

24 March 2023

**Enquiries:** Rebecca Taranto  
**Our Ref:** MCUC 2022\_5127/1 (Doc ID:1141769)  
**Your Ref:**

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

Vermilion 21 Pty Ltd (Tte)  
C/- Daniel Favier (Aspire Town Planning)  
PO Box 1040  
MOSSMAN QLD 4873

Dear Sir/Madam

**Development Application for Material Change of Use (Dwelling house)  
At 34 Murphy Street Port Douglas  
On Land Described as Lot 126 on SP144708**

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

Please quote Council's application number: MCUC 2022\_5127/1 in all subsequent correspondence relating to this development application.

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

Yours faithfully



**For**  
**Paul Hoyer**  
**Manager Environment & Planning**

encl.

- Decision Notice
  - Approved Drawing(s) and/or Document(s)
  - Reasons for Decision - response to properly made submissions.
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Approval (with conditions)

*Given under s 63 of the Planning Act 2016*

#### Applicant Details

Name: Vermilion 21 Pty Ltd (Tte)  
Postal Address: C/- Daniel Favier (Aspire Town Planning)  
PO Box 1040  
Mossman QLD 4873  
Email: admin@aspireqld.com

#### Property Details

Street Address: 34 Murphy Street Port Douglas  
Real Property Description: Lot126 on SP144708  
Local Government Area: Douglas Shire Council

#### Details of Proposed Development

Development Permit for MCU - Material Change of Use (Dwelling house)

#### Decision

Date of Decision: 24 March 2023  
Decision Details: Approved (subject to conditions)

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

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

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

Drawing or Document	Reference	Date
Lower Ground, Ground Floor, 1 <sup>st</sup> Floor Areas	Danny Vos Architect Rev 0 Sheet 1.0	08/02/2023
Proposed Dwelling	Danny Vos Architect Rev 0	08/02/2023

	Sheet 1.1	
Lower Ground Floor Plan	Danny Vos Architect Rev0 Sheet 2.0	08/02/2023
Ground Floor Plan	Danny Vos Architect Rev 0 Sheet 2.1	08/02/2023
First Floor Plan	Danny Vos Architect Rev 0 Sheet 2.2	08/02/2023
Roof Plan	Danny Vos Architect Rev 0 Sheet 2.3	08/02/2023
Side and rear Elevation	Danny Vos Architect Rev 0 Sheet 3.1	08/02/2023
Owen St Reserve and Front Elevation at Boundary	Danny Vos Architect Rev 0 Sheet 3.2	08/02/2023
Elevations 01, 01 and 03	Danny Vos Architect Rev 0 Sheet 4.0	08/02/2023
Elevation 04 and Section 01	Danny Vos Architect Rev 0 Sheet 4.1	08/02/2023
Section 02 and 03	Danny Vos Architect Rev 0 Sheet 4.2	08/02/2023
Section 04 and 05 and Retaining Wall Elevation	Danny Vos Architect Rev 0 Sheet 4.3	08/02/2023
Stormwater Management and Retaining Wall Plan	CMG Consulting Engineers Pty Ltd Dwg No. 45853-SK01 AMDT A	February 2023
Driveway Grading	CMG Consulting Engineers Pty Ltd	February 2023

	Dwg No. 45853-SK02 AMDT A	
Landscape Concept Plan	Hortulus Australia Pty Ltd Drawing 1	25 November 2022
Site Planting Plan	Hortulus Australia Pty Ltd Drawing 2	25 November 2022
Landscape Plan for Town Planning Approval	Hortulus Australia Pty Ltd Drawing 3	25 November 2022
Schematic Elevation	Hortulus Australia Pty Ltd Drawing 4	25 November 2022
Schematic Elevation	Hortulus Australia Pty Ltd Drawing 5	25 November 2022

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

#### **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. 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.

#### **Site Drainage Study**

3. With reference to the Site Drainage Management Plan drawn by CMG Consulting Engineers Pty Ltd, Drawing No. 45853-SK01, dated February 2023, undertake a local drainage study of the site to determine the drainage impacts on upstream and downstream properties and the mitigation measures required to minimise such impacts. In particular, the study must address the following:
  - a. The contributing catchment boundaries;
  - b. Primary and secondary flow paths for the 5, 20, 50 and 100 year ARI flood events;
  - c. Delivery of all storm water from the proposed development to the storm water pit located within the road reserve to the south-west of the allotment.
  - d. Information on the proposed works and any impacts on the receiving stormwater pit.

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

The Site Drainage Study and Drainage Management Plan must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work with the necessary works being undertaken prior to Commencement of Use.

### **External Storm Water Connection**

4. Connection of the proposed onsite stormwater drainage infrastructure to the stormwater pit located in the Murphy Street road reserve will require a separate Operation Works application be submitted to Council.

### **Earthworks Plan**

5. Submit an Earthworks Plan and retaking to be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Works. The plan is to detail those areas that will be characterised by earth batters and those areas to be retained.

All earthworks must be carried out in accordance with the requirements as detailed in the Geotechnical Report prepared by Geo Design, Reference 22098AA-D-R01-v1, dated 7 February 2023, prepared by Stephen Ford RPEQ 25762. All works are to be carried out under the direction and supervision of Geo Design to confirm design and construction adequacy.

### **Sediment and Erosion**

6. A copy of the contractors Erosion and Sediment Control Plan (ESCP) is to be submitted to Council prior to the issue of a Development Permit for Building Work.

All earthworks must be carried out in accordance with section CP1.13 and D5 of the FNQROC Development Manual. Measures nominated in the ESCP must be implemented prior to commencement of any earthworks. 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.

### **Access Driveway**

7. Should the existing access driveway on Council land be required to be extended to facilitate the development, an Operational Works application will be required to be submitted to Council.

Any extension to the driveway must be developed in accordance with the latest version of AS2890-2004 with the following design parameters being met:

- a. Vehicle access to any other allotment must not be inhibited by the section of private access driveway in the Murphy Street road reserve.
- b. Any proposed removal or damage to vegetation within the adjacent Murphy Street road reserve requires approval be sought from Council prior to the commencement of work.

The access driveway within the road reserve of Murphy Street will not become a Council asset and will not be maintained by Council. The ongoing maintenance obligation of the driveway in the Murphy Street road reserve remains with the property owner at all times.

### **Water Supply and Sewerage Works Internal**

8. Undertake the following water supply and sewerage works internal to the subject land:
  - a. Provide a single internal sewer connection which complies with the requirements of the Queensland Development Code MP 1.4. Should HCB be altered, provide Council with CCTV footage prior and on completion of the works.
  - b. Provide a single internal water connection;

- c. Provide an internal water pump and storage tanks to the extent necessary to provide adequate supply and pressure at the house pad. Supply and installation of the pump and associated pipework and fillings is to be at the applicant's cost.

All the above works must be designed and constructed in accordance with the FNQROC Development Manual. All works must be carried out to the requirements and satisfaction of the Chief Executive Officer prior to Commencement of Use.

### **Water Supply Connection**

9. Connection to Council's reticulated water supply can be achieved through a plumbing application to Council for water connection.

### **Landscaping**

10. The site must be landscaped in accordance with details included on the landscaping concept plan prepared by Hortulus Landscape Designs dated 25 November 2022. All landscaping must be completed prior to the commencement of use and maintained at all times to the satisfaction of the Chief Executive Officer.

### **Damage to Council Infrastructure**

11. In the event that any part of Council's existing sewer / water or road infrastructure is damaged as a result of construction activities occurring on the site, including but not limited to; mobilisation of heavy construction equipment, stripping and grubbing, 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.

### **Bushfire Hazard**

12. The house must be developed in accordance with AS3959- 2009.

### **External Building Colours**

13. Prior to the issue of a Development Permit for Building Work, the external colours of the building must be submitted to Council for endorsement by the Chief Executive Officer. The external building colours must be reflective of the surrounding natural environment, must not be white or metallic. The building exterior finishes, including any exposed concrete, fixed / louvered and pool glazing, must be of suitably dark colours to blend into the surrounding vegetation. All glazing must be of a non-reflective finish.

### **Off-site impacts**

14. Dust emissions or other air pollutants, including odours, must not extend beyond the boundary of the site and cause a nuisance to surrounding properties.

### **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 the provisions of s85 of the *Planning Act 2016*.
2. 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.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
4. Light emanating from the site must not cause a light nuisance to surrounding properties in accordance with the *Environmental Protection Act 1994*.
5. The development approval does not permit the landscaping beyond the property

boundary. Any such work would be subject to achieving suitable tenure and approval under the Planning Scheme.

6. For information relating to the *Planning Act 2016* log on to [www.dsdmip.qld.gov.au](http://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](http://www.douglas.qld.gov.au) .

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### **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 Operational Work

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

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### **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*.

