

7 June 2022

Enquiries: Jenny Elphinstone
Our Ref: MCUC 2008_2265/2 (Doc ID 1085308)
Your Ref: 2022-04-06-JONES

Adam Jones and Eleanor Jane Jones
C/- Daniel Favier (Aspire Town Planning)
PO Box 1040
MOSSMAN QLD 4873

Dear Sir

**Development Application for a Minor Change to the Development Approval for a
Material change of use for a dwelling house
At 76 Spring Creek Road Mowbray
On Land Described as Lot 4 on SP114407**

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

Please quote Council's application number: MCUC 2008_2265/2 in all subsequent correspondence relating to this development application.

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

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning

cc. Ergon Energy

encl.

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



Amended Decision Notice

Approval (with conditions)

Given under section Sections 78, 78A, 79, 81, 81A and 83 of the Planning Act 2016

Applicant Details

Name: Adam Jones and Eleanor Jane Jones
Postal Address: C/- Daniel Favier (Aspire Town Planning)
PO Box 1040
MOSSMAN QLD 4873
Email: admin@aspireqld.com

Property Details

Street Address: 76 Spring Creek Road Mowbray
Real Property Description: Lot 4 on SP114407
Local Government Area: Douglas Shire Council

Details of Proposed Development

Application for a minor change to the Development Permit for Material Change of Use for a dwelling house.

Decision

Date of Decision: 7 June 2022
Decision Details: Minor change to the development approval (subject to conditions). This Decision Notice supersedes the decision Notice issued 26 October 2008 whereby:

1. The list of approved Drawing(s) and/or Document(s) is deleted and the following list is approved.

APPROVED DRAWING(S) AND/OR DOCUMENT(S)

The term 'approved drawing(s) and/or document(s)' or other similar expressions means:

Drawing Document	or Reference	Date
<u>Site and Floor Plans</u>	<u>Danny Voss Architect, Sheets 1.0, 2.0 and 2.1, Revision F</u>	<u>8 April 2022</u>
<u>Roof Plan</u>	<u>Danny Voss Architect, Sheet 2.2, Revision F</u>	<u>8 April 2022</u>
<u>Elevations and Sections</u>	<u>Danny Voss Architect, Sheet 3.0 and 4.0, Revision F</u>	<u>8 April 2022</u>

2. The Further Advice is deleted and the following Advice is included:

Advice

1. 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 Section 85 of the *Planning Act 2016*.
 2. The applicants' attention is drawn to Condition 8 of the approval that requires geotechnical assessment.
 3. All building site managers must take all action necessary to ensure building materials and/or machinery on construction sites are secured immediately following the first potential cyclone warning and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
 4. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
 5. The applicant is responsible to achieve any required approval or exemption for the removal or damage to any protected flora under the *Nature Conservation Act 1992*.
 6. For information relating to the *Planning Act 2016* log on to www.dsdmip.qld.gov.au. To access the *FNQROC Development Manual*, Local Laws and other applicable Policies log on to www.douglas.qld.gov.au.
3. All conditions of the Amended Decision Notice dated 26 October 2009 remain unchanged.

Further Development Permits

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*.

Concurrence Agency Response

As per the original approval

Note – Concurrence Agency Response is attached. This Concurrence Agency Response maybe amended by agreement with the respective agency.

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

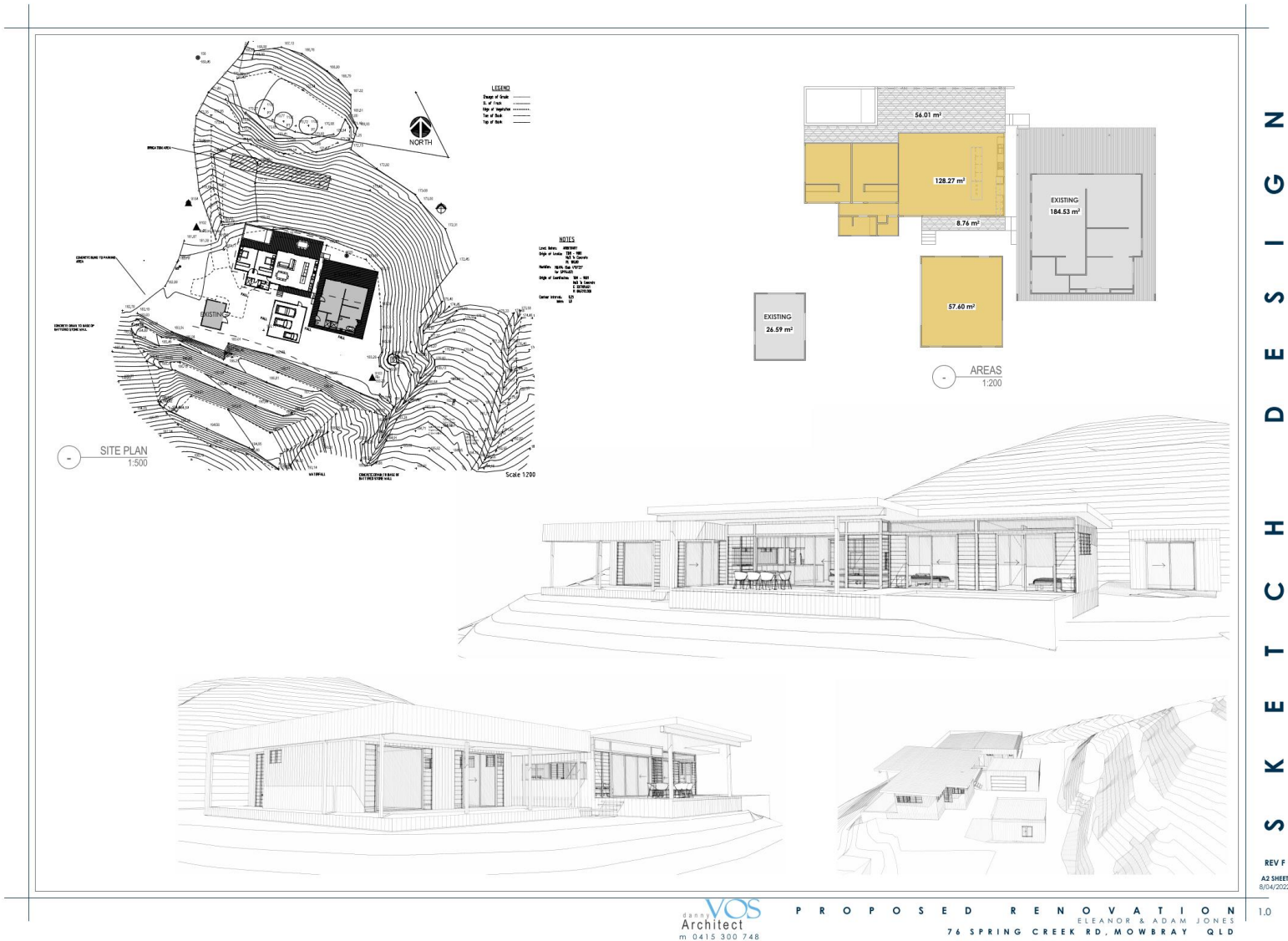
The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

