

1 DWELLING AND AN OUTBUILDING TO BE USED AS A HORSE TRAINING FACILITY AT BOTTOMLEY DRIVE EMERALD

FILE REFERENCE INT1644483

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Vageesha Wellalage

RECOMMENDATION

That a Refusal to Grant Planning Permit T160048 be issued for the Use and development of the land for a dwelling and horse training facility at Bottomley Drive, Emerald Victoria.

Attachments

- | | | |
|---|--|----------|
| 1 | Locality plan | 1 Page |
| 2 | Development plans | 10 Pages |
| 3 | Letters of objections circulated to councillors only | 62 Pages |

EXECUTIVE SUMMARY:

APPLICATION NO.:	T160048
APPLICANT:	Chris Krishna-Pillay
LAND:	Bottomley Drive, Emerald Victoria 3782
PROPOSAL:	Use and Development of the land for a dwelling and horse training facility
PLANNING CONTROLS:	Green Wedge A Zone Schedule 1 Environmental Significance Overlay Schedule 1 Bushfire Management Overlay
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> by sending notices to adjoining land owners and occupiers and placing a sign on site. To date there have been 12 objections received.
KEY PLANNING CONSIDERATIONS:	Proximity of the dwelling to neighbouring broiler farms. The negative visual impact of the dwelling
RECOMMENDATION:	Refusal

BACKGROUND:

There is no relevant planning permit history for the site.

SUBJECT SITE

The site is located on the southern side of Bottomley Drive Emerald.

A crossover is located on the northern alignment of the site and the site is not affected by any easements.

The site currently contains is vacant.

The topography of the land is undulating.

The main characteristics of the surrounding area are:

North	Access Road (Bottomley Drive)
South	Rural Residential/Agricultural
East	Rural Residential/Agricultural
West	Rural Residential/Agricultural

PROPOSAL

Approval is sought for the use and development of the land for a dwelling and an outbuilding to be used as a private horse training facility. Details of the proposed dwelling and outbuilding are as follows:

Dwelling

The dwelling will be located approximately 205 metres from the existing broiler farm. The dwelling will contain two bedrooms, two bathrooms, study, kitchen, laundry and an open plan meals and dining area. The dwelling will be dispersed on to the slope and will be covered by earth. It will have a total height of 3 meters above the ground level. The dwelling will be constructed of concrete panels.

Outbuilding

The outbuilding is proposed to be used as a private horse training facility. It will be located on the highest point of the land with a setback of 85 metres of the proposed dwelling. The outbuilding will have a building footprint of 1200 square metres (30m x 40m) and total height 6.4 metres above the ground level. It will be constructed of steel and Colorbond for the roof with cottage green in colour.

Earthworks

Earthworks will be associated with the construction of the dwelling and the outbuilding. Maximum depth of earthworks is shown as 3 metres for the dwelling and 1 metre for the outbuilding.

PLANNING SCHEME PROVISIONS

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.05-3 Rural Productivity
- Clause 13.04-2 Air Quality
- Clause 14.01-1 Protection of Agricultural Land
- Clause 16.02-1 Rural Residential Development

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03-3 Rural townships

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 65 – The Decision Guidelines

Zone

The land is subject to the **Green Wedge A Zone Schedule 1**

Overlays

The land is subject to the following overlays:

- Environmental Significance Overlay Schedule 1
- Bushfire Management Overlay

PLANNING PERMIT TRIGGERS

The proposal for use and development of the land for a dwelling and an outbuilding to be used as a horse training facility requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.05-1 of Green Wedge A Zone, a planning permit is required to use the land for a dwelling.
- Pursuant to Clause 35.05-1 of Green Wedge A Zone, a planning permit is required for buildings and works associated with a Section 2 Use (dwelling and outbuilding) and earthworks.
- Pursuant to Clause 3.0 of Environmental Significance Overlay Schedule 1, a permit is required for an outbuilding exceeding 4 metres in height where all outbuildings on site exceed 120 square metres in size and earthworks exceeding 1 metre in depth.
- Pursuant to Clause 44.06-1 of Bushfire Management Overlay, a permit is required for buildings and works associated with 'accommodation'.

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 land*
- *Placing (a) sign(s) on site*
- *Placing a notice in the (detail newspaper name)*

- *Sending notices to the owners and occupiers of adjoining land.*
- *Placing a signs on site*

The notification has been carried out correctly, and Council has received **12** objections to date.

The key issues that were raised in the objections are:

- Bushfire Risk created by the proposal
- Potential for the horse arena to become a commercial enterprise providing lessons.
- Increase in traffic on Bottomely Drive
- Poor status of Alexandra Road and the hazardous nature of the Belgrave Gembrook Road, Alexandra Road and Bottomley Drive may contribute to increase in traffic accidents.
- Impact of the existing broiler farm on the proposed sensitive use (dwelling and outbuilding) due to separation distance provided, potential odour complaints from the new residents and impact on the continuation of the broiler farm.

REFERRALS

Country Fire Authority (CFA)

The application was referred to CFA as a statutory referral. CFA had no objection to the proposal subject to conditions.

