

Our Ref: LM:DA/4546:D23/10847

Your Ref: 22014

14 April 2023

William & Krystal Miles
c/-Scope Town Planning
75 Hastie Road
MAREEBA QLD 4880

E-mail: jburns@scopetownplanning.com.au

Attention: Johnathan Burns

Dear Mr Burns

Negotiated Decision Notice – Approval (With Conditions)

Given under section 76 of the *Planning Act 2016*

I refer to your Change Representations for Development Application DA/4546 – Material Change of Use (Multiple Dwelling – 4 x Dwelling Units) located at 12 Howard Street, Cooktown received by Council on 1 December 2022. This application was determined by the Chief Executive Officer as delegated on 12 April 2023. The decision was made to issue a Negotiated Decision Notice, to replace the previously issued Decision Notice dated 17 October 2022.

In summary, the conditions of the Development Permit are amended as follows:

- Condition 4 to be amended.

The nature of the changes are:

CONDITION 4

External Works

- “4. The applicant must upgrade the Helen and Howard Road frontages to provide kerb and channel for the full frontages of the site. The kerb and channel is to be provided to replace the roadside table drains and must be installed at a level and grade to facilitate the FNQROC verge and road crossfalls. The requirements of this condition will include backfilling the existing drain along the road frontage and constructing the kerb and channel to revised levels. The applicant will need to prepare engineering plans for approval with the levels, locations and extent of kerb shown on these external works plans.

Advice Note: Council may be upgrading underground drainage in Howard Street and the applicant is to liaise with Council's Engineering team to confirm the timing of Council's drainage works. If the timing of the development kerbing work precedes Council's work program, Council may nominate the drainage and kerb alignments to ensure future construction impacts are minimised."

Condition 4 to be amended to:

- 4A. The applicant must upgrade the Helen and Howard Road frontages to provide kerb and channel for the full frontages of the site. The kerb and channel is to be provided to replace the roadside table drains and must be installed at a level and grade to facilitate the FNQROC verge and road crossfalls. The requirements of this condition will include backfilling the existing drain along the road frontage and constructing the kerb and channel to revised levels. The applicant will need to prepare engineering plans for approval with the levels, locations and extent of kerb shown on these external works plans.

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- 4B. The applicant must comply with the Infrastructure Agreement entered into with Council dated 06 April 2023 by paying to Council the full amount of the contribution (in lieu of works) under the agreement.

Advice Note: Payment of the full amount of the contribution under the agreement to Council will amount to compliance with Condition 4A.

The Negotiated Decision Notice for DA/4546 is attached to this letter.

The currency period for this approval is four (4) years from the date of this Negotiated Decision Notice. Any extension to the currency period must be applied for within this period.

Yours sincerely



Lisa Miller
Manager
Planning and Environment
Cook Shire Council

Our Ref: LM:DA/4546:D23/10847

Your Ref: 22014

13 April 2023

William & Krystal Miles
c/-Scope Town Planning
75 Hastie Road
MAREEBA QLD 4880

E-mail: jburns@scopetownplanning.com.au

Attention: Johnathan Burns

Dear Mr Burns

Negotiated Decision Notice - Approval (with conditions)

Given under section 76 of the *Planning Act 2016*

The development application described below was properly made to Cook Shire Council on 26 August 2022.

Applicant details

Applicant name: William and Krystal Miles

Applicant contact details: c/-Scope Town Planning
75 Hastie Road
MAREEBA QLD 4880
E-mail: jburns@scopetownplanning.com.au

Application details

Application number: DA/4546

Approval sought: Development Permit for a Material Change of Use

Description of the development proposed: Multiple Dwelling (4 x Dwelling Units)

Location details

Street address: 12 Howard Street, Cooktown QLD 4895

Real property description: Lot 620 on C17912

Decision

Original Date of Decision: 17 October 2023

Decision Details: Approved in full subject to conditions. These conditions are set out in Attachment 1 and are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

Details of the Approval

Development Permit Material Change of Use for Multiple Dwelling (4 x Dwelling Units)

Variation Approval Details

Not applicable

Conditions

This approval is subject to the conditions in Attachment 1.

Further Development Permits

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

- Development Permit for Plumbing and Drainage Work
- Development Permit for Building Work.

Properly Made Submissions

Not applicable - no part of the application required public notification.

Referral Agencies

Not applicable - no part of the application required referral.

Approved Plans and Specifications

Copies of the approved plans, specifications and/or drawings are enclosed in **Attachment 2**.

Currency period for the approval

This development approval will lapse at the end of the period set out in section 85 of the *Planning Act 2016*

Lapsing of Approval if Development Started but not Completed

In accordance with section 88(1) of the Planning Act 2016, a development approval, other than a variation approval, for development lapses to the extent the development is not completed within any period or periods required under a development condition.

Rights of Appeal

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the Planning Act 2016 are provided in Attachment 4 of this Decision Notice.

Other Details

Council relies on the accuracy of information included in the application documentation when assessing and deciding applications.

If you find an inaccuracy in any of the information provided above, have a query, or need to seek clarification about any of these details, please contact Cook Shire Council's Planning and Environment Department on (07) 4082 0500 or email: mail@cook.qld.gov.au.

Yours sincerely



Lisa Miller
Manager
Planning and Environment
Cook Shire Council

enc: **Attachment 1** – Conditions Imposed by the Assessment Manager
Attachment 2 – Approved Plans (D22/23366)
Attachment 3 – Infrastructure Charges Notice (D22/24389)
Attachment 4 – Infrastructure Agreement (D23/10822)
Attachment 5 – Extract of Appeal Provisions (Chapter 6, Part 1 of the *Planning Act 2016*).

Attachment 1 - Conditions Imposed by the Assessment Manager (Cook Shire Council)

A. Assessment Manager (Council Conditions)

Approved Plans

1. The development must be carried out generally in accordance with the following plans/specialist reporting submitted with the application, except for any variations required to comply with the conditions of this approval:
 - Cover Sheet, Sheet No. A-100, drawn by AKA Architects, dated 6 May 2022
 - Site Plan, Sheet No. A-101, drawn by AKA Architects, dated 31 August 2022
 - Serv. & Landscape Plan, Sheet No. A-101A, drawn by AKA Architects, dated 17 August 2022
 - Floor Plan – Villa 01, Sheet No. A-102, drawn by AKA Architects, dated 22 June 2022
 - Elevations – Villa 01, Sheet No. A-103, drawn by AKA Architects, dated 22 June 2022
 - Elevations – Villa 01, Sheet No. A-104, drawn by AKA Architects, dated 22 June 2022
 - Floor Plan – Villa 2 & 4, Sheet No. A-105, drawn by AKA Architects, dated 6 May 2022
 - Elevations – Villa 2 & 4, Sheet No. A-106, drawn by AKA Architects, dated 6 May 2022
 - Elevations – Villa 2 & 4, Sheet No. A-107, drawn by AKA Architects, dated 6 May 2022
 - Section – Villa 2 & 4, Sheet No. A-108, drawn by AKA Architects, dated 6 May 2022
 - Floor Plan – Villa 03, Sheet No. A-109, drawn by AKA Architects, dated 6 May 2022
 - Elevations – Villa 03, Sheet No. A-110, drawn by AKA Architects, dated 6 May 2022
 - Elevations – Villa 03, Sheet No. A-111, drawn by AKA Architects, dated 26 August 2022
 - Section – Villa 03, Sheet No. A-112, drawn by AKA Architects, dated 6 May 2022

Access

2. Access to the proposed development must be provided in accordance with the approved plans of development as updated to show the kerb and channel and driveway crossovers.
3. Access from the property boundary to the road pavement must be sealed with concrete or bitumen and be constructed to the requirements of the FNQROC Development Manual Drawing S1015 and Design Manual D1, Road Geometry, section D1.17 and subject to a Local Laws Permit 'Make Alterations or Improvements to a Road'.