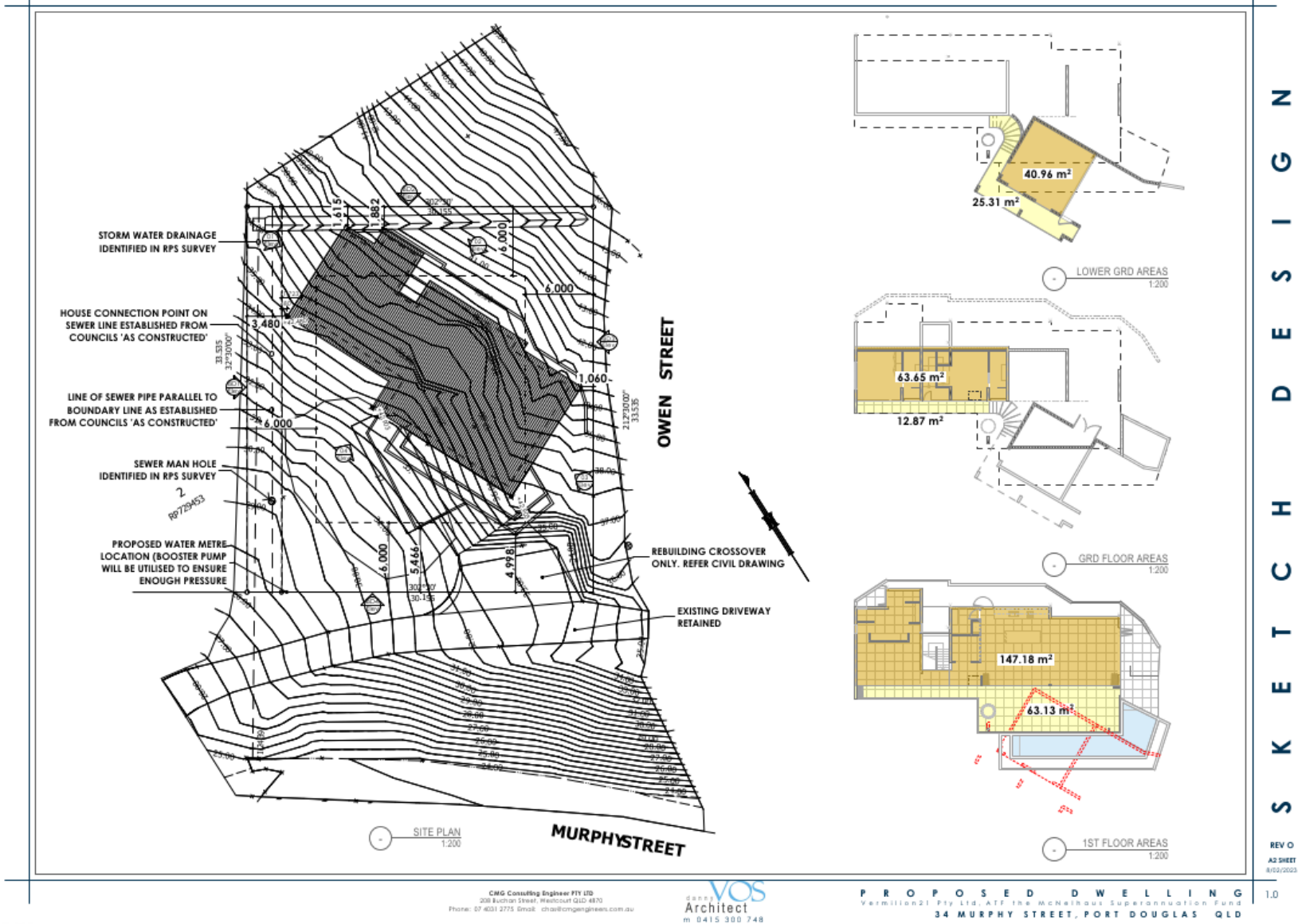
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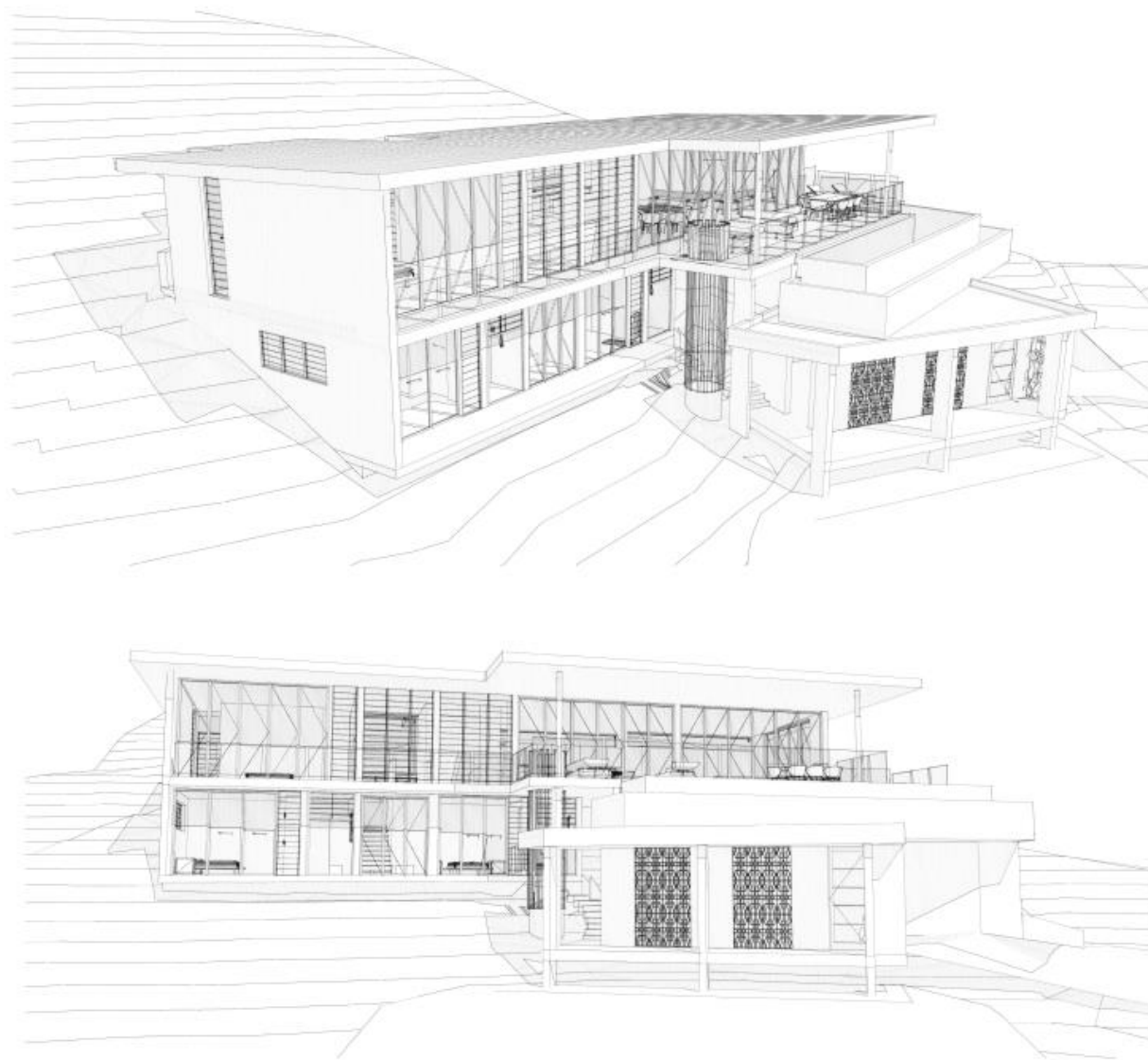
### **Rights to make Representations & Rights of Appeal**

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 are attached.

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





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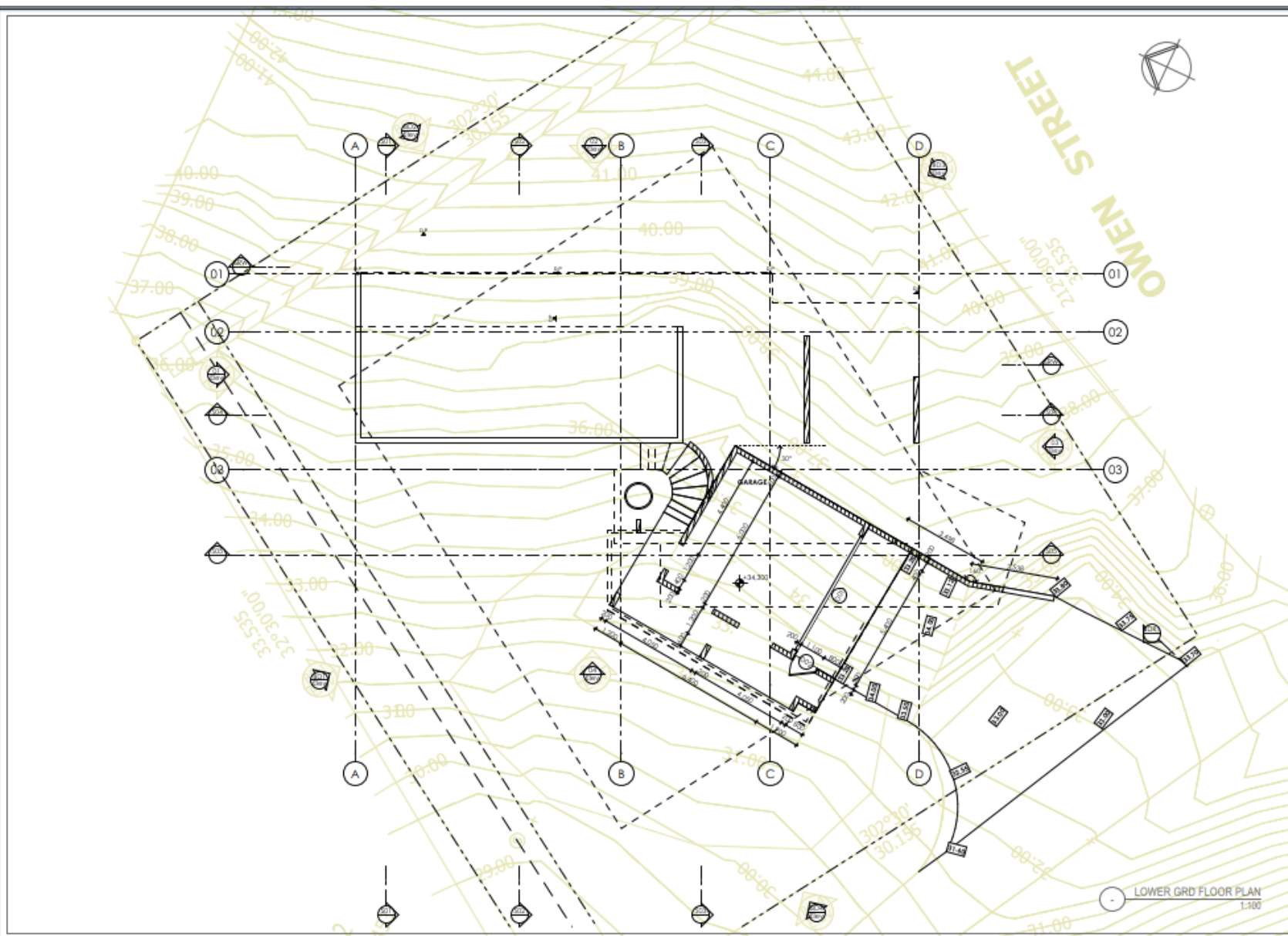
REV O  
A2 SHEET  
8/05/2023