Environmental Protection Authority (EPA)

The application was referred to EPA for comment. EPA is not a determining referral authority, therefore could not refuse the proposal, however they did recognise concerns with the proposal, as mentioned further in this report.

DISCUSSION

The proposal has been assessed against all relevant Clauses of Cardinia Planning Scheme and determined to be inappropriate for the site.

According to the current planning scheme, Intensive Animal Husbandry is a prohibited use Green Wedge A Zone. There is a broiler farm located at 19 Bottomley Drive across the road from the subject site that has been established some time ago. Therefore, the broiler farm has existing use rights under Clause 63 of the planning scheme thus can lawfully continue to operate as a broiler farm. However, according to the requirements of the Victorian Boiler Code 2009, the broiler farm would not be able to expand due to the inability of meeting the buffer distances. Therefore, Council Officers have not considered this as an issue to allow a sensitive use on the subject site. The refusal of the sensitive use, in this case the dwelling and the outbuilding, leans more towards the impact of the broiler farm such as odour, noise, traffic movement and so forth on the proposed sensitive use.

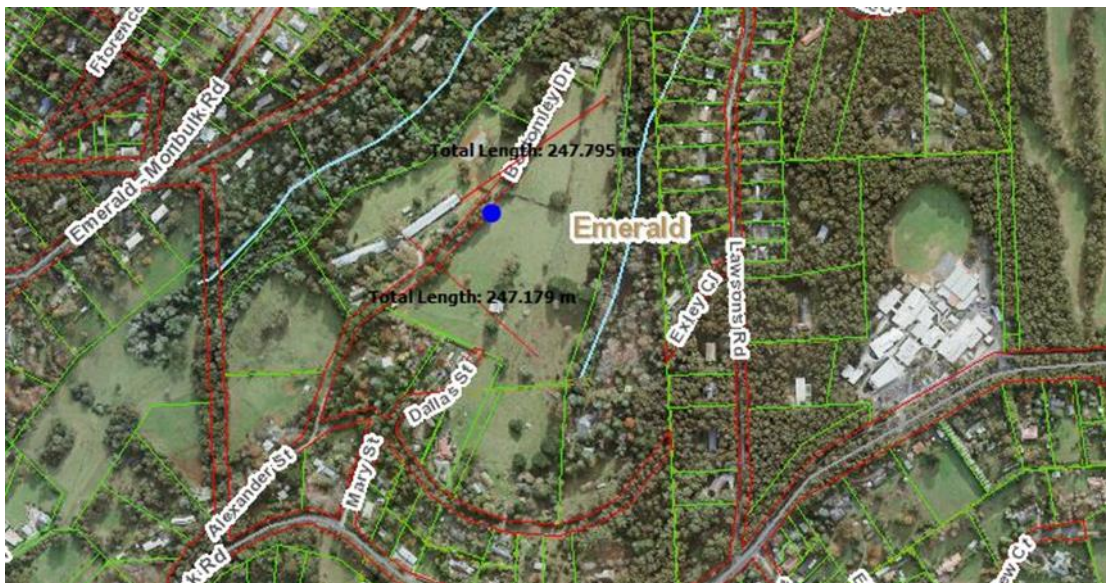
The Victorian Code for Broiler Farms 2009 advises that Responsible Authorities should consider the impacts of existing broiler farm emissions when deciding on applications for proposed sensitive land use developments, and ensure the separation distance is as large as reasonably possible. The proposed dwelling at Bottomley Drive should according to the Victorian Code for Broiler Farms have a separation distance of 246.36 metres from the 60,000 bird broiler farm at 19 Bottomley Drive.

The separation distances for the proposed dwelling in this instance are approximately 205 metres from the broiler farm which is not considered to be as large as reasonably possible.

The Victorian Code for Broiler Farms 2009 details that “Although the separation distance requirements found in the “Classification of broiler farms” section of this code apply only to the development or expansion of broiler farms, they can be used as a guide to identify locations of a future sensitive use that may be adversely affected by broiler farm emissions”. The Code goes on further to say that “The separation distance provided by the new dwelling should be as large as reasonably possible taking into account the likely additional risk of exposure to odour”.

The primary issues in the consideration of this application are the proximity of this sensitive land use (dwelling and outbuilding) to an existing broiler farm, and whether the applicant has made sufficient effort to locate the dwelling as far as possible away from the farm.

While it is acknowledged that a large portion of the subject site is within the buffer distance of the neighbouring broiler farm, there was the potential to locate a dwelling in the north-eastern corner and south-eastern corners of the lot, which would result in it being outside of the buffer distance of the broiler farm and a considerable distance from the broiler farm. In discussions with the applicant during the planning permit process, the applicant has mentioned that those locations will not be suitable to accommodate the dwelling as doing so will then make it challenging to meet the relevant bushfire regulations. The following picture illustrates the possible locations that the dwelling could be placed while meeting the buffer distances.



