

Administration Office

64 - 66 Front St Mossman

P 07 4099 9444

F 07 4098 2902

20 April 2020

**Enquiries:** Daniel Lamond  
**Our Ref:** MCUC 2016\_1443/1 (950649)  
**Your Ref:** MCUC1443\_2016

A Henderson  
1746 Mossman Daintree Rd  
WONGA BEACH QLD 4873

**Email:** turtletime1@hotmail.com

Dear Mr Henderson

**Application for Extension of Currency Period- Material Change of Use (Dwelling house)  
At Cape Tribulation Road DIWAN  
On Land Described as LOT: 55 RP: 739766**

Please find attached the Decision Notice for the above-mentioned application for extension to currency period. In accordance with section 87 of the Planning Act 2016, please be advised that Council has extended the Period of Approval for six (6) years, up to and including 26 May 2026, subject to the conditions contained within the Decision Notice dated 26 May 2004 (copy attached) Condition 4.9 has been erased and condition 4.10 has been amended to read:

~~4.10 Any clearing outside the marked areas for the driveway and building pad is a breach of Council's Local Law No. 56 (Vegetation Management) and is likely to result in legal action by Council.~~ 4.10 Existing vegetation on the subject land must be retained in all areas except those affected by the construction of road works / access driveways, house pad or the installation of services as detailed on the approved plans as stated in Condition 1. Any further clearing requires an Operational Works Approval.

Please quote Council's application number: MCUC 2016\_1443/1 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)
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Extension of Currency Period- Approval

*Given under section 87 of the Planning Act 2016*

#### Applicant Details

**Name:** A Henderson  
**Postal Address:** 1746 Mossman Daintree Rd  
WONGA BEACH QLD 4873  
**Email:** turtletime1@hotmail.com

#### Property Details

**Street Address:** Cape Tribulation Road, Diwan  
**Real Property Description:** LOT: 55 RP: 739766  
**Local Government Area:** Douglas Shire Council

#### Details of Proposed Development

Extension of Currency Period- Material Change of Use (Dwelling house)

#### Decision

**Date of Decision:** 20 April 2020  
**Decision Details:** Approved- extension of currency period up to and including 26 May 2026.

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

Drawing or Document	Reference	Date
DSC Decision Notice	MCU 3B 024/04	26 May 2004

## **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*.

## **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)

Tracey Pascoe – Assistant Planning Officer  
Planning Services Section - ☎ (07) 4099 9450

TAP  
MCU 3B 024/04

Mr Angus Henderson  
CMB 66  
MOSSMAN QLD 4873

26th May 2004

# INTEGRATED PLANNING ACT DECISION NOTICE

## DEVELOPMENT APPLICATION

<b>Applicant's Name</b>	:	Mr Angus Henderson
<b>Owner's Name</b>	:	Mr Angus Henderson
<b>Proposal</b>	:	Council approves the Application for Material Change of Use of Premises for a Dwelling House on Residential Rural zoned land at Lot 55 on RP739766, Parish of Alexandra.
<b>Application Number</b>	:	MCU 3B 024/04
<b>Site Address</b>	:	Cape Tribulation Road, Diwan
<b>Property Description</b>	:	Lot 55 on RP739766, Parish of Whyanbeel, County of Solander

1. **Decision:** **Decision Date:** 25th May 2004

Approved subject to Conditions

2. **Type of Development Approval:**

Material Change of Use

Development Permit

.../2.

