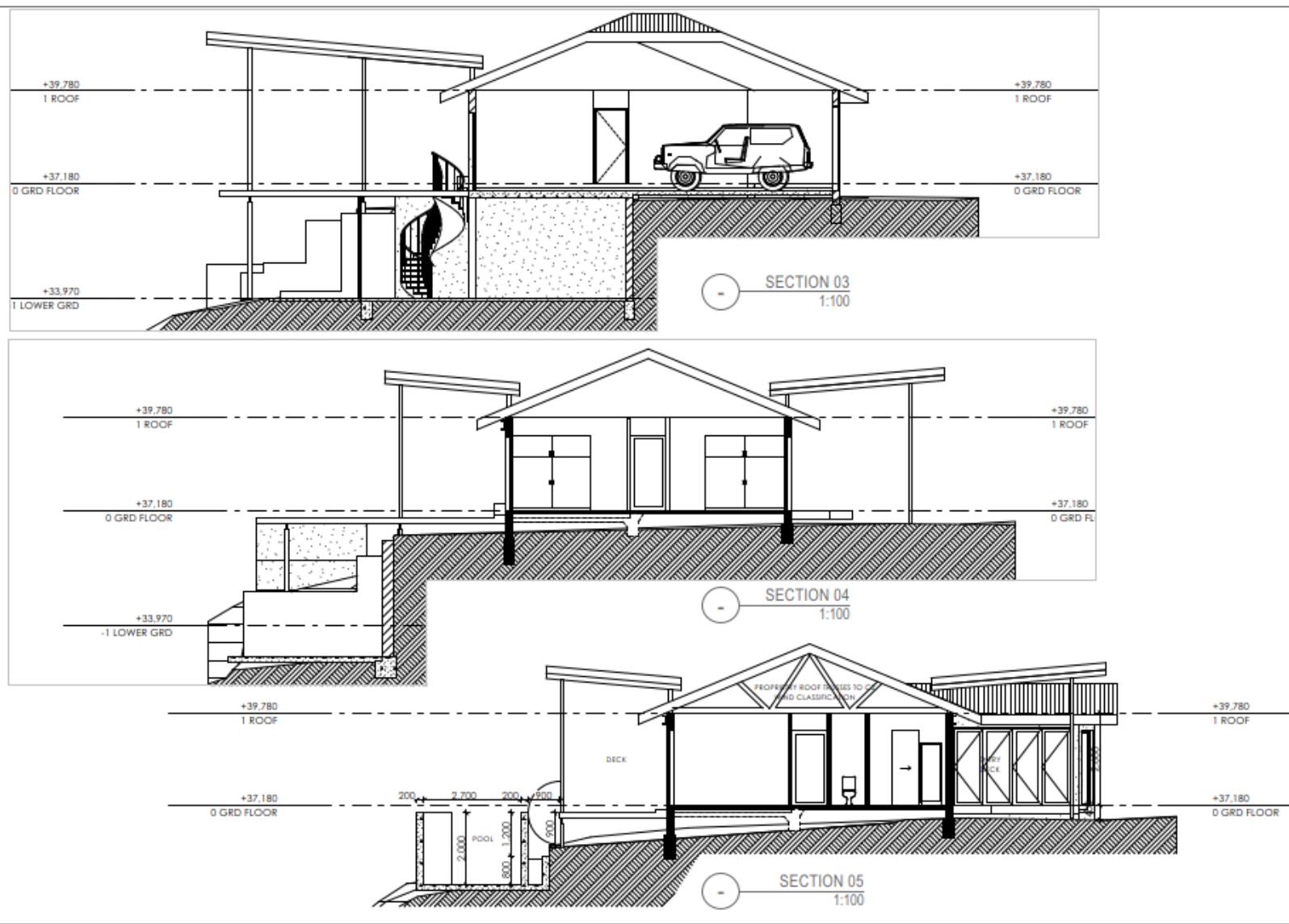
S K E T C H D E S I G N

REV D  
A3 SHEET  
30/11/2020

VOS  
Architect  
m 0415 300 748

P R O P O S E D R E N O V A T I O N  
MARK SHEARER & CARA BEADLE  
36R OCEAN VIEW ROAD, KILLALOE (Lot 14 on RP 745 097)