CMG Consulting Engineers PTY LTD  
308 Bishop Street, Westport QLD 4870  
Phone: 07 4031 2775 Email: chris@cmgengineers.com.au

VOS  
Architect  
m 0415 300 748

PROPOSED DWELLING  
W/111/2021 FLY LTD, ATT THE MONATROUS SUPERSTITION FLY  
34 MURPHY STREET, PORT DOUGLAS QLD

1.1



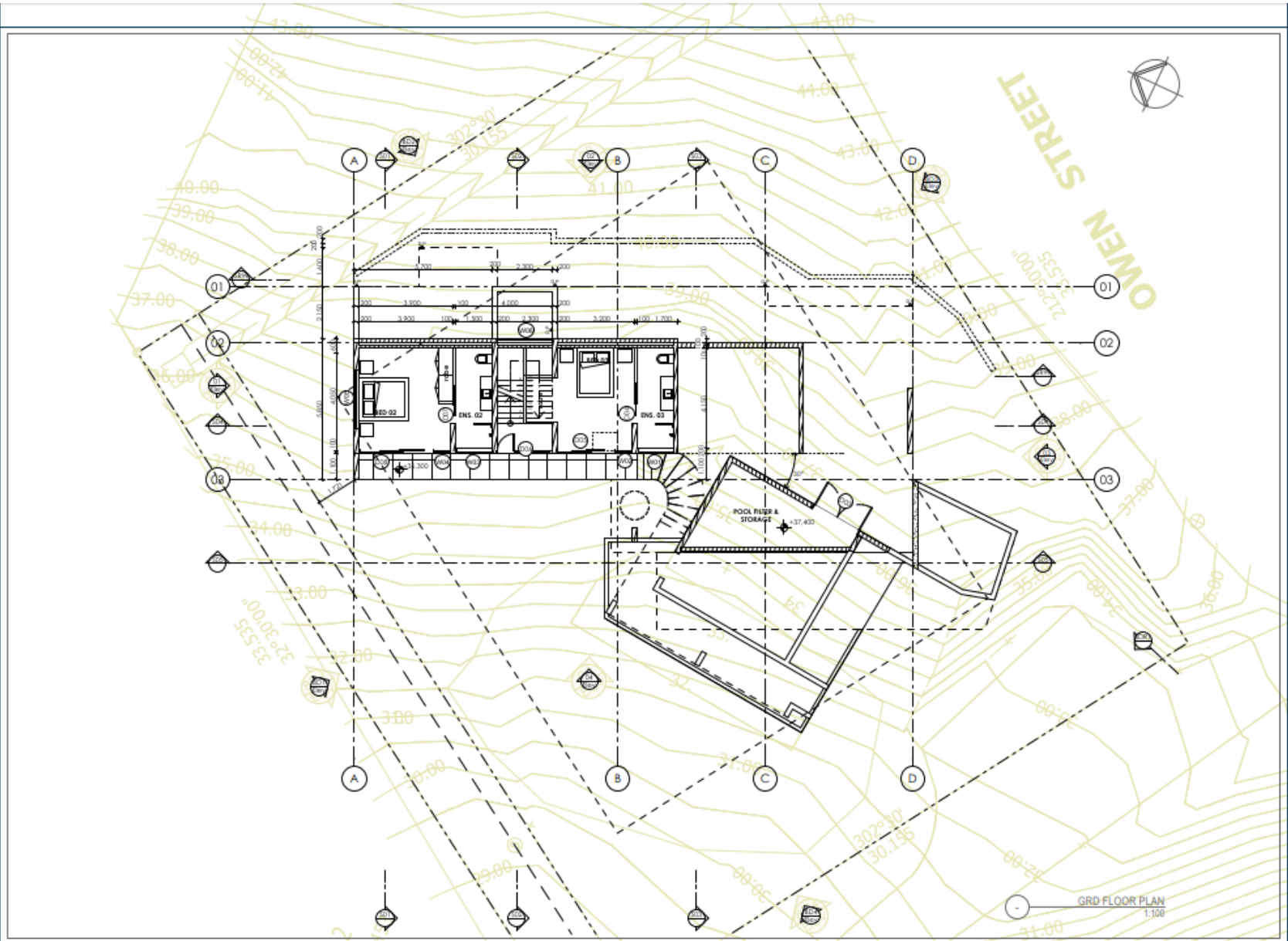
CMG Consulting Engineer PTY LTD  
208 Buchanan Street, Westcourt QLD 4870  
Phone: 07 4031 2775 Email: chris@cmgengineers.com.au

VOS  
Architect  
m. 0415 300 748

PROPOSED DWELLING  
Vermillion21 Pty Ltd ATF the McNeilhaus Superannuation Fund  
34 MURPHY STREET, PORT DOUGLAS QLD

REV O  
A2 SHEET  
4/10/2023

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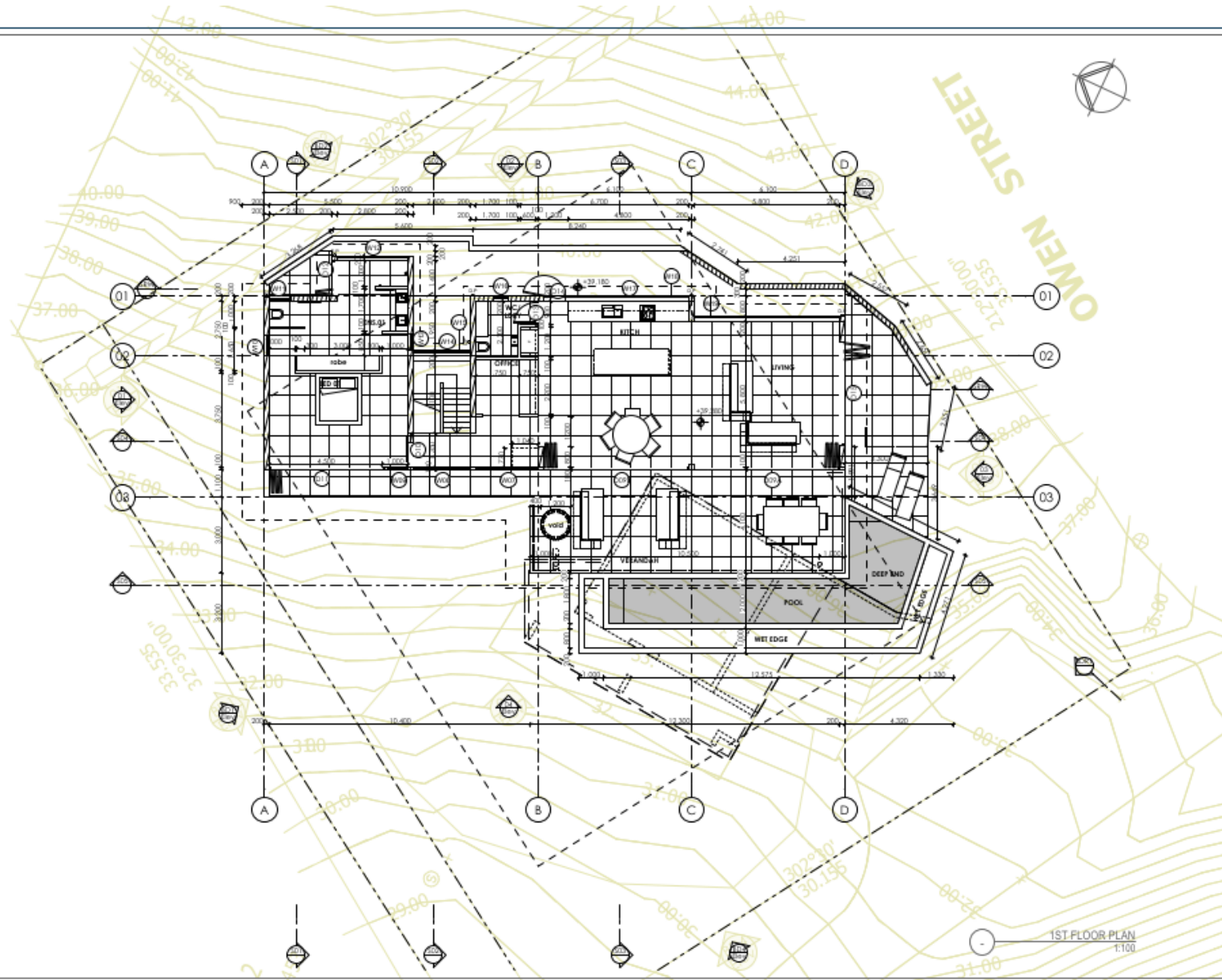
CMG Consulting Engineer Pty Ltd  
 208 Buchan Street, Westcourt QLD 4870  
 Phone: 07 4031 2775 Email: chris@cmgengineers.com.au

**VOS**  
 Architect  
 m 0415 300 748

**PROPOSED DWELLING**  
 Vermilion21 Pty Ltd, ATF the McNeilhaus Superannuation Fund  
 34 MURPHY STREET, PORT DOUGLAS QLD

