

Administration Office

64 - 66 Front St Mossman

P 07 4099 9444

F 07 4098 2902

2 June 2020

**Enquiries:** Daniel Lamond  
**Our Ref:** MCUI 2020\_3532/1 (955911)  
**Your Ref:**

J P Kenny  
PO Box 85  
MOSSMAN QLD 4873

**Email:** jimmykenny1@hotmail.com

Dear Sir

**Development Application for Material Change of Use  
(Dwelling house and secondary dwelling)  
At 11 Thomas Street MOSSMAN  
On Land Described as LOT: 26 RP: 707231**

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

Please quote Council's application number: MCUL 2020\_3532/1 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)
  - Reasons for Decision
- Advice For Making Representations and Appeals (Decision Notice)



## Decision Notice

### Approval (with conditions)

*Given under section 63 of the Planning Act 2016*

#### Applicant Details

**Name:** J P Kenny  
**Postal Address:** PO Box 85  
MOSSMAN QLD 4873  
**Email:** jimmykenny1@hotmail.com

#### Property Details

**Street Address:** 11 Thomas Street MOSSMAN  
**Real Property Description:** LOT: 26 RP: 707231  
**Local Government Area:** Douglas Shire Council

#### Details of Proposed Development

Development Permit- Material Change of Use (Dwelling house and secondary dwelling)

#### Decision

**Date of Decision:** 2 June 2020  
**Decision Details:** Approved (subject to conditions)

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

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

Drawing or Document	Reference	Date
Site Plan, Sheet List, Notes	Plan prepared by Greg Skyring Design and Drafting, Sheet No 1 of 5, Plan No. 302-20.	24 February 2020
Floor Plan- Primary Residence	Plan prepared by Greg Skyring Design and Drafting, Sheet No 2 of 5, Plan No. 302-20.	24 February 2020

Elevations- Primary Residence	Plan prepared by Greg Skyring Design and Drafting, Sheet No 3 of 5, Plan No. 302-20.	24 February 2020
Flor Plan- Secondary Residence	Plan prepared by Greg Skyring Design and Drafting, Sheet No 4 of 5, Plan No. 302-20.	24 February 2020
Elevations- Secondary Residence	Plan prepared by Greg Skyring Design and Drafting, Sheet No 5 of 5, Plan No. 302-20.	24 February 2020
<b>FNQROC Regional Development Manual Standard Drawing/s for Vehicle Access</b>		
Access Crossovers	Standard Drawing S1015 Issue D	23 October 2017

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

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1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
  - (a) The specifications, facts and circumstances as set out in the application submitted to Council; and
  - (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.

### **Secondary Dwelling Use**

3. The secondary dwelling must only be used by members of the same household as the primary dwelling on-site.

### **Landscaping**

4. The site must be landscaped in accordance with a landscaping plan drawn to an appropriate scale on A3 sized paper. Provide a landscaping plan consistent with the requirements of Planning Scheme Policy SC6.7 to be endorsed by the Chief Executive Officer and implement landscaping works prior to the commencement of use.

### **Lawful Point of Discharge**

5. All stormwater from the property must be directed to a lawful point of discharge such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer.

### **Further Development Permits**

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

- All Building Work

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

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

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This approval, granted under the provisions of the *Planning Act 2016*, shall lapse six (6) years from the day the approval takes effect in accordance with the provisions of Section 85 of the *Planning Act 2016*.

### **Submissions**

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There were no submissions received by Council in relation to the development application.