4.0

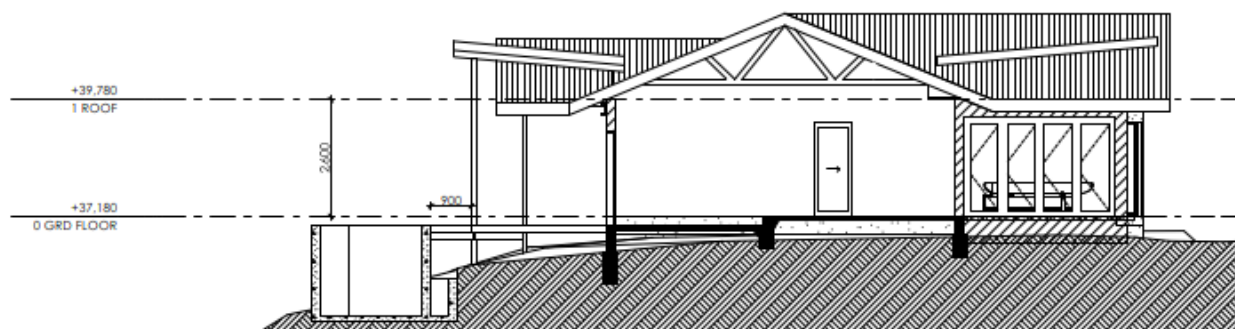


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30/11/2020

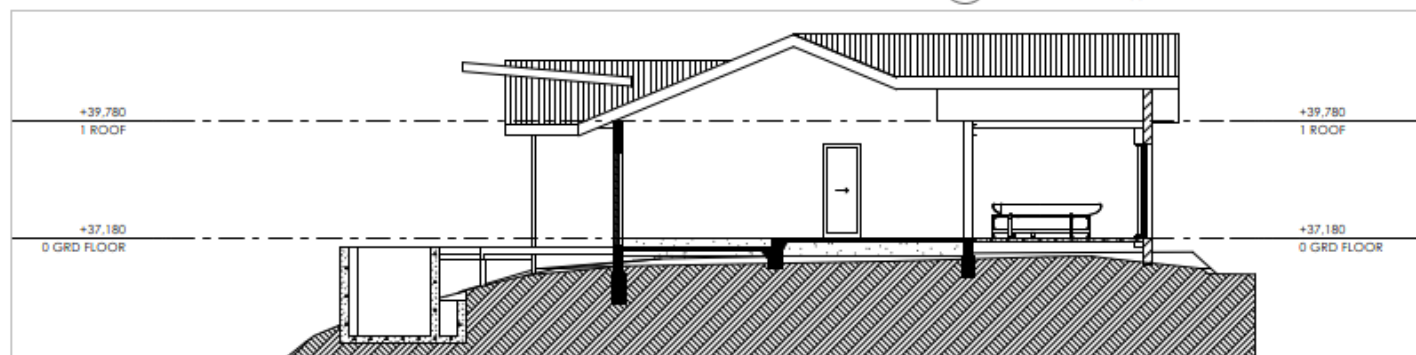
**VOS**  
danny  
Architect  
m 0415 300 748

P R O P O S E D R E N O V A T I O N  
MARK SHEARER & CARA BEADLE  
36R OCEAN VIEW ROAD, KILLALOE (Lot 14 on RP 745 097)

4.1



SECTION 06  
1:100



SECTION 07  
1:100

REV D  
A3 SHEET  
30/11/2020

4.2

**VOS**  
danny  
Architect  
m 0415 300 748

P R O P O S E D R E N O V A T I O N  
MARK SHEARER & CARA BEADLE  
36R OCEAN VIEW ROAD, KILLALOE (Lot 14 on RP 745 097)

## 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 22 December 2020 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]

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### 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 applicant receives notice that the assessment manager does not agree with 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) However, if the assessment manager gives the applicant 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.

## Extracts from the Planning Act 2016 – Appeal Rights

Planning Act 2016  
Chapter 6 Dispute resolution  
[s 229]

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- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
  - conduct** means an act or omission.
  - representative** means—
    - (a) of a corporation—an executive officer, employee or agent of the corporation; or
    - (b) of an individual—an employee or agent of the individual.
  - state of mind**, of a person, includes the person's—
    - (a) knowledge, intention, opinion, belief or purpose; and
    - (b) reasons for the intention, opinion, belief or purpose.

## 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) 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.

## **Part 2 Development tribunal**

### **Division 1 General**

#### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
  - (a) has the qualifications or experience prescribed by regulation; and
  - (b) has demonstrated an ability—
    - (i) to negotiate and mediate outcomes between parties to a proceeding; and
    - (ii) to apply the principles of natural justice; and
    - (iii) to analyse complex technical issues; and
    - (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.