External Works

4. ~~The applicant must upgrade the Helen and Howard Road frontages to provide kerb and channel for the full frontages of the site. The kerb and channel is to be provided to~~

~~replace the roadside table drains and must be installed at a level and grade to facilitate the FNQROC verge and road crossfalls. The requirements of this condition will include backfilling the existing drain along the road frontage and constructing the kerb and channel to revised levels. The applicant will need to prepare engineering plans for approval with the levels, locations and extent of kerb shown on these external works plans.~~

~~*Advice Note: Council may be upgrading underground drainage in Howard Street and the applicant is to liaise with Council's Engineering team to confirm the timing of Council's drainage works. If the timing of the development kerbing work precedes Council's work program, Council may nominate the drainage and kerb alignments to ensure future construction impacts are minimised.*~~

- 4A. The applicant must upgrade the Helen and Howard Road frontages to provide kerb and channel for the full frontages of the site. The kerb and channel is to be provided to replace the roadside table drains and must be installed at a level and grade to facilitate the FNQROC verge and road crossfalls. The requirements of this condition will include backfilling the existing drain along the road frontage and constructing the kerb and channel to revised levels. The applicant will need to prepare engineering plans for approval with the levels, locations and extent of kerb shown on these external works plans.**

Advice Note: Council may be upgrading underground drainage in Howard Street and the applicant is to liaise with Council's Engineering team to confirm the timing of Council's drainage works. If the timing of the development kerbing work precedes Council's work program, Council may nominate the drainage and kerb alignments to ensure future construction impacts are minimised.

- 4B. The applicant must comply with the Infrastructure Agreement entered into with Council dated 06 April 2023 by paying to Council the full amount of the contribution (in lieu of works) under the agreement.**

Advice Note: Payment of the full amount of the contribution under the agreement to Council will amount to compliance with Condition 4A.

- 5. The external works require a Local Laws Permit 'Make Alterations or Improvements to a Road' or Operational Works Approval prior to construction. The external works must be completed and accepted by Council prior to commencement of the use.**

Car Parking

- 6. A minimum of five (5) car parking spaces must be provided on site (four (4) resident and one (1) visitor space adjoining Villa #01).**
- 7. Car parking spaces must be located as per the approved plans and be concrete or bitumen sealed and comply with the Australian Standard 2890.1 – Parking Facilities – off-street parking and be constructed to the requirements of the FNQROC Development Manual.**

Fencing and Landscaping

- 8. Fencing and landscaping must be provided in accordance with the approved plans of development.**

Electricity

9. The development must be connected to the reticulated electricity supply.
10. Internal reticulation between the dwelling units must be via underground distribution.

Services

11. Electricity and telecommunication services must be provided to the premises in accordance with the standards and requirements of the relevant service provider.

Water

12. The development must be connected to the reticulated water supply prior to the commencement of the use at full cost to the applicant.

Sewerage Supply

13. The sewer manhole located at the rear of the lot must remain unobstructed and accessible at all times.
14. The development must be connected to the reticulated sewerage scheme prior to the commencement of the use, at full cost to the applicant. Plans must be submitted as part of a plumbing application for approval by Council's Plumbing Inspector prior to works commencing.

Waste Disposal

15. All bins and waste storage areas must be located on site and screened so they are not visible from the street or neighbouring properties.

Stormwater

16. Stormwater drainage must be directed to a lawful point of discharge being Howard Street.

Environmental

17. No State declared or environmental pest, plants, and animals are to be introduced onto the property.
18. The applicant must ensure that no soil or silt runoff occurs from the site during the construction and operational phase of the development.

Public Utilities

19. The developer is responsible for the cost of any alterations to public utilities as a result of complying with the conditions of this approval.

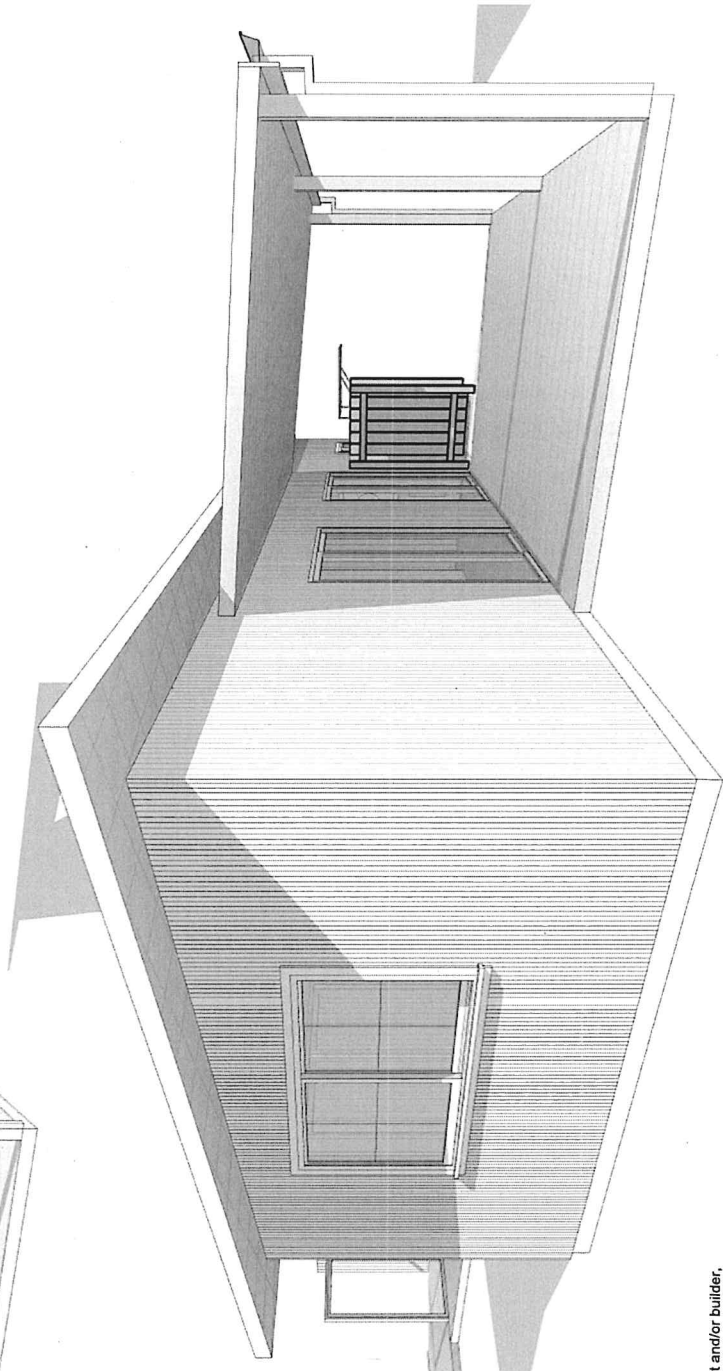
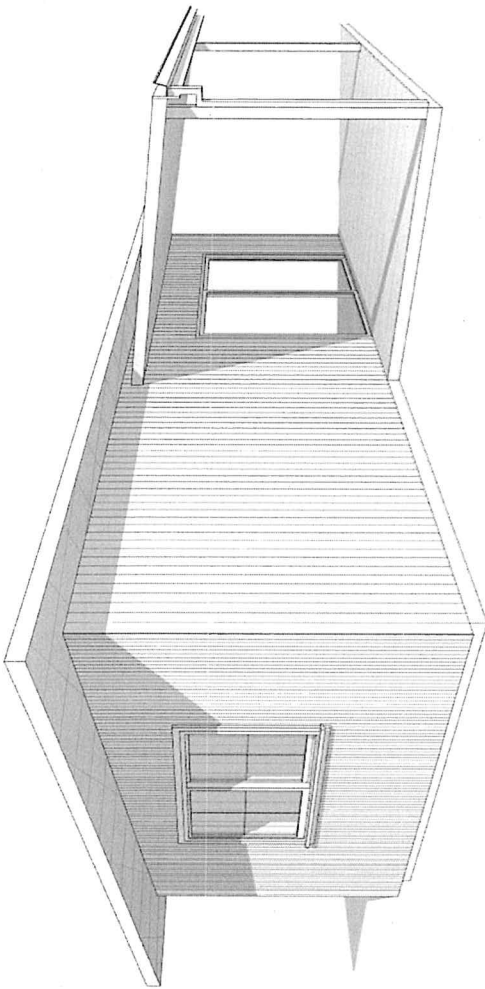
Amenity

20. The development shall have no adverse impact on the amenity of the surrounding area by way of light nuisance, dust or noise.

A. Assessment Manager (Council) Advice

1. A development permit is required for carrying out Building Works, and a Plumbing and Drainage Approval/compliance permit is required for Plumbing and Drainage Works prior to construction of any buildings associated with this development.
2. The currency period for this application is six (6) years. Should the approved use not commence within this time, the approval shall lapse.
3. Infrastructure charges must be paid to Council prior to the commencement of use of the new dwelling house as indicated on the attached Adopted Infrastructure Charges Notice at the rate applicable at the time of payment.
4. The applicant/owner must notify Council their intention to commence the use after acceptable of and compliance with these conditions or negotiated conditions (or court determined conditions) and prior to the commencement of the use. This will allow a check for compliance with conditions to be carried out by Council officers.
5. The applicant/owner is to ensure compliance with the requirements of the *Aboriginal Cultural Heritage Act* and in particular 'the duty of care' that it imposes on all landowners.