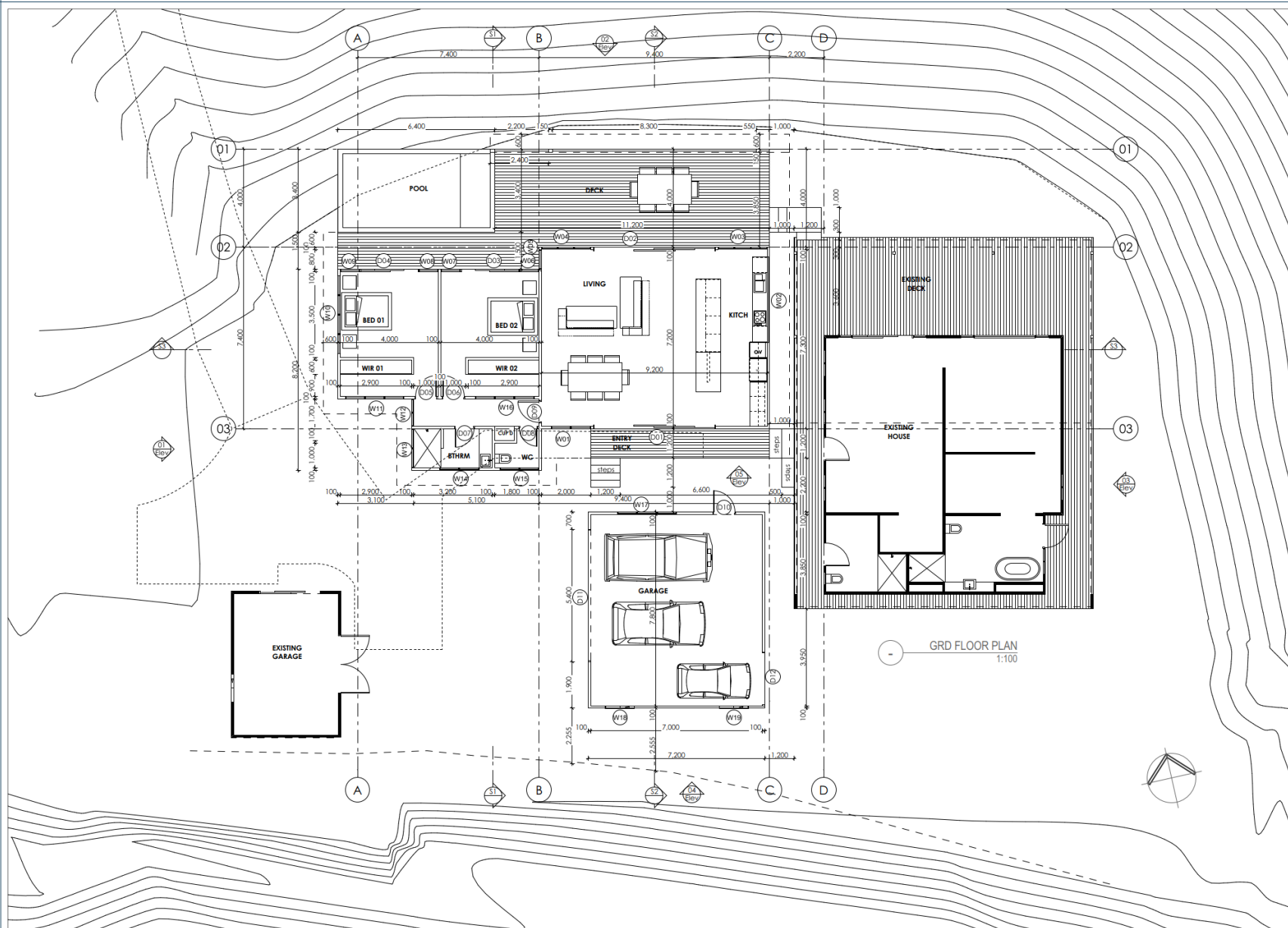
A copy of the relevant appeal provisions is attached.