**3. Referral Agency:**

Nil

**4. Conditions**

- 4.1 The approved development and the conduct of the approved use, the carrying out of any works on the premises and the construction of any buildings on the premises associated with the development must generally be in accordance with:
- (a) The plans and specifications submitted with the application to Council attached to this approval
- 4.2 This development approval lapses four (4) years after the day that the development approval takes effect, unless the use has substantially commenced or this period is extended under Section 3.5.22 of the *Integrated Planning Act 1997*.
- 4.3 The approved use must not be conducted so as to cause a nuisance or annoyance to persons not associated with the business and so as not to adversely affect any other property.
- 4.4 Any erection and use and occupation of the premises shall at all times comply with the conditions laid down and provided for in the Douglas Shire Planning Scheme from time to time.
- 4.5 Approval of satisfactory building plans and specifications in accordance with the Building Act, Council's Local Laws and the Douglas Shire Planning Scheme where applicable and generally in accordance with the approved plans submitted with the MCU Application 024/04.
- 4.6 The issue of this Development Permit approval in no way implies building approval, either in principle or in detail, of any plans of the proposed development which may have been submitted with the application. Approval of any building works associated with the use shall be the subject of a separate Building Application in accordance with the Council's Local Laws.
- 4.7 The issue of this Development Permit approval in no way implies building approval, either in principle or in detail, of any plans of the proposed development which may have been submitted with the application. Approval of any building works associated with the use shall be the subject of a separate Building Application in accordance with the Council's Local Laws.
- 4.8 The minimum floor level for all habitable rooms in any building erected on the premises must be:
- (a) a minimum of 3.4m AHD; or

.../3.

- (b) a minimum of the Q100 flood level.

Which ever is the greater.

- 4.9 All native vegetation on the site is identified as protected vegetation under Council's Local Law N° 56 vegetation Management. No vegetation is permitted to be removed from the site without the approval of Council under this Local Law.
- 4.10 Any clearing outside the marked areas for the driveway and building pad is a breach of Council's Local Law No. 56 (Vegetation Management) and is likely to result in legal action by Council.
- 4.11 The provisions of the Development Permit are to be effected prior to the commencement of the specific use as granted by Council.
- 4.12 The proposed colour schedule of dark green walls and a light green roof for the dwelling are approved. No variation from the approved colours is permitted without the written authorisation of Council.
- 4.13 Water storage tank(s), with a minimum capacity not less than 30,000 litres, shall be installed prior to occupation of the premises. Details of the water tank(s) shall be shown on plans submitted with the building application. Such water tanks shall be fitted with:-
  - (a) screening at the inlet to prevent the intrusion of leaves and insects;
  - (b) The water tank(s) shall be fitted with a 50mm ball valve with a camlock fitting; and
  - (c) The water tank(s) shall be accessible by fire fighting vehicles at all times.
- 4.14 Plans of the proposed waste water treatment, designed in accordance with the Standard Sewerage Law, is required to be submitted to Council's plumbing Inspector at the time of lodgement of application for building works and are to be approved and constructed prior to the commencement of the use. Council urges the use of composting toilets, or other technologies that reduce the amount of wastewater generated. Where wastewater treatment is to be by way of a septic system, tree root barriers are to be used in conjunction with absorption trenches.
- 4.15 All power generation devices are to be positioned and housed (including noise attenuation material) so as to mitigate noise nuisance to adjoining and nearby residents.
- 4.16 In accordance with section 8.5.2 of the Douglas Shire Planning Scheme, no change to the natural surface level of the lot shall occur without the written consent of Council's Director Engineering Services.

.../4.

- 4.17 Should excavation or filling be required on-site, then the applicant will be required to prepare and submit civil engineering plans for all excavation including a sediment control plan in accordance with the FNQROC Development Manual for the separate Council approval.

You are advised that the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* applies to proposed activities likely to have a significant impact on the matters of 'national environmental significance', including world heritage properties. Such activities may require approval under this Act prior to any works being undertaken. Further information on the Act can be obtained from Environment Australia's Community Information unit (1800 803 772) or from the following website [www.environment.gov.au/epbc](http://www.environment.gov.au/epbc). EPBC *Act Administrative Guidelines on Significance (July 2000)* are available to assist people in deciding whether activities are likely to need consideration under the Act.

