

5.2 T210341 PA - Use and development of the land for a dwelling, outbuilding and vegetation removal at 209 Berglund Road, Beaconsfield Upper

Responsible GM: Lili Rosic
Author: Dean Hausler

Recommendation

That Council resolve to issue a Refusal to Grant a Permit for Planning Permit Application T210341 for use and development of land for a dwelling, outbuilding and removal of vegetation at 209 Berglund Road, Beaconsfield Upper on the following grounds:

1. The proposal is contrary to the purposes and decision guidelines of the Rural Conservation Zone – Schedule 2 that seek to protect, conserve and enhance the environmental values and landscape qualities of the land.
2. The proposal does not respond to the purpose and decision guidelines of Clause 52.17 Native Vegetation that seeks to avoidance native vegetation removal and insufficient information has been provided to determine the extent of past native vegetation removal.
3. The proposal does not respond to the statement of significance, environmental objectives or decision guidelines of Clause 42.01 Environmental Significance Overlay and Schedule 1 (Northern Hills) that seek to ensure buildings and works do not adversely impact environmental values.
4. The proposal results in exposure to unnecessary bushfire risk and does not prioritise the protection of human life, sought to be protected by Clause 44.06 Bushfire Management Overlay and associated Planning Policy and Local Planning Policy Framework provisions.
5. The proposal does not appropriately respond to a number of visions, strategies and objectives of Clause 11 Settlement, Clause 12 Environmental and Landscape Values, Clause 13 Environmental Risks and Amenity, Clause 15 Built Environment and Heritage, Clause 16 Housing, Clause 21.02 Environment, Clause 21.03 Settlement and Housing and Clause 21.07 Local Areas – Hills Region.

Attachments

1. T 210341 PA - Development plans & documents [5.2.1 - 11 pages]
2. T 210341 PA - Locality map [5.2.2 - 1 page]
3. T210341 PA Council officer report [5.2.3 - 29 pages]

Application Details

APPLICATION NO.:	T210341
APPLICANT:	Mr Cameron Jennings

LAND:	L1 TP240987, 209 Berglund Road, Beaconsfield Upper VIC 3808
PROPOSAL:	Use and development of the land for a dwelling, outbuilding and removal of vegetation.
PLANNING CONTROLS:	Rural Conservation Zone Schedule 2 Bushfire Management Overlay Environmental Significance Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	Notification was undertaken in accordance with Section 52(1) of the <i>Planning and Environment Act</i> 1987. No objections have been received to date.
KEY PLANNING CONSIDERATIONS:	Native vegetation impact Bushfire risk and management measures Land use compatibility
REASON FOR MEETING:	Officer recommendation for refusal
RECOMMENDATION:	Refuse to Grant a Permit

Executive Summary

On a balanced assessment against policy and controls that apply to the site, the consistent themes applying to this application regards the protection of high biodiversity areas and directing of settlement to areas where bushfire threat to life and property can be managed to an acceptable level.

In attempting to achieve an acceptable bushfire management response, the proposal seeks to change the natural landscape to accommodate the dwelling where policy and planning controls require that the protection of the environment is a central outcome of an application.

The location of a dwelling within an area exposed to high landscape threat, results in the need to remove a significant volume of remnant native vegetation including a large number of a threatened species to provide adequate building protection.

As the planning settings and controls seek to protect and conserve the environmental values of this site and guide settlement to areas of lower bushfire risk areas, the proposal is considered inappropriate for the site.

Background

Initial pre-application advice was provided to the landowner in May 2020 that outlined the concerns with an application to construct a dwelling on this land due to the environmental protections and bushfire risk exposed to the site.

The Planning Permit application was submitted on 12 May 2021 proposing the use and development of land for a dwelling, dependent persons units, outbuilding and removal of vegetation.

A request for additional information was made on 4 June 2021 that again highlighted concerns that the application did not adequately respond to the environmental significance and protections that apply to the site. The further information was submitted in January 2022 where the Dependent Person's Unit was removed from the application.

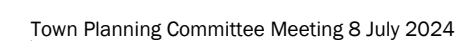
In response to information requests and concerns raised by referral authorities, the applicant provided additional information and amended their application in late 2022. The application proceeded to public notice in January 2023; no submissions were received. Due to ongoing concerns with native vegetation impact, a site meeting was held between the applicants, Council, Department of Environment Energy and Climate Action (DEECA) and Fire Rescue Victoria (FRV) in June 2023.

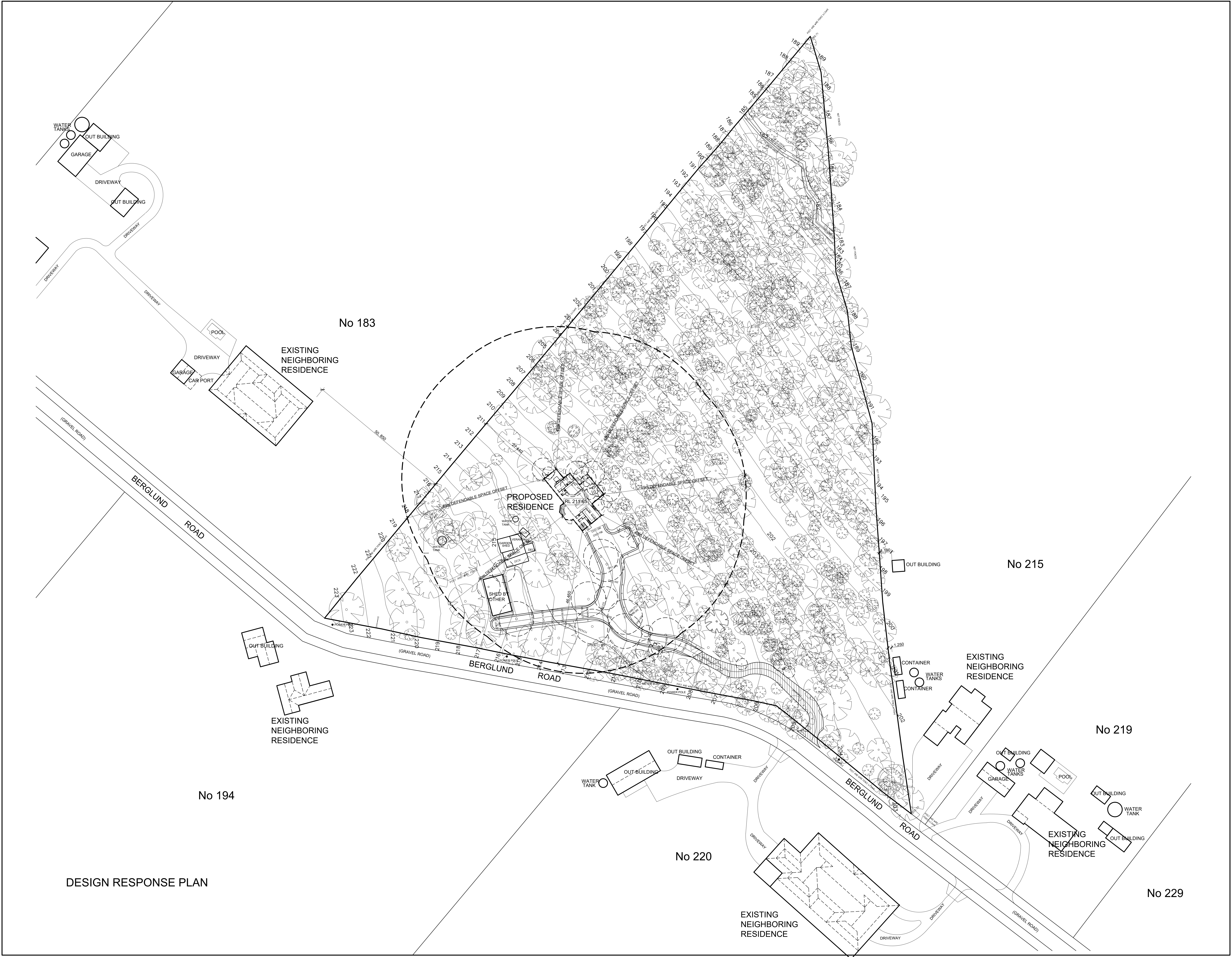
In February 2024 the application was amended to make modifications to bushfire management measures and consent was ultimately provided by DEECA and FRV. Despite the consent from these authorities Council's Statutory Planning and Environment departments have maintained concern with the extensive levels of biodiversity loss that seeks to remove over 283 trees and shrubs that require planning approval across an area of 7000 square metres. There is also concern about the potential development advantage from the past unlawful removal of vegetation and works to create access.

Relevance to Council Plan

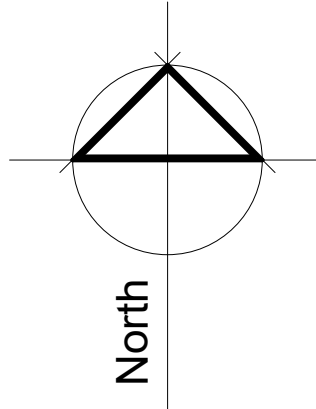
5.1 We practise responsible leadership

5.1.1 Build trust through meaningful community engagement and transparent decision-making.

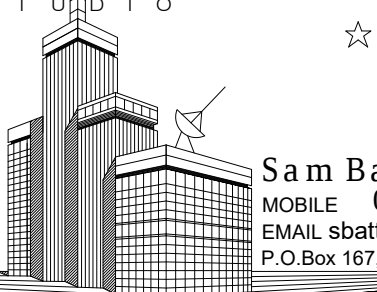




GENERAL NOTES:-



creative
design



COPYRIGHT REMAINS THE PROPERTY OF THIS OFFICE

PROPOSED 2 STOREY
RESIDENCE & DRIVEWAY
EXTENSION.

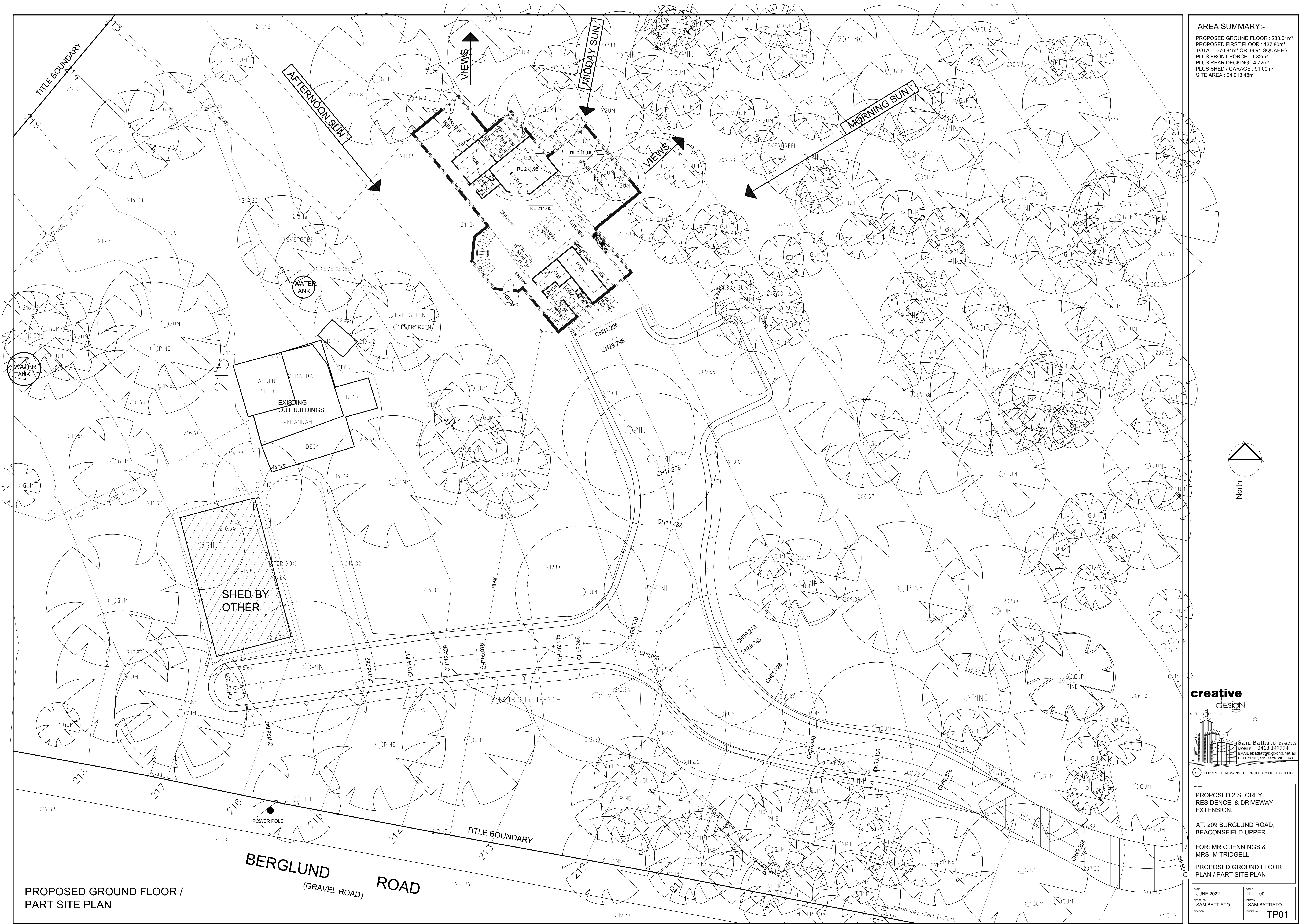
AT: 209 BURGLUND ROAD,
BEACONSFIELD UPPER.