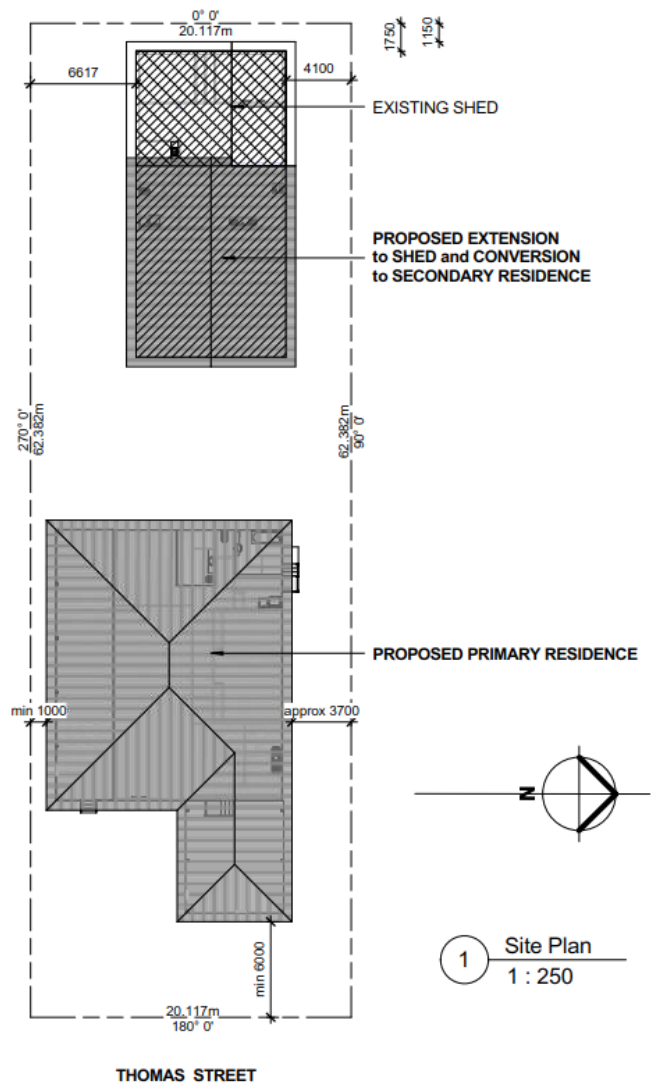
### **Rights to make Representations & Rights of Appeal**

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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)