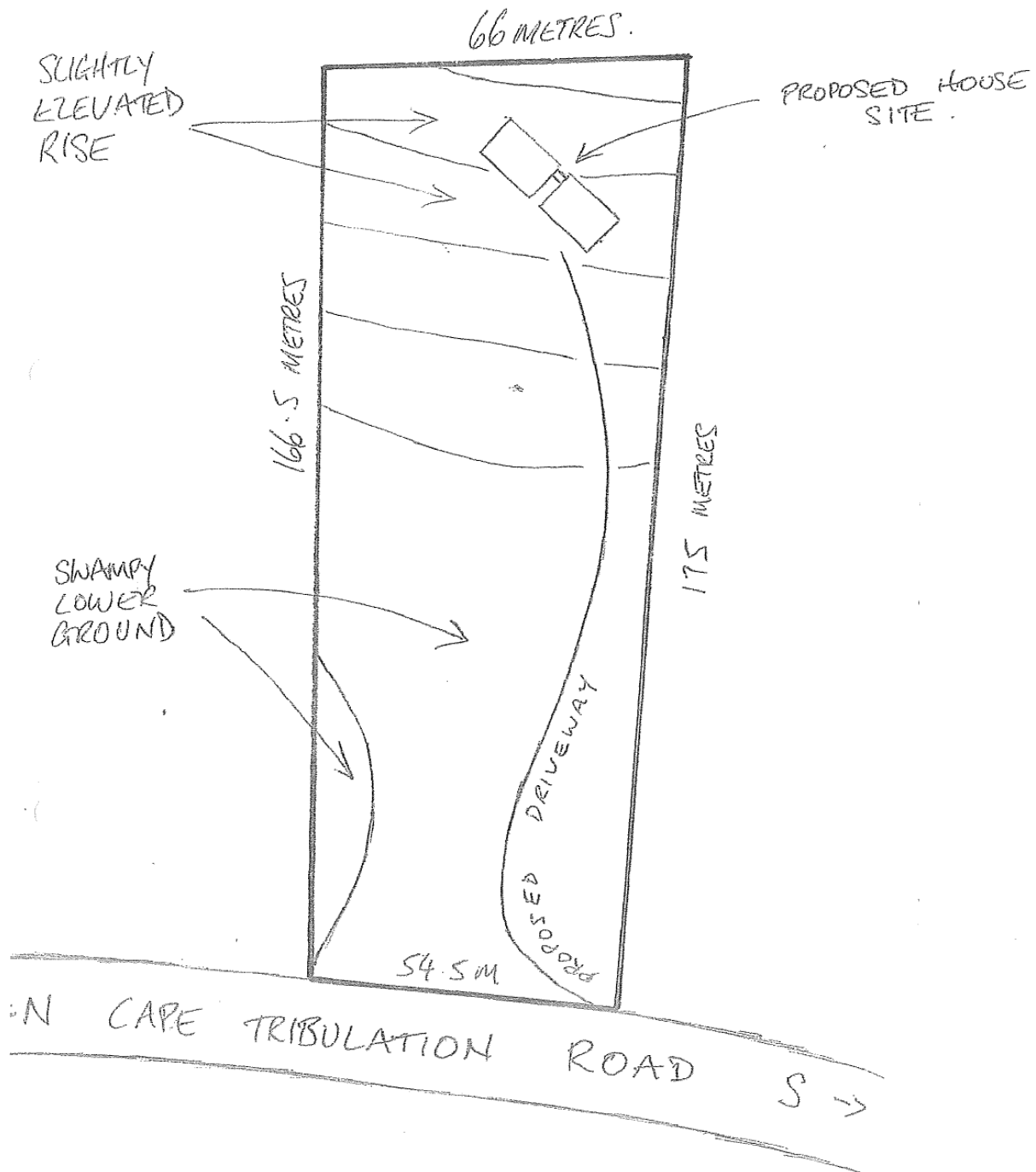
You are advised that the taking of water, or interfering with water from streams or groundwater sources will require a permit administered under the *Water Act 2000* and issued by the regional office of the Department of the Natural Resources and Mines. The related infrastructure will/may require an approval for operational works pursuant to the *Integrated Planning Act 1997*. Further information can be obtained from the Department of Natural Resources and Mines at Cairns, Telephone 4039 8275.