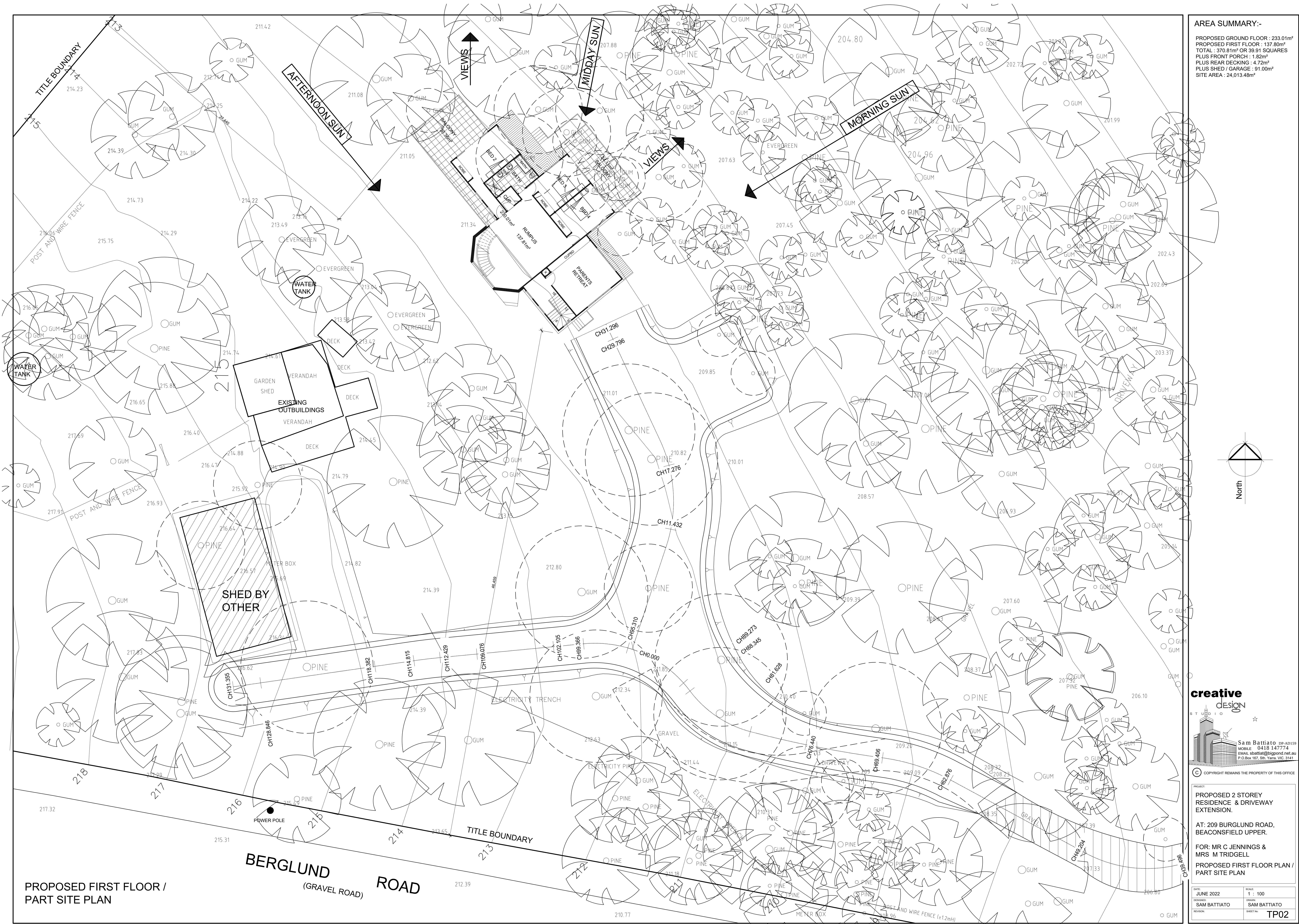
FOR: MR C JENNINGS &
MRS M TRIDGELL

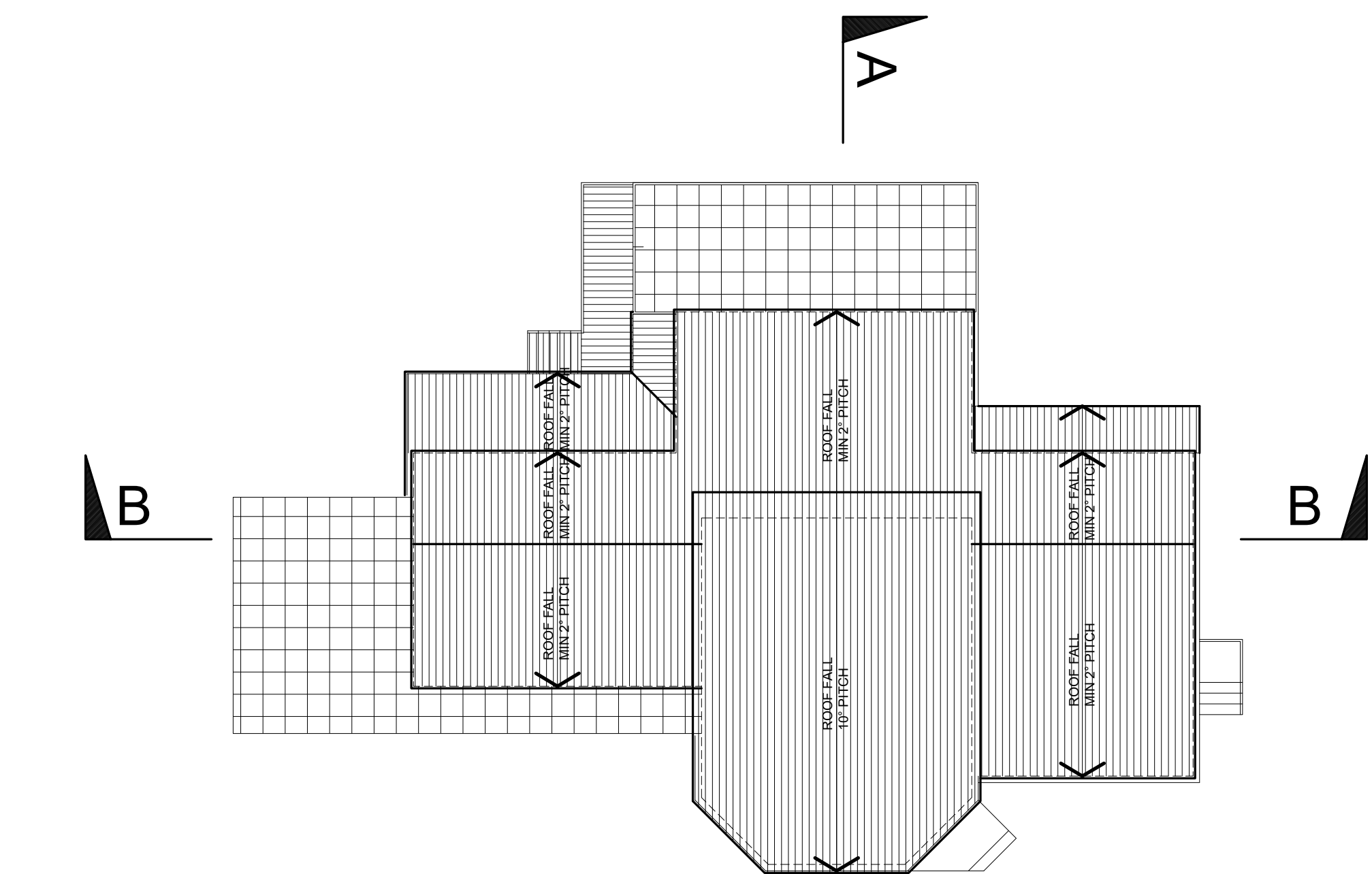
DESIGN RESPONSE

DATE: JUNE 2022
DRAWN: SAM BATTIATO
REVISION: TP06

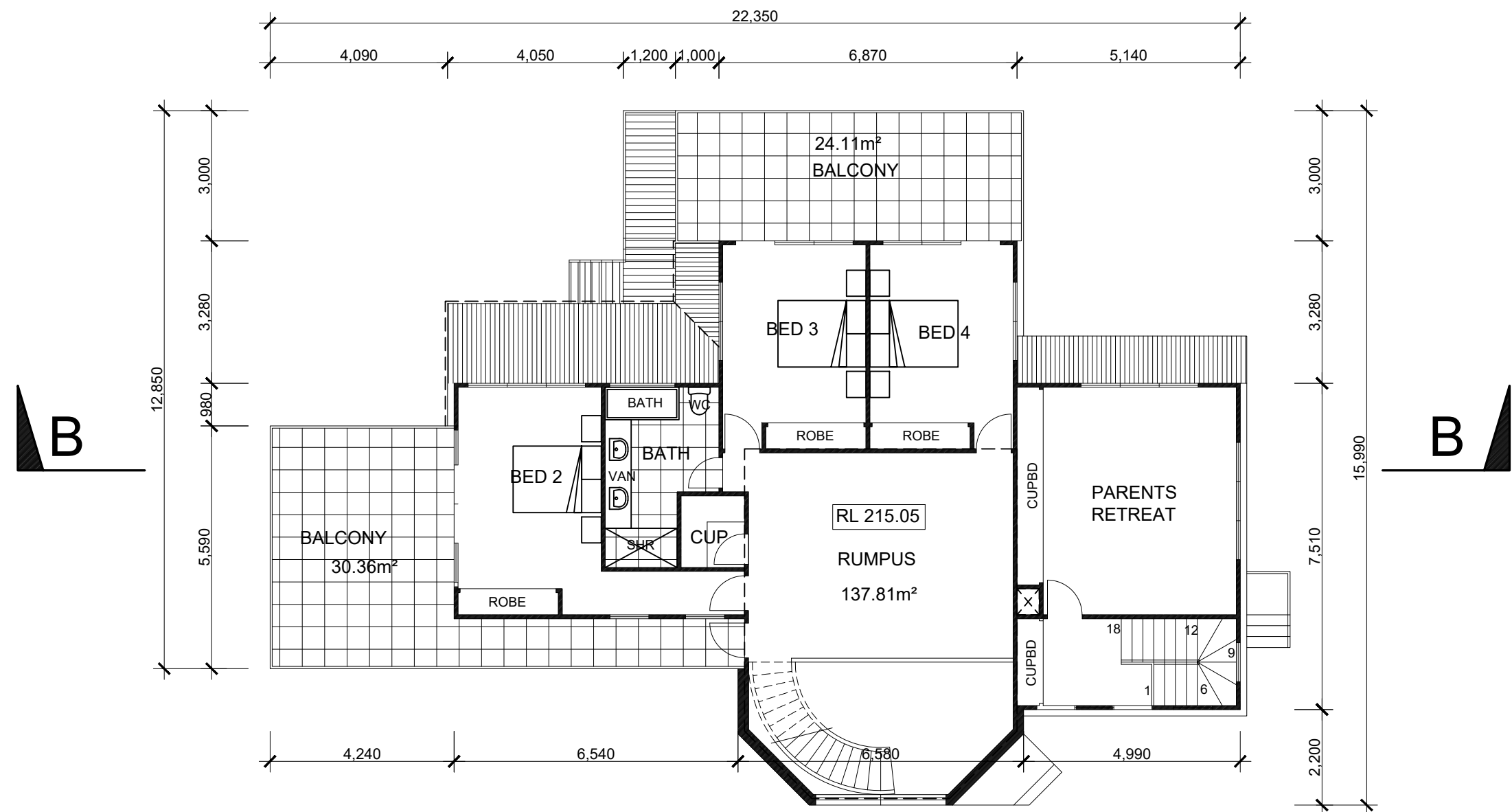
SCALE: 1 : 400
PROJECT: SAM BATTIATO



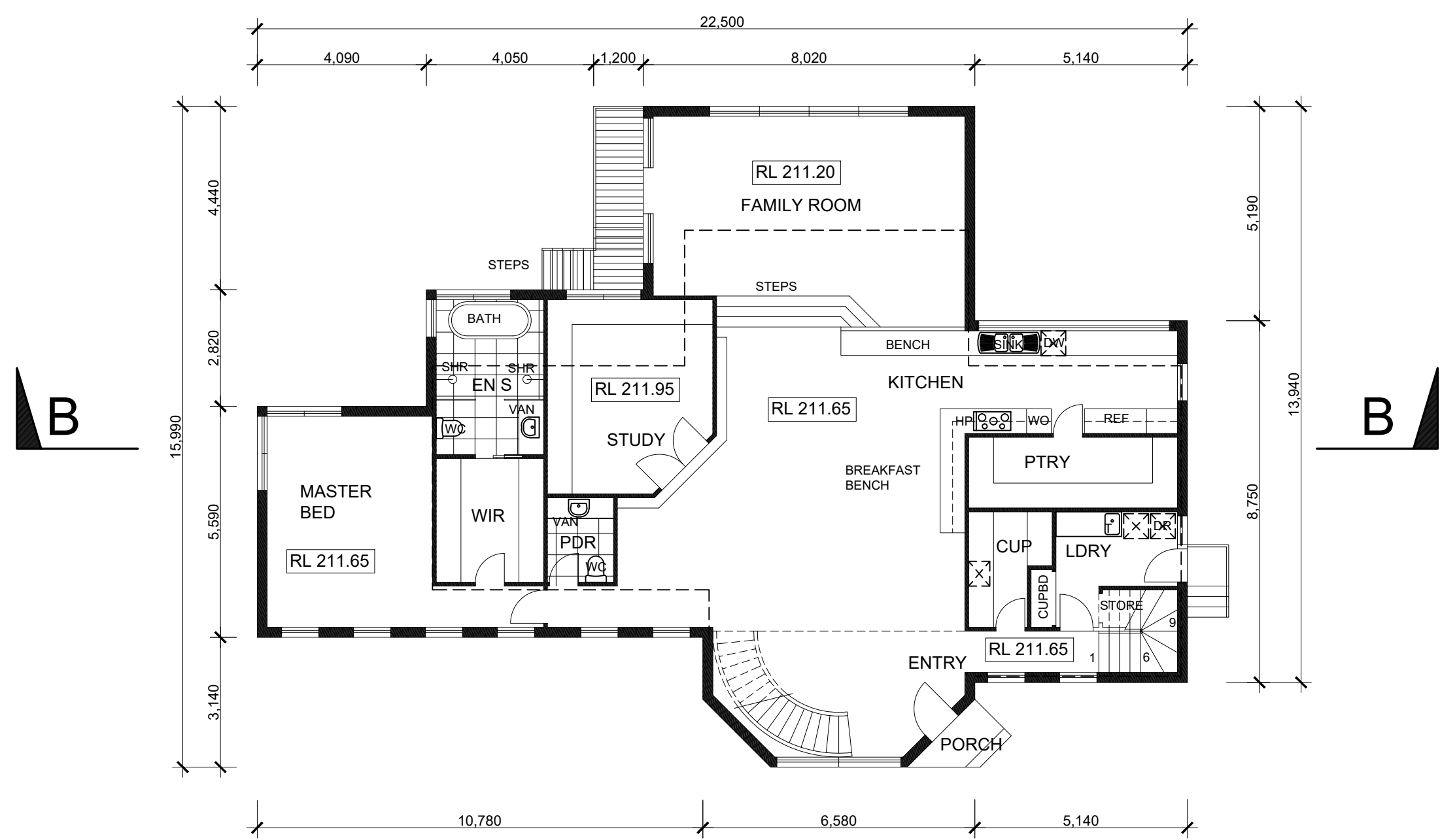




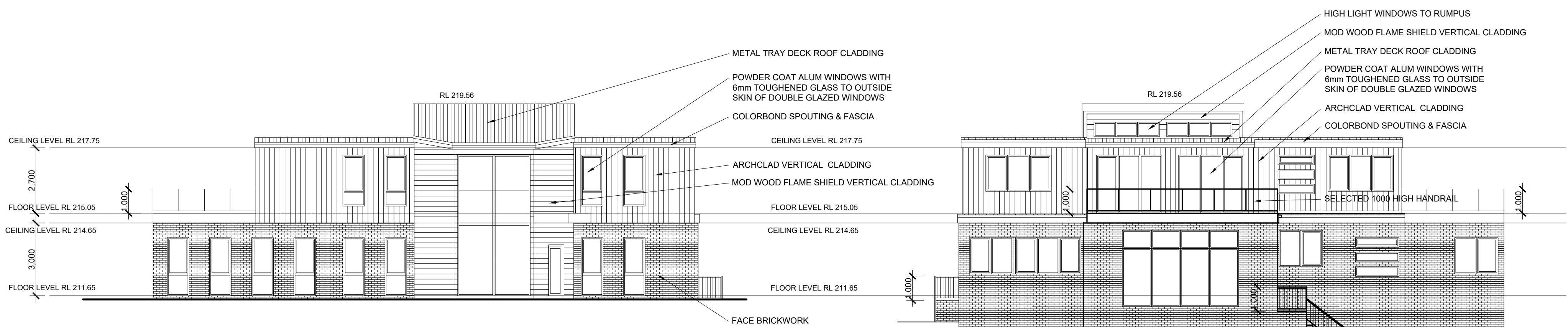
PROPOSED ROOF PLAN



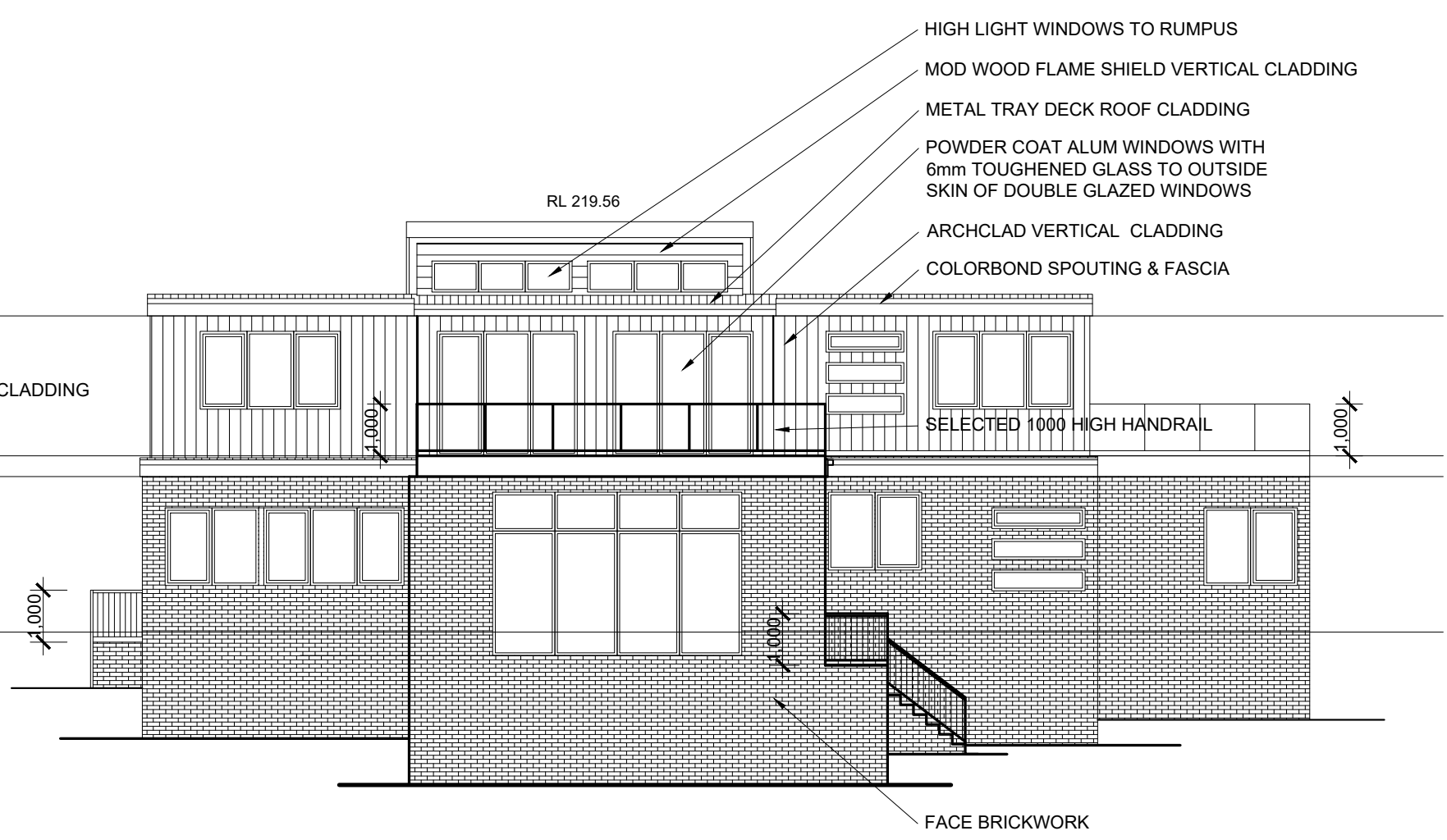
PROPOSED FIRST FLOOR PLAN



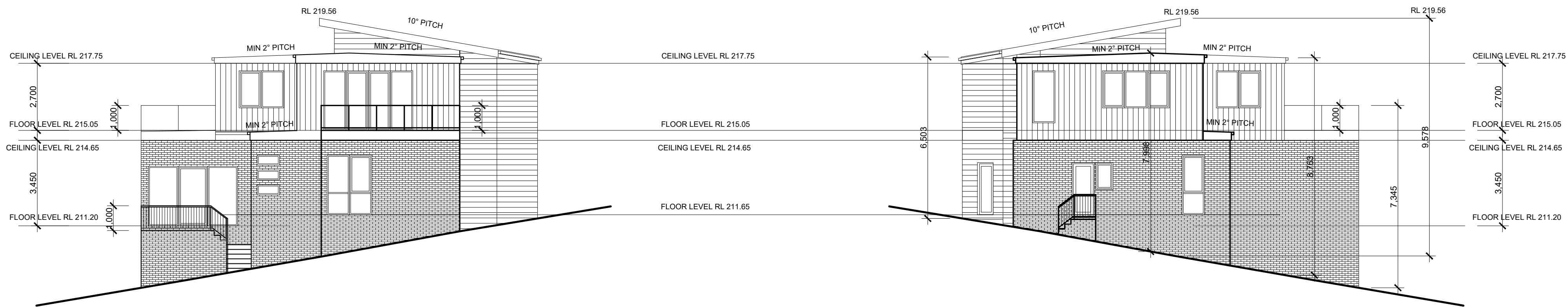
PROPOSED GROUND FLOOR PLAN



PROPOSED SOUTH WEST ELEVATION

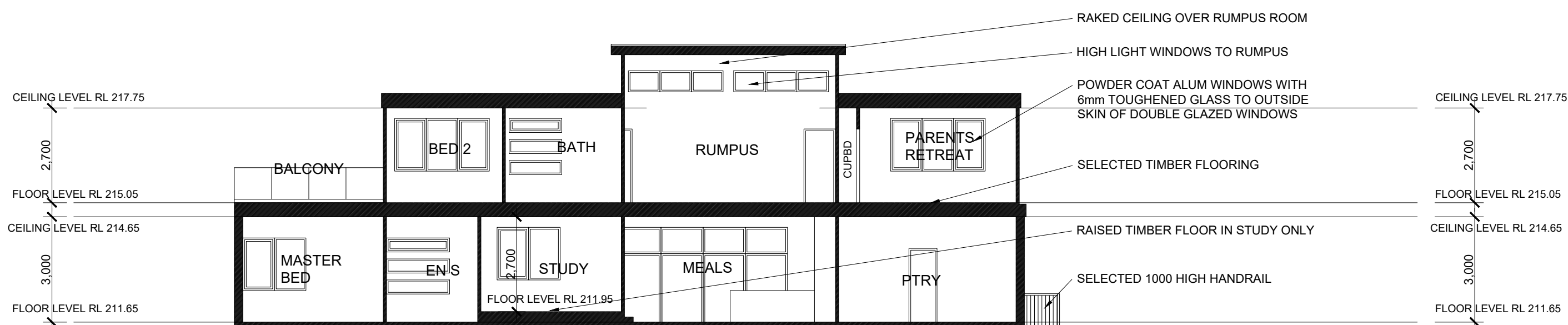