REV O  
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 8/02/2023

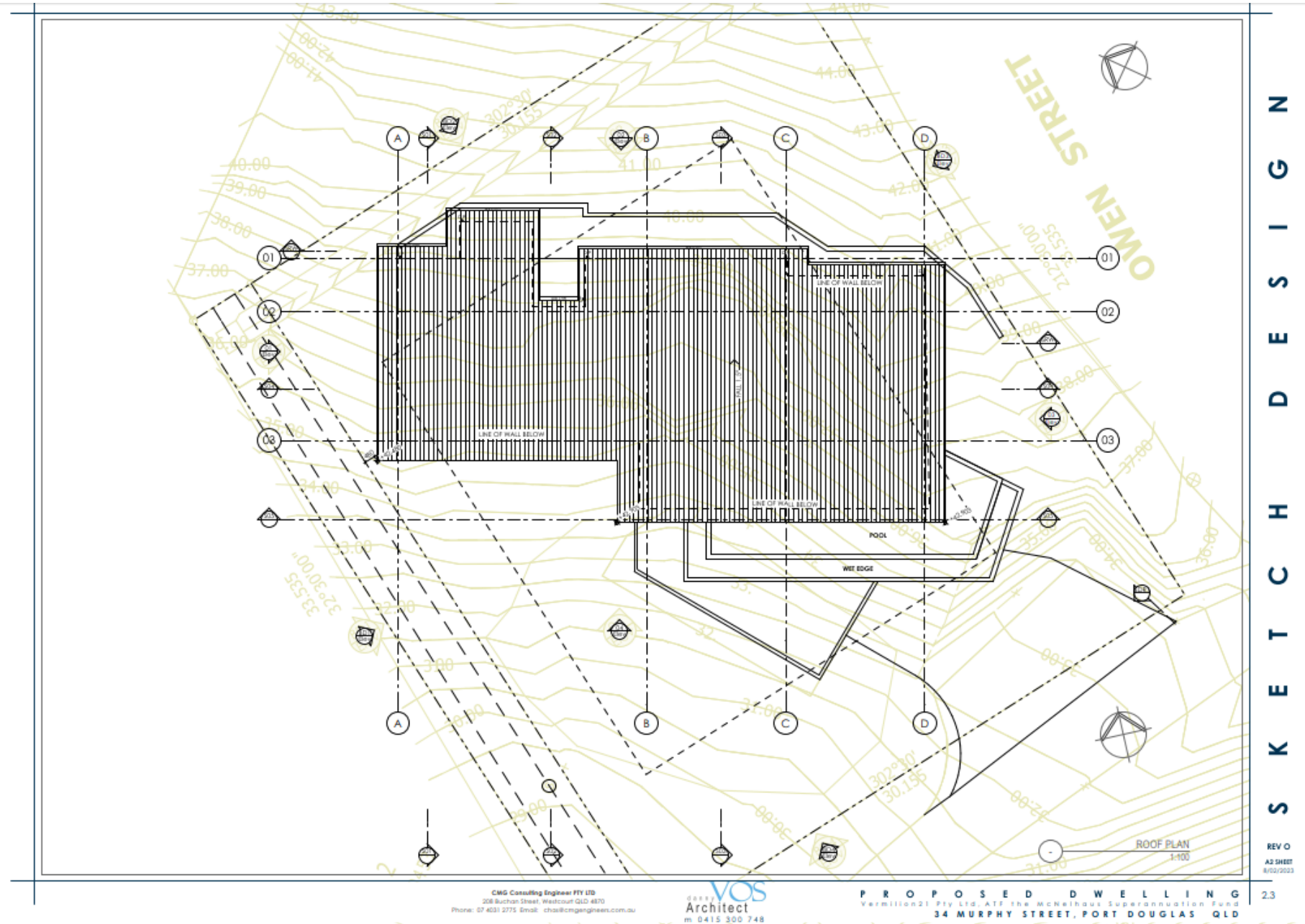
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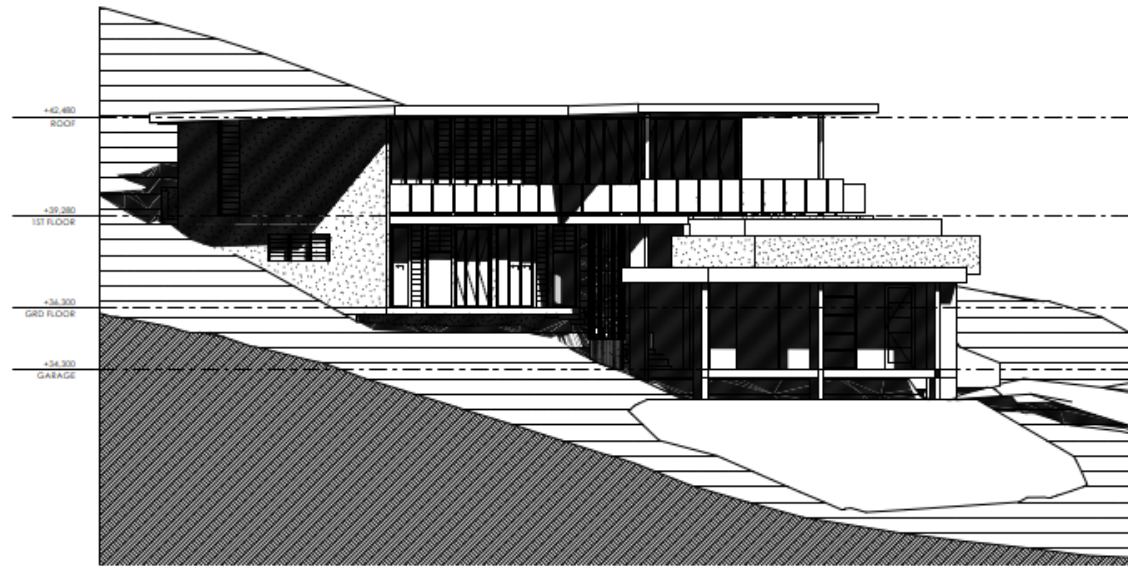


CMG Consulting Engineer PTY LTD  
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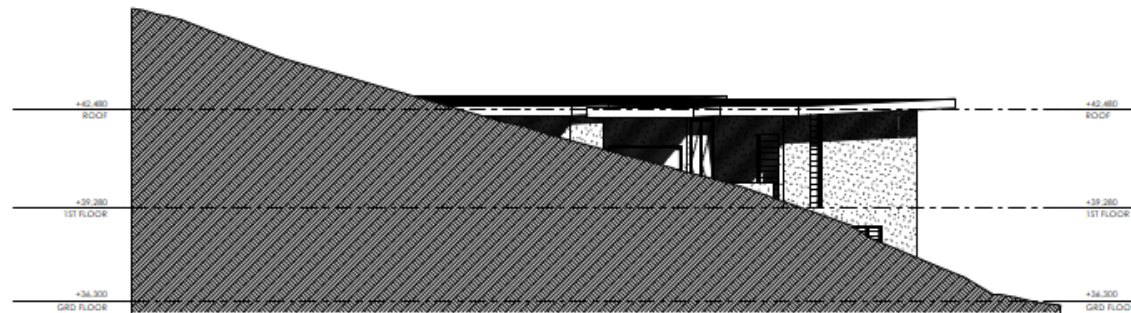
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Architect  
m 0415 500 748

PROPOSED DWELLING  
Vermilion21 Pty Ltd, ATF the McNeilhaus Superannuation Fund  
34 MURPHY STREET, PORT DOUGLAS QLD





BD1 SIDE ELEVATION AT BOUNDARY  
1:100



BD2 REAR ELEVATION AT BOUNDARY  
1:100

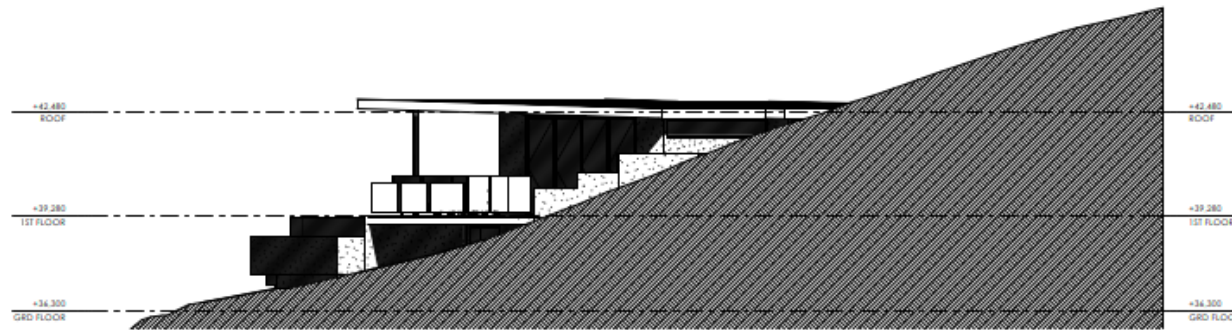
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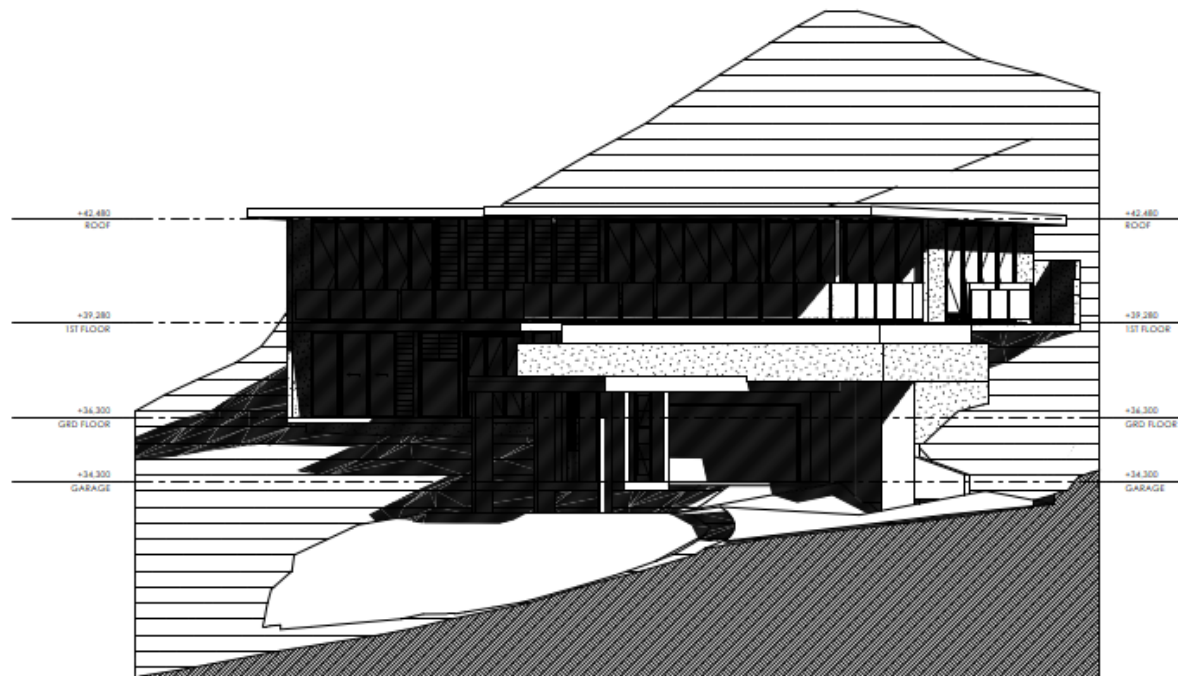
VOS  
Architect  
m 0415 300 748