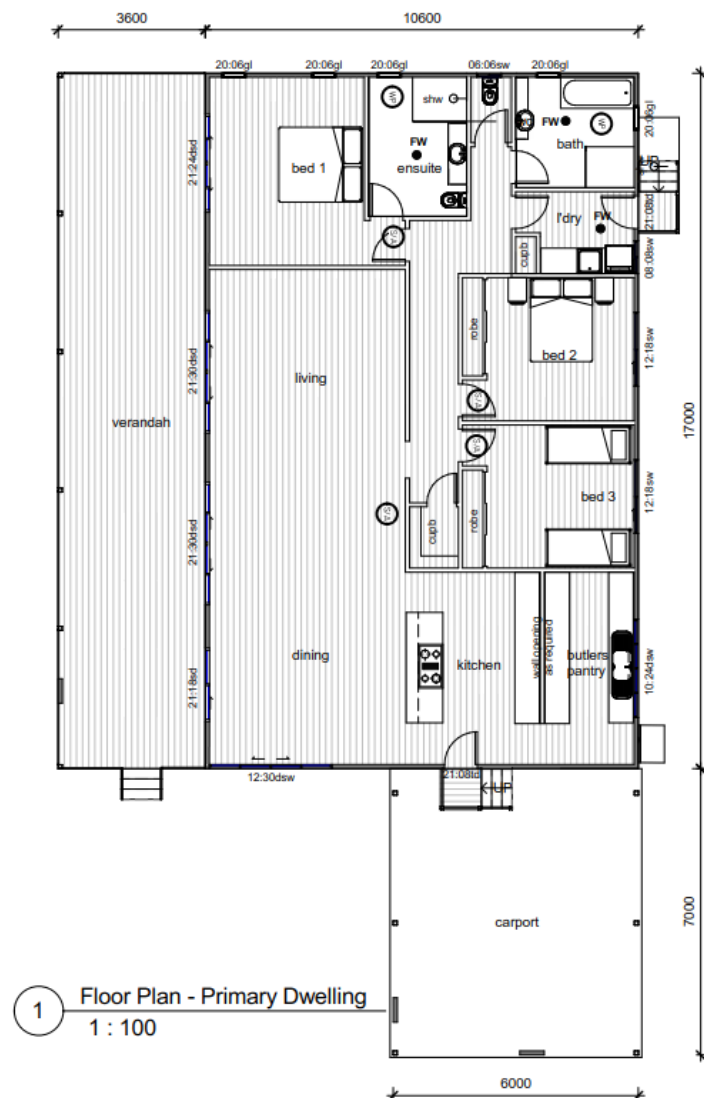


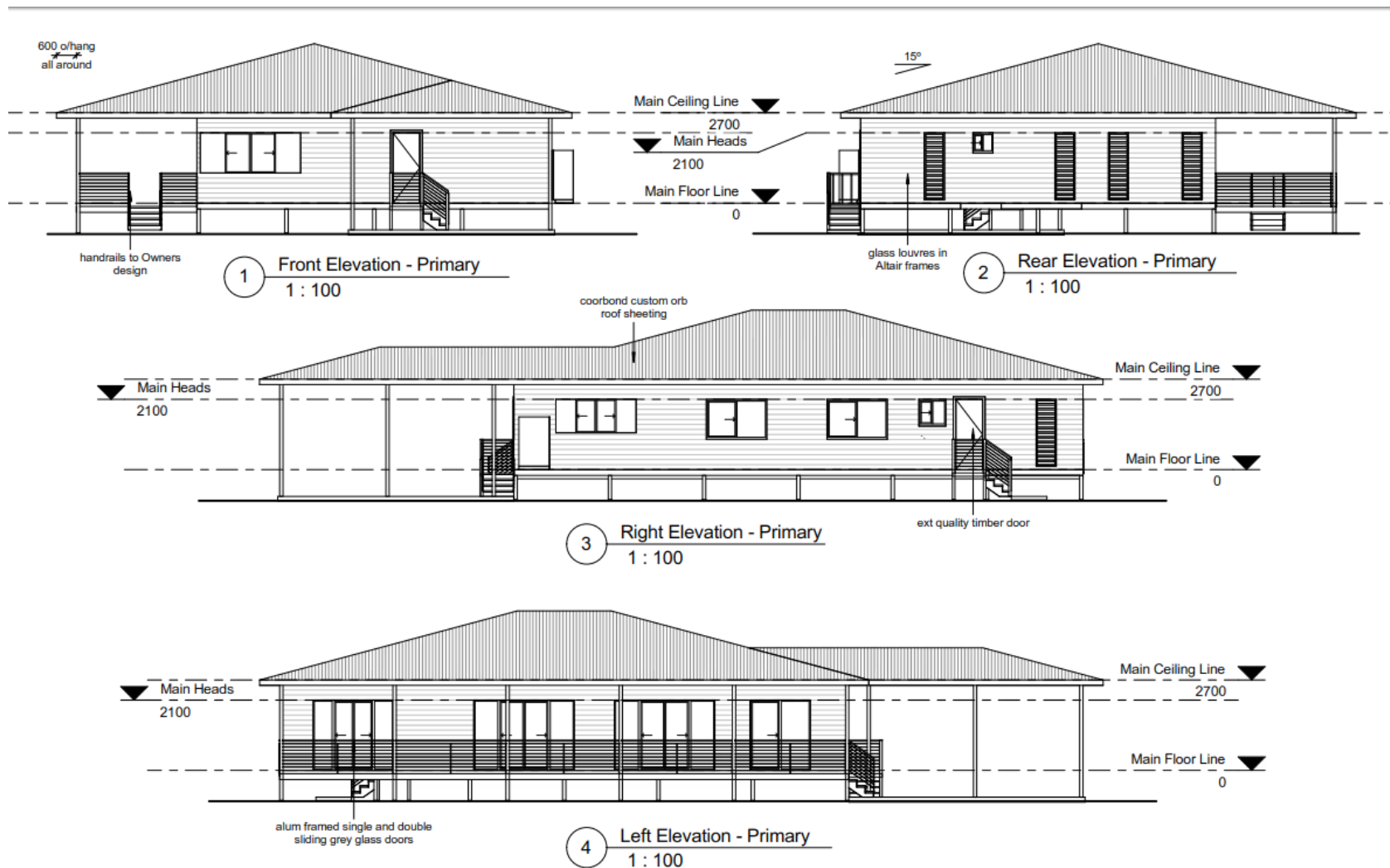
Sheet List	
Sheet Number	Sheet Name
1 of 5	Site Plan, Sheet List, Notes
2 of 5	Floor Plan - Primary Residence
3 of 5	Elevations - Primary Residence
4 of 5	Floor Plan - Secondary Residence
5 of 5	Elevations - Secondary Residence