PROPOSED NORTH EAST ELEVATION

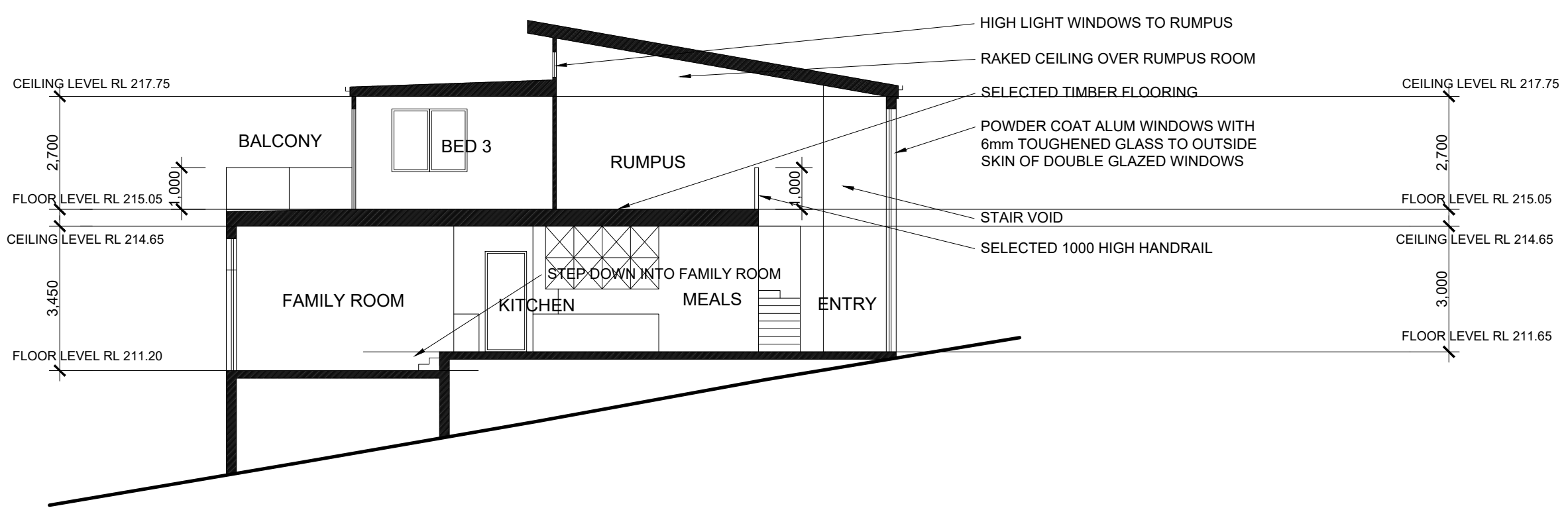


PROPOSED NORTH WEST ELEVATION

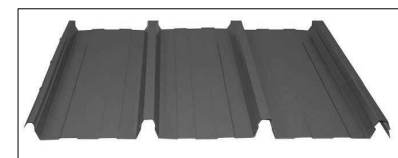
PROPOSED SOUTH EAST ELEVATION



SECTION B - B



SECTION A - A



METAL TRAY DECK ROOFING



Night Sky®



Monument®



Windspray®



MOD WOOD FLAME SHIELD CLADDING



PGH FACE BRICK

AREA SUMMARY:-

PROPOSED GROUND FLOOR : 233.01m²
PROPOSED FIRST FLOOR : 137.80m²
TOTAL : 370.81m² OR 39.91 SQUARES
PLUS FRONT PORCH : 1.02m²
PLUS REAR DECKING : 4.72m²
PLUS SHED / GARAGE : 91.00m²
SITE AREA : 24,013.48m²