The EPA in its consideration of the application stated the following:

“EPA must take a conservative view of an appropriate separation distance between the proposed dwelling and the existing Broiler Farm, as there is insufficient evidence to provide certainty that the dwelling will not be adversely impacted, particularly by odour.

The EPA is not convinced the proposed separation distance of 205m between the proposed dwelling and the existing Broiler Farm will result in no adverse odour affecting the amenity of the proposed dwelling.”

In the case *Holder vs Cardinia Shire Council* in relation to the application for a dwelling at 9 Bottomley Drive the member stated the following:

“The important principle involved is keeping potentially incompatible uses apart. The Code provides guidance on how far apart they should be kept..... It is immaterial, having regard to the purpose of the separation, and for that matter of the Code, whether new broiler farms are kept away from existing houses, or new houses kept away from existing broiler farms. The purpose is defeated by establishing new houses in close proximity to broiler farms, just as it would be defeated by establishing new broiler farms in close proximity to existing houses.”

It is considered that the ‘buffer distance’ is a vital element to assess when allowing a sensitive use near a broiler farm. The reason behind this consideration is that a sensitive use, particularly a dwelling near a broiler farm could raise issues in relation to odour, traffic movements (transporting birds in and out of the site), and appearance. On the other hand, it would also put a burden on the broiler farm to operate in a manner to minimise impacts on the neighbouring dwellings. A fundamental element of good planning is to avoid incompatible land uses in close proximity to each other. The development of a dwelling at the proposed location is considered not acceptable as it is within the buffer zone of the broiler farm. In the case *Holder vs Cardinia Shire Council*, the member stated the following:

“The first thing to be said about this proposition is that it is, after all, an argument for bad planning. Good planning keeps incompatible uses separate. It is not a reason for bad planning that the incomer is a volunteer. It is good planning to protect foolish volunteers from themselves.”

Having considered the aforementioned factors allowing a dwelling in the proposed location would not result in a good planning outcome.

Objector's concerns

Overall, the main concern of the objectors is the potential for the proposed horse training facility to become a commercial enterprise. The proposal section of the application form mentions that the facility will be for private use therefore Council is obligated to assess the application based on the information provided for assessment. As such, Council is not in the position to refuse the application based on an assumption that there is a potential for the proposed horse training facility to become a commercial enterprise.

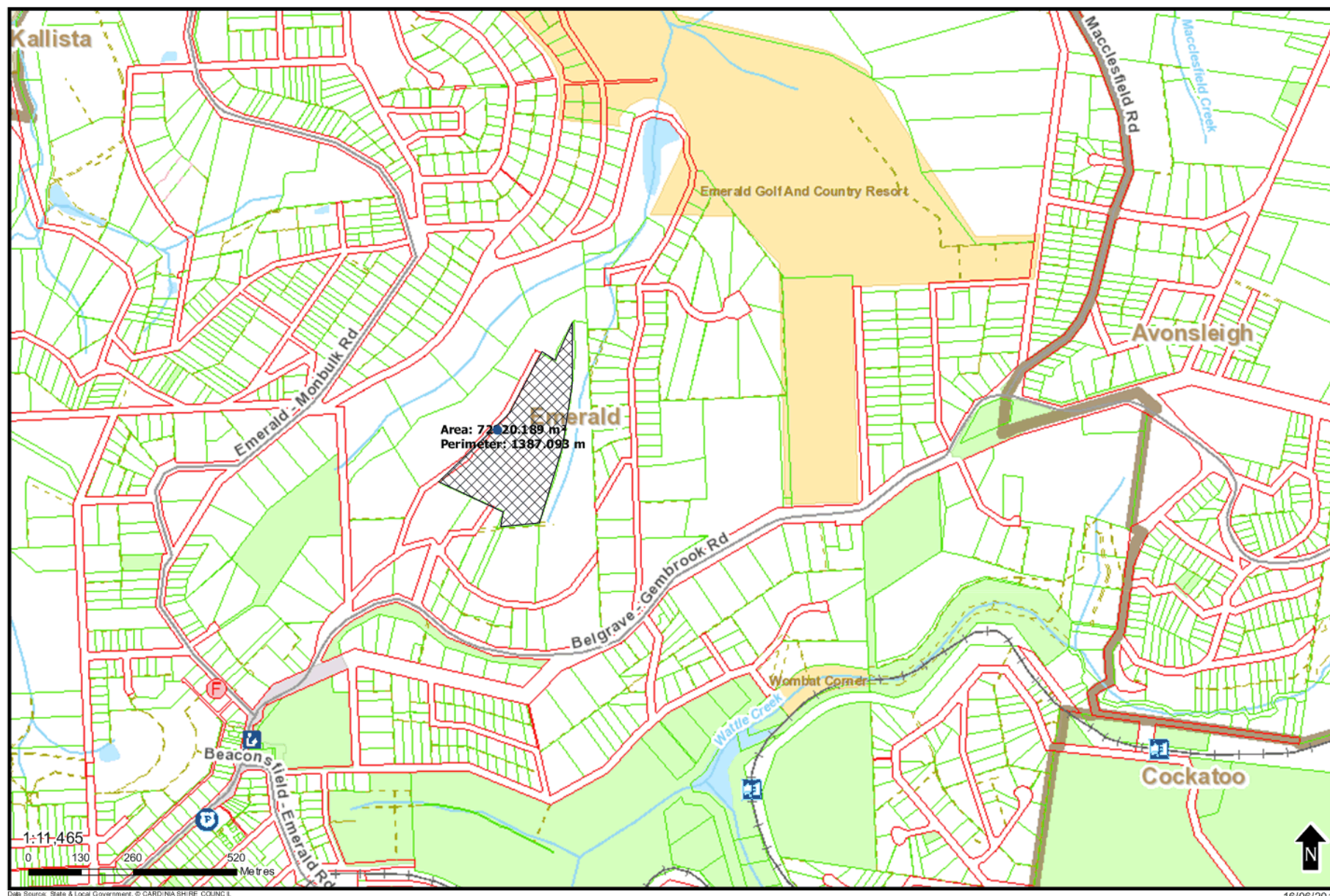
The other main concern raised by the objectors is the condition of Bottomley Drive and the hazardous intersection at Belgrave Gembrook Road, potentially increase traffic accidents as a result of horse training facility. As explained above, if the proposed horse facility is for private use, it is not expected that the number of horse floats will be increased by the proposed use. Therefore, this is not considered relevant to the proposal.