**GENERAL**  
All construction is to comply with C2 building standards, Building Code of Australia, all relevant legislation, and Council By-Laws. Builders are to ensure that all materials nominated on this plan are used and fixed strictly in accordance with the manufacturers specifications, also taking into consideration all site conditions applicable to the materials allowable and recommended use. Substitution of any structural members, or variation to any part of the design without seeking approval prior to changing will void any responsibility of the Designer and Engineer for the structural integrity and performance of the building. Only Australian Standards compliant steel members are to be used in this building. All nominated fixings, reinforcing, timber sizes and grades etc are the minimum requirements. All dimensions must to be checked by the Builder prior to commencing any work – written dimensions take precedence over scaled. Any alterations or discrepancies are to be clarified with the plan Author or Engineer prior to carrying out the work. This plan has been prepared for building approval only and is not intended to be read as a complete specification of the work and finishes to be carried out on this project.

**TERMITE PROTECTION**  
This structure as detailed complies with the provisions of AS3660.1 for the protection of new buildings from subterranean termites. Owners are reminded that to maintain compliance with AS3660.1 they are advised to have inspections carried out by a qualified person every 12 months generally, and every 3 months if in an area where termite risk is high.

	24.02.20	original
REV	DATE	DESCRIPTION
<b>GREG SKYRING</b> <i>Design</i> and DRAFTING Pty. Ltd. Lic: Under QBSA Act 1991 - No 1040371 <b>11 Noli Close,</b> <b>Mossman Q. 4873</b> Phone/Fax: (07) 40982061 Mobile: 0419212652 Email: greg@skyringdesign.com.au		
PROJECT Proposed Extension to Shed and Conversion to Secondary Residence, Proposed New Primary Residence 11 Thomas St., L26 RP707231, MOSSMAN		
PLAN TITLE Site Plan, Sheet List, Notes		
CLIENT J. Kenny		
SCALES 1 : 250	WIND CLASS C2	PLAN NO 302-20 REV. A
		SHEET NO 1 of 5





**GREG SKYRING**  
*Design* and DRAFTING Pty. Ltd.  
Lic: Under QBSA Act 1991 - No 1040371  
11 Noli Close,  
Mossman Q. 4873  
Phone/Fax: (07) 40982061  
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PROJECT  
Proposed Extension to Shed and  
Conversion to Secondary Residence,  
Proposed New Primary Residence  
11 Thomas St., L26 RP707231,  
MOSSMAN