Attachment 2– Approved Plans Referenced in Conditions (D22/23366)



Sheet List	
Sheet Number	Sheet Name
A-106	Elevations - Villa 2 & 4
A-107	Elevations - Villa 2 & 4
A-108	Section - Villa 2 & 4
A-109	Floor Plan - Villa 03
A-110	Elevations - Villa 03
A-111	Elevations - Villa 03
A-112	Section - Villa 03

Sheet List	
Sheet Number	Sheet Name
A-100	Cover Sheet
A-101	Site Plan
A-101A	Serv. & Landscape Plan
A-102	Floor Plan - Villa 01
A-103	Elevations - Villa 01
A-104	Elevations - Villa 01
A-105	Floor Plan - Villa 2 & 4

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NOTE: The drawings are indicative only and are required to be verified / confirmed by the owner and/or builder and engineer and/or certifier in accordance with the relevant Building Legislation/Regulations, Housing Development Codes, NCC, Australian Standards, etc.
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Cover Sheet		FOR APPROVALS	
Project number	210216	Version	FOR APPROVALS
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Drawn by	Author	Version	FOR APPROVALS
Print Date:	31/09/2022 5:12:29 pm	Scale:	on A3
		A-100	

IMPORTANT NOTES:

- *THE REQUIREMENT OF REGULATIONS TAKES PRECEDENCE OVER THE DRAWINGS. DETAIL DRAWINGS TAKE PRECEDENCE OVER GENERAL DRAWINGS.
- *DO NOT SCALE DRAWINGS - ALL DIMENSIONS IN "mm".
- *BUILDER TO VERIFY ALL DIMENSIONS ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION WORKS, PRODUCING SHOP DRAWINGS OR FABRICATING COMPONENTS.
- *BUILDER TO CHECK DOORS/WINDOWS DIMENSIONS BEFORE ORDERING ON FLOOR PLAN AND ELEVATIONS.
- *ALUMINIUM FRAMED DOORS/WINDOWS WITH OPENING STYLES IN ACCORDANCE WITH ELEVATIONS AND FROM APPROVED MANUFACTURER UNO.
- *LINTELS TO TRUSS MANUFACTURER'S TABLES, ROOF TRUSSES TO MANUFACTURER'S SPECIFICATION.
- *ALL CONSTRUCTION WORK TO BE DONE IN ACCORDANCE WITH BCA AND RELEVANT AUSTRALIAN STANDARDS AND DEVELOPMENT CODES.
- *TERMITE PROTECTION TO COMPLY WITH AS 1694 'PHYSICAL BARRIERS' & AS3660 'APPENDIX D' AND TO ACT BUILDING CONTROL BUILDING NOTE NO3. FRAMING TO AS 1684 'NATIONAL TIMBER FRAMING CODE' AND SUPPLIEMENTS, HARDWOOD TO AS.2796. ELECTRICAL TO AS.3000. PLUMBING TO AS3500. CONCRETE TO AS.3600. BRICKWORK TO AS.3700. *SAA MASONRY CODE AND AS.1640 'SAA BRICKWORK CODE'. STRUCTURAL STEEL TO AS.1170 & AS.4100. WET SEAL TO AS.3740 AND *SMOKE ALARMS CONNECTED TO MAINS POWER SUPPLY. WITH BATTERY BACKUP. ARE TO BE INSTALLED IN ACCORDANCE WITH AS3786.

- *BLOCK BOUNDARIES, CONTOURS, SERVICES AND EASEMENTS TO BE VERIFIED ON SITE PRIOR TO CONSTRUCTION.
- *CONFIRM ALL LEVELS AND CONTOURS ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION. BUILDER IS RESPONSIBLE TO ENSURE ALL INFORMATION SHOWN HERE REGARDING LEVELS ARE ACCURATE AND REPRESENTS EXISTING ON SITE LEVELS.
- *THE FFLS ARE SUBJECT TO CHANGE AND ARE UP TO BUILDERS DISCRETION TO BE VERIFIED ON SITE. MAXIMUM CHANGE UNDER 340 mm. TO BE CONFIRMED BY CERTIFIER.
- *LOCATION OF CUTS ARE INDICATIVE ONLY AND TO BE VERIFIED ON SITE. THEREFORE, ALL CUTS & FFL TO BE VERIFIED ON SITE BY A REGISTERED SURVEYOR.
- *0.3 M CUT APPROX AT LINE OF HOUSE - SITE TO BE LEVELLED / GRADED TO ALLOW FOR SURFACE DRAINAGE AS PER BCA.
- *RETAINING WALL TO BE BUILT ENSURING DRAINAGE AS PER RELEVANT CODES/BCA V2. HEIGHTS AND ALL LEVELS TO SUIT SITE CONDITIONS. FINAL HEIGHTS TO BE CONFIRMED BY BUILDER ON SITE.

- *SEDIMENT & EROSION CONTROL TO COMPLY WITH THE BEST PRACTICE GUIDELINES - PREVENT SOULION FOR RESIDENTIAL BUILDING SITES MARCH 2006 AND ENVIRONMENT PROTECTION GUIDELINES FOR CONSTRUCTION AND LAND DEVELOPMENT IN THE ACT. MARCH 2011.
- *BUILDER TO PROVIDE CRUSHED GRANITE OR AGGREGATES AT ACCESS POINT TO SITE DURING CONSTRUCTION

- * DRIVEWAY TO COMPLY WITH AS2870
- * IF LEVELS & CONTOURS ARE DIFFERENT ON SITE FROM THE DRAWING BUILDER TO PROVIDE CONTOUR PLAN & REPORT BACK TO THE DESIGNER TO ADJUST LEVELS ACCORDINGLY.
- * NO PART OF CUT SHOULD ENCRACH OUT OF THE BOUNDARY OR EASEMENT

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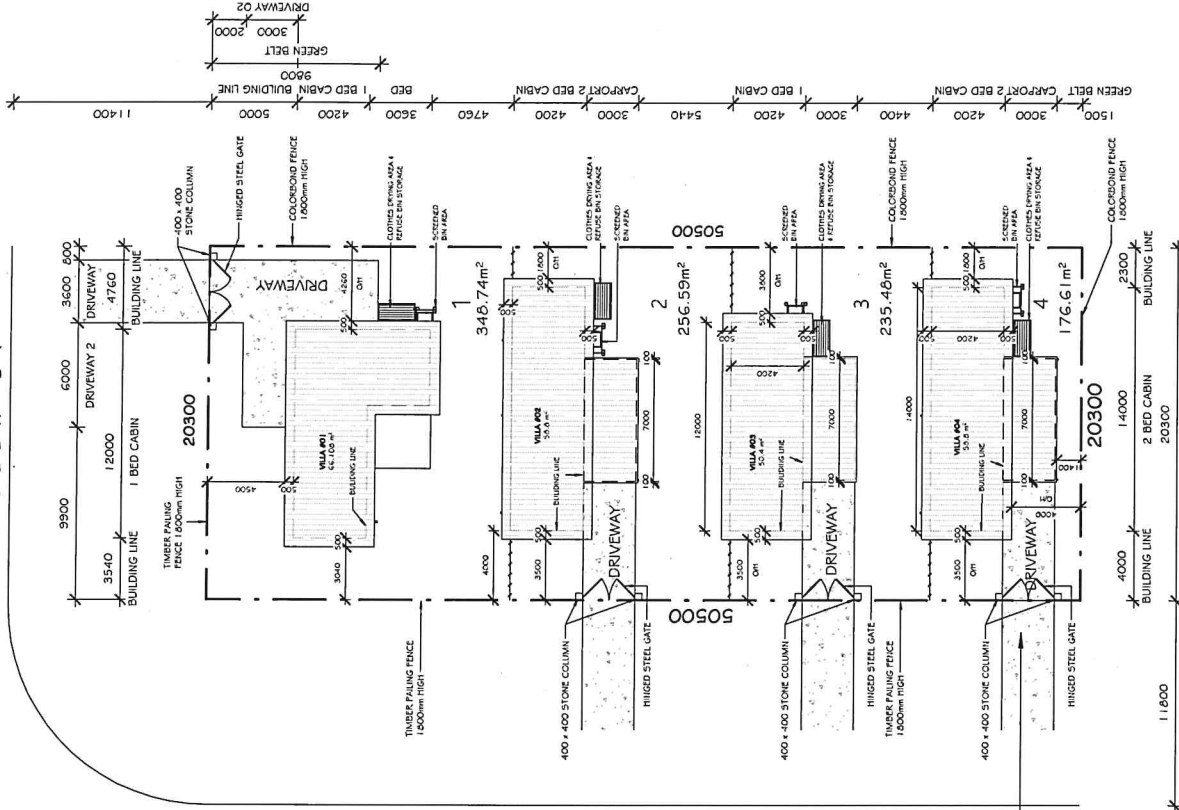
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HELEN ST