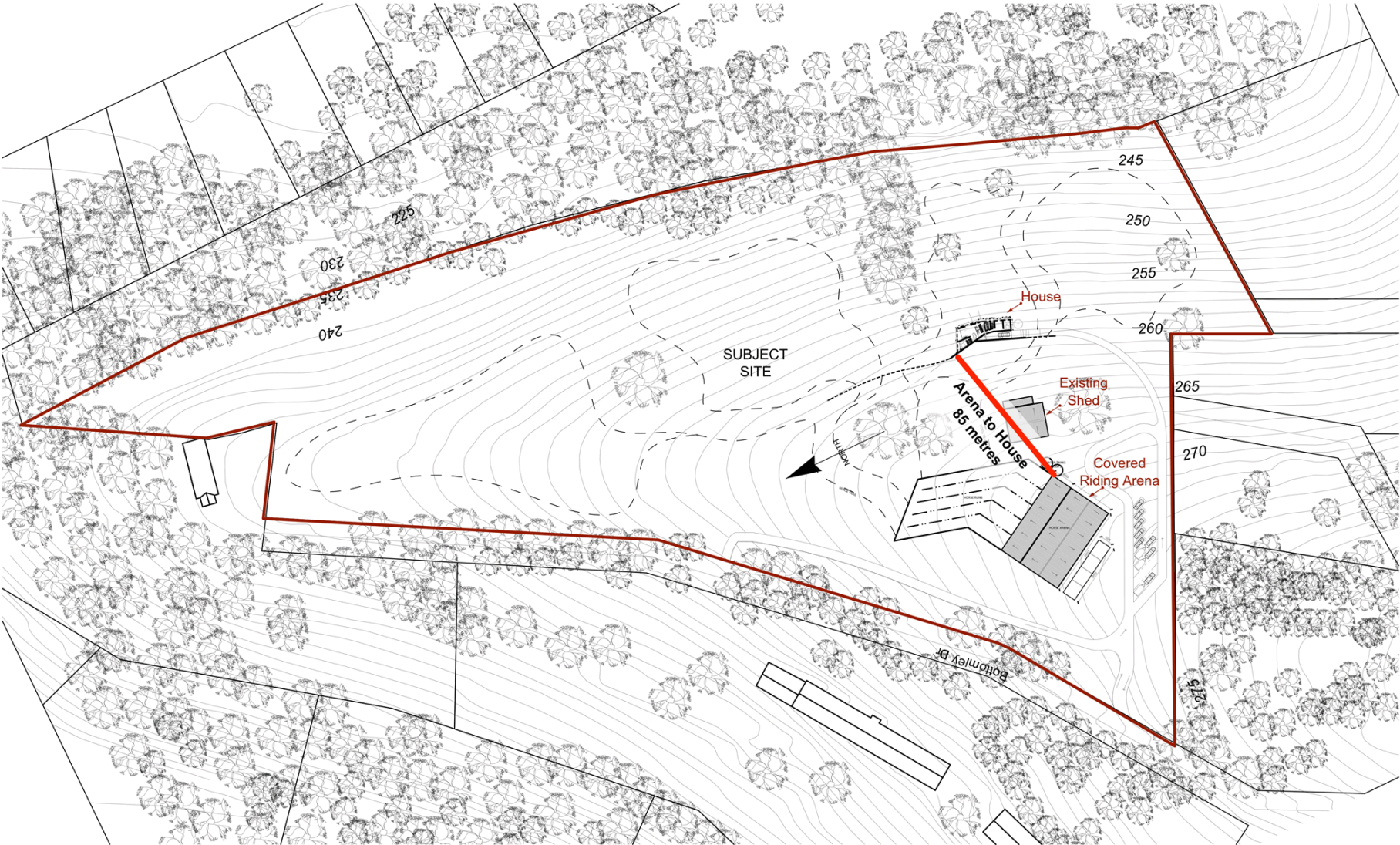
The owners of the broiler farm have also put in an objection mentioning the adverse impact of the broiler farm on the proposed dwelling. This is due to the odour generated by the broiler farm. Council has taken the separation distance provided for the proposed dwelling and considered not sufficient to minimise the impacts generated by the broiler farm. The applicant has not provided a response to the potential noise and odour impact of the broiler farm on the proposed residential use.