PROPOSED DWELLING  
Vermilion21 Pty Ltd, ATF The McNeithaus Superannuation Fund  
34 MURPHY STREET, PORT DOUGLAS QLD

3.1



BD3 OWEN ST RESERVE ELEVATION AT BOUNDARY  
1:100



BD4 FRONT ELEVATION AT BOUNDARY  
1:100

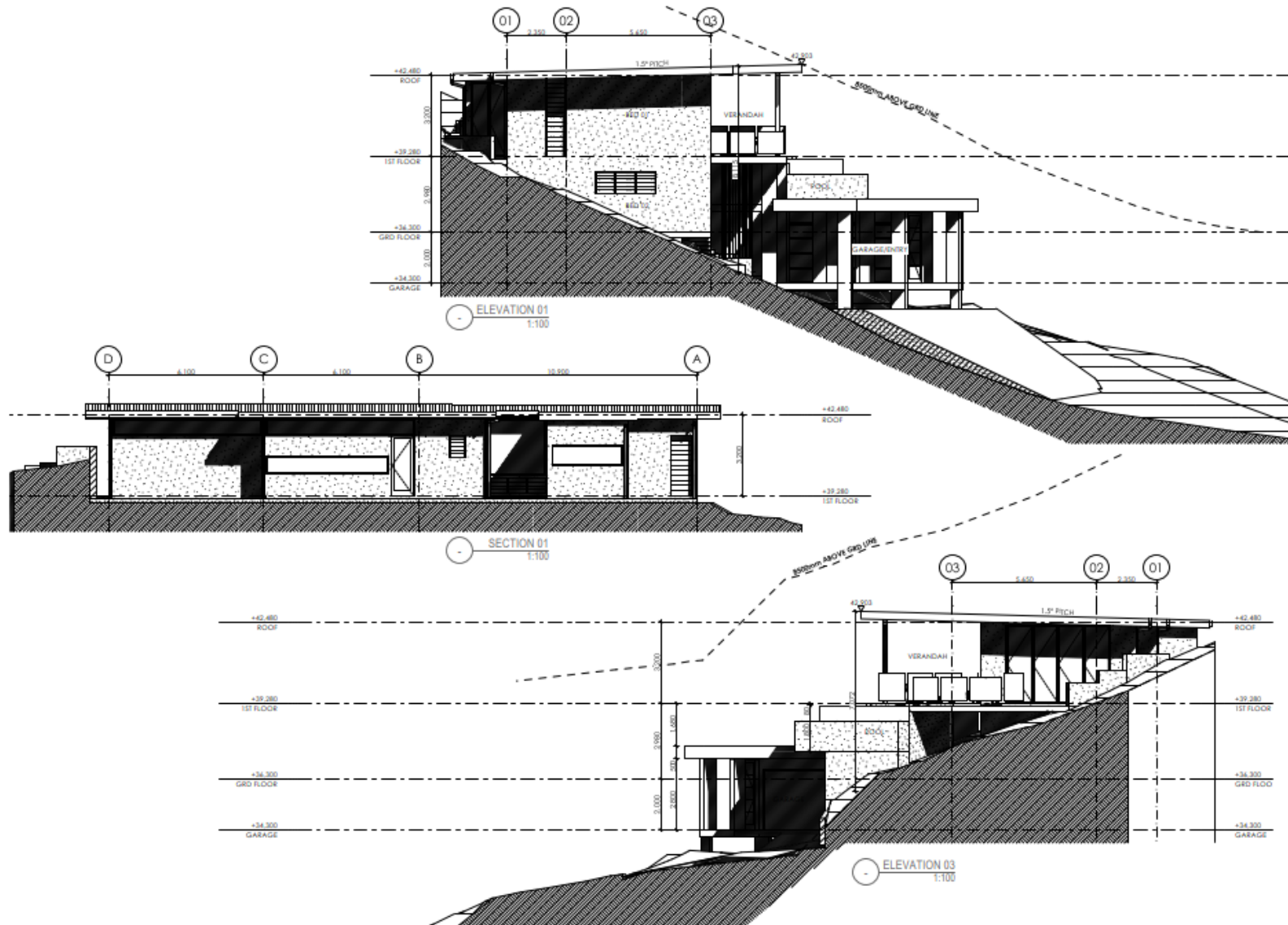
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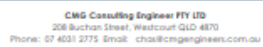
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Vermilion21 Pty Ltd, ATF The McNeilhaus Superannuation Fund  
34 MURPHY STREET, PORT DOUGLAS QLD

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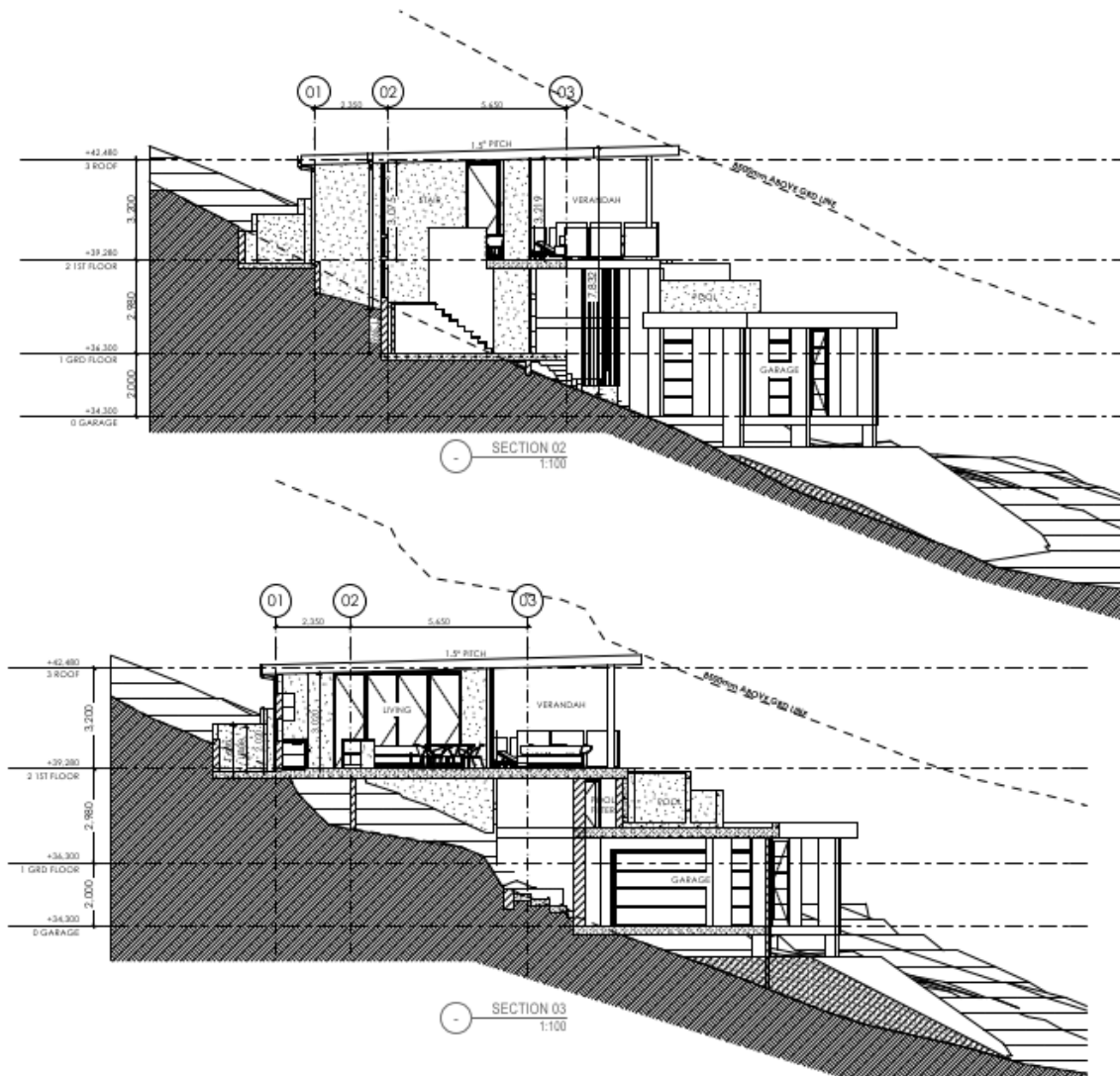


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8/02/2023

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PROPOSED DWELLING  
Vermilion21 Pty Ltd, ATF The McNeilhaus Superannuation Fund  
34 MURPHY STREET, PORT DOUGLAS QLD