FINISHES

WALL CLADDING

GROUND FLOOR WALLS TO BE FACE BRICK BY PGH, COLOR 'WINDLO' OR SIMILAR
ARCHCLAD VERTICAL SHEET CLADDING OR SIMILAR
APPROVED COLOR 'WINDSPRAY'

ROOF, SPOUTING & FASCIA

ROOF:

METAL TRAY DECK ROOF CLADDING, COLOR 'MONUMENT'
SPROUTING & FASCIA:
COLORBOND TYPE, COLOR 'NIGHT SKY'

DOWNPIPS:

COLORBOND TYPE COLOR 'NIGHT SKY'

WINDOWS

POWDER COAT ALUMINUM TYPE
COLOR 'NIGHT SKY'

EXTERNAL SHUTTERS

APPROVED METAL WINDOW SHUTTERS WHERE REQUIRED,
COLOR 'WINDSPRAY'

DECKING & BALCONIES

DECKING & BALCONY FLOORS TO BE MOD WOOD FLAME SHIELD, OR SIMILAR APPROVED, COLOR, JAMBAH

creative design

Sam Battiatto

Sam Battiatto

Sam Battiatto

Sam Battiatto

Sam Battiatto

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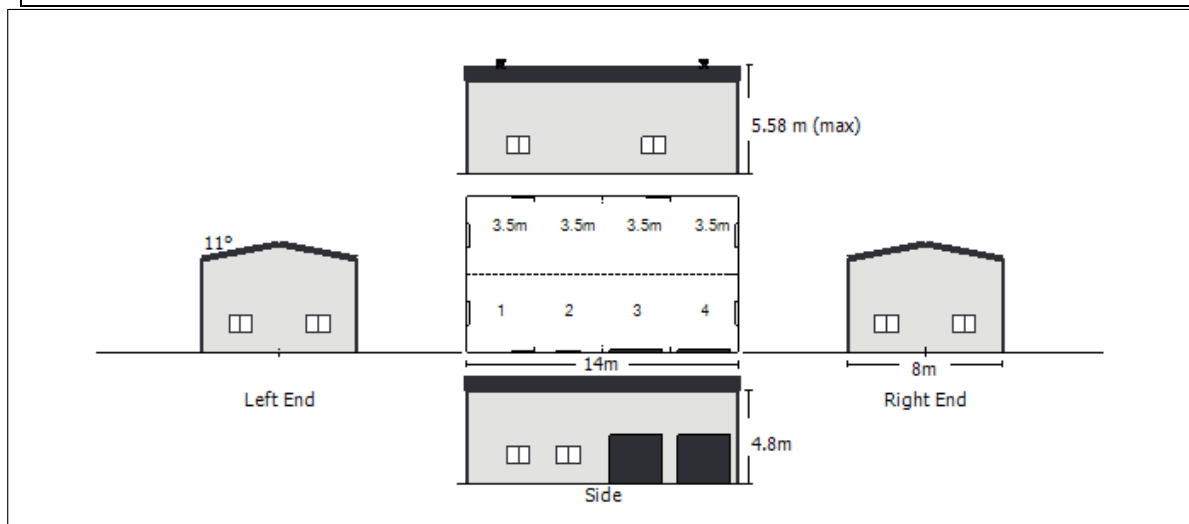




11 Purton Road, Pakenham, 3810
P: 03 5941 9019 • www.pakenhamgarages.com.au • A.B.N: 64 106 890 957

Customer: CAMERON JENNINGS 209 BERGLUND ROAD UPPER BEACONSFIELD 3808	Tel: (03) 9587 6155 Email: cameron@whitelawhydraulics.com.au Work: Mobile:	Quote Number: 29565 21/02/2020 Quote valid for 7 Days Sales Rep: Anthony Smith sales@pakenhamgarages.com.au
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<u>DIMENSIONS:</u>		Office use only	
Span:	8m		
Length:	14m		
Eave Height:	4.8m		
Apex Height:	5.58m		
Bay Width:	Side bays 3.5m x 4. End bays are 4m each		
Roof Pitch:	11Deg°		
Left Leanto			
Right Leanto			
<u>DESIGN FACTORS:</u>		BUILT TO NCC REQUIRMENTS FOR 2019	
Importance Level:	2	Shielding Factor:	1
Wind Region:	Reg A	Int Pressure Co-efficient:	-0.5, 0.5
Terrain Category:	TCat 2.5	Site wind speed in meters	46.197 (ultimate limit state)
Topography:	1.18	per second:	
<u>Approximate representation of the Building:</u>			



Pakenham Garages only uses genuine Australian Made Blue Scope Colorbond® & Zinalume® steel

Bushfire Management Plan

209 Berglund Road Beaconsfield Upper

Sheet 1 of 3

Construction Standard

All dwellings are to be designed and constructed to a minimum AS-3959 Bushfire Attack Level of BAL 40

Defendable Space:

Defendable Space is to a distance of 49 metres from the dwellings or to the property boundary (whichever is less) and a distance of 10m from the shed where vegetation and other flammable materials must be managed in accordance with the following:

1. Grass must be short cropped and maintained during the declared fire danger period.
2. All leaves and vegetation debris must be removed at regular intervals during the declared fire danger period.
3. Within 10 metres of a building, flammable objects must not be located close to the vulnerable parts of the building.
4. Plants greater than 10 centimetres in height must not be placed within 3m of a window or glass feature of the building.
5. Shrubs must not be located under the canopy of trees.
6. Individual and clumps of shrubs must not exceed 5 sq. metres in area and must be separated by at least 5 metres.
7. Trees must not overhang or touch any elements of the building.
8. The canopy of trees must be separated by at least 2 metres (with the exception of dead trees) as shown on sheet 2
9. There must be a clearance of at least 2 metres between the lowest tree branches and ground level.

Water Supply Requirements

A 10,000 litre water supply tank is to be provided for each dwelling. The water supply is to:

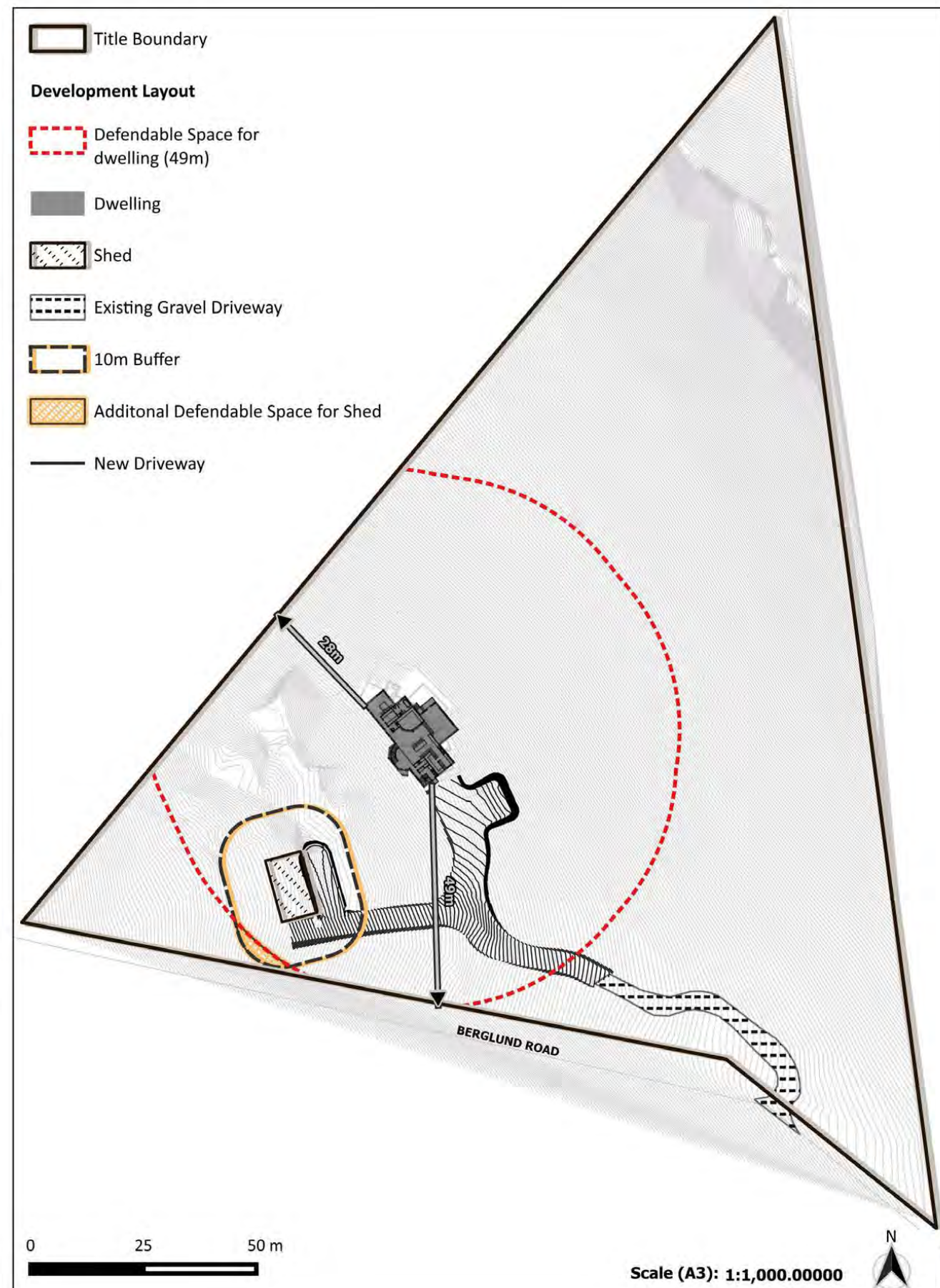
1. Be stored in an above ground water tank constructed of concrete or metal
2. All fixed above-ground water pipes and fittings required for firefighting purposes must be made of corrosive resistant metal
3. Include a separate outlet for occupant use
4. Be readily identifiable from the building or appropriate identification signs to the satisfaction of the relevant fire authority
5. Be located within 60 metres of the outer edge of the approved building.
6. The outlet/s of the water tank must be within 4m of the accessway and be unobstructed.
7. Incorporate a ball or gate valve (British Standard Pipe (BSP) 65mm) and coupling (64 mm CFA 3 thread per inch male fitting).
8. Any pipework and fittings must be a minimum of 65 mm (excluding the CFA coupling).

Access Requirements

The following design and construction requirements apply:

1. All-weather Construction
2. A load limit of at least 15 tonnes
3. Have a minimum trafficable width of 3.5 metres.
4. Be clear of encroachments for at least 0.5m on each side and 4m vertically.
5. Curves must have a minimum inner radius of 10m.
6. The average grade must be no more than 1 in 7 (14.4 %) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50m.
7. Dips must have no more than a 1 in 8 (12.5%) (7.1 degrees) entry and exit angle.
8. Incorporate a turning area for fire fighting vehicles close to the building.
9. Incorporate a passing bay (as shown) which must be at least 20m long and have a minimum trafficable width of 6m