CONCLUSION

It is considered that the proposed dwelling and outbuilding with a close proximity to the existing broiler farm is not appropriate for the site. It is therefore recommended that the use and development of a dwelling and horse training facility at Bottomley Drive, Emerald Victoria be refused on the following grounds:

1. The proposal is inconsistent with the requirements of Victorian Broiler Code and may create future land use conflicts between potentially conflicting land uses and developments.
2. The proposal is contrary to the State Planning Policy Framework





SITE PLAN 1:1500

TP 06 BOTTOMLEY DRIVE EMERALD

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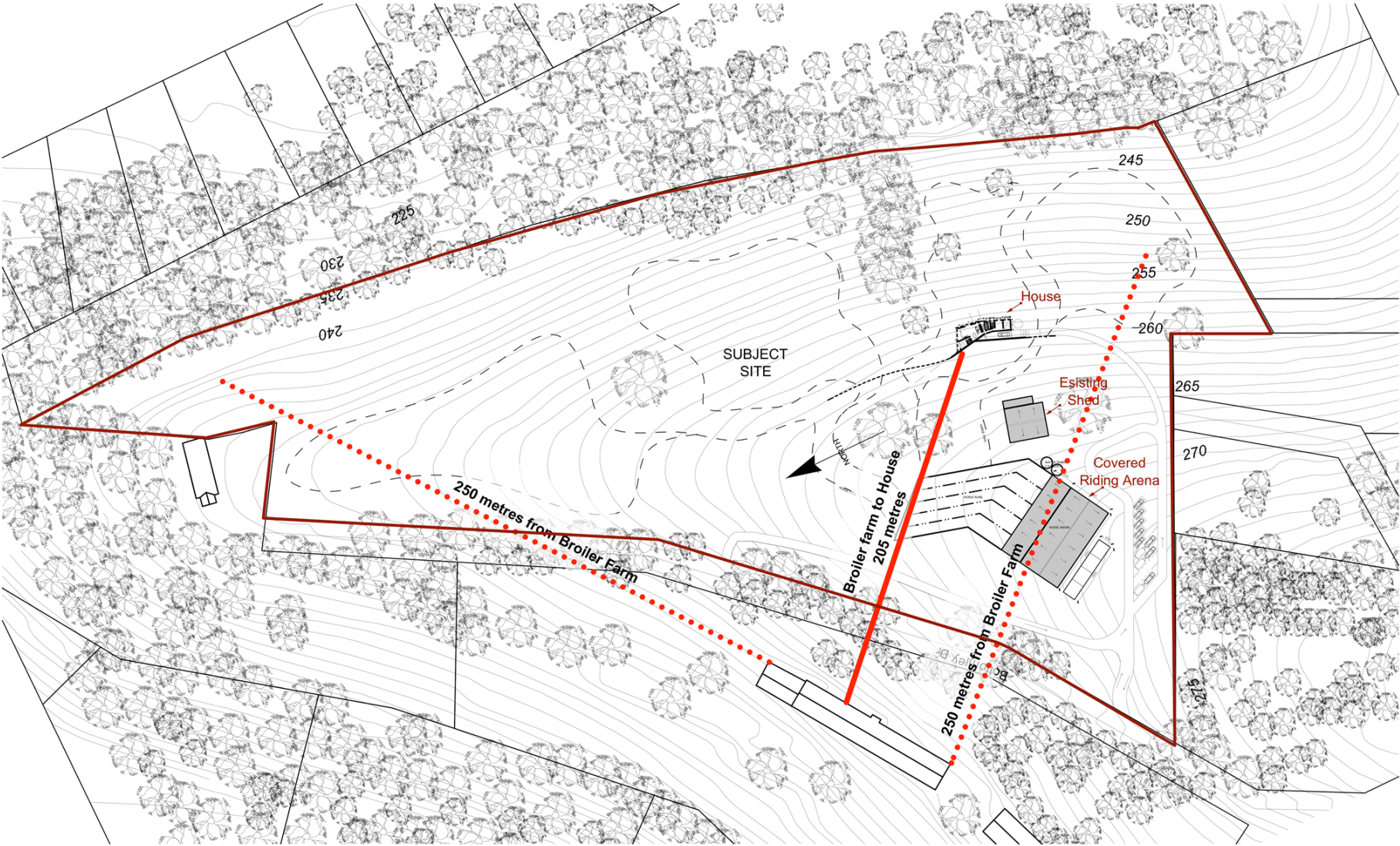
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CHRIS KRISHNA-PILLAY & MARY VAIL