CLIENT  
J. Kenny

WIND CLASS  
C2

PLAN NUMBER  
302-20

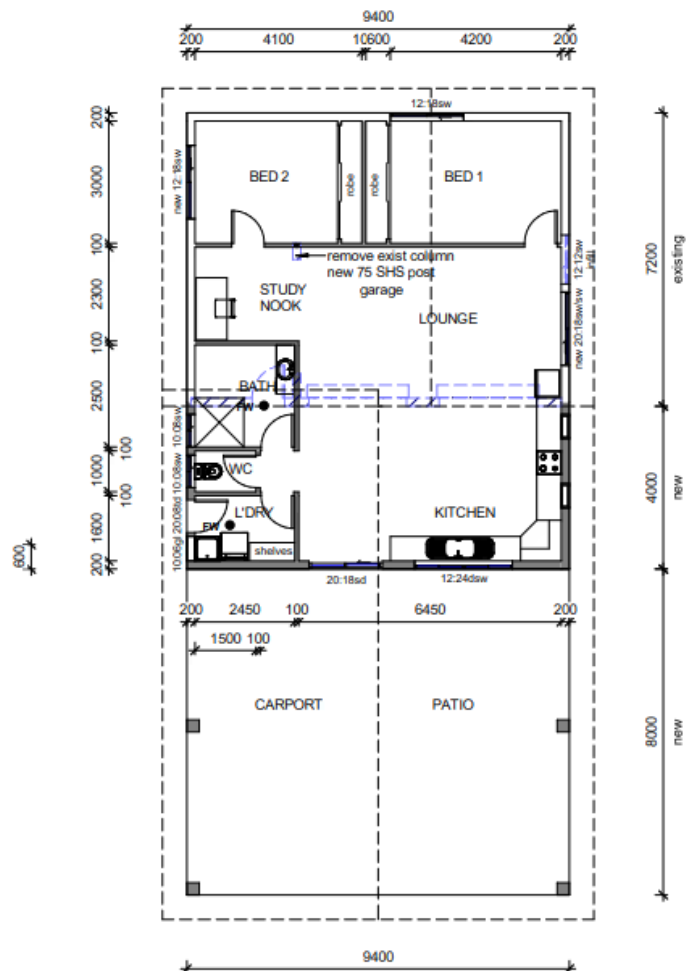
SHEET  
3 of 5

SCALES  
1 : 100

PLAN TITLE  
Elevations - Primary Residence

DATE OF ISSUE  
23.03.20

REV  
A



#### LEGEND

- exist 200/150 Concrete Masonry external walls, iron joint finish to external, gyprock to internal generally, villaboard to wet areas.
- new 200 Concrete Masonry external walls, finish to match existing
- new stud framed internal walls, line to match existing
- as above with 4mm F22 structural ply lining extra to one face, nail fixed for bracing (see bracing notes).
- Floor Waste (optional)
- Waterproof wet area to AS3740.
- Smoke alarms to AS3786.
- existing use area, lower case
- new use area, upper case

#### WINDOW and DOOR LEGEND

- panelift garage door
- timber door, suitable for location
- single sliding window
- double sliding window
- glass louvres in Altair frames

NOTE: all windows and doors are colour coated aluminium framed uno, fitted with grey glass and flymesh, - match existing generally