Refer to the following page for information on tree management





Bushfire Management Plan

209 Berglund Road Beaconsfield Upper - Feb 2024

Sheet 3 of 3 - Trees to be Retained within the designated defensible space

ID	Botanical Name	Common Name	Height	Spread	DBH (cm)	TPZ	SRZ	Health
22	Eucalyptus radiata	Narrow-leaf Peppermint	17	8	50	6.00	2.47	Poor
31	Eucalyptus radiata	Narrow-leaf Peppermint	6	3	10	2.00	1.26	Fair
33	Eucalyptus radiata	Narrow-leaf Peppermint	15	5	47	5.64	2.41	Fair
37	Eucalyptus radiata	Narrow-leaf Peppermint	7	2	15	2.00	1.49	Good
40	Eucalyptus radiata	Narrow-leaf Peppermint	15	8	52	6.24	2.51	Fair
44	Eucalyptus radiata	Narrow-leaf Peppermint	19	11	78	9.36	2.98	Fair
45	Eucalyptus radiata	Narrow-leaf Peppermint	19	16	80	9.60	3.01	Dead
47	Eucalyptus radiata	Narrow-leaf Peppermint	12	7	38	4.56	2.20	Dead
53	Eucalyptus radiata	Narrow-leaf Peppermint	11	6	52	6.24	2.51	Fair
69	Eucalyptus spp.	Eucalyptus	7	2	75	9.00	2.93	Dead
74	Eucalyptus radiata	Narrow-leaf Peppermint	15	11	55	6.60	2.57	Fair
96	Eucalyptus radiata	Narrow-leaf Peppermint	16	9	60	7.20	2.67	Fair
99	Eucalyptus radiata	Narrow-leaf Peppermint	12	7	43	5.16	2.32	Fair
101	Acacia melanoxylon	Blackwood	7	4	21	2.52	1.72	Good
106	Eucalyptus radiata	Narrow-leaf Peppermint	19	13	87	10.44	3.12	Poor
117	Eucalyptus radiata	Narrow-leaf Peppermint	19	5	89	10.68	3.15	Poor
118	Eucalyptus radiata	Narrow-leaf Peppermint	6	3	20	2.40	1.68	Good
119	Eucalyptus radiata	Narrow-leaf Peppermint	14	12	55	6.60	2.57	Good
121	Eucalyptus fulgens	Green Scentbark	11	7	60	7.20	2.67	Dead
123	Acacia melanoxylon	Blackwood	8	4	25	3.00	1.85	Poor
124	Eucalyptus fulgens	Green Scentbark	11	9	59	7.08	2.65	Poor
125	Eucalyptus radiata	Narrow-leaf Peppermint	9	5	45	5.40	2.37	Poor
135	Eucalyptus fulgens	Green Scentbark	0	12	64	7.68	2.74	Fair
152	Eucalyptus fulgens	Green Scentbark	15	7	58	6.96	2.63	Poor
157	Acacia melanoxylon	Blackwood	8	2	20	2.40	1.68	Poor
160	Eucalyptus fulgens	Green Scentbark	18	5	40	4.80	2.25	Good
168	Eucalyptus fulgens	Green Scentbark	18	8	57	6.84	2.61	Fair
196	Eucalyptus fulgens	Green Scentbark	14	12	73	8.76	2.90	Poor
203	Eucalyptus obliqua	Messmate Stringybark	15	3	30	3.60	2.00	Good
212	Eucalyptus obliqua	Messmate Stringybark	14	6	27	3.24	1.91	Fair
219	Eucalyptus obliqua	Messmate Stringybark	15	6	30	3.60	2.00	Good
224	Eucalyptus obliqua	Messmate Stringybark	14	5	24	2.88	1.82	Fair
227	Eucalyptus obliqua	Messmate Stringybark	10	5	19	2.28	1.65	Good
233	Eucalyptus fulgens	Green Scentbark	13	5	25	3.00	1.85	Fair
253	Eucalyptus fulgens	Green Scentbark	7	3	17	2.04	1.57	Fair
286	Eucalyptus fulgens	Green Scentbark	13	11	54	6.48	2.55	Good
301	Eucalyptus obliqua	Messmate Stringybark	15	12	77	9.24	2.97	Fair
312	Eucalyptus obliqua	Messmate Stringybark	7	2	8	2.00	1.15	Poor
323	Eucalyptus radiata	Narrow-leaf Peppermint	16	10	44	5.28	2.34	Good
329	Eucalyptus fulgens	Green Scentbark	5	3	11	2.00	1.31	Fair
378	Eucalyptus fulgens	Green Scentbark	12	6	23	2.76	1.79	Fair

ID	Botanical Name	Common Name	Height	Spread	DBH (cm)	TPZ (m)	SRZ (m)	Health
402	Eucalyptus fulgens	Green Scentbark	15	8	49	5.88	2.45	Fair
437	Eucalyptus radiata	Narrow-leaf Peppermint	16	11	67	8.04	2.80	Good
444	Eucalyptus fulgens	Green Scentbark	13	2	17	2.04	1.57	Good
456	Eucalyptus fulgens	Green Scentbark	15	6	29	3.48	1.97	Good
457	Eucalyptus fulgens	Green Scentbark	8	3	15	2.00	1.49	Good
469	Eucalyptus fulgens	Green Scentbark	8	3	15	2.00	1.49	Good
483	Eucalyptus fulgens	Green Scentbark	16	6	48	5.76	2.43	Fair
494	Eucalyptus fulgens	Green Scentbark	12	5	44	5.28	2.34	Good
497	Eucalyptus fulgens	Green Scentbark	16	7	50	6.00	2.47	Fair
499	Eucalyptus fulgens	Green Scentbark	4	2	7	2.00	1.08	Fair
506	Eucalyptus fulgens	Green Scentbark	16	9	51	6.12	2.49	Poor
510	Eucalyptus fulgens	Green Scentbark	13	3	22	2.64	1.75	Good
516	Eucalyptus fulgens	Green Scentbark	16	8	65	7.80	2.76	Fair
519	Eucalyptus fulgens	Green Scentbark	17	8	42	5.04	2.30	Good
540	Eucalyptus fulgens	Green Scentbark	15	7	22	2.64	1.75	Fair
558	Eucalyptus fulgens	Green Scentbark	17	6	34	4.08	2.10	Good
563	Eucalyptus fulgens	Green Scentbark	11	3	22	2.64	1.75	Good
566	Eucalyptus fulgens	Green Scentbark	16	4	22	2.64	1.75	Good
569	Eucalyptus radiata	Narrow-leaf Peppermint	15	6	28	3.36	1.94	Fair
575	Eucalyptus fulgens	Green Scentbark	6	2	15	2.00	1.49	Good
581	Eucalyptus fulgens	Green Scentbark	12	3	22	2.64	1.75	Fair
584	Eucalyptus fulgens	Green Scentbark	8	3	16	2.00	1.53	Good
588	Eucalyptus fulgens	Green Scentbark	12	3	25	3.00	1.85	Good
591	Eucalyptus fulgens	Green Scentbark	16	11	66	7.92	2.78	Fair
595	Eucalyptus fulgens	Green Scentbark	16	6	31	3.72	2.02	Good
600	Eucalyptus obliqua	Messmate Stringybark	14	5	32	3.84	2.05	Good
601	Eucalyptus radiata	Narrow-leaf Peppermint	14	9	48	5.76	2.43	Fair
604	Eucalyptus fulgens	Green Scentbark	9	4	20	2.40	1.68	Poor
616	Eucalyptus fulgens	Green Scentbark	14	8	45	5.40	2.37	Dead
635	Eucalyptus fulgens	Green Scentbark	14	4	26	3.12	1.88	Good
644	Eucalyptus radiata	Narrow-leaf Peppermint	12	6	36	4.32	2.15	Fair
652	Eucalyptus fulgens	Green Scentbark	11	4	18	2.16	1.61	Good
664	Eucalyptus fulgens	Green Scentbark	16	12	76	9.12	2.95	Poor
680	Eucalyptus fulgens	Green Scentbark	10	2	12	2.00	1.36	Fair
697	Eucalyptus fulgens	Green Scentbark	12	10	66	7.92	2.78	Fair
705	Eucalyptus fulgens	Green Scentbark	5	2	8	2.00	1.15	Good
706	Eucalyptus fulgens	Green Scentbark	8	2	10	2.00	1.26	Fair
710	Eucalyptus fulgens	Green Scentbark	11	2	20	2.40	1.68	Good
713	Eucalyptus fulgens	Green Scentbark	6	2	10	2.00	1.26	Good
718	Eucalyptus fulgens	Green Scentbark	8	2	10	2.00	1.26	Good
727	Eucalyptus fulgens	Green Scentbark	16	12	61	7.32	2.69	Fair

*Tree Assessment undertaken
by Greenwood Consulting
Recommendations for Tree
Retention by Ranges
Environmental

RANGES
Environmental
info@rangesconsulting.com



APPLICATION FOR CONSIDERATION
REFUSAL- COUNCIL REPORT



Application Details:

Proposal	Use and development of the land for a dwelling, outbuilding and removal of vegetation		
Applicant	Mr Cameron Jennings		
Date Received:	11 May 2021		
Statutory Days:	42		
Section 50/50A/57A Amendment	☐ None	☒ Yes, date: 16 December 2022 - (Section 57A) – Reduction of dwelling size and vegetation removal. 29 February 2024 – (Section 57A) - Amendments to the retention and removal of vegetation and modification to canopy separation requirements (bushfire mitigation measures)	
Application Number	T210341		
Planner	Dean Haeusler		
Land/Address	L1 TP240987, 209 Berglund Road, Beaconsfield Upper VIC 3808		
Property No.	1091800600		
Zoning	Clause 35.06 - Rural Conservation Zone Schedule 2		
Overlay/s	Clause 42.01 - Environmental Significance Overlay Schedule 1 Clause 44.06 - Bushfire Management Overlay		
Permit Trigger(s)	- Pursuant to Clause 35.06-1 of the Rural Conservation Zone, a planning permit is required to use the land for the purpose of a dwelling. - Pursuant to Clause 35.06-5 of the Rural Conservation Zone a planning permit is required to construct buildings associated with a section 2 use (dwelling) and earthworks. - Pursuant to Clause 44.06-2 of the Bushfire Management Overlay, a planning permit is required for buildings and works associated with a dwelling. - Pursuant to Clause 42.01-2 of the Environmental Significance Overlay a permit is required to construct a building or carry out works (to construct a building exceeding 7 metres in height, to construct an outbuilding exceeding 120 square metres, earthworks exceeding 1 metre and removal of vegetation); - Pursuant to Clause 52.17-1 Native Vegetation, a permit is required to lop, destroy or remove native vegetation.		
Aboriginal Cultural Sensitivity	☒ No	☐ Yes; a CHMP is: ☐ Not required ☐ Required	

Section 55 Referrals	☐ None	☒ Yes, list below:	
	▪ Country Fire Authority ▪ Department of Energy, Environment and Climate Change		
Registered restrictions on Title	☒ None	☐ Yes, list below:	
Recommendation	☐ Permit ☐ NOD ☒ Refusal		
Ward Councillor communications	☒ None	☐ Yes, item in Councillor Bulletin	
Documents relied on	▪ Development Plans prepared by Creative Design (dated June 2022) ▪ Development Plans (Shed) supplied by Pakenham Garages (dated 21 February 2020) ▪ Town Planning Submission prepared by Axiom Planning and Design (dated 29th February 2024) ▪ Tree Assessment Report prepared by Ranges Environmental Consulting (dated 29 February 2024) ▪ Biodiversity Assessment and NVIM Assessment prepared by Mark Shepard Ecological Consulting (Revision 4.2, Dated 21 February 2024) ▪ Bushfire Management Assessment prepared by Ranges Environmental Consulting (dated 1 March 2024) ▪ Land Capability Assessment prepared by Beata Lorincz (Dated June 2022) ▪ Title Documents		
Full plans and documents	T210341 PA - Compiled documents (Mar 2024).pdf		
Plans to be endorsed?	☐ Yes, ☒ No – Refusal recommended		

Proposal

Approval is sought for the use and development of for a dwelling and outbuilding along with the removal of vegetation.

Buildings and works (dwelling, outbuilding and driveway)

The proposed buildings will be accessed via an unsealed driveway forks off to a shed and a dwelling. The dwelling will be sited 46.5 metres from the frontage to Berglund Road and 27 metres from the western boundary.



Figure 1: Site plan

The dwelling will be a two storey design consisting of a family, living and kitchen area along with master bedroom and study at the lower level while the first floor will contain a further three bedrooms, rumpus and retreat along with two balconies. Total floor area will be 371 square metres.



Figure 2: South-west elevation view



The architectural drawings for the 'Left End' building are as follows:

- Front Elevation:** A symmetrical building with a gabled roof. The roof slope is indicated as 11°. The building has two windows on each side of the central axis. The total width is 14m, divided into four equal sections of 3.5m each.
- Side Elevation:** A long, low profile of the building with a height of 4.8m. It shows two windows on the left and two solid black rectangular blocks on the right, representing doors or large windows.
- End Elevation:** A symmetrical building with a gabled roof, similar to the front elevation but with a different roof profile. It has two windows on each side. The total width is 8m.

Figure 4: Outbuilding elevation drawings

No colours or materials have been specified for the building.

Bushfire Management

A bushfire management assessment has been submitted to support the application. In summary, the report concludes the following:

- Landscape Type categorises the bushfire landscape threat between 1 (low risk) to 4 (highest risk). The risk profile of the site is identified as type 3 where bushfire could feasibly approach the site from most directions, particularly north and south-west. There is also no immediate access to a Neighbourhood Safer Place.

Landscape Type	Description
Type 1	- There is little vegetation beyond 150 metres of the site (except grasslands and low-threat vegetation). - Extreme bushfire behaviour is not possible. - The type and extent of vegetation is unlikely to result in neighbourhood scale destruction of property. - Immediate access is available to a place that provides shelter from bushfire.
Type 2	- The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site. - Bushfire can only approach from one aspect and the site is located in a suburban, township or urban area managed in a minimum fuel condition. - Access is readily available to a place that provides shelter from bushfire. This will often be the surrounding developed area.
Type 3	- The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site. - Bushfire can approach from more than one aspect. - The site is located in an area that is not managed in a minimum fuel condition. - Access to an appropriate place that provides shelter from bushfire is not certain.
Type 4	- The broader landscape presents an extreme risk. - Evacuation options are limited or not available.

Figure 5: Landscape Types (Source: Ranges Environmental Consulting - Bushfire Management Assessment)

- Defendable Space around the dwelling has been determined as follows:

DIRECTION	VEGETATION TYPE	SLOPE	DEGREES	DEFENDABLE SPACE PROVIDED
NORTH	Forest	Downslope	5-10	49
EAST	Forest	Downslope	15-20	39
SOUTH	Forest/Modified	Downslope	5-10	50 or property boundary
WEST	Grassland	Downslope	5-10	28

- To mitigate landscape threat, a combination of a high construction level (Bushfire Attack Level (BAL) -40) and increased defendable space (provided based on the basis of BAL-29 construction level) are proposed to be implemented, along with 10,000 litres on-site static water supply for bushfire purposes and access measures designed to accommodate CFA vehicles.
- Canopy separation within the managed defendable space will vary between 2 and 5 metres due to site conditions such as the sparse tree cover separating the road and the dwelling, the grassland west of the site, canopy densities with a greater proportion of trees to be removed within 10 metres of the dwelling.

- The shed has a requirement of 10 metres defendable space that is mostly incorporated within the defendable space of the dwelling. As the outbuilding will be non-habitable, no BAL requirements apply.