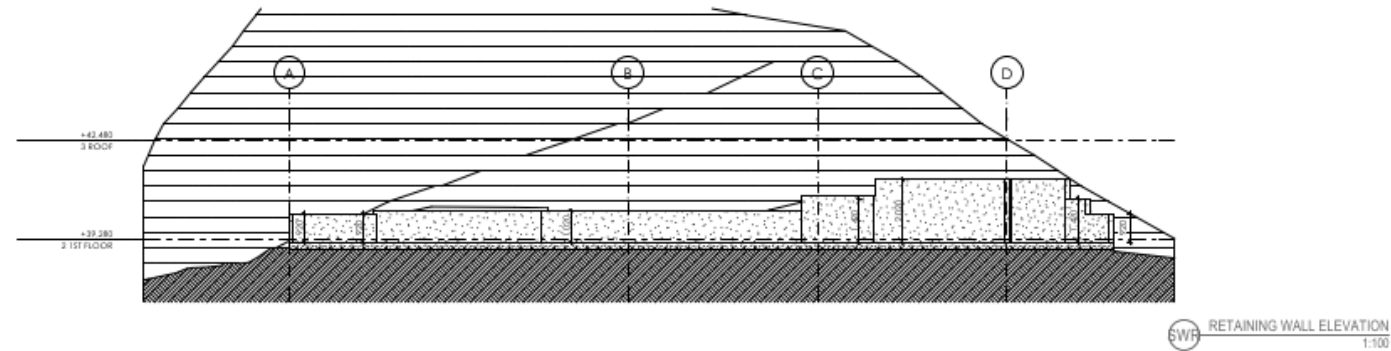
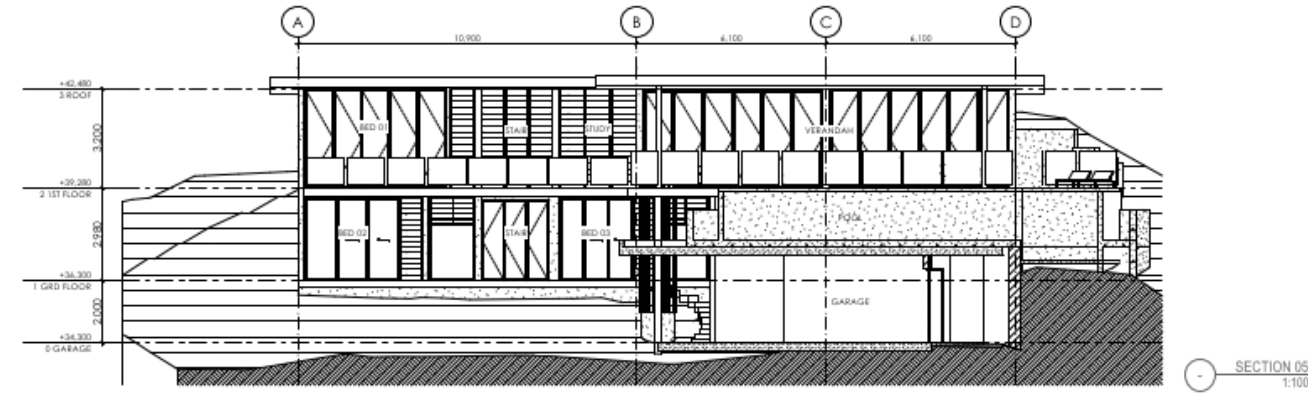
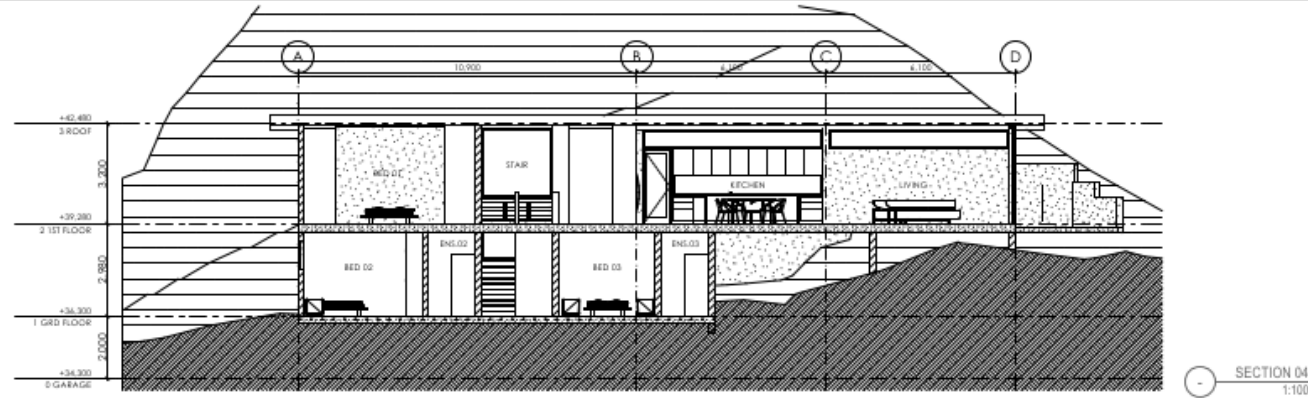
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CMG Consulting Engineers Pty Ltd  
208 Buchan Street, Westport QLD 4870  
Phone: 07 4031 2775 Email: chris@cmgengineers.com.au

VOS  
Architect  
m 0415 300 748

PROPOSED DWELLING  
Vermilion21 Pty Ltd, AT1 The McNeilhaus Superannuation Fund  
34 MURPHY STREET, PORT DOUGLAS QLD

4.2



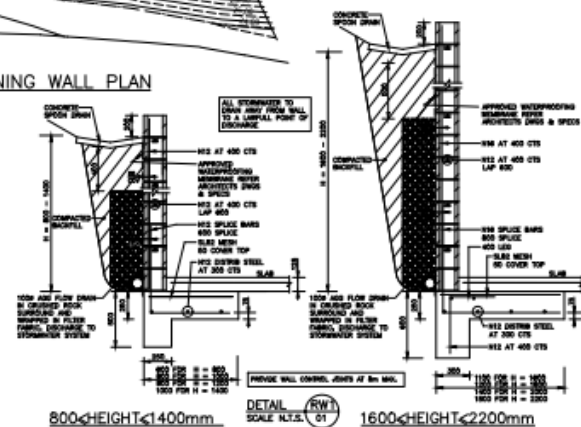
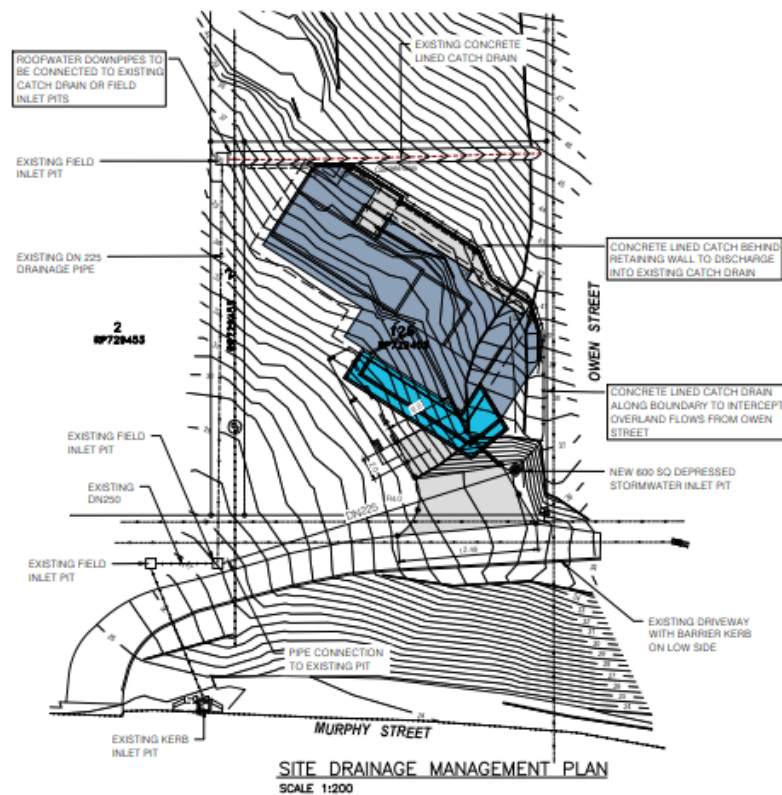
CMG Consulting Engineer Pty Ltd  
208 Buchan Street, Westcreek QLD 4870  
Phone: 07 4031 2775 Email: chas@cmgengineers.com.au

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Architect  
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PROPOSED DWELLING  
Vermilion21 Pty Ltd, ATF The McNeilhaus Superannuation Fund  
34 MURPHY STREET, PORT DOUGLAS QLD

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8/02/2023

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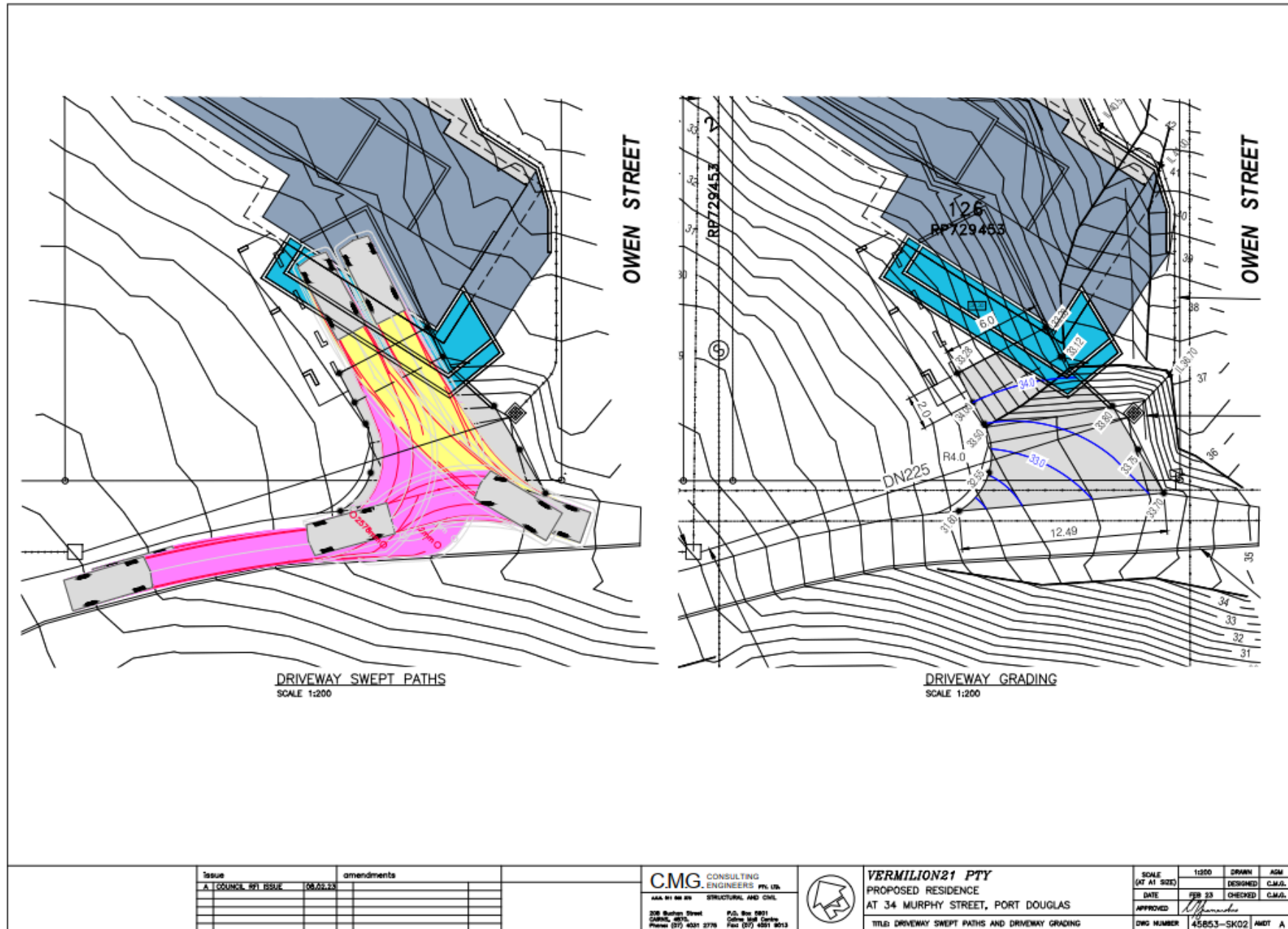
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A COUNCIL RP1 ISSUE 06.02.23	