A.C.N 141 375 573
1 / 190 BOURKE STREET
MELBOURNE, VIC 3000
GPO BOX 4568 MELBOURNE, VIC 3001
+61 432 322 854
MELBOURNE@FRASERPAXTON.COM.AU





SITE PLAN 1:1500

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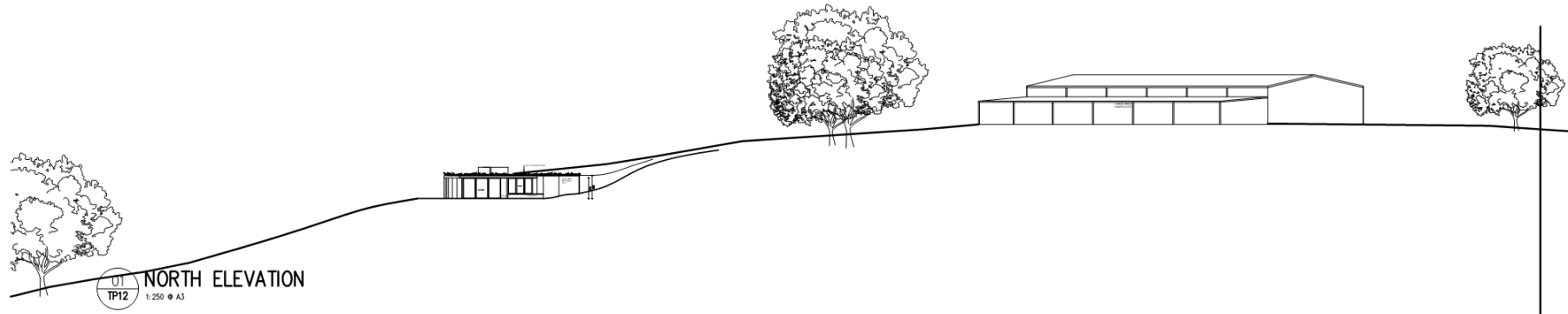
A.C.N 141 375 573
1 / 190 BOURKE STREET
MELBOURNE, VIC 3000
GPO BOX 4568 MELBOURNE, VIC 3001
TEL: 03 9594 1322 FAX: 03 9594 1323
MELBOURNE@FRASERPAXTON.COM.AU



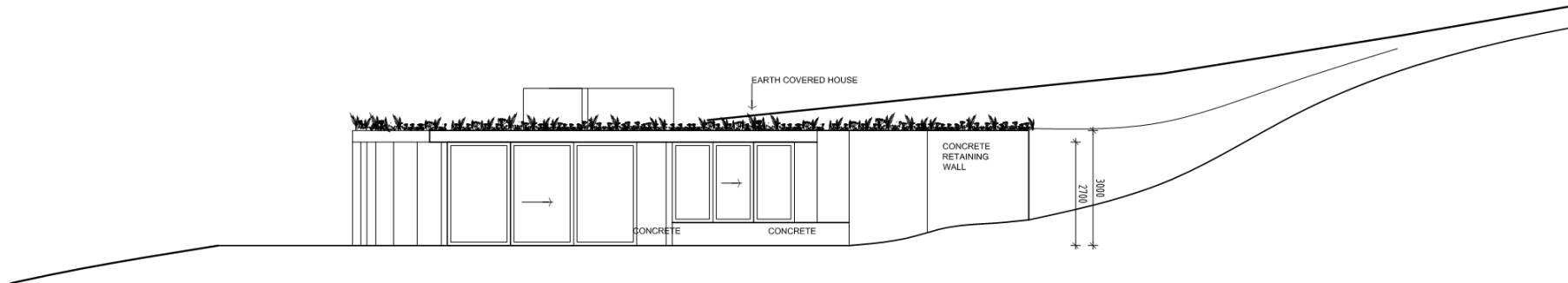
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SITE BOUND/