Figure 6: Bushfire Management Plan (Source: Ranges Environmental Consulting Bushfire Management Assessment)

Vegetation and biodiversity impact

A biodiversity assessment and tree assessment have also been submitted to support the application. The assessments conclude the following:

- The area is dominated by relatively high-quality remnant forest that covers much of the site. There is a patch of exotic vegetation in the west corner of the site and a water course runs through the northern tip of the property.
- Two Ecological Vegetation Classes (EVC) have identified on the site; Grassy Forest and Riparian Scrub/Swampy Riparian Woodland Complex.
- The conservation status of these EVCs is *Vulnerable* in the Highlands Southern Fall bioregion.
- Seven Habitat Zones are identified on the site with Habitat Scores ranging from 0.25 – 0.70 (out of a possible 1.00). Grassy Forest 1 (GF1) and Swampy Riparian Woodland (SRW1) cover the largest portion of the site and achieve a score of 0.69 and 0.70 respectively, due to measures such as low weed cover and high floral diversity.
- The majority of the dwelling footprint is located within Habitat Zone GF1.



Figure 7: Habitat Zones (Mark Sheperd Biodiversity Assessment)

Habitat Zone	GF1	GF2	GF3	GF4	GF5	GF6	SRW1	
Ecological Vegetation Class	Grassy Forest	Grassy Forest	Grassy Forest	Grassy Forest	Grassy Forest	Grassy Forest	Swampy Riparian Woodland	
EVC bioregional conservation status	V	V	V	V	V	V	V	
Habitat Score	0.69	0.69	0.25	0.3	0.32	0.3	0.7	Totals
Area of zone (Ha)	1.890	0.040	0.021	0.023	0.037	0.067	0.061	2.138
Area of removal (Ha)	0.646	0.000	0.021	0.005	0.010	0.001	0.000	0.683
Large Tree Count	9	0	0	0	2	0	2	13
Large Trees removed	2	0	0	0	0	0	0	2

Figure 8: Native vegetation impacts (Mark Sheperd Biodiversity Assessment)

- **145 flora species were recorded** on site of which 103 species (72%) are indigenous species. One flora species (Green Scentbark *Eucalyptus Fulgens*) is **recognised as state significant with**

an **Endangered** classification under the *Flora and Fauna Guarantee Act*, 1988. This species is the major overstorey species on the site.

- **44 fauna species were recorded** during the assessment and two targeted searches including a suite of woodland birds, Eastern Grey Kangaroo, Common Wombat, Short-beaked Echidna and Southern Boobook (Owl species). No significant fauna species were recorded at the time of assessment however the author concedes that the study did not comprise more targeted survey methodologies (spotlighting, trapping, motion sensor camera) that would provide greater certainty of the presence of fauna.

Vegetation will be removed to accommodate the dwelling, accessway extension, defensible space and effluent field. In total, **285 trees and shrubs require planning permission**: 241 indigenous trees, 18 indigenous shrubs and 26 exotic trees (*Pinus radiata*).

While 579 plants are to be removed in total, the balance is exempt from planning permission as dead or an environmental weed species listed under Schedule 1 of the Environmental Significance Overlay.

Commented [DH1]: Hi Duncan, the individual breakdown of impacts were not adding up and I think this is due to tree and shrub numbers being used interchangeably in the ecologist report. I've decided to remove the breakdown entirely and rely on final removal numbers only.

Subject site & locality

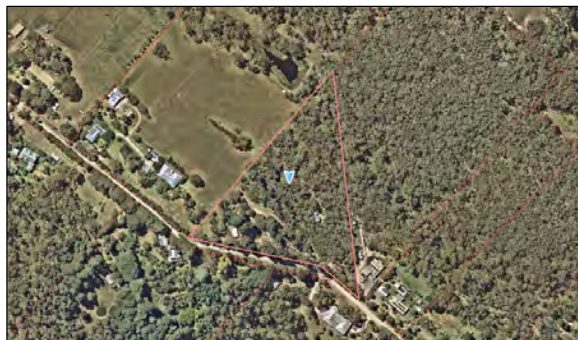


Figure 9: subject site

An inspection of the site and the surrounding area was undertaken in June 2023.

The site is a triangular-shaped lot approximately 2.38 hectares in size. The parcel is located on the north side of Berglund Road, Beaconsfield Upper, 3.18 kilometres east of the township boundary to Beaconsfield Upper.

The land is heavily vegetated within remnant Victorian native vegetation covering the majority of the site. An area within the western portion of the lot has been cleared at one point, and exotic vegetation such as has either been planted or self-seeded. The land slopes moderately from the west of the site across to the north-east.

Over the last nine years a range of construction and vegetation clearing activity has occurred on the land. It is understood that buildings on the land have been constructed and used for accommodation purposes without Planning permission.



Figure 10: Locality (Source: NearMap 15 Feb 2024)

The site is characterised by medium to large-sized rural and rural-residential properties. Some properties have historically been cleared while many properties remain heavily vegetated, primarily with remnant bushland and forest.

North and east of the site is a 5.5 hectare allotment with access from Berglund Road. The property contains a dwelling and small outbuildings in its southern corner and is otherwise heavily vegetated.

Berglund Road runs south of the subject site where No. 194 lies adjacent. The land contains a dwelling and outbuildings with a mixture of exotic planted and native vegetation covering much of the property.

West of the site is an 8 hectare property containing a dwelling and series of outbuildings. The southern half of the lot is cleared with paddocks established while the northern half is densely vegetated.

Recent site history (2015 – present)

The property contains a number of illegal buildings constructed on the land; some of which Council believe are being used for accommodation purposes.

Illegal land clearing occurred between November 2016 and November 2017 to establish a driveway that was constructed illegally between 23 December 2018 and 18 December 2019. Within the following year an approximately 31 square metre building was constructed at the end of the driveway, 52 metres from Berglund Road. Refer to Figures 10 - 13:



Figure 11: Subject site 20 Nov 2016 (Source NearMap)

14 March 2018

Planning Enforcement action taken against landowner (JA03/2018) for removal of vegetation following an inspection of the site undertaken 14th March 2018 with an official warning issued.



Figure 12 Subject site 23 Dec 2018 (Source: NearMap)



Figure 13: Subject site 18 December 2019 (Source: NearMap)

4 May 2020

GE200294 (pre-application advice) – Following the lodgement of a pre-application advice request with Council's Planning Department, written advice was issued to the landowner advising that a Planning

Permit required for a dwelling. They were further advised that there is no guarantee of a receiving a Planning Permit for 'bush block' properties due to the environment protections that apply to the site and the potential bushfire threat.



Figure 14: Subject site 12 December 2020 (Source: NearMap)

Throughout this period construction activity has also continuously occurred in western portion of the site, none of the activity has planning permission:



Figure 15: Subject site 31 December 2015 (Source: NearMap)



Figure 16: Subject site 5 Feb 2022 (Source: Nearmap)

27 June 2022

Notice of Intention to Enter Land - During the course of an inspection by Council's Enforcement Officer, various illegal activities were identified including multiple buildings that appeared to be used for

accommodation and did not have Planning permission. Following discussion with Council's Planning Department, it was decided that no further action would be taken until the active Planning Permit application was determined.



Figure 17: Subject site 15 February 2024 (Source: NearMap)

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- Rural Conservation Zone Schedule 2

Overlays

The land is subject to the following overlays:

- Bushfire Management Overlay
- Environmental Significance Overlay Schedule 1

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 Settlement, inclusive of Clause 11.02-1S Settlement
- Clause 12 Environmental and Landscape Values, inclusive of Clause 12.01-1S Protection of Biodiversity, Clause 12.01-2S Native Vegetation Management and Clause 12.05-2S Landscapes
- Clause 13 Environmental Risks and Amenity, inclusive of Clause 13.02-1 Bushfire Planning.
- Clause 15 Built Environment and Heritage, inclusive of Clause 15.01-1S Urban Design, Clause 15.01-2S Building Design and Clause 15.01-6S Design for Rural Areas
- Clause 16 Housing, inclusive of Clause 16.01-1S Housing Supply and Clause 16.01-3S Rural Residential Development.

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.02 Environment, inclusive of Clause 21.02-2 Landscape, Clause 21.02-3 Biodiversity and Clause 21.02-4 Bushfire Management
- Clause 21.03 Settlement and Housing, including Clause 21.03-1 Housing, Clause 21.03-4 Rural Townships, Clause 21.03-5 Rural Residential and Rural Living Development
- Clause 21.07 Local Areas – Hills Region

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.17 Native Vegetation
- Clause 53.02 Bushfire Planning
- Clause 65 Decision Guidelines
- Clause 66 – Referral and Notice Provisions

Planning Permit Triggers

The proposal requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.06-1 of the Rural Conservation Zone, a planning permit is required to use the land for the purpose of a dwelling.
- Pursuant to Clause 35.06-5 of the Rural Conservation Zone a planning permit is required to construct buildings associated with a section 2 use (dwelling) and earthworks.
- Pursuant to Clause 44.06-2 of the Bushfire Management Overlay, a planning permit is required for buildings and works associated with a dwelling.
- Pursuant to Clause 42.01-2 of the Environmental Significance Overlay a permit is required to construct a building or carry out works (to construct a building exceeding 7 metres in height, to construct an outbuilding exceeding 120 square metres, earthworks exceeding 1 metre and removal of vegetation);
- Pursuant to Clause 52.17-1 Native Vegetation, a permit is required to lop, destroy or remove native vegetation.

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining and nearby land; and
- Placing a sign on site.

The notices were sent by Council to adjoining owners and occupiers. A sign on site was erected by the applicant. Council officers have cited photos confirming the signs were erected and have requested a statutory declaration from the owner to confirm the same.

Council has received no objections/submissions at the time of writing this report.

Referrals

External Referrals/Notices:

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	DEECA [recommending]	The application was referred to DEECA as the extent of removal exceeded 0.5 hectares, requiring a Detailed Assessment Pathway and referral to the Department. DEECA's initial referral response requested additional information and raised concern regarding the extent of native vegetation removal and siting of the building. Following the revision to the application in February 2024, DEECA identified no objection, subject to conditions.
	Fire Rescue Victoria (CFA) (Recommending)	No objection (subject to conditions)
Section 52 Notices	None	N/A

Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Environment	Unsupportive of the proposal due to the insufficient information to inform the assessment and unacceptable biodiversity impacts. Please refer to the assessment of the report for more detailed comments.
Engineering	No objection, subject to conditions

Assessment

The application has been assessed against the guidelines and strategies of the relevant state and local policy, the applicable zones and overlays, as well as the relevant particular and general provisions of the Cardinia Planning Scheme.

On balance, the proposal does not appropriately respond to the decision-making considerations of the Cardinia Planning Scheme, and as such it is recommended that the application be refused.

In coming to this decision, Council Officers have used the decision-making tools available by identifying and then assessing the main considerations for an application of this nature as follows:

- How does the proposal respond to the Rural Conservation Zone?
- How does the proposal respond to bushfire risk and the Bushfire Management Overlay?
- How does the proposal respond to Environmental Significance Overlay – Schedule 1, and is the proposed vegetation impact acceptable?

- Is the application supported by Planning Policy Framework and Local Planning Policy Framework provisions?
- Is the application supported by any other relevant General/Particular provisions of the Cardinia Planning Scheme that apply to the proposal?
- How does the proposal respond to the Decision Guidelines of the Cardinia Planning Scheme?

As a number of these considerations have overlapping metrics, this assessment should be read in full as not all matters are repeated under every relevant section.

Rural Conservation Zone

The need for a Planning Permit is triggered and required to both use the land, as well as to undertake buildings and works for this application. As such, alignment with the purposes and decision guidelines of the Rural Conservation Zone (RCZ) is a critical element in determining the suitability of this proposal as there is no 'as of right' permissions allowing the land to be used for residential purposes.

Use of land is guided by the purposes of the RCZ, which are:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To conserve the values specified in a schedule to this zone.*
- *To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.*
- *To protect and enhance natural resources and the biodiversity of the area.*
- *To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.*
- *To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.*
- *To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.*

Additionally, Schedule 2 to the RCZ has listed 'Conservation Values' for the:

- *Protection and conservation of the environmental values and landscape qualities of the land, including habitat of botanical and zoological significance, and the conservation of natural resources, including native vegetation, waterways and soils.*

To summarise and paraphrase the relevant purposes and values, the core reason to identify areas as RCZ land is to protect and enhance the natural environment from unnecessary impacts, and to ensure that any use or development proposed has merit to allow for continued environmental protection and enhancement.

Importantly, none of these purposes act to supporting residential uses. Whilst a single dwelling on a lot may be considered a relatively 'minor' use, it is more so important to consider the impact upon the land to allow for the dwelling to be constructed and then used on an ongoing, permanent basis.

The dwelling, outbuilding, accessways and effluent area will remove or modify a total of 0.700 hectares of land, with a minimum of 579 trees and shrubs are to be removed and an unknown quantity of groundcovers, herbs and flowers.

The level of removal needed to allow for the use and development of the land for a dwelling – simply put – does not then seek to conserve or protect the vegetation on the site. Any argument or consideration as to the percentage amount of vegetation to be impacted is not overly relevant when the amount to be lost is so substantial.

Council Officers have raised concerns with the amount of vegetation to be impacted in the context of the size of the dwelling and siting. While modifications have been made to the original footprint, the dwelling remains sizeable and located in area of the site with particularly high biodiversity value.

Further, the application is not supported by any Land Management Plan or similar which would otherwise potentially identify the landowners intentions to sustainably manage the land moving forward. Based on the material submitted, the application provides for a rural living development within an area that seeks to protect, enhance and conserve the environment.