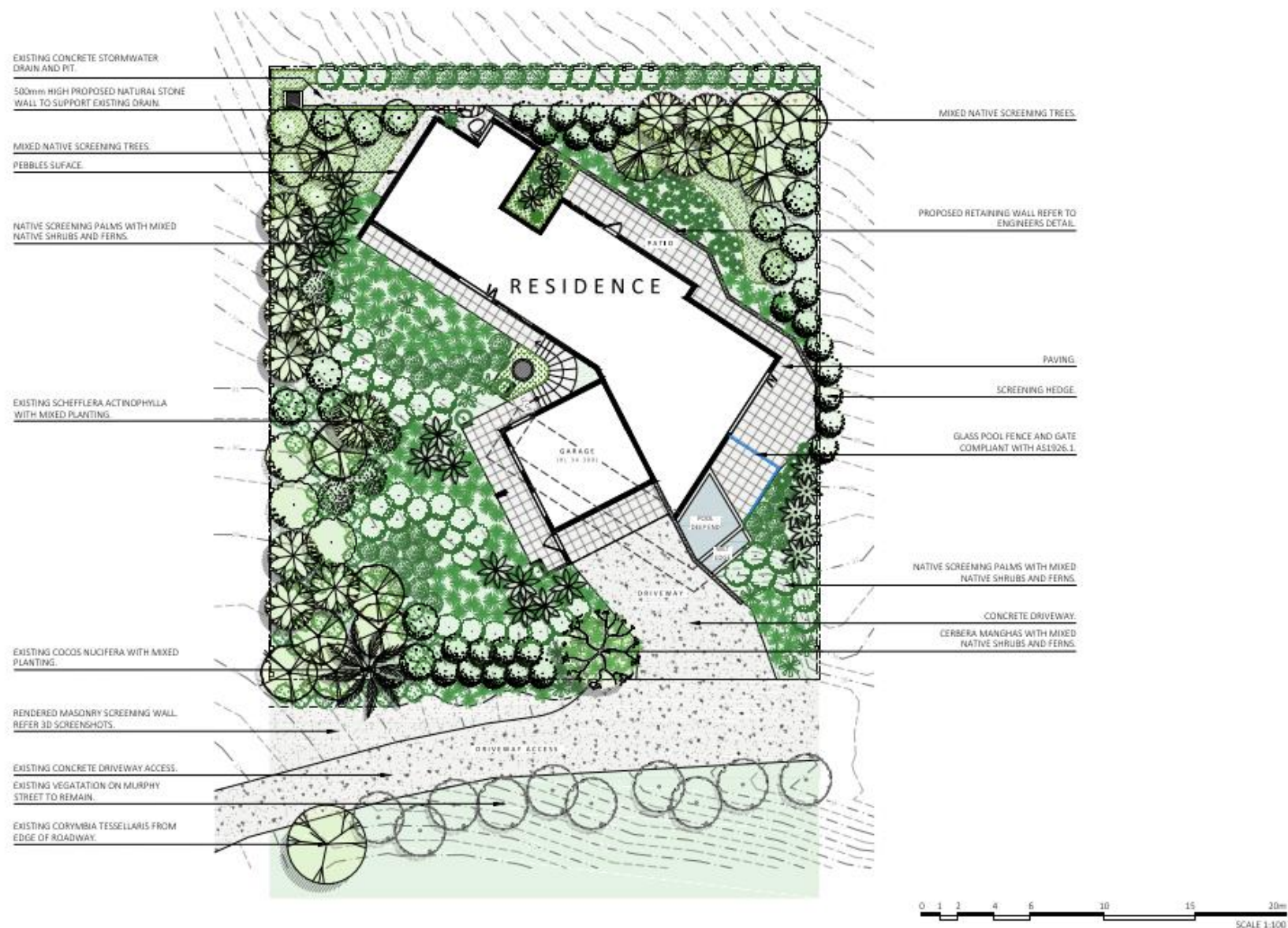
**C.M.G. CONSULTING ENGINEERS PTY. LTD.**  
 AAA R1 90 89 STRUCTURAL AND CIVIL  
 208 Butha Street  
 CARPENTERS POINT  
 Phone (07) 4331 2776  
 P.O. Box 9901  
 Cairns QLD 4850  
 Fax (07) 4331 9513



**VERMILION21 PTY**  
 PROPOSED RESIDENCE  
 AT 34 MURPHY STREET, PORT DOUGLAS  
 TITLE: STORMWATER MANAGEMENT & RETAINING WALL PLAN

SCALE (AT 1:200)	1:200	DRAWN	AGM
DATE	FEB 23	DESIGNED	C.M.G.
APPROVED	<i>[Signature]</i>	CHECKED	C.M.G.
DWG NUMBER	45853-SK01	AMDT	A





VERMILION21 PTY LTD RESIDENCE

SITE ADDRESS: 34 Murphy Street | Port Douglas QLD

DRAWING TITLE

LANDSCAPE CONCEPT PLAN

SCALE: 1:100@A1

DATE: 25 November 2022

DRAWING NO.

1

HORTULUS AUSTRALIA PTY LTD

338 Port Douglas Road | Port Douglas QLD Australia 4877

T: 0412944793

W: www.hortulus.com.au

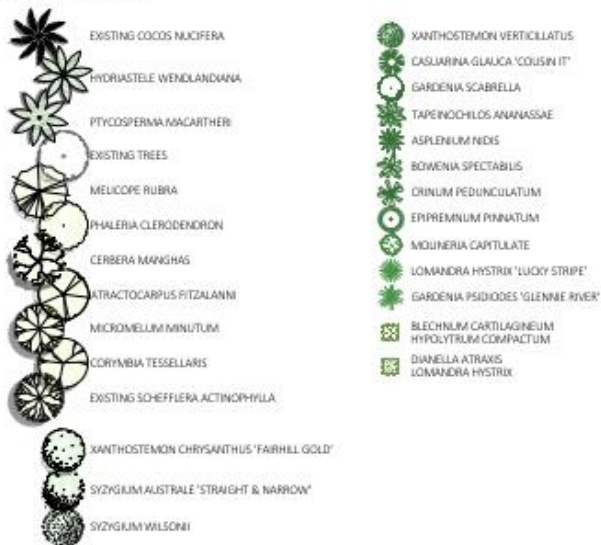
E: design@hortulus.com.au



## PLANT SCHEDULE

Code	Botanical Name	Common Name	Qty.	For Sale	Type	It's W
<b>TREES &amp; PALMS</b>						
AF	<i>Artocarpus foveolatus</i>	Brown gardenia	8	400.00	T	800
CM	<i>Cerbera manghas</i>	Native beach 'Red poison'	3	100.00	T	600
ON	<i>Coccothraustes</i>	Golden palm	3	Exting.	P	1200
CT	<i>Cordia alliodora</i>	Morion bay ash tree	1	Exting.	T	1200
HT	<i>Hydnastrole myrsinifolia</i>	Bogon swamp palm	16	200.00	P	600.5
HM	<i>Melicope indica</i>	Pearl chrysanthemum	3	300.00	T	1000
MM	<i>Moronelepis indica</i>	Love berry	13	800.00	T	500
HC	<i>Palmetto candelabra</i>	Native cypripedium	6	800.00	T	600
MA	<i>Phytophthora macrantha</i>	Macarthur palm	3	400.00	P	800
SA	<i>Syzygium australe 'Straight &amp; Narrow'</i>	Straight & narrow lilly pilli	24	300.00	T	600
SH	<i>Schottia laetevirens</i>	Pineapple tree	3	Exting.	T	600
DM	<i>Syzygium melaleuca</i>	Umbrella tree P. lilly pilli	4	200.00	T	500
AC	<i>Swartzia speciosa 'Australis'</i>	Red gardenia persea	14	400.00	T	600
<b>SHRUBS, GRASSES, GROUNDCOVERS &amp; CLIMBERS</b>						
AC	<i>Asplenium nidus</i>	Brick's nest fern	3	200.00	P	100
RI	<i>Blechnum cartilagineum</i>	Brake fern	19	140.00	S	0.140.5
CC	<i>Centropogon spathulatus</i>	Samia fern	3	200.00	S	300
CT	<i>Cyathea glauca 'Chrysom'</i>	Cycas (cycad)	25	300.00	S	0.300
CT	<i>Cyrtosperma integrifolium</i>	Native swamp lily	18	140.00	S	100
DA	<i>Dianella caerulea</i>	Blue lily	20	200.00	S	100
GP	<i>Sagittaria pinnatifida</i>	Native arrowhead	3	200.00	S	300
GP	<i>Gonolobus pinnatifidus 'Glenzie River'</i>	Glenzie river gardenia	35	140.00	GC	0.340
GS	<i>Gonolobus scabellus</i>	Cape lily gardenia	65	140.00	S	300
HC	<i>Hydrocotyle compacta</i>	Runaway sedge	35	140.00	S	0.340.5
IL	<i>Lomandra laevis</i>	Mitrus	26	200.00	S	100
GP	<i>Lomatium pinnatifidum 'Sandy dunes'</i>	Sandstone mitrus	94	140.00	S	100
AC	<i>Adiantum capillare</i>	Wetland lily	20	140.00	S	100
TA	<i>Tapeinophloeus australis</i>	Native beach tree fern	3	200.00	S	200
XV	<i>Xanthorrhoea verticillata</i>	Bottlebrush persea	50	200.00	S	200

### KEY TO SYMBOLS



VERMILION21 PTY LTD RESIDENCE

SITE ADDRESS: 34 Murphy Street | Port Douglas QLD

DRAWING TITLE

### SITE PLANTING PLAN

SCALE: 1:100@A1

DATE: 25 November 2022

 DRAWING NO.