LOT 620, 12 HOWARD St,
COOKTOWN, QLD

SITE PLAN
1:300

TOTAL LOT AREA: 1012 m²
DIMENSIONS SUBJECT TO FINAL SURVEY

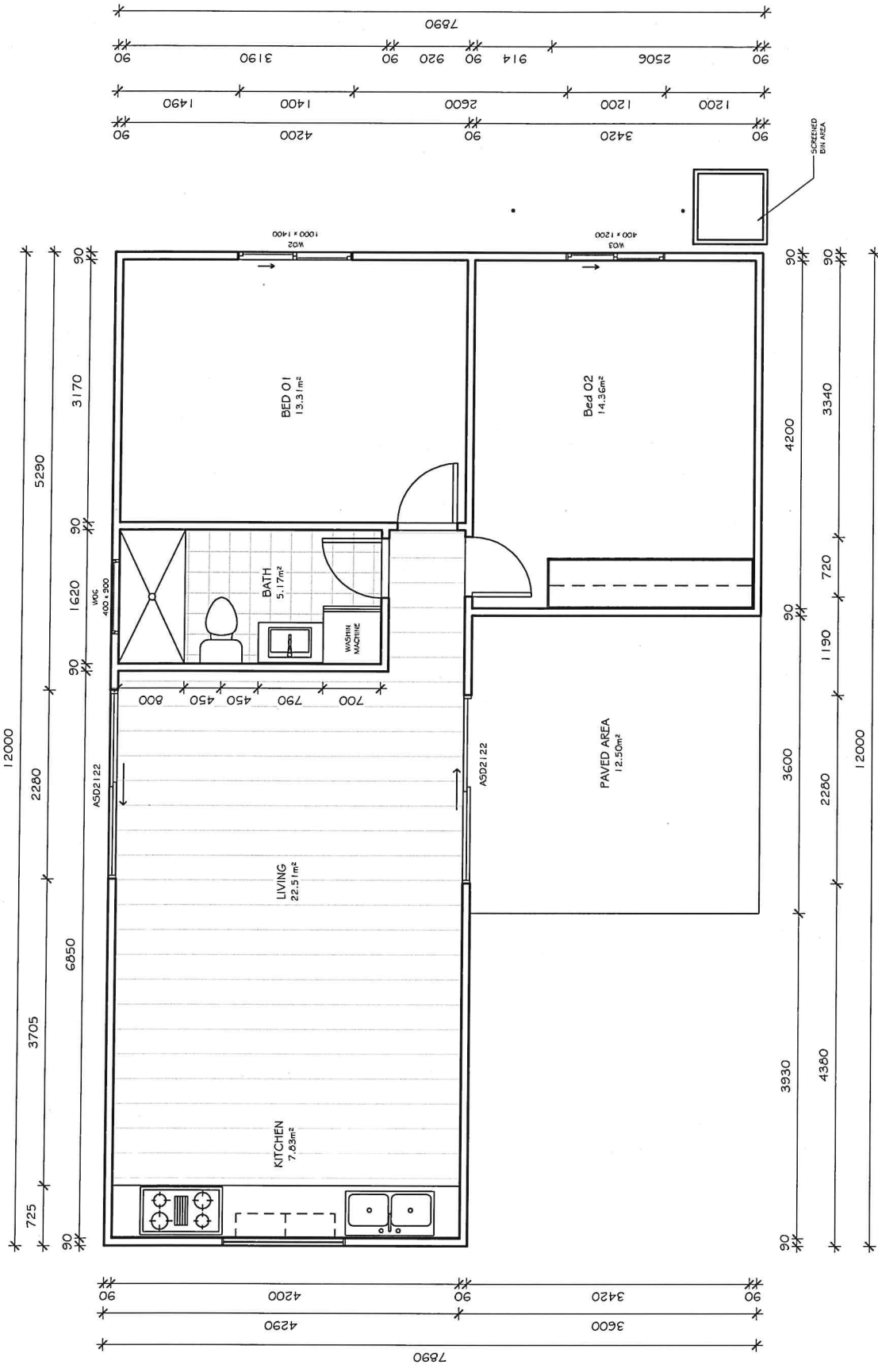
DWELLING UNIT	GFA	SITE COVERAGE %
VILLA 01	66.108	6.49%
VILLA 02	58.8	5.77%
VILLA 03	50.4	4.95%
VILLA 04	58.8	5.77%

INDICATES TIMBER PALING FENCE 1.5m HIGH
INDICATES PROPERTY LINE

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ADDRESS
12 Howard St, Cooktown

Site Plan FOR APPROVALS

Project number	210216
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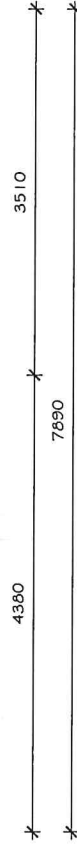
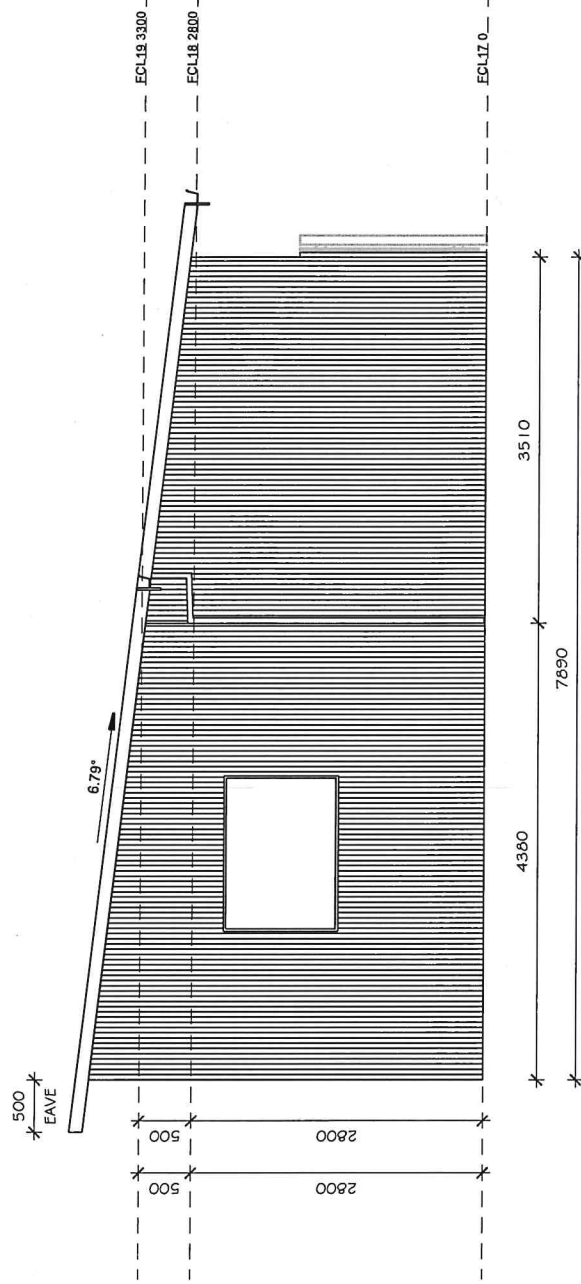
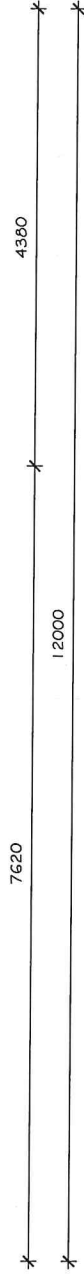
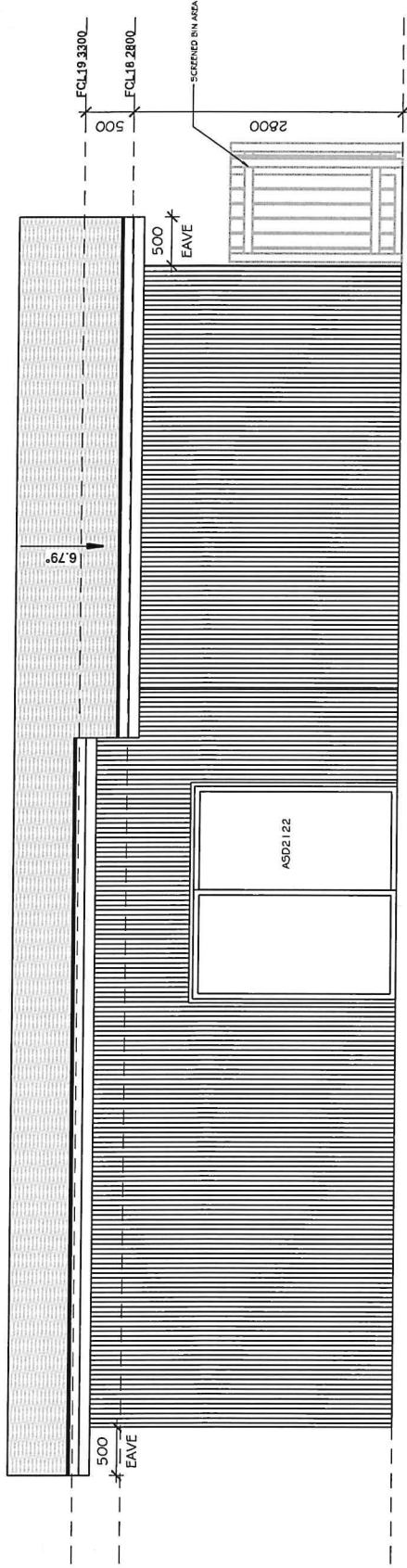
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Floor Plan - Villa 01