**5. Further Development Approvals Required:**

Building Work  
Plumbing & Drainage Permit

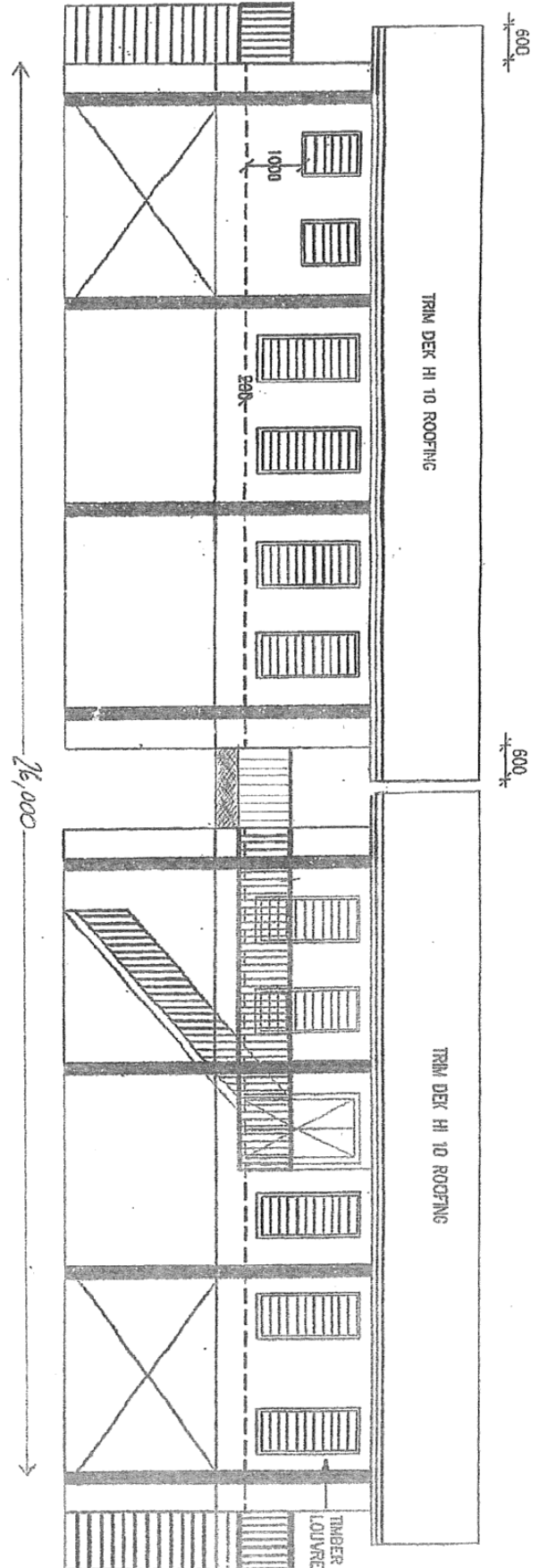
Terry Melchert  
**Chief Executive Officer**

PROPOSED DWELLING FOR  
ANGUS HENDERSON  
LOT 55  
CAPE TRIBULATION ROAD  
DIWAN, Q4873



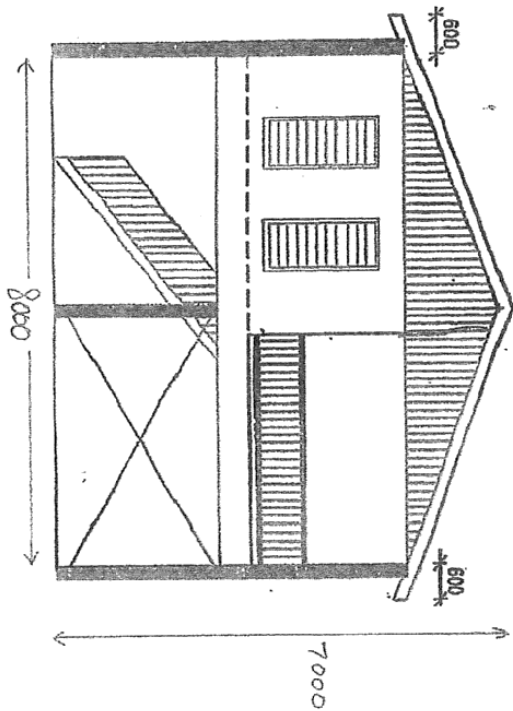
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## ELEVATION