NORTH ELEVATION



NORTH ELEVATION

PROPOSED NORTH ELEVATION

TP 12 BOTTOMLEY DRIVE EMERALD

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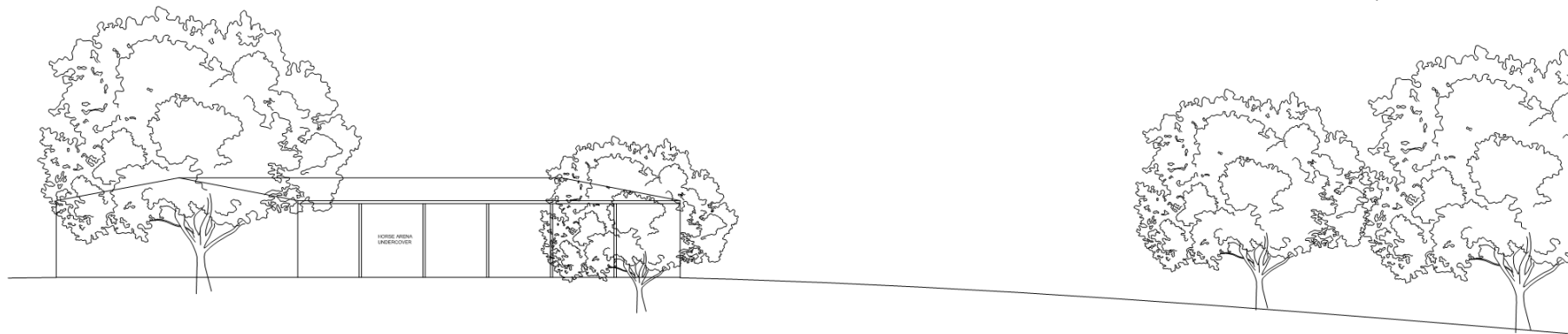
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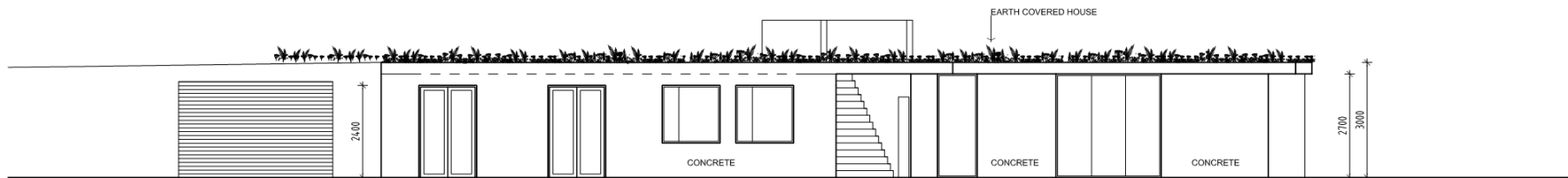
A.C.N 141 375 573
1 / 190 BOURKE STREET
MELBOURNE, VIC 3000
GPO BOX 4568 MELBOURNE, VIC 3001
+61 432 522 854
MELBOURNE@FRASERPAXTON.COM.AU





01
TP13
1:250 @ A3

EAST ELEVATION



01
TP13
1:100 @ A3

EAST ELEVATION

PROPOSED ELEVATIONS

TP 13 BOTTOMLEY DRIVE EMERALD

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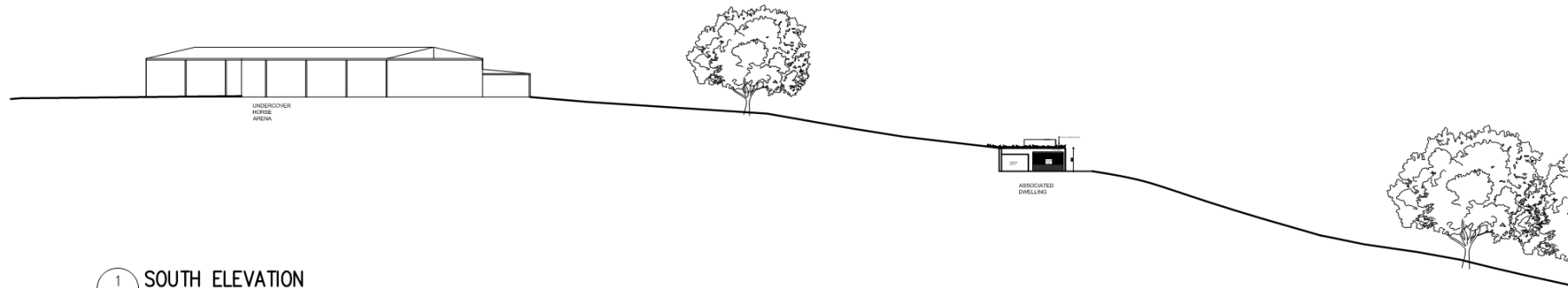
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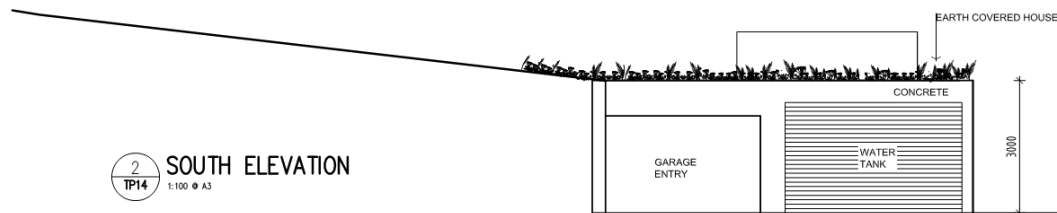
CHRIS KRISHNA-PILLAY & MARY VAIL

A/CN 141 375 573
1 / 190 BOURKE STREET
MELBOURNE VIC 3000
GPO BOX 4568 MELBOURNE VIC 3001
+61 432 522 854
MELBOURNE@FRASERPAXTON.COM.AU