A-102



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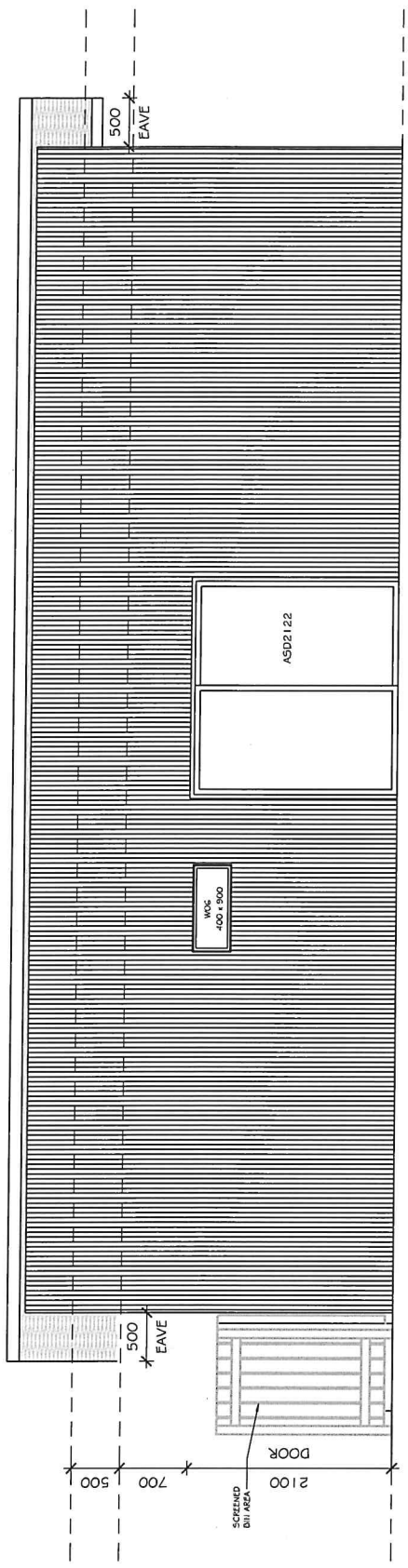
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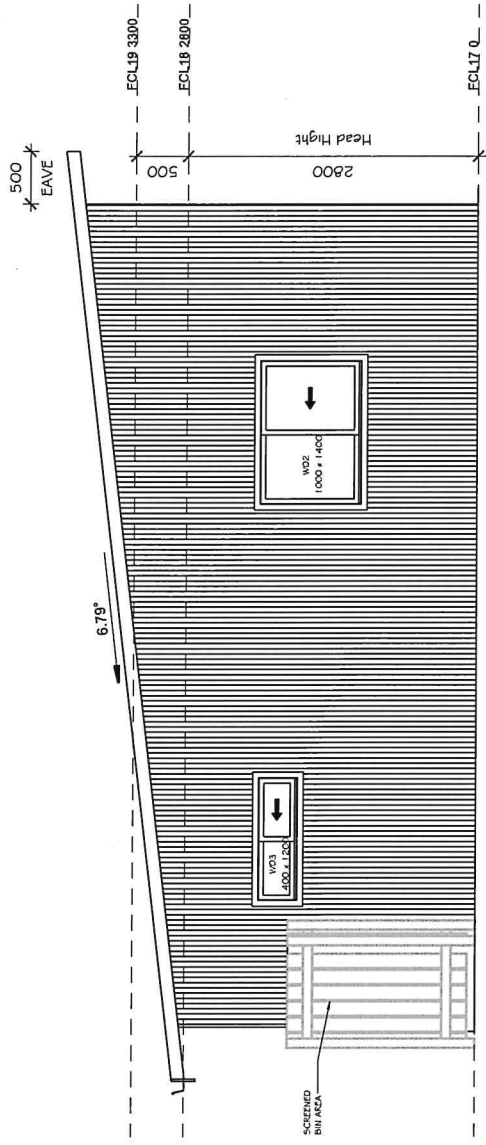
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Elevations - Villa 01 FOR APPROVALS

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500 EAVE
 700
 2100 DOOR
 5330
 2200
 4470
 12000



500 EAVE
 6.79°
 2800
 7690
 7690
 500
 WV3 1000 x 1400
 WV2 1000 x 1400
 Head height
 ECL19 3300
 ECL18 2800
 ECL17 0
 SCREENED BIN AREA