Upon determining that the application does not appropriately respond to the purposes and values sought for the RCZ and the subject site, Council is required to consider the decision guidelines as listed within Clause 35.06-6 of the RCZ. These decision guidelines are categorised under a number of sub-headings including General Issues, Rural Issues, Environmental Issues, Accommodation Issues and Design and Siting Issues. An assessment of these themes is provided below:

General issues

- The Municipal Planning Strategy and the Planning Policy Framework.
- Any Regional Catchment Strategy and associated plan applying to the land.
- The capability of the land to accommodate the proposed use or development.
- How the use or development conserves the values identified for the land in a schedule.
- Whether use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.
- Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.

Assessment:

The Land Capability Assessment provided with the application identifies that the land is capable of containing an effluent system to support the dwelling however a 462m² area of vegetation is required to be cleared (with the under story significantly modified) to accommodate the system.

The application material submitted does not identify any proposed enhancements to the environment, and as such results in net negative impacts.

Rural issues

- The environmental capacity of the site to sustain the rural enterprise.
- The need to prepare an integrated land management plan.
- The impact on the existing and proposed infrastructure.
- Whether the use or development will have an adverse impact on surrounding land uses.

Assessment:

Whilst a number of surrounding lots contain dwellings and/or farming/agricultural pursuits, these sites have been subject to historical partial clearing to allow for such developments.

Planning controls under this zone dictate that permission is required for most forms of agriculture, including grazing and horticulture. Given the extent of vegetation coverage and condition of vegetation, the property is best recognised for its biodiversity value rather than productive land value.

The proposed single dwelling is unlikely to adversely impact surrounding land uses.

Environmental issues

- An assessment of the likely environmental impact on the biodiversity and in particular the flora and fauna of the area.
- The protection and enhancement of the natural environment of the area, including the retention of vegetation and faunal habitats and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge areas.

- How the use and development relates to sustainable land management and the need to prepare an integrated land management plan which addresses the protection and enhancement of native vegetation and waterways, stabilisation of soil and pest plant and animal control. - The location of on site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation. Assessment: The provided Biodiversity Impact Assessment prepared on behalf of the applicant identifies that the site is rich in biodiversity and environmental value, highlighting that the majority of the canopy vegetation is Eucalyptus Fulgens (Green Scentbark) and Eucalyptus Radiata (Narrow-Leaved Peppermint), with an understory will high floristic diversity and limited invasive plant species. Further, the report identifies it likely that the site is home to a number of protected floral species and that the site is suitable habitat to a number of indigenous faunal species. The report concludes (in summary) that: - The proponent has explored options to minimise vegetation impact by reducing the building footprint, micro-alignments to the effluent field and low impact driveway construction. - The proposal will result in the removal of 0.744 hectares of vegetation including 259 indigenous trees and shrubs. - The majority of vegetation loss is concentrated with the area identified as GF1, the area is characterised by indigenous vegetation with a high Habitat Score (0.69). - Native fauna including Wombats and Echidna's were identified during site inspections. No 'significant' fauna was identified during these visits.
Accommodation issues - Whether the dwelling will result in the loss or fragmentation of productive agricultural land. - Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation. - Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses. - The potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990. Assessment: The proposed dwelling will not fragment agricultural land as the site is heavily covered by indigenous flora, making it unviable for productive agricultural practices. It is also unlikely that the single dwelling will impact upon adjoining or nearby land uses due to the existing mosaic of farmland intermixed with dwellings and dense vegetation.
Design and siting issues - The need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas. - The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape. - The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance. - The location and design of roads and existing and proposed infrastructure services to minimise the visual impact on the landscape. - The need to locate and design buildings used for accommodation to avoid or reduce the impact from vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary

Commented [DH2]: updated

of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.

Assessment: Whilst the dwelling has a relatively large footprint, it is of an appropriate design seeking to minimise any perceived visual impact to the public realm or adjoining properties as its scale will be softened by the fall from the road and relatively deep setback. However, due to limited retention of vegetation within the frontage, the dwelling and outbuilding will be clearly visible and prominent from the road.

In short, the above assessment identifies that the proposal will result in a negative impact on the environment. If the site was set aside for residential purposes such as a residential zone, the impact may be assessed differently. However the assessment before Council is for a site within the Rural Conservation Zone which seeks to protect, conserve and enhance biodiversity and the landscape. Consequential, both the use and development of the dwelling do not support the core purposes of the zone.

Bushfire Risk and the Bushfire Management Overlay

Prior to assessing bushfire particulars in detail, it is noted that Fire Rescue Victoria (formally Country Fire Authority) has been referred the application and provided consent, subject to conditions to be placed on any permit issued. This consent indicates that Fire Rescue Victoria has assessed the Bushfire Management Plan provided by the applicant which is deemed to be appropriate and meets the numerical and policy requirements to provide defensible space and ensure risk to life is deemed 'acceptable'.

However, it is important to balance this response against the wider policy provisions associated with bushfire risk.

The Bushfire Management Overlay includes the following purposes:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

In response to some of these purposes, it is noted that subject to the removal of vegetation the risk to life and property can be deemed acceptable. However, this must be balanced against the value of the vegetation to be removed, as well as the zoning of the land as assessed above.

There are vast opportunities to use and/or develop land for a dwelling within the Cardinia municipality, and it not deemed appropriate to subject existing, valued vegetation to removal to justify 'acceptable' levels of risk for a dwelling when it is likely there are other opportunities when the planning framework provides guidance to the community for where residential development is encouraged.

This 'balance' is specifically stated at Clause 71.02-3 which states:

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However in bushfire affected areas, planning authorities and responsible authorities must prioritise the protection of human life over all other policy considerations.

In consideration of bushfire risk, there is no 'net community benefit' as a result of the proposal, as the only evident benefit is to that of the applicant being able to use and develop the land for a dwelling. Furthermore, whilst the application is able to meet distance and vegetation thresholds to satisfy the bushfire authority, the application fails to respond appropriately to supporting Planning Policy Framework such as Clause 13.02-1S which seeks "to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life." This is expanded on at the Local Planning Policy Framework level, noting that the objective of Clause 21.02-4 Bushfire Management is "to recognise that areas in the municipality are prone to bushfire and to minimise the potential risk to life, property and the environment."

The area has been affected by well-known bushfire events (Ash Wednesday, 1983), and a number of 'credible bushfire scenarios' are discussed at length within the provided Bushfire Management Assessment. To add further uncertainty, the Bushfire Assessor notes that there is no Neighbourhood Safer Place within 12 kilometres of the property.

Provision of a dwelling in this location results in an unnecessary risk to life and property, regardless as to whether the threshold requirements are met in relation to a bushfire attack level rating. Compounding the fact that substantial vegetation is proposed to be removed to establish a compliant location, it is considered the proposal fails to appropriately minimise bushfire risk as the risk is unnecessary when considering and balancing the sites existing ecological benefits and the existing land available for residential living.

Vegetation and environmental impacts and the Environmental Significance Overlay

Please refer to the response and assessment to the Rural Conservation Zone, which discusses a number of environmental matters at length. In addition, consideration of environmental impacts is assessed under the Environmental Significance Overlay.

Prior to discussing these matters further, it is noted that DEECA have consented to the proposal, noting the applicant has taken adequate steps to avoid and minimise native vegetation removal and that the proposed offsets can be secured.

The department further notes that "the potential opportunities to avoid and minimise impacts to the higher values identified in Habitat Zone GF1 by moving the 'house' footprint further in the 'south-west sector' of the site would compromise the defensible space requirement provided by adjoining land."

While the dwelling's siting establishes defensible space that, in the opinion of the Fire Authority, can mitigate risk to an acceptable level, it is important to consider that this threat does not justify a particular siting at the expense of all other planning considerations.

The purposes of the Environmental Significance Overlay (ESO) are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify areas where the development of land may be affected by environmental constraints.
- To ensure that development is compatible with identified environmental values.

Schedule 1 to the ESO regards "Northern Hills" and provides the following statement and objectives:

Statement: *The hills to the northern part of the municipality (generally to the north of the Princes Highway) is an area with significant landscape and environmental values. The area is characterised by a geology of Devonian Granitic and Sulrian Sediment origin, moderate to steep slopes, and areas of remnant vegetation. These characteristics contribute to environmental values including landscape quality, water quality, and habitat of botanical and zoological significance. These characteristics are also a significant factor in terms of environmental hazards including erosion and fire risk.*

The vegetation supports the ecological processes and biodiversity of this area by forming core habitat areas within a complex network of biolink wildlife corridors. Sites containing threatened

flora and fauna are defined as being of botanical and zoological significance. Development within and around these sites need to be appropriately managed to ensure the long term protection, enhancement and sustainability of these ecological processes and the maintenance of biodiversity.

Environmental Objectives:

- *To protect and enhance the significant environmental and landscape values in the northern hills area including the retention and enhancement of indigenous vegetation.*
- *To ensure that the siting and design of buildings and works does not adversely impact on environmental values including the diverse and interesting landscape, areas of remnant vegetation, hollow bearing trees, habitat of botanical and zoological significance and water quality and quantity.*
- *To ensure that the siting and design of buildings and works addresses environmental hazards including slope, erosion and fire risk, the protection of view lines and maintenance of vegetation as the predominant feature of the landscape.*
- *To protect and enhance biolinks across the landscape and ensure that vegetation is suitable for maintaining the health of species, communities and ecological processes, including the prevention of the incremental loss of vegetation.*

It is therefore determined by the ESO1 that:

- The site is within a location of significant landscape and environmental value.
- The site is subject to slope and areas of remnant vegetation, contributing to the environmental value.
- The slope and vegetation presents fire risk, yet supports ecological processes, habitat and biodiversity.
- Development should protect, enhance and maintain the ecological processes, habitat and biodiversity.
- Use and development should be supported where the environmental significance is protected and enhanced.

Noting the proposal seeks to remove over 500 trees and shrubs and modify 7000 square metres of land inclusive of canopy vegetation and groundcovers with no specific protection measures or ongoing enhancement, the proposal does not appropriately respond to the relevant purposes of the Schedule or the decision guidelines.

Council's Environment Unit have assessed the application and are not satisfied the granting of a permit will produce acceptable outcomes with respect to the decision guidelines or objectives of the overlay, highlighting:

- The incomplete submission of information relating to part vegetation removal has removed Environment officers ability to undertake a complete evaluation of the application and understand cumulative Environmental impacts.
- The past removal may lead to a perceived development 'advantage' by undertaking works that undermine the objectives of the Victorian planning system.
- That the site is located in an area of Regional Zoological Significance due to present of mammal species that where uncommon in the catchment.
- The Eucalyptus Fulgens is listed as an Endangered species under the *Flora and Fauna Guarantee Act 1988* where 208 out of 258 identified on the land are marked for removal.
- The development will result in an unacceptable impact to landscape character.
- The Grassy Forest Ecological Vegetation Class (EVC128) is in a bioregion classified as 'Vulnerable' and an underrepresented in the conservation reserves system.
- The proposed removal results in habitat fragmentation as it's located within a continuous patch of vegetation.
- The Strategic Biodiversity Value of 0.620 indicates a high biodiversity value.

Commented [DH3]: This figure is derived from page 47 of the Ecologist report.

Response to Planning Policy Framework and Local Planning Policy Framework

The proposal responds appropriately to some policies; however it does not appropriate respond to the majority as detailed below:

Clause 11.01-1S Settlement seeks to facilitate for sustainable growth and development, to deliver choice and opportunity through a network of settlements. Specific strategies expand on this objective further, highlighting main considerations to provide for settlement opportunities in appropriate locations within settlement boundaries or well serviced areas, to result in balanced land use and development outcomes that enhance and contribute to settlements and landscapes, to limit urban sprawl among other things.

Clause 12.01 Environment states that *"planning should help to protect the health of ecological systems and the biodiversity they support (including ecosystems, habitats, species and genetic diversity) and conserve areas with identified environmental and landscape values."* Clause 12.01-1S Protection of Biodiversity expands on this, with an objective *"to protect and enhance Victoria's biodiversity"* with associated strategies to take into account cumulative environmental impacts and support development that actively enhances habitat. Clause 12.01-2S Native Vegetation Management also seeks to *"ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation"* supported by strategies to seek to avoid or minimise removal of native vegetation. These clauses link to Clause 12.05-2S Landscapes which seeks to *"protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments"* with identified strategies to ensure development does not detract from significant landscapes, improve landscape qualities and environmental performance, and to recognise the landscape as a fully functioning system.

Clause 13 Environmental Risks and Amenity identifies that Planning should identify, prevent and minimises risk to the environmental and human life via land use compatibility and effective controls to prevent and mitigate risk, and that any development or mitigation is not to the detriment of the environmental and natural processes. Additionally, Clause 13.02-1S Bushfire Planning seeks to *"strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life"* as identified within the 'bushfire' assessment section of this report.

Clause 15 Built Environment seeks for planning to promote excellence in the built environment, and ensuring that built form minimises detrimental impacts on the built and natural environment. Clause 15.01 Built Environment expands in greater detail, noting an objective to *"create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity"* with a number of supporting strategies such as seeking for development to respond to the surrounding natural features and landscape and to avoid detrimental impacts to the natural and built form. Clause 15.01-6S Design for Rural Areas also seeks for development to respect "valued areas" and rural character.

Clause 16 Housing identifies that *"planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure"* in appropriate locations. This is further substantiated at Clause 16.01 which discusses housing supply and the need to provide for diverse, well serviced and located residential housing, as well as rural residential development and the need to *"identify land suitable for rural residential development"* that does not result in environmental impacts to *"existing landscape values."*

Many Local Planning Policy Framework considerations expand on the above.

Clause 21.02 Environment is expanded upon at Clause 21.02-2 Landscape which identifies key issues as the need to protect significant landscapes, and noting the pressures to develop land in locations of high value. Additionally, Clause 21.02-3 Biodiversity acknowledges that the municipality is known to contain state and nationally significant species, and that:

The decline and fragmentation of habitats resulting in the loss of biodiversity is a key issue. Over 75% of the native vegetation in Cardinia Shire has been cleared leaving those areas of remnant vegetation of particular significance and value in terms of maintaining biodiversity within the Municipality.