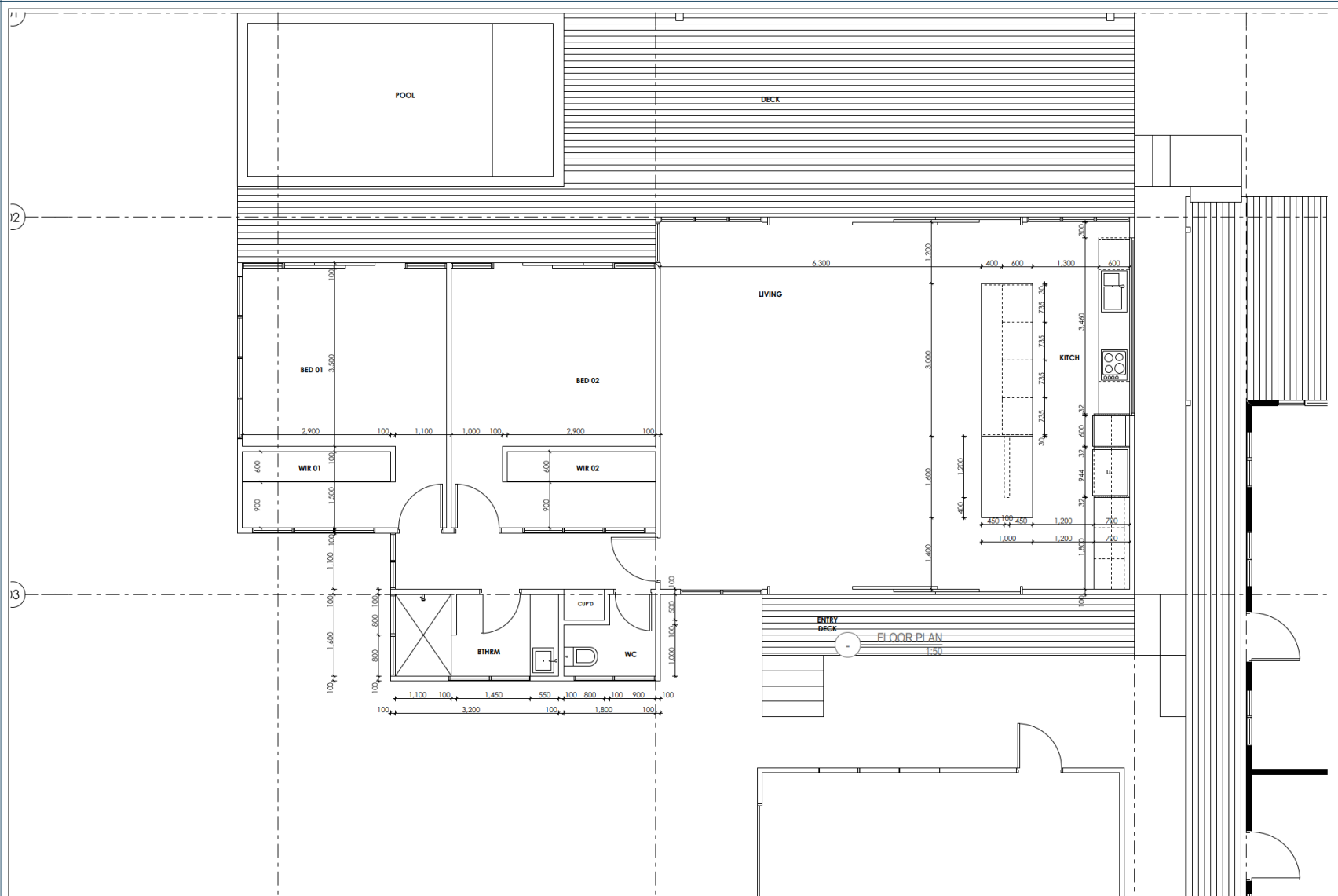
Reasons for decision

1. The reasons for this decision are:
 - a. Sections 78, 78A, 79, 81, 81A and 83 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 application for a minor change was properly lodged to the Douglas Shire Council 25 April 2022 under section 78, 78A, 79 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules;
 - b. The application is for a minor change, being a minor change consistent with Schedule 2 of the *Planning Act 2016*; and
 - c. the application contained information from the applicant which Council reviewed together with Council's own assessment against the 2006 Douglas Shire Planning Scheme 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 Rural Zone Code;
 - b. Council undertook an assessment in accordance with the provisions of sections 81, 81A and 83 of the *Planning Act 2016*; and
 - c. the applicant's reasons have been considered and the following findings are made:
 - i. the change to the condition does not affect the ability for the development to satisfactorily meet the Planning Scheme benchmarks.