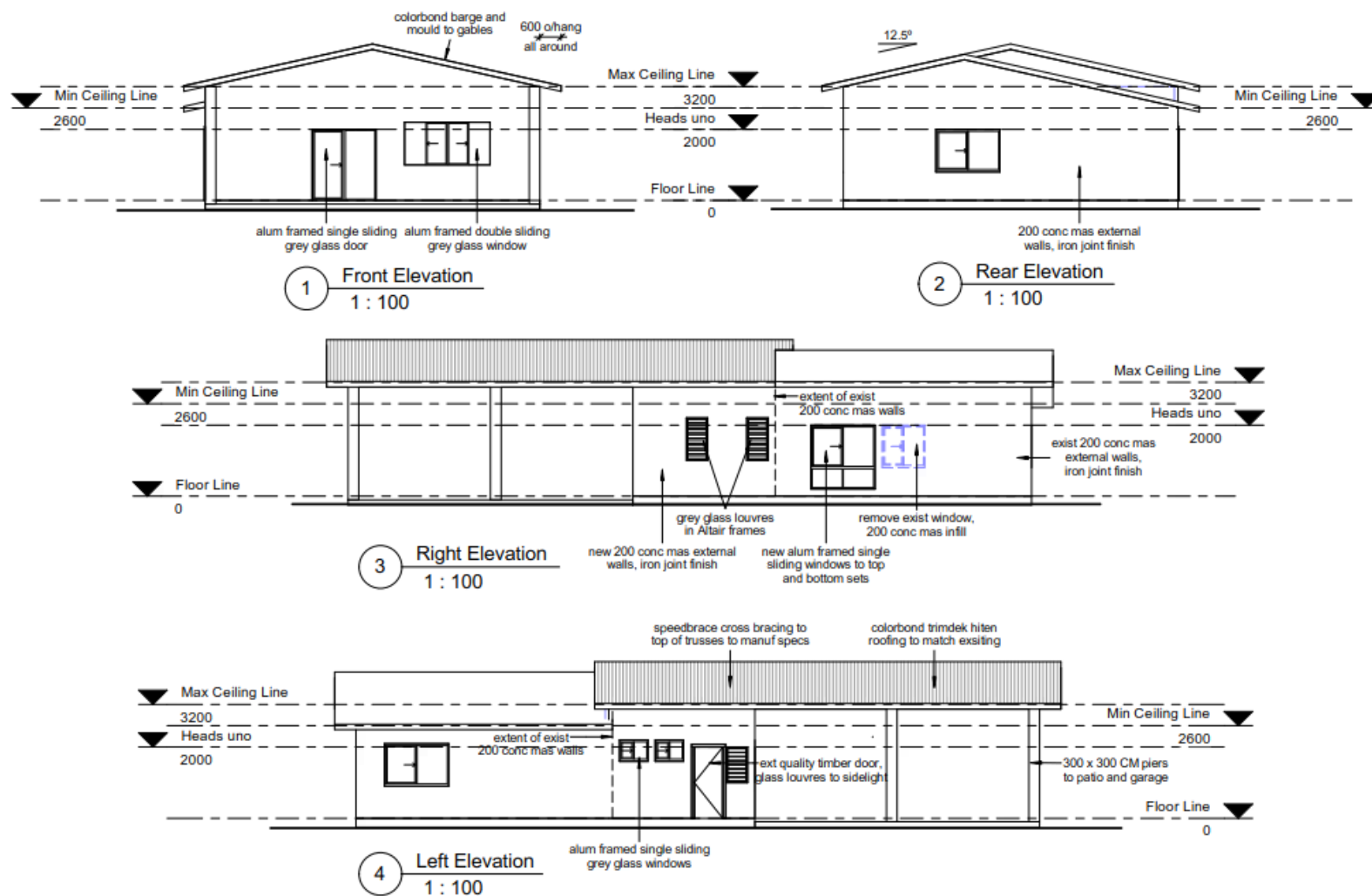
#### SECONDARY BUILDING AREAS

Living	105.3m <sup>2</sup>
Patio	37.6m <sup>2</sup>
Carport	37.6m <sup>2</sup>
<b>TOTAL AREA</b>	<b>180.5m<sup>2</sup></b>

1 Floor Plan - Second Dwelling  
1 : 100

REV	DATE	DESCRIPTION
	24.02.20	original
<b>GREG SKYRING</b> <i>Design</i> and DRAFTING Pty. Ltd. Lic Under QBSA Act 1991 - No 1040371		
11 Noll Close, Mossman Q. 4873		
PROJECT Proposed Extension to Shed and Conversion to Secondary Residence, Proposed New Primary Residence 11 Thomas St., L26 RP707231, MOSSMAN		
PLAN TITLE Floor Plan - Secondary Residence		
CLIENT J. Kenny		
SCALES	WIND CLASS	PLAN NO
1 : 100	C2	302-20
		SHEET NO
		4 of 5
		REV.
		A





**GREG SKYRING**  
*Design* and DRAFTING Pty. Ltd.

Lic Under QBSA Act 1991 - No 1040371

11 Noll Close,  
Mossman Q. 4873

Phone/Fax: (07) 40982061  
Mobile: 0419212652  
Email: greg@skyringdesign.com.au

**PROJECT**

Proposed Extension to Shed and  
Conversion to Secondary Residence,  
Proposed New Primary Residence  
11 Thomas St., L26 RP707231,  
MOSSMAN

**CLIENT**

J. Kenny

**WIND CLASS**

C2

**PLAN NUMBER**

302-20

**SHEET**

5 of 5

**SCALES**

1 : 100

**PLAN TITLE**

Elevations - Secondary  
Residence

**DATE OF ISSUE**

23.03.20

**REV**

A

## Reasons for Decision

The reasons for this decision are:

1. Sections 60, 62 and 63 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 10 July 2019 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 Community Facility 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.

## 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.