Supporting objectives to ensure appropriate maintenance of biodiversity in areas of significance include seeking to achieve no net loss on quantity and quality of vegetation, as well the need to maintain and enhance the diversity of indigenous habitats and species. Additionally, Clause 21.02-4 regards bushfire management which has been assessed within the 'bushfire' assessment section of this report.

Clause 21.03-4 Rural Townships identifies the need to appropriately plan housing and development having regard to environmental and servicing constraints with a number of strategies listed. Additionally, Clause 21.03-5 Rural Residential and Rural Living Development further seeks to ensure that environmental impacts of rural residential and rural living developments are considered.

Clause 21.07 Local Areas also includes an assessment of Beaconsfield Upper, however it is noted the site is not located within the township boundary.

In response to the Planning Policy Framework, it is considered that:

- The site is not located in an existing serviced settlement, which by itself does not mean a permit could not be granted, however layered with other policy considerations of bushfire and environment impacts, is not appropriate in this instance
- A substantial impact to the environment is a result of the proposal in an area with identified significant values as per the ESQ1. Whilst offsets would apply for removal of some vegetation, consideration as to whether the proposal has sought to 'avoid' or 'minimise' vegetation impacts must first be applied. The application does not seek to protect, nor enhance the landscape.
- The provided Biodiversity Report identifies a rich, diverse landscape which is to be unnecessarily impacted within a Rural Conservation Zone for the purpose of a dwelling.
- Further to the previous sections of this report relating to bushfire, the high landscape risk and implementation of increased defensible space relative to the construction level of the building is recognition of the unnecessary risk that are to be implemented at the expense of the environment.
- The proposed dwelling and outbuilding are appropriately designed from a built form perspective, providing attractive built form with materials and styles not uncommon for the area. However, the siting and scale of the built form does not avoid detrimental impacts to natural systems.
- The dwelling results in environmental impacts to an existing valued landscape, and on balance it is considered that this particular site is not suitable for rural residential development due to the required environmental impacts resulting from the proposed dwelling.

Based on the above, it is determined that the proposal does not appropriately respond to a number of policies.

Response to General and Particular Provisions

Two provisions apply which are all intrinsically linked, being Clause 52.17 - Native Vegetation and Clause 53.02 - Bushfire Planning.

Clause 52.17 Native Vegetation

This provision seeks to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017)*. Pursuant to Clause 52.17-1, a permit is required to remove, destroy or lop native vegetation.

A total of 0.744ha is proposed to be disturbed, (including 0.044 hectares of past removal), including the removal of 259 indigenous trees and shrubs requiring planning permission. The application material includes a Native Vegetation Removal Report for the 0.7 hectares of disturbed land via the Detailed Assessment Pathway and 0.44 hectares of past vegetation removal. The resulting offset is 0.310 general habitat units within a minimum strategic biodiversity score of 0.620.

Commented [DH4]: Updated

For the reasons details in previous sections of the report, it is considered the proposal does not respond to avoid and minimisation principles and the guidelines set out in the *Guidelines for the removal, destruction and lopping of Native Vegetation* (2017).

Clause 53.02 Bushfire Planning is also relevant which seeks to ensure that *"the development of land prioritises the protection of human life and strengthens community resilience to bushfire."* The Clause provided a number of measures and guidelines to meet where some variations have been sought have been sought due to the high landscape risk.

Clause 53.02 – Bushfire Planning

The entirety of the site is affected by the Bushfire Management Overlay where planning permission is required for buildings and works associated with accommodation. Clause 53.02 provides the framework for assessment of such applications to determine what management measures must be implemented depending on risk exposure. The application was submitted with a Bushfire Management Statement (BMS), Landscape Hazard and Site assessments.

The landscape risk has been assessed as type 3 where fire can approach the site from multiple directions and there is an elevated likelihood of the need to 'Shelter in Place' as the report details that there is no Neighbourhood Safer Place within 12 kilometres of the subject site.

The BMS identifies the area immediately surrounding the dwelling as a mixture of forest grassland and modified vegetation on a slope that ranges between 5–20 degrees depending on the aspect. Due to the high landscape risk the applicant has chosen to provide larger defendable space relative to their construction level (BAL-40) on the North, East and Western directions. BAL-40 is usually applied to a proposal where there are significant siting constraints, demonstrating the extreme circumstances needed to apply this construction level.

The application relies on CFA Practice Note, Applying the Bushfire Hazard Landscape and 'Forest' classification to justify the large defendable space.

In assessing the application, Council Officers encouraged the applicant to explore locating within the western corner of the site closer to the grassland area and road so as to minimise impact to high-value biodiversity while meeting minimum defendable space requirements of this provision.

Following an on-site meeting held in June 2023 with Fire Rescue Victoria, DEECA, Council and the applicant, FRV expressed concern that a reduced setback to the road (and western corner) would expose the dwelling to the higher risk of bushfire from the southerly aspect.

Landscape, Siting and Design Objective

Approved or alternative measure	Assessment
AM2.1 The Bushfire Risk to the development from the landscape beyond the site can be mitigated to an acceptable level	Yes, as a consequence of the increased defendable space provision the landscape risk can be mitigated to an acceptable level.
AM 2.2 A building is sited to ensure the site best achieves the following: a) The maximum separation distance between the building and the bushfire hazard. b) The building is in close proximity to a public road c) Access can be provided to the building for emergency service vehicles	The building has been sited to maximise defendable space on the subject site. The dwelling will have relatively close access to Berglund road and will be designed to the relevant standards to enable CFA vehicle access.

AM 2.3 A building is designed to be responsive to the landscape risk and reduce the impact of bushfire on the building	Roofing has been simplified to avoid accumulation of debris and the formerly exposed timber foundations are now proposed to be brick. A very high construction level of BAL40 is proposed.
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Defendable space and construction objectives

Approved Measure 3.1

In response to the landscape risk raised earlier, the applicant has chosen to exceed minimum defendable space requirements:

Direction	Vegetation type	Slope	Degrees	Defendable space required (metres)	Defendable space provided (metres)
North	Forest	Downslope	5-10	49	49
East	Forest	Downslope	15-20	50	39
South	Forest/Modified	Downslope	5-10	39	50 or property boundary
West	Grassland	Downslope	5-10	11	28

Water supply and access objectives

Access: The driveway will be 117 from the road access and has been designed to meet the standards set out in Table 5 of this provision and shown a T-head with provision for an 8.8 metre design vehicle.

Water supply: Static water supply is proposed on the site for firefighting purposes. This consists of an above ground 10,000 litre water tank with appropriate access and CFA fittings. The tanks are situated adjacent to the outbuilding and dwelling is close proximity to the access.

Bucci v Cardinia SC (2022, VCAT 113)

The proposal has similar traits to recent VCAT determinations such as *Bucci v Cardinia SC (2022, VCAT113)* for 369 Paternoster Road, Cockatoo which regarded the development of land for a dwelling within a Rural Conservation Zone, Environmental Significance Overlay and Bushfire Management Overlay on a heavily vegetated site.

Whilst each site and proposal should be assessed on its merits, policy considerations are similar to the application at hand.

In the instance of Bucci V Cardinia SC, the vegetation to be removed regarded 0.542 hectares.



Figure 18: Aerial imagery of the site subject to VCAT determination Bucci V Cardinia SC

In coming to the determination to affirm Council's decision to refuse the planning application, the Member stated:

33 I note that there is no permit trigger in the RCZ1 for vegetation removal but the purpose and decision guidelines of the RCZ refer to how a proposal will impact on the natural environment and landscape. A permit for vegetation removal is required under other provisions but there is an obvious interrelationship between those and the purpose and decision guidelines of the RCZ.

34 Even if a permit was not required for vegetation removal under any provision of the planning scheme, but vegetation removal was still required in order to establish the dwelling, the impact of vegetation removal would still be a relevant consideration under the RCZ1, given its purposes and decision guidelines.

35 The applicant said that there are competing policies at play but that the weighting lands on the side of an acceptable outcome being achieved.

36 The fact that a dwelling is a section 2, or permit required, use, does not imply that a permit will or should be granted. Further, the inclusion of decision guidelines in the RCZ specifically relating to dwellings is not affirmation of any encouragement for a dwelling on this site.

37 The applicant also relied on the circumstances of the surrounding area, and in particular the existence of dwellings on at least 8 of the other 9 lots in the original subdivision through which this site was created, as support for the proposition it put forward that the establishment of a dwelling on the review site is "the missing tooth in the smile" and would have negligible impact on the character of the area. It was also submitted that the proposed is classified as 'rural living' which is recognised as being an in-demand type of housing that is to be provided for.

38 In my view, there is very limited weighing of so-called 'competing policies' required. The provision of diverse and affordable housing as one of the factors weighing in favour of the proposal is quite a stretch in my view. The diverse and affordable housing policies of the planning scheme also have to be viewed through the lens of accompanying policy, such as those relating to establishment of housing in existing or identified settlements. Further, the provision of rural living housing is something which the planning scheme seeks to provide in a coordinated and planned manner, rather than through provision of dwellings on individual vacant lots, in non-urban areas.

39 Alternatively, there is little in the planning scheme that lends support to a proposal for a dwelling on this land, where such a large extent of the existing vegetation on the land is required to be removed to facilitate it.

40 I am not persuaded that the removal of such a large extent of vegetation is an acceptable outcome in the RCZ. The RCZ seeks to retain and enhance the natural qualities of the land and the review site is in an area of identified significant landscape and environmental qualities, owing to the fact that the ESO1 wholly affects the site.

41 Whilst the proposed dwelling is to be located in an area of the review site that is somewhat cleared of vegetation, the proposal still necessitates a substantial amount of the on-site vegetation to be removed.

42 Although when viewed on a broader scale the loss of the vegetation proposed to be removed may be relatively minimal, in my view what the planning scheme is seeking is to avoid these types of outcomes, given cumulative impacts are to be considered and vegetation and areas of biodiversity are sought to be protected, conserved and enhanced. The proposed loss of the vegetation, which is necessitated by the establishment of a dwelling, in my view, is inconsistent with what the planning scheme is seeking to achieve.

43 The RCZ and accompanying policy seek that land within the RCZ be conserved, protected and enhanced in terms of environmental, landscape and biodiversity outcomes. This proposal does not achieve those outcomes due to the extent of vegetation removal and including the impact this would have on the landscape and visibility of that in the surrounding area. I find that the proposal is in fact an adverse outcome when tested against the relevant considerations. The proposed removal of vegetation from the site does not protect and enhance natural resources and the biodiversity or the landscape qualities of the area.

44 Whilst I have some sympathy for the applicant with respect to the argument that this is the last lot of the original subdivision to remain vacant and most others contain a dwelling, to give this argument any weight would be to ignore the role of the decision maker in administering the planning scheme. I find that there is no part of the planning scheme that I can give any weight to in support of the proposal on such grounds. This may seem unfair and unjust; however, it also has to be recognised that this is not residentially zoned land, where a substantial amount of vegetation needs to be removed for the proposed dwelling and the other existing dwellings referred to have existed for many years.

45 For these reasons I find that the proposal is not an acceptable outcome on this site under the provisions of the RCZ1.

This decision provides guidance and confirmation as to the assessing Officer's position on the application.

Clause 65 Decision Guidelines

The Decision Guidelines at Clause 65 of the Cardinia Planning Scheme have been captured at various chapters of this report. The proposal is not deemed to result in an appropriate response.

Conclusion

On a balanced assessment against policy and controls that apply to the application, the consistent themes applying to this application regard the protection of high biodiversity areas and directing of settlement to areas where bushfire threat to life and property can be managed to an acceptable level.

In attempting to achieve an acceptable bushfire management response the proposal seeks to transform the natural landscape to suit the needs of the dwelling where policy and Planning controls require that the protection of the environment is a central outcome of an application.

The location of a dwelling within an area exposed to high landscape threat, results in the need to remove a significant volume of remnant native vegetation including a large numbers of a threaten species in order to provide adequate building protection.

While not all information has been provided to Council to enable a complete assessment of the application, sufficient information has been provided to determine that the application results in unacceptable biodiversity impacts that does not result in a Net Community Benefit. As such, it is recommended Planning Permit application T210341 is refused.

Recommendation

Council refuse Planning Permit application T210341 for the use and development of land for a dwelling, outbuilding and removal of vegetation on the following grounds:

1. The proposal is contrary to the purposes and decision guidelines of the Rural Conservation Zone – Schedule 2 that seek to protect, conserve and enhance the environmental values and landscape qualities of the land.
2. The proposal does not respond to the purpose and decision guidelines of Clause 52.17 Native Vegetation that seeks to avoid native vegetation removal and insufficient information has been provided to determine the extent of past native vegetation removal.
3. The proposal does not respond to the statement of significance, environmental objectives or decision guidelines of Clause 42.01 Environmental Significance Overlay and Schedule 1 (Northern Hills) that seek to ensure buildings and works do not adversely impact environmental values.
4. The proposal results in exposure to unnecessary bushfire risk and does not prioritise the protection of human life, sought to be protected by Clause 44.06 Bushfire Management Overlay and associated Planning Policy and Local Planning Policy Framework provisions.
5. The proposal does not appropriately respond to a number of visions, strategies and objectives of Clause 11 Settlement, Clause 12 Environmental and Landscape Values, Clause 13 Environmental Risks and Amenity, Clause 15 Built Environment and Heritage, Clause 16 Housing, Clause 21.02 Environment, Clause 21.03 Settlement and Housing and Clause 21.07 Local Areas – Hills Region.