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



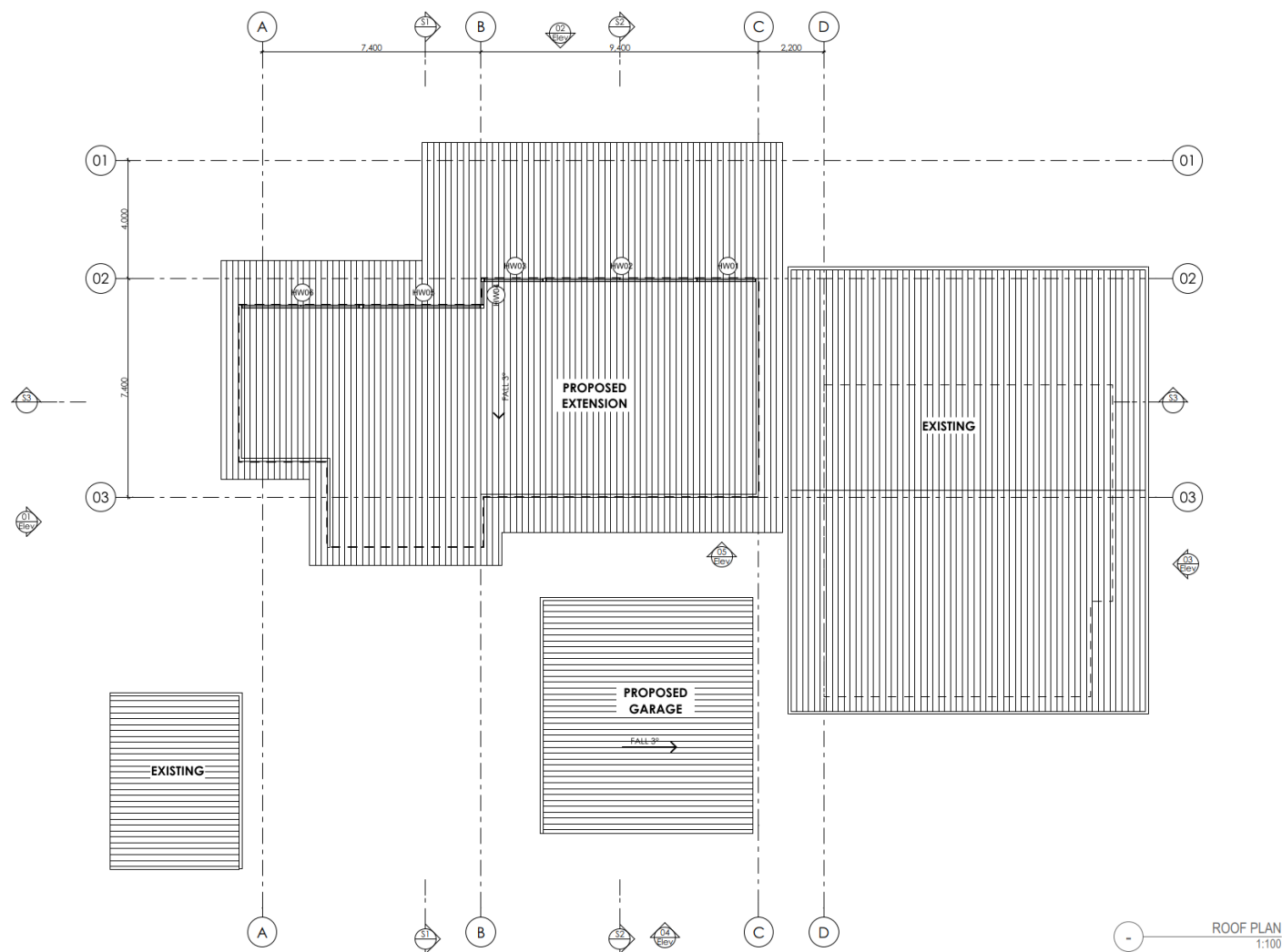




29/05/2019

VOS
danny
Architect
m 0415 300 748

PROPOSED RENOVATION
ELEANOR & ADAM JONES
76 SPRING CREEK RD, MOWBRAY QLD



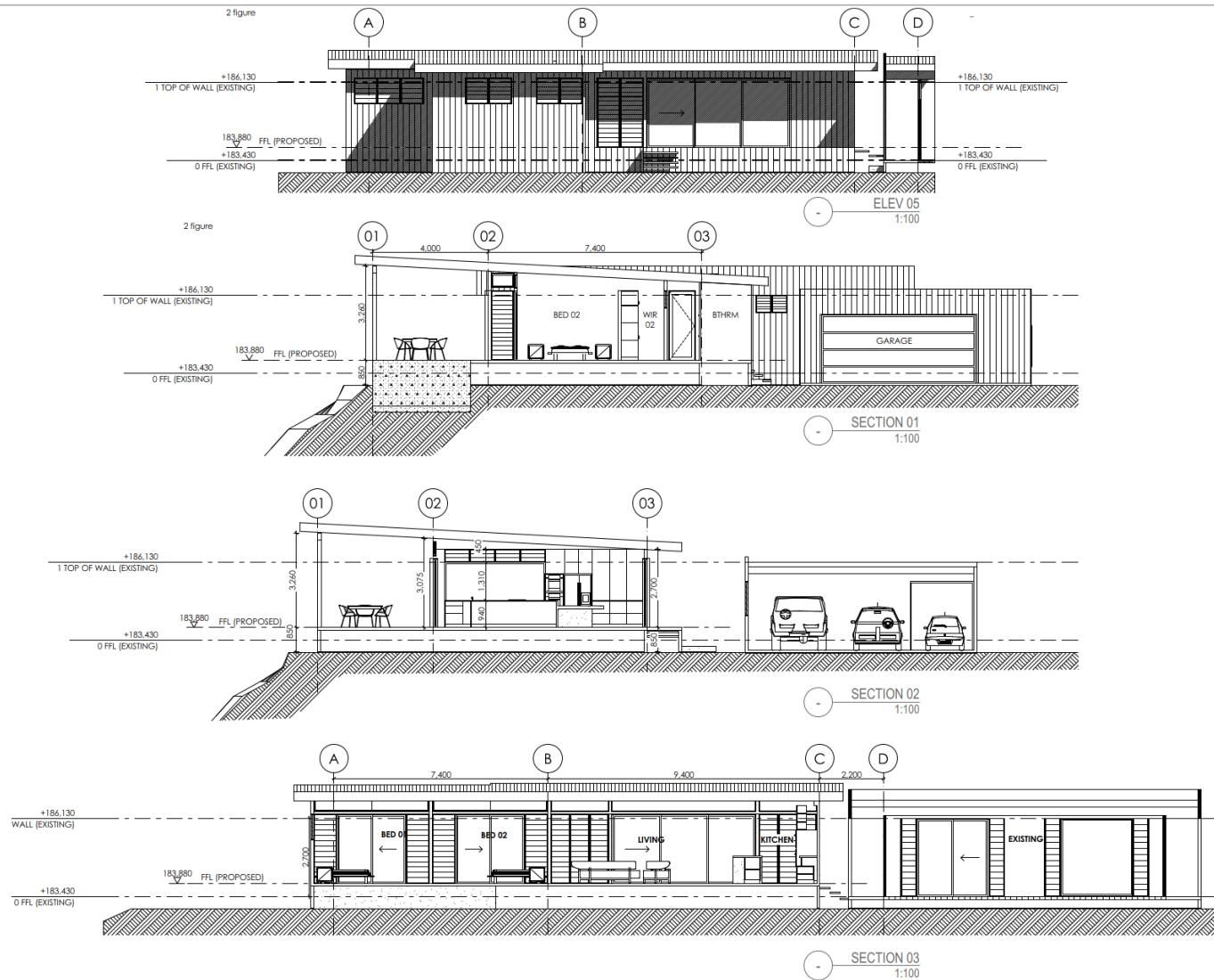
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A2 SHEET
8/04/2022