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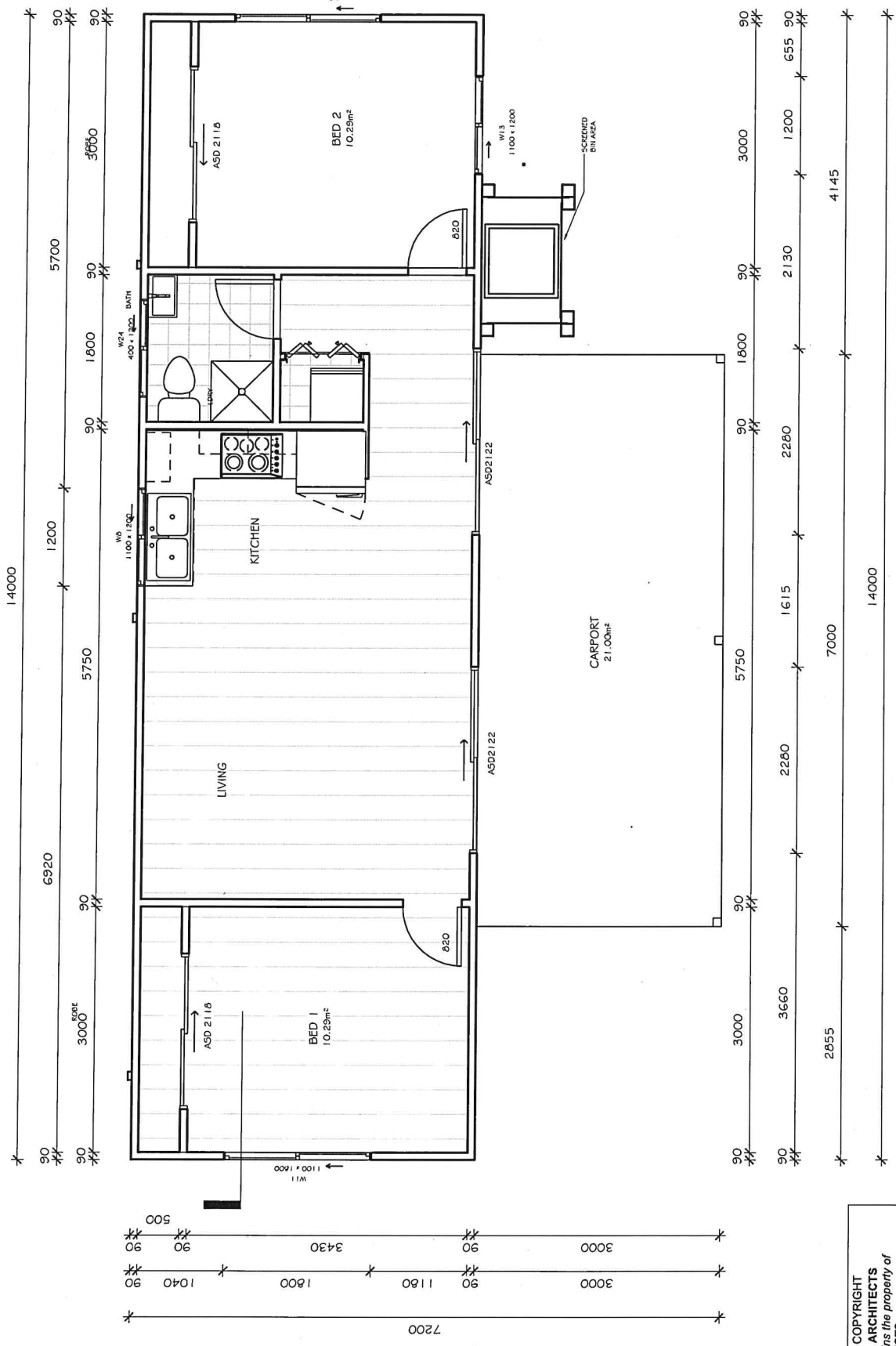
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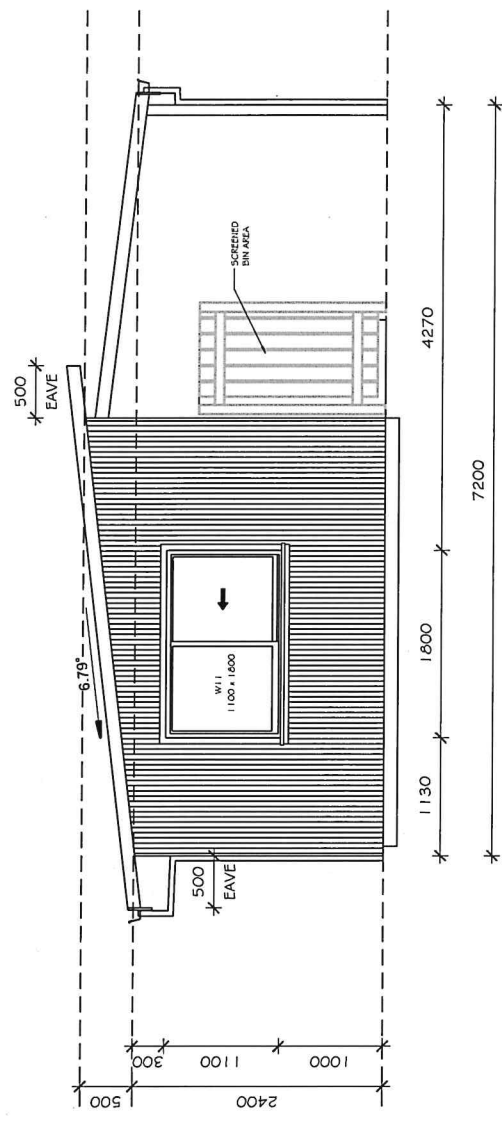
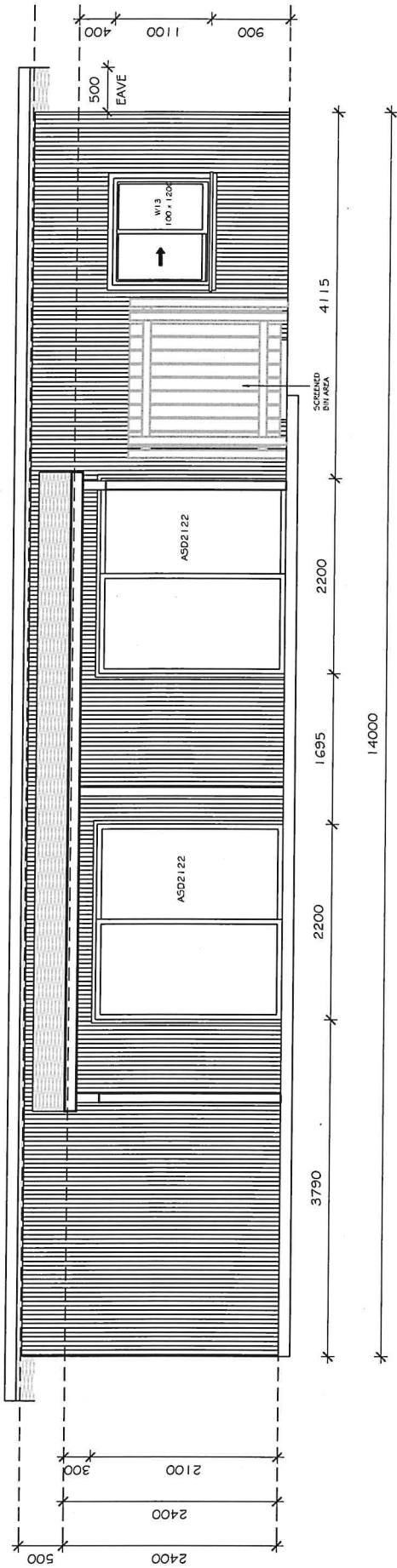
CLIENT
WILL MILES
PROJECT
COOKTOWN CABINS
ADDRESS
12 Howard St, Cooktown

Project number		210216
Drawn Date		06/05/22
Drawn by	Author	Checked by
Version	FOR APPROVALS	Checker
Print Date:		31/08/2022 5:12:40 pm
Scale:		1 : 50 on A3

Floor Plan - Villa 2 & 4

FOR APPROVALS

A-105



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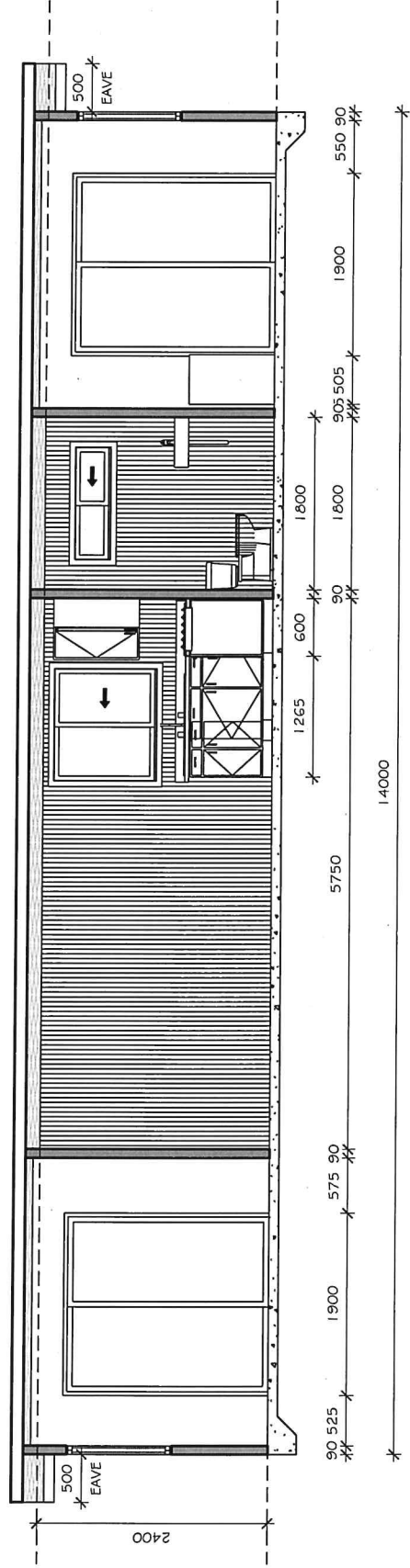
Email: asadkamatlabasi@gmail.com Mob: +92 333 2252100