2

HORTULUS AUSTRALIA PTY LTD

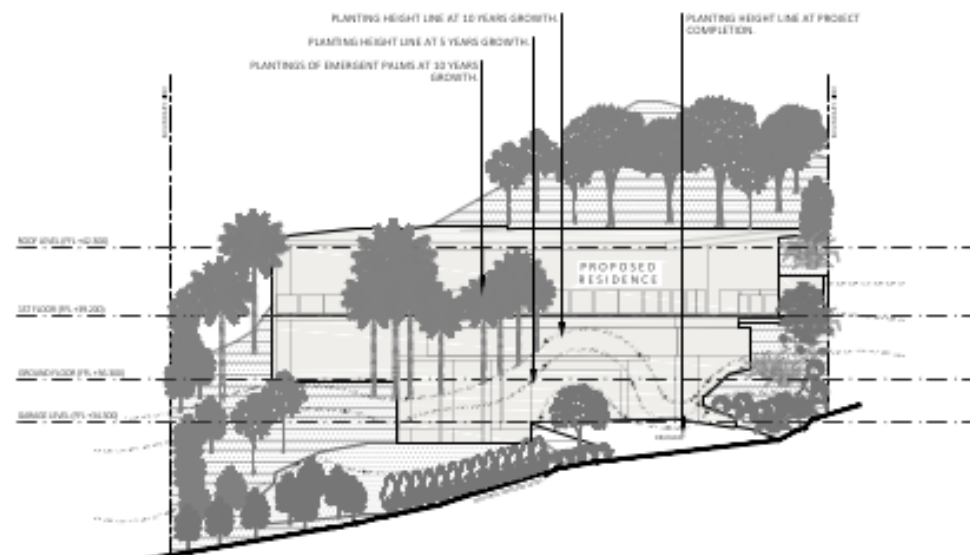
338 Port Douglas Road | Port Douglas QLD Australia 4877

T: 0412944793  
 Web: [www.hortus.nl](http://www.hortus.nl)

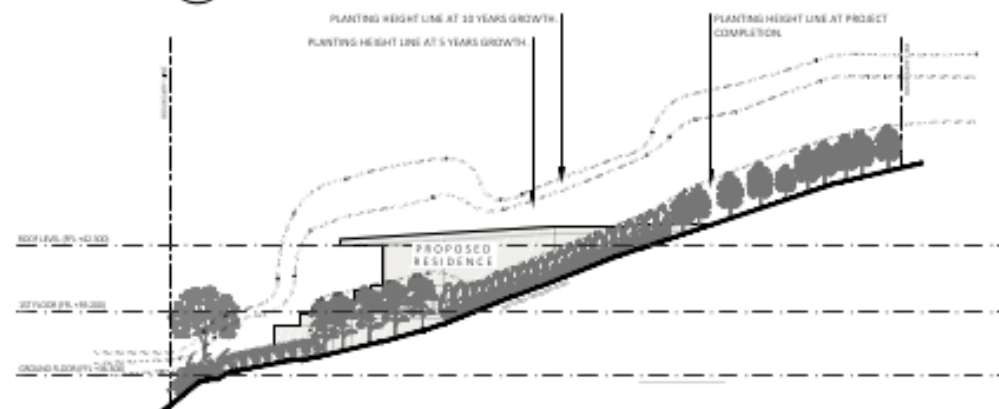
E: [design@hortulus.com.au](mailto:design@hortulus.com.au)

**HORTULUS**  
LANDSCAPE DESIGN / CONTRACT / MAINTENANCE  
P4099 1885 / HORTULUS.COM.AU





1 FRONT ELEVATION AT BOUNDARY - SCHEMATIC VEGETATION  
1:100



2 OWEN STREET RESERVE ELEVATION AT BOUNDARY - SCHEMATIC VEGETATION  
1:100

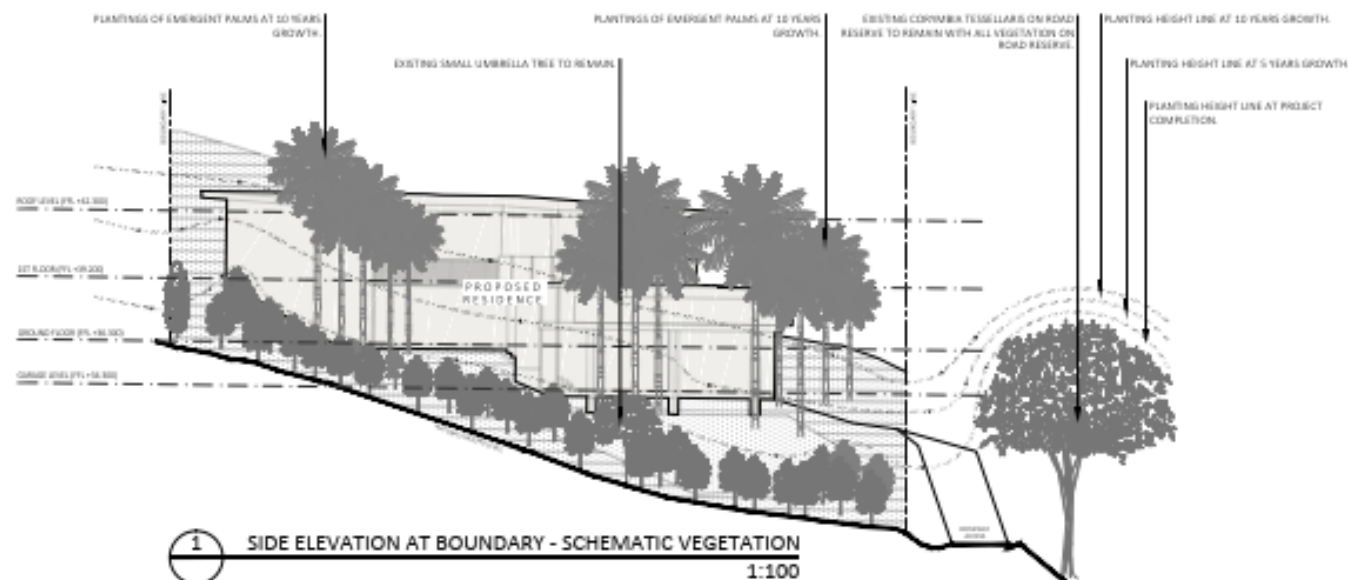


VERMILION21 PTY LTD RESIDENCE  
SITE ADDRESS: 3rd Murphy Street | Port Douglas QLD  
DRAWING TITLE  
SCHEMATIC ELEVATION

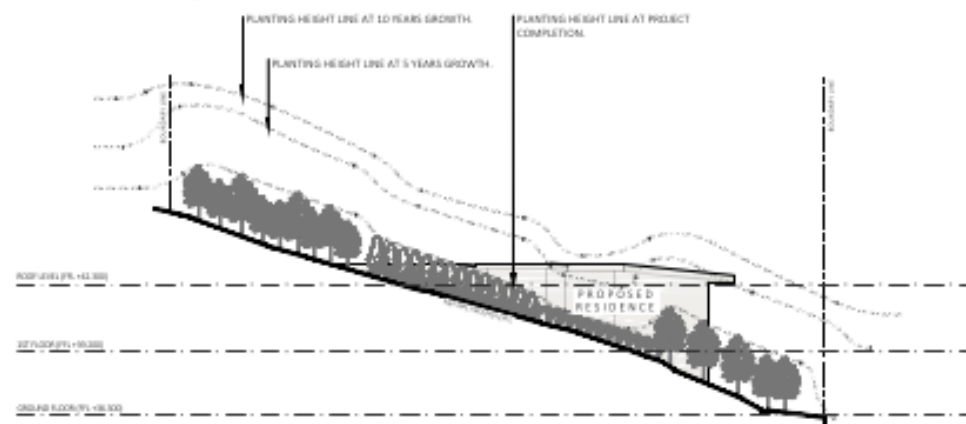
SCALE: 1:100@A1  
DATE: 25 November 2022  
DRAWING NO. 4  
REV. -

HORTULUS AUSTRALIA PTY LTD  
338 Port Douglas Road | Port Douglas QLD Australia 4877  
T: 0412944793  
W: www.hortulus.com.au  
E: design@hortulus.com.au





1 SIDE ELEVATION AT BOUNDARY - SCHEMATIC VEGETATION  
1:100



2 REAR ELEVATION AT BOUNDARY - SCHEMATIC VEGETATION  
1:100



VERMILION21 PTY LTD RESIDENCE  
SITE ADDRESS: 46 Murphy Street | Port Douglas QLD  
DRAWING TITLE  
SCHEMATIC ELEVATION

SCALE: 1:100@A1  
DATE: 25 November 2022  
DRAWING NO. 5  
REV. -

HORTULUS AUSTRALIA PTY LTD  
138 Port Douglas Road | Port Douglas QLD Australia 4807  
T: 0412944793  
W: www.hortulus.com.au  
E: design@hortulus.com.au



## 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 18/10/2022 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.

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.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

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

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

*Note—*

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

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

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

## **230 Notice of appeal**

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

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

## **231 Non-appealable decisions and matters**

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

- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—  
**decision** includes—
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.**non-appealable**, for a decision or matter, means the decision or matter—
  - (a) is final and conclusive; and
  - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

## 232 Rules of the P&E Court

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