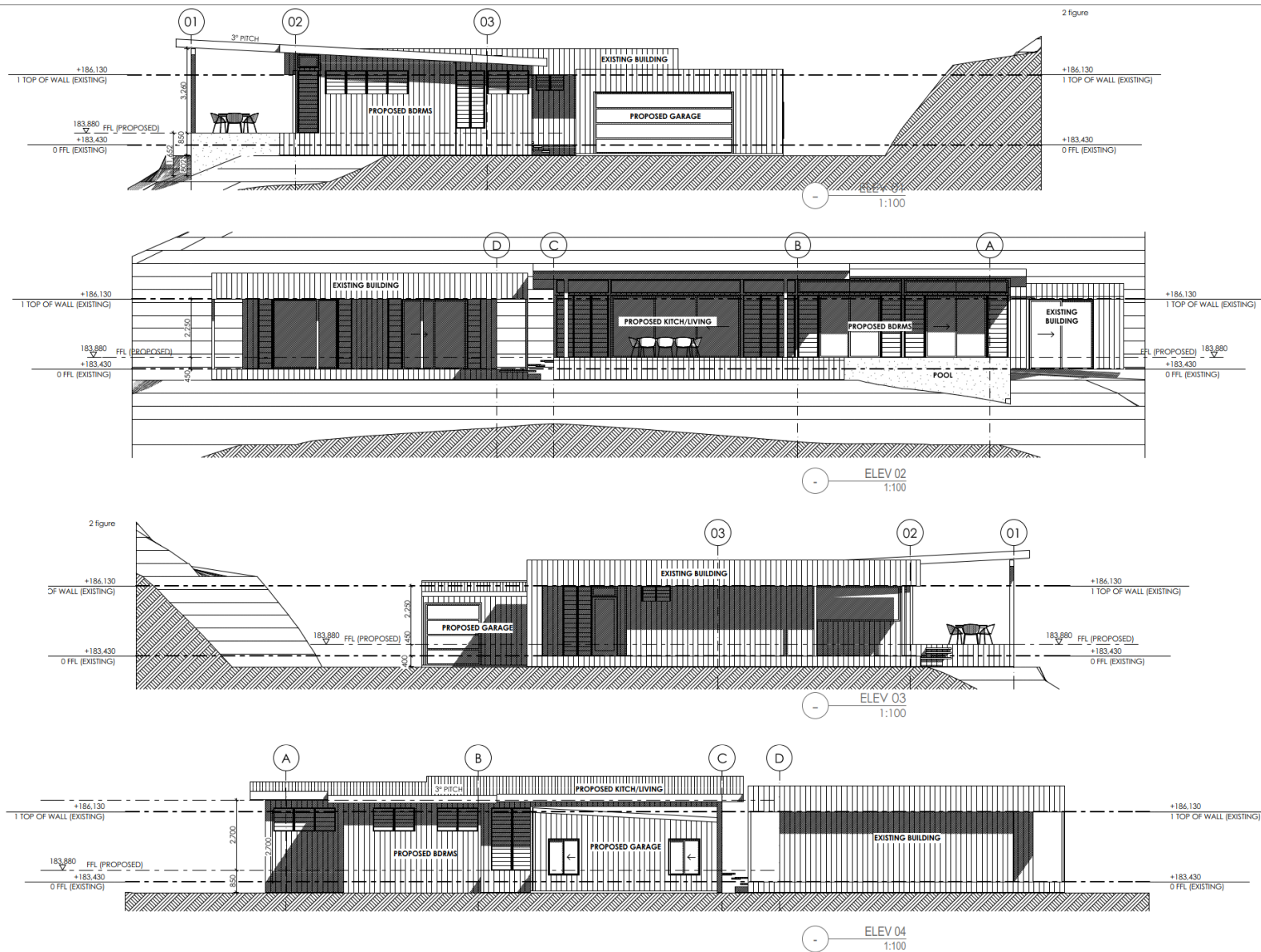
29/05/2019

VOS
danny
Architect
m 0415 300 748

PROPOSED RENOVATION
ELEANOR & ADAM JONES
76 SPRING CREEK RD, MOWBRAY QLD

2.2





ENQUIRIES: Ms Sarah Cook
PHONE: (07) 4044 3381
FAX: (07) 4044 3836
YOUR REF: 62813/NAC/R64606
OUR REF: 8/7/1208 (2360412)

26 October 2009

H C Dawe
C/- Conics (Cairns) Pty Ltd
PO Box 355
MOSSMAN QLD 4873

Dear Sir/Madam

**DECISION NOTICE UNDER S3.5.15 INTEGRATED PLANNING ACT 1997:
DEVELOPMENT APPLICATION FOR SPRING CREEK ROAD, MOWBRAY**

With reference to the abovementioned Development Application, please find attached the relevant Decision Notice which was determined under Instrument of Delegation on 26 October 2009.

The notice includes extracts from the Act with respect to lodging an Appeal.

Should you have any enquires in relation to this Decision Notice, please contact Sarah Cook of Council's Development Assessment team on telephone number (07) 4044 3381.

Yours faithfully

Neil Beck
Acting Manager Development Assessment

Att

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DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

APPLICANT DETAILS

H C Dawe
C/- Conics (Cairns) Pty Ltd
PO Box 355
MOSSMAN QLD 4873

ADDRESS

Spring Creek Road, Mowbray

REAL PROPERTY DESCRIPTION

Lot 4 on SP114407

PROPOSAL

House (Exceeding Self Assessable Provisions for GFA)

DECISION

Approved subject to conditions (refer to approval package below).

DECISION DATE

This Decision Notice dated 26 October 2009 replaces the Decision Notice dated 1 July 2008.

TYPE

Material Change of Use (Development Permit)

REFERRAL AGENCIES

(Vegetation Clearing, Remnant Vegetation & Acid Sulfate Soils)
Department of Environment & Resources Management
(Formerly DNRW)
PO Box 937
CAIRNS QLD 4870

(Electricity Easement or Located within 100m of a substation site)
Ergon
Chris Souter
PO Box 358
CAIRNS QLD 4870

SUBMISSIONS

There were no submissions for this application.

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DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

FURTHER DEVELOPMENT PERMITS REQUIRED

Development Permit for Building Works
Development Permit for Plumbing Works

CODES TO COMPLY WITH FOR SELF-ASSESSABLE DEVELOPMENT

None

DOES THE ASSESSMENT MANAGER CONSIDER THE APPLICATION TO BE IN CONFLICT WITH APPLICABLE CODES, PLANNING SCHEME, STATE PLANNING POLICIES OR PRIORITY INFRASTRUCTURE PLAN (IF YES, INCLUDE STATEMENT OF REASONS)