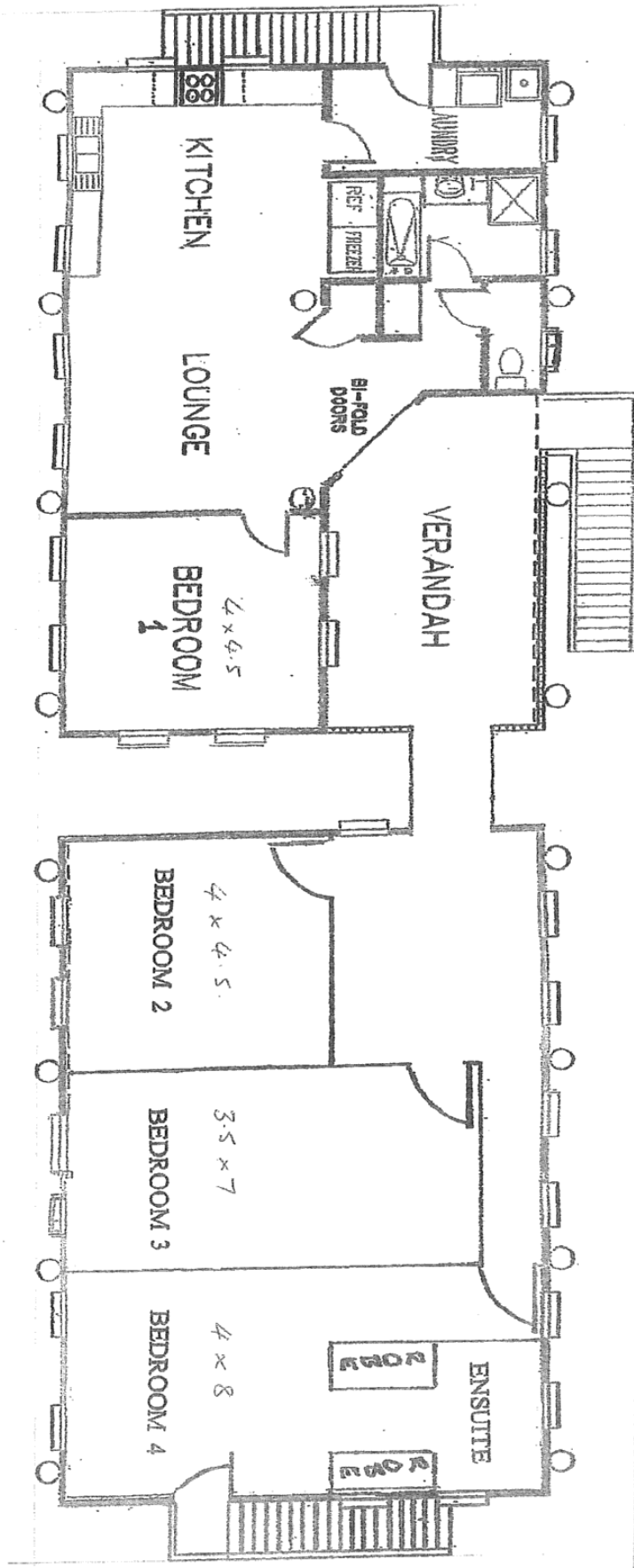
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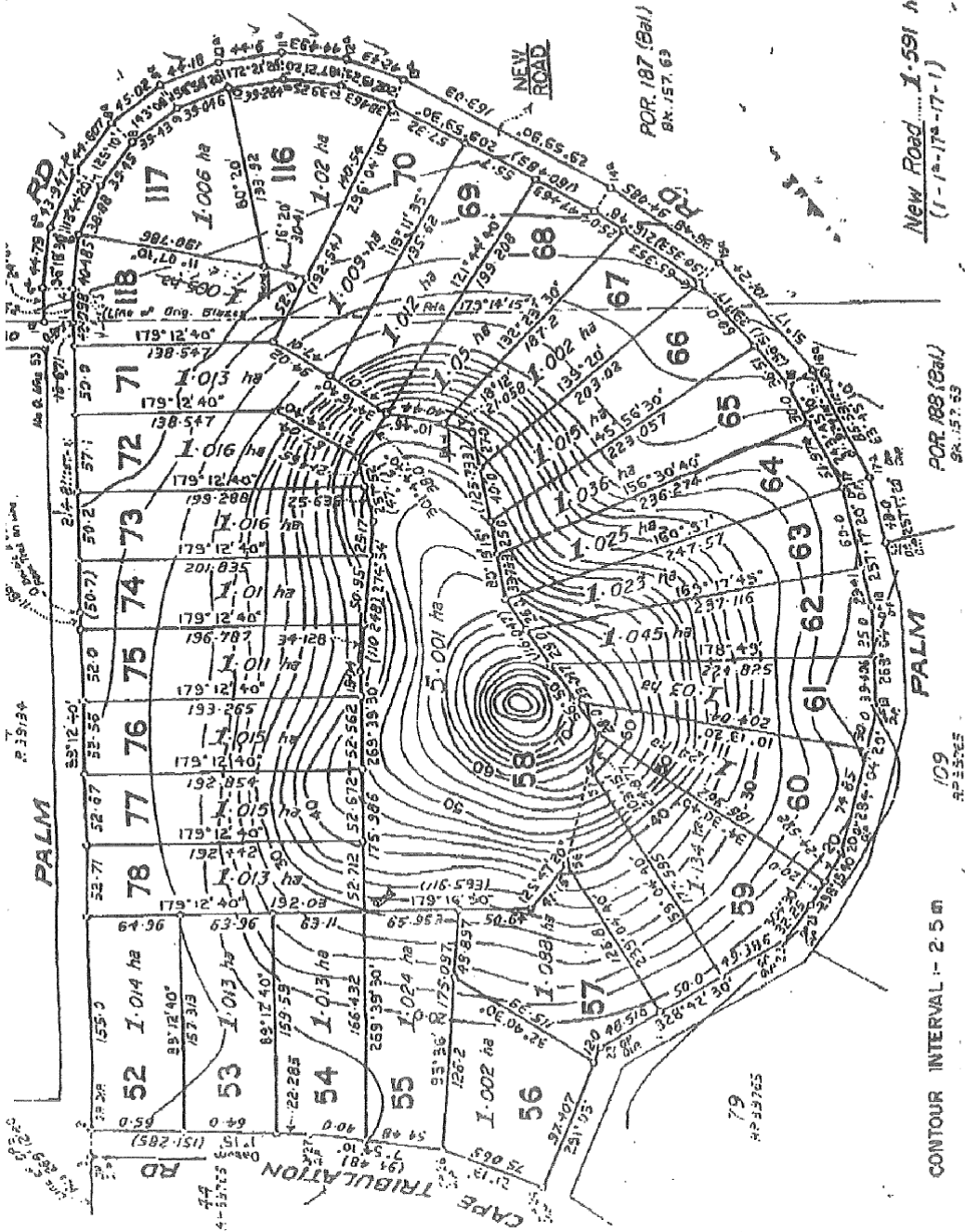
PROPOSED DWELLING FOR  
ANGUS HENDERSON  
LOT 55  
CAPE TRIBULATION ROAD  
DIWAN, Q4873

PROPOSED DWELLING FOR  
ANGUS HENDERSON  
LOT 55  
CAPE TRIBULATION ROAD  
DIWAN, Q4873

SCALE: 1 = 100



UPPER FLOOR PLAN



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TOWN 99766

PAISH. ALEXANDER

PLAN OF LOTS 52 to 78 & 116 to 118

[illegible]

187 & 153

## Reasons for Decision

1. Sections 87 of the *Planning Act 2016*:
  - a) to ensure the development satisfies the benchmarks of the 2018 Douglas Shire Planning Scheme Version 1.0; and
  - b) 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 on 23 March 2020 under section 51 of the *Planning Act 2016* and Part 1 of the *Development Assessment Rules*;
  - b) the extension 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.

## **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

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Current as at 1 July 2019

Authorised by the Parliamentary Counsel



- (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, 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.