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ADDRESS
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Elevations - Villa 2 & 4		FOR APPROVALS	
Project number	210216	Author	A-107
Drawn Date	06/05/22	Checked by	Checker
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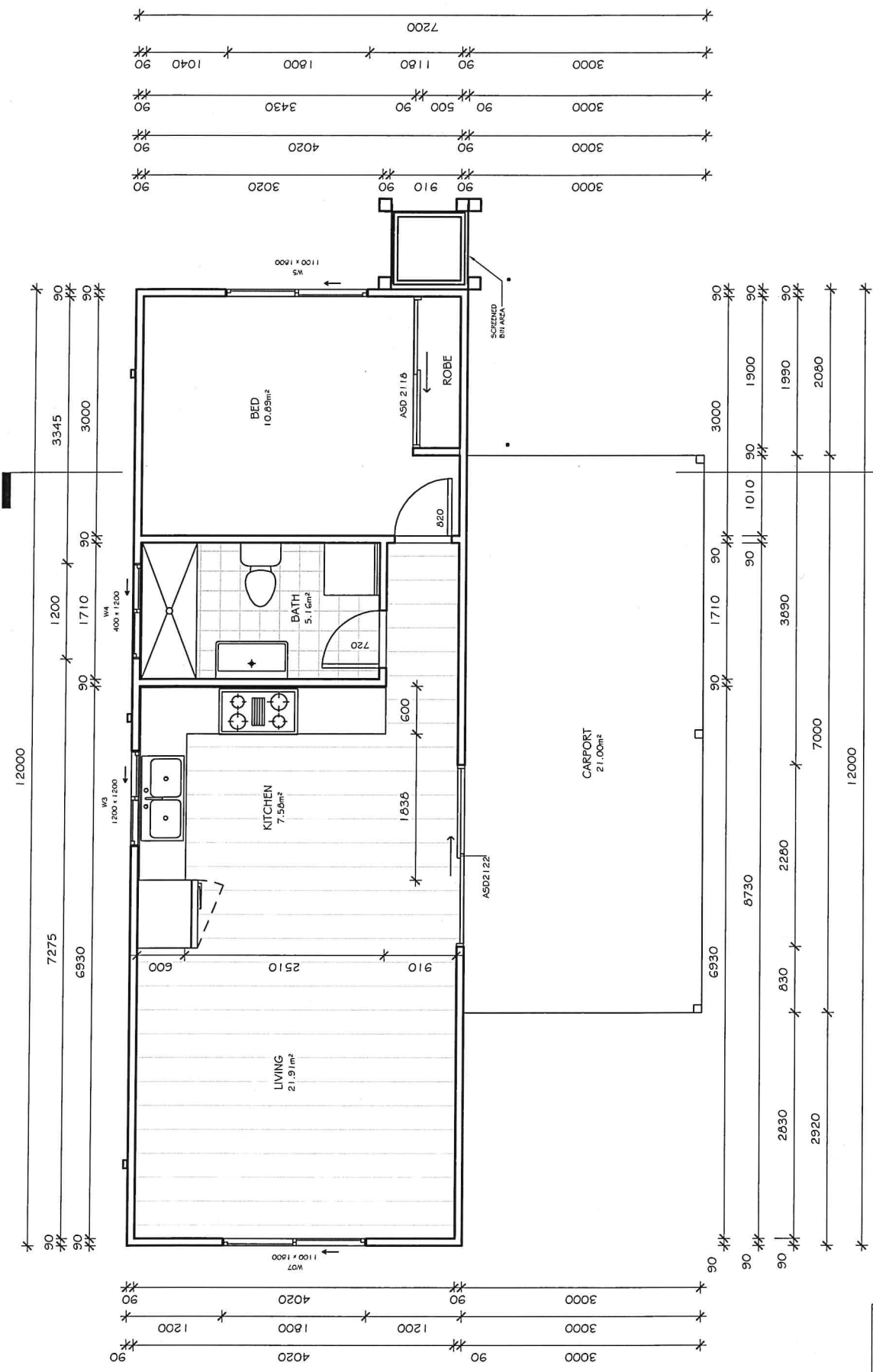
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Section - Villa 2 & 4		FOR APPROVALS	
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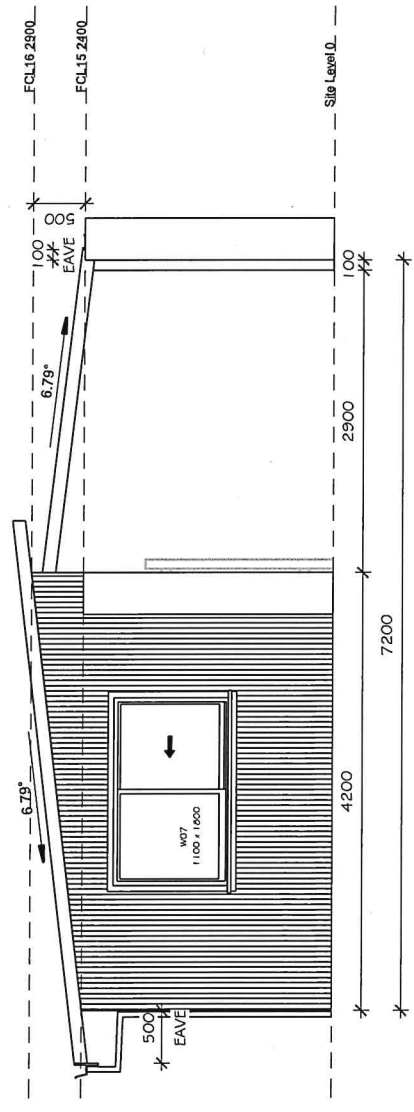
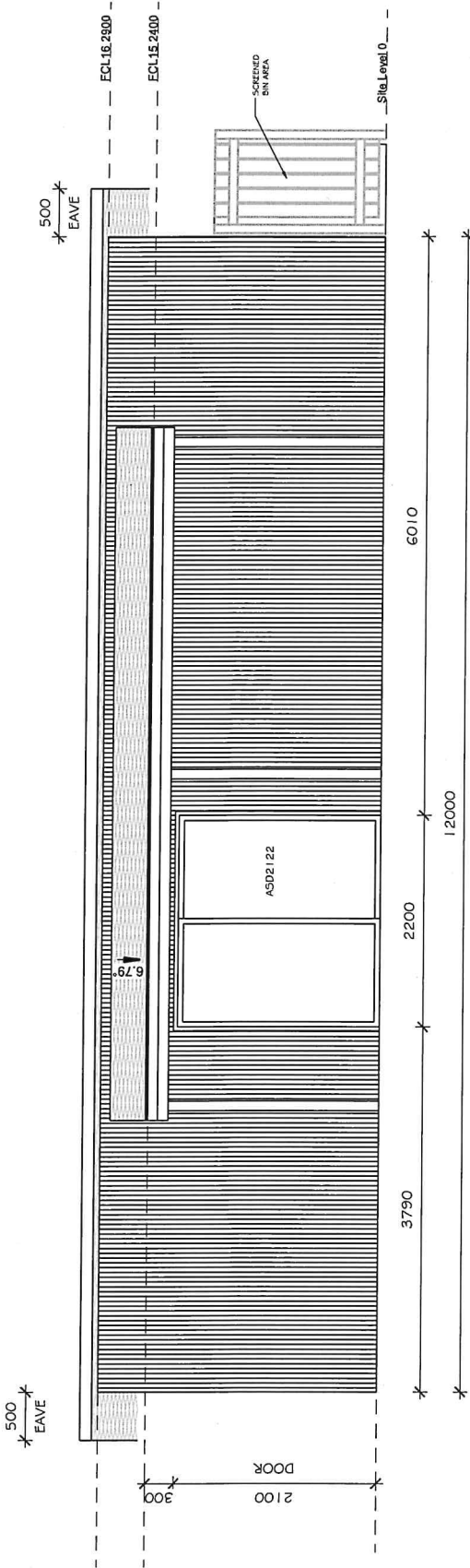
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Project number		210216
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Project name		Floor Plan - Villa 03
Project ID		A-109
Print Date:	31/08/2022 5:12:45 pm	
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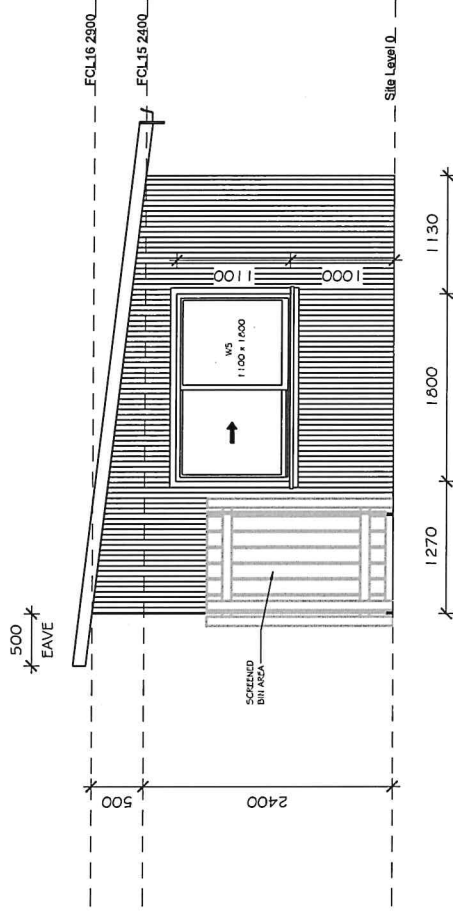
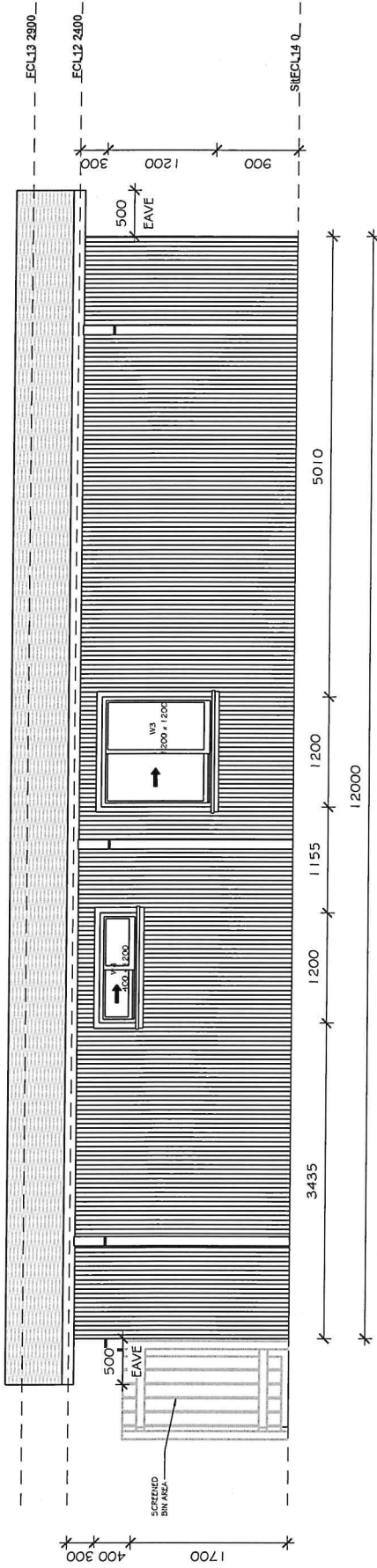
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Elevations - Villa 03		FOR APPROVALS	
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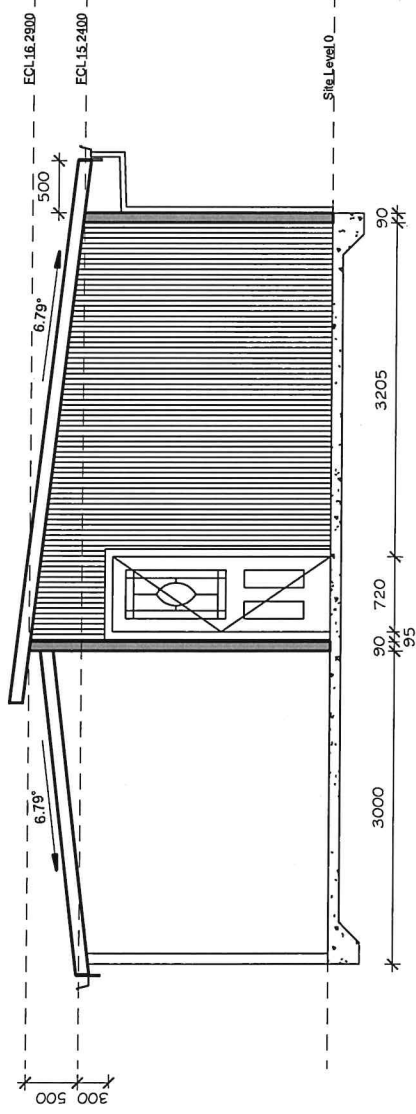
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PROJECT
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Elevations - Villa 03		FOR APPROVALS	
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Section