Not in conflict

APPROVED DRAWING(S) AND/OR DOCUMENT(S)

The term 'approved drawing(s) and/or document(s)' or other similar expressions means:

Drawing or Document	Reference	Date
Floor Plans & Elevations	WD/07/370/2	Sept 2007
Site Plan	WD/07/370/1	Sept 2007

Drawing or Document	Reference	Date
Site Plan	PD0100000 – DA00	September 2009
Floor Plan	PD0100010 – DA00	September 2009
Elevations	PD0100030 – DA00	September 2009
Sections	PD0100031 – DA00	September 2009

ASSESSMENT MANAGER CONDITIONS

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. To ensure that the development complies in all respects with the following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual; and

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.

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Water Supply

3. Water storage tank(s) with a minimum capacity not less than 30,000 litres, and must be installed prior to occupation of the premises. Details of the water tank(s) must be shown on plans submitted with the building application. Such water tanks must be provided with:
 - a. Mosquito-proof screens of brass, copper, aluminium or stainless steel gauze not coarser than one (1) mm aperture mesh of substantial construction and installed in such manner as not to cause or accelerate corrosion; or
 - b. Flap valve at every opening of the tank or other receptacle; or
 - c. Other approved means for preventing the ingress or egress of mosquitoes; and
 - d. Where a tank or other receptacle is provided with a manhole, the manhole must have a diameter of no more than 40 cm; and
 - e. The water tank(s) shall be fitted with a 50 mm ball valve with a camlock fitting.

On-site Effluent Disposal

4. The method of on-site effluent disposal must be in accordance with the Queensland Plumbing & Wastewater Code. Details of the wastewater treatment system to be installed must be approved by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

Vegetation Clearing

5. Existing vegetation on the subject land must be retained in all areas except those affected by the construction of access driveways, the installation of services as detailed on the approved plans. Any further clearing requires a Permit to Damage Protected Vegetation under *Amendment 1 of 2006 Of Local Law No. 56 Vegetation Management*.

Building Colours

6. The exterior finishes and colours of Buildings are non-reflective and blend with the natural colours of the surrounding environment. Roofs must be of moderately dark to darker shades of green, grey, blue and brown.

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

Sediment and Erosion Control

7. The 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).

Geotechnical Assessment

8. All earthwork batters steeper than 1 in 2 and/or higher than 1.8 metres must be certified by a qualified Geotechnical Engineer prior to the Commencement of Use.

Structural Certification

9. All retaining walls or structures higher than one (1) metre must be structurally certified prior to the issue of a Development Permit for Building Work.

Where the profile or height of the wall is redesigned during structural certification, amended plans must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

Water Saving

10. All toilet devices in the development must be fitted with dual flush cisterns and showers and hand basins in the development must be fitted with flow control valves or similar water control devices to generally restrict flow to nine (9) litres of water per minute.

CONCURRENCE AGENCY CONDITIONS & REQUIREMENTS

Concurrency Agency	Concurrency Agency Reference	Date	Council Electronic Reference
Department of Natural Resources and Water	2008/003139	09 May 2008	1693820

Refer to Appendix 2: Concurrence Agency Requirements. (Please note that these conditions / requirements may be superseded by subsequent negotiations with the relevant referral agencies).

FURTHER ADVICE

1. This approval, granted under the provisions of the *Integrated Planning Act 1997*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 3.5.21 of the *Integrated Planning Act 1997*.

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DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

2. The applicant/owner is advised that this approval does not approve the construction of the building works. The applicant will be required to obtain a Development Permit for Building Work in order for construction to commence.
3. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council Officers, prior to commencement of works.
4. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
5. The taking of water, or interfering with water from streams or groundwater sources will require a permit administered under the *Water Act 2000* and issued by the regional office of the Department of the Natural Resources and Water. Further information can be obtained from the Department of Natural Resources and Water on (07) 4039 8431 or at www.nrw.qld.gov.au.
6. For information relating to the *Integrated Planning Act 1997* log on to www.ipa.qld.gov.au. To access Council's Development Manual, Local Laws and other applicable Policies log on to www.cairns.qld.gov.au.