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PROJECT
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Section - Villa 03

Project number	210216	FOR APPROVALS
Drawn Date	06/05/22	
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Attachment 3 – Infrastructure Charges Notice (D22/24389)



Our Ref: LM:TS:DA/4546:D22/24389

18 October 2022

William & Krystal Miles
c/- Scope Town Planning
75 Hastie Road
MARREBA QLD 4880
E-mail: jburns@scopetownplanning.com.au
Attention: Jonathan Burns

Dear Mr Burns

ADOPTED INFRASTRUCTURE CHARGES NOTICE
Development Application - DA/4546
12 Howard Street, Cooktown – Lot 620 on C17912

Proposal:	Material Change of Use for Multiple Dwelling (4 x Dwelling Units)
Applicant:	William & Krystal Miles c/- Scope Town Planning
Location of Site:	12 Howard Street, Cooktown 4895
Real Property Description:	Lot 620 on C17912
Level of Assessment:	Code Assessment

CHARGES CALCULATION

Material Change of Use for Multiple Dwelling

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential (1 or 2 bedroom dwelling)	\$1,500 (Water Supply)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,500 (Sewerage)	Per dwelling	4	\$6,000.00
Residential (1 or 2 bedroom dwelling)	\$1,800.00 (Transport)	Per dwelling	4	\$7,200.00

Residential (1 or 2 bedroom dwelling)	\$600.00 (Public Parks & Community Land)	Per dwelling	4	\$2,400.00
Residential (1 or 2 bedroom dwelling)	\$600.00 (Stormwater)	Per dwelling	4	\$2,400.00
Total Charge				\$24,000.00

CREDIT CALCULATION

Vacant lot

Development Class	Charge	Unit of Measure	No. of Units	Amount of Charge
Residential RAL	\$2,100 (Water Supply)	Per dwelling	1	\$2,100.00
Residential RAL	\$2,100 (Sewerage)	Per dwelling	1	\$2,100.00
Residential RAL	\$2,520 (Transport)	Per dwelling	1	\$2,520.00
Residential RAL	\$840 (Public Parks & Community Land)	Per dwelling	1	\$840.00
Residential RAL	\$840 (Stormwater)	Per dwelling	1	\$840.00
Total Credit				\$8,400.00

Net Adopted Infrastructure Charges Summary

Total Adopted Charge	Total Credit	Total Infrastructure Charge
\$24,000.00	\$8,400.00	\$15,600.00

(Note: The Total Infrastructure Charge = Total Charges – Total Credit for Existing Use)

Due Date for Payment:

Payment of the total infrastructure charge must be made prior to the commencement of the use of the new Multiple Dwellings (4 x Units):

Payment Details:

Payment of the adopted infrastructure charge must be made to Cook Shire Council.

Goods and Services Tax

The federal government has determined that rates and utility charges levied by a local government will be GST free. Accordingly, no GST is included in this infrastructure charge notice.



Adopted Infrastructure Charge is Subject to Price Variation

The amount of the adopted infrastructure charge is subject to variations in the Consumer Price Index (C.P.I.). All groups from the reference date stated in this notice until the date the payment is made.

This notice will lapse if the development approval stops having effect.

RIGHTS OF APPEAL:

Pursuant to the provisions of Chapter 6 of *The Planning Act 2016*, a person may appeal to the Planning & Environment Court against the decision of this Council. Please refer to <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-025> to access the *Planning Act 2016*. Please refer to sections 124, 125, and 229 to 232 which detail your appeal rights regarding this notice.

Should you require any further information or assistance on this matter please contact Council's Planning and Environment Department on (07) 4082 0500 or E-mail: mail@cook.qld.gov.au .

Yours faithfully

Brian Joiner
Chief Executive Officer
Cook Shire Council

Attachment 4 – Infrastructure Agreement (D23/10822)

Refer to the Infrastructure Agreement (Contribution in Lieu of Works) document provided under separate cover dated 06 April 2023.

Attachment 5 – Extract of Appeal Provisions

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.