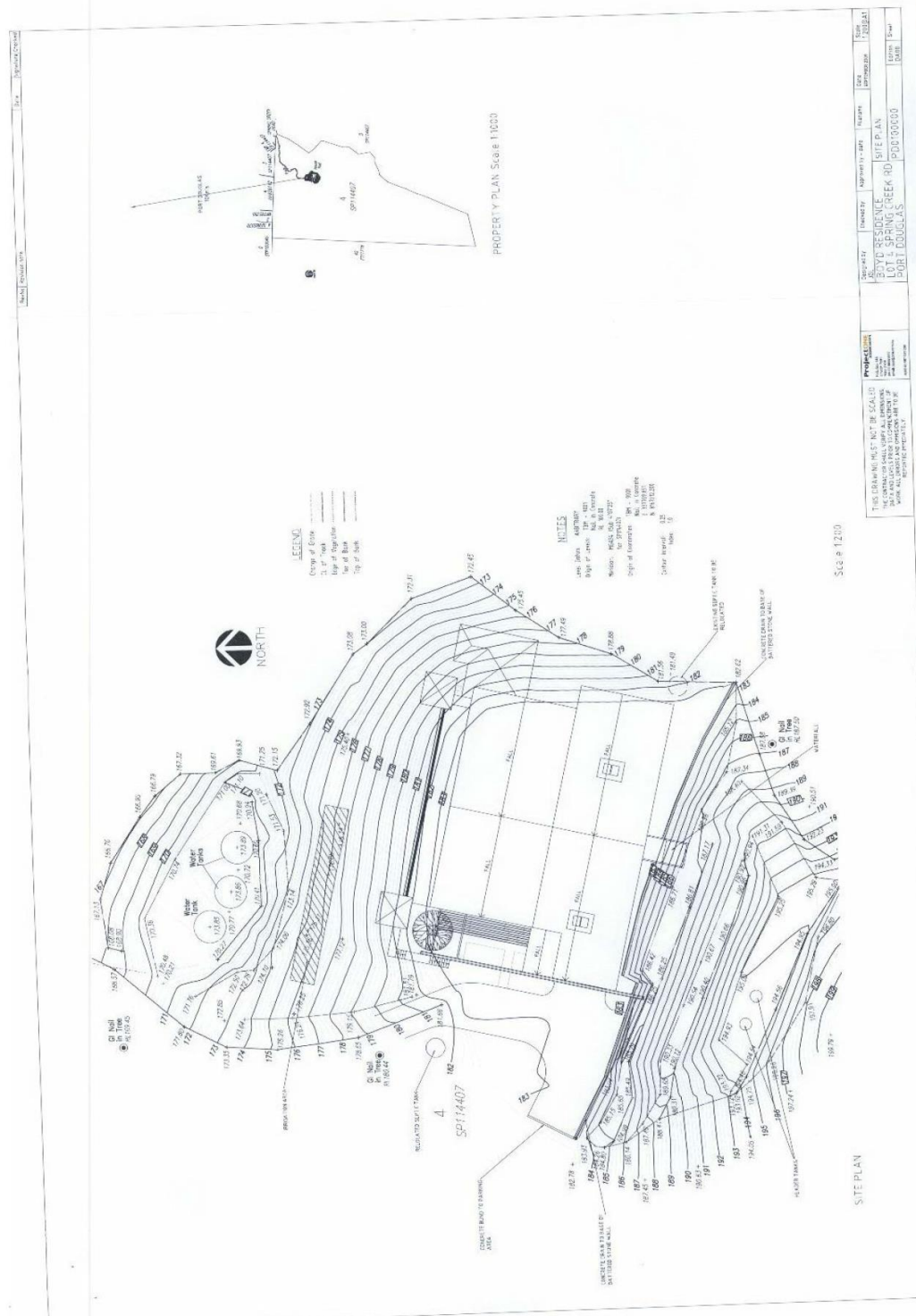
RIGHTS OF APPEAL

Attached

End of Decision Notice

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APPENDIX 1 APPROVED PLAN(S) & DOCUMENT(S)



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(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)



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DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

APPENDIX 2 CONCURRENCE AGENCY CONDITIONS & REQUIREMENTS



Author : Lisa Collins
File / Ref number : 2008/003139
Recfind No: MBA/000516
Trackjob No: JC0408CNS0004
Unit : Vegetation Management Unit
Phone : (07) 4048 4719

Department of
Natural Resources and Water

9 May 2008

Chief Executive Officer
Cairns Regional Council
PO Box 359
Cairns Qld 4870

Attention: S M Cook

Dear Sir or Madam

Application for Material Change of Use on Lot 4 SP114407 - Cairns Regional Council – Referral Agency Response

The Department of Natural Resources and Water (acting as a Concurrence Agency), has completed the assessment of the above application against the purposes of the Vegetation Management Act 1999 in accordance with the Concurrence Agency Policy for MCU (Concurrence-Single Issue).

The Referral Agency Response, prepared pursuant to section 3.3.16(1) of the *Integrated Planning Act 1997*, is **enclosed**. I look forward to receiving a copy of the decision notice for the application in due course.

Should you have any questions about the above, please contact Lisa Collins on telephone number (07) 4048 4719, quoting the above reference number.

Yours sincerely

A handwritten signature in black ink, appearing to read "Kathryn Dark".

Kathryn Dark
A/Senior Vegetation Management Officer
North Region



NRW Mareeba
28 Peters Street
Mareeba
PO Box 2116
Mareeba Qld 4880
Telephone 40484602
Facsimile 40484759
Website www.nrw.qld.gov.au
ABN 83 705 537 586

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**Department of Natural Resources and Water –
Referral agency response**

Given under Section 3.3.16 of the *Integrated Planning Act 1997*

1. Application details

1.1. Applicant's name	Mr Howard Dawe
1.2. Property description	Lot 4 SP114407
1.3. Development type	Material Change of Use (MCU)
1.4. Assessment manager	Cairns Regional Council
1.5. Assessment manager reference	8/7/1208 (1683187)
1.6. Referral date	7 April 2008
1.7. Our references	eLVAS –2008/003139 RecFind –MBA/000516 TrackJob –IC0408CNS0004

2. Concurrence agency response

The chief executive of the Department of Natural Resources and Water (NRW) would like to inform the assessment manager that NRW has no concurrence agency requirements in regard to the application.

3. Reasons for the concurrence agency response

NRW has assessed the application against the *Concurrence Agency Policy for Material Change of Use (MCU) 23 August 2007* (MCU Policy) and has determined that the application meets the requirements of Criteria Table D, because clearing as a result of the MCU will be—

- On freehold land;
- Limited to what is necessary to build a single residence on an existing lot and any reasonably associated infrastructure; and
- On a lot where no other residence exists on the lot.

4. Aboriginal cultural heritage advice

Under Section 23 of the *Aboriginal Cultural Heritage Act 2003*, a person who carries out an activity must take all reasonable and practicable measures to ensure that the activity does not harm Aboriginal cultural heritage (the 'cultural heritage duty of care'). Maximum penalties for breaching the cultural heritage duty of care are \$750 000 for a corporation and \$75 000 for an individual.

Applicants will comply with the cultural heritage duty of care in relation to Aboriginal cultural heritage if they are acting in compliance with the cultural heritage duty of care guidelines gazetted under the *Aboriginal Cultural Heritage Act 2003*, available on the NRW website, or in accordance with an agreement with the Aboriginal party for the area or a cultural heritage management plan approved under Part 7 of the *Aboriginal Cultural Heritage Act 2003*.

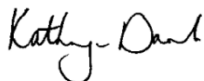
Applicants should also undertake a search of the Aboriginal Cultural Heritage Database and the Aboriginal Cultural Heritage Register, administered by the Cultural Heritage Coordination Unit, NRW. Application forms to undertake a free

DECISION NOTICE DETAILS
(SECTION 3.5.15 INTEGRATED PLANNING ACT 1997)

NRW – Referral agency response 2008/003139

search of the Aboriginal Cultural Heritage Database and the Aboriginal Cultural Heritage Register may be obtained by contacting the Cultural Heritage Coordination Unit on (07) 3238 3838 or on the NRW website—
www.nrw.qld.gov.au/cultural_heritage.

5. Delegated officer signature



Kathryn Dark
A/Senior Vegetation Management Officer
North Region, NRW

9 May 2008

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Reasons for Decision

Non-Compliance with Assessment Benchmarks

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.