1
TP14
SOUTH ELEVATION
1:500 @ A3



2
TP14
SOUTH ELEVATION
1:100 @ A3

PROPOSED SOUTH ELEVATION

TP 14 BOTTOMLEY DRIVE EMERALD

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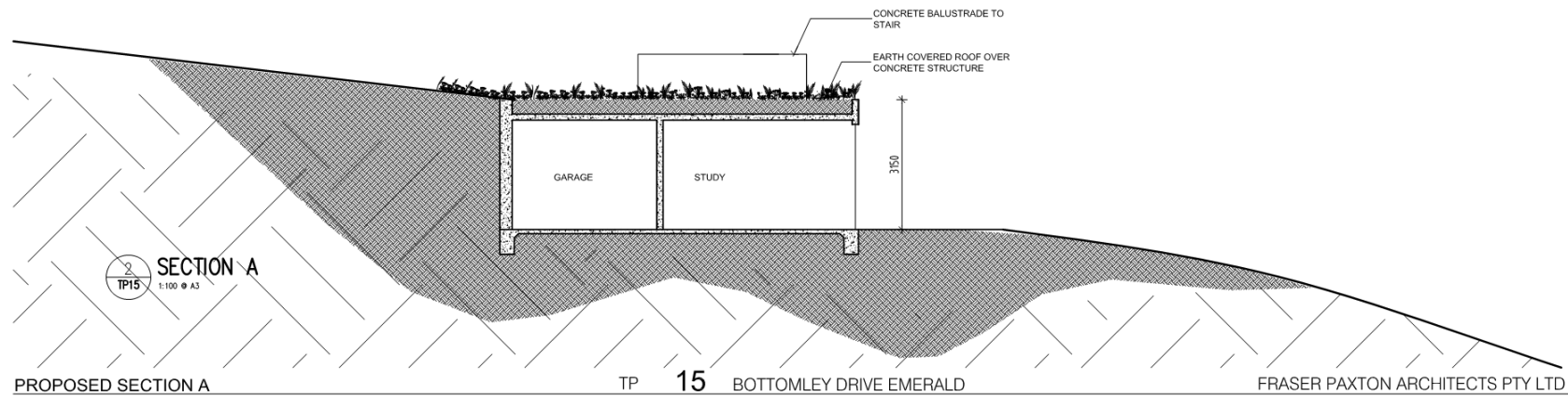
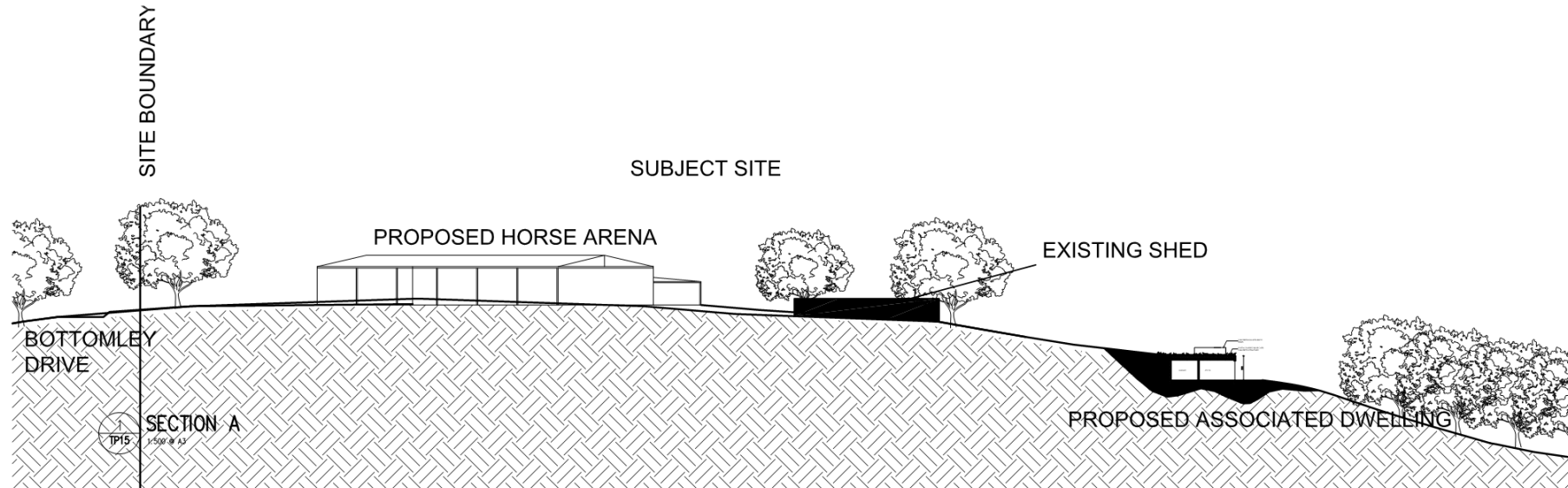
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CHRIS KRISHNA-PILLAY & MARY VAIL

A/CN 141 375 573
1 / 190 BOURKE STREET
MELBOURNE, VIC 3000
GPO BOX 4568 MELBOURNE, VIC 3001
+61 432 522 854
MELBOURNE@FRASERPAXTON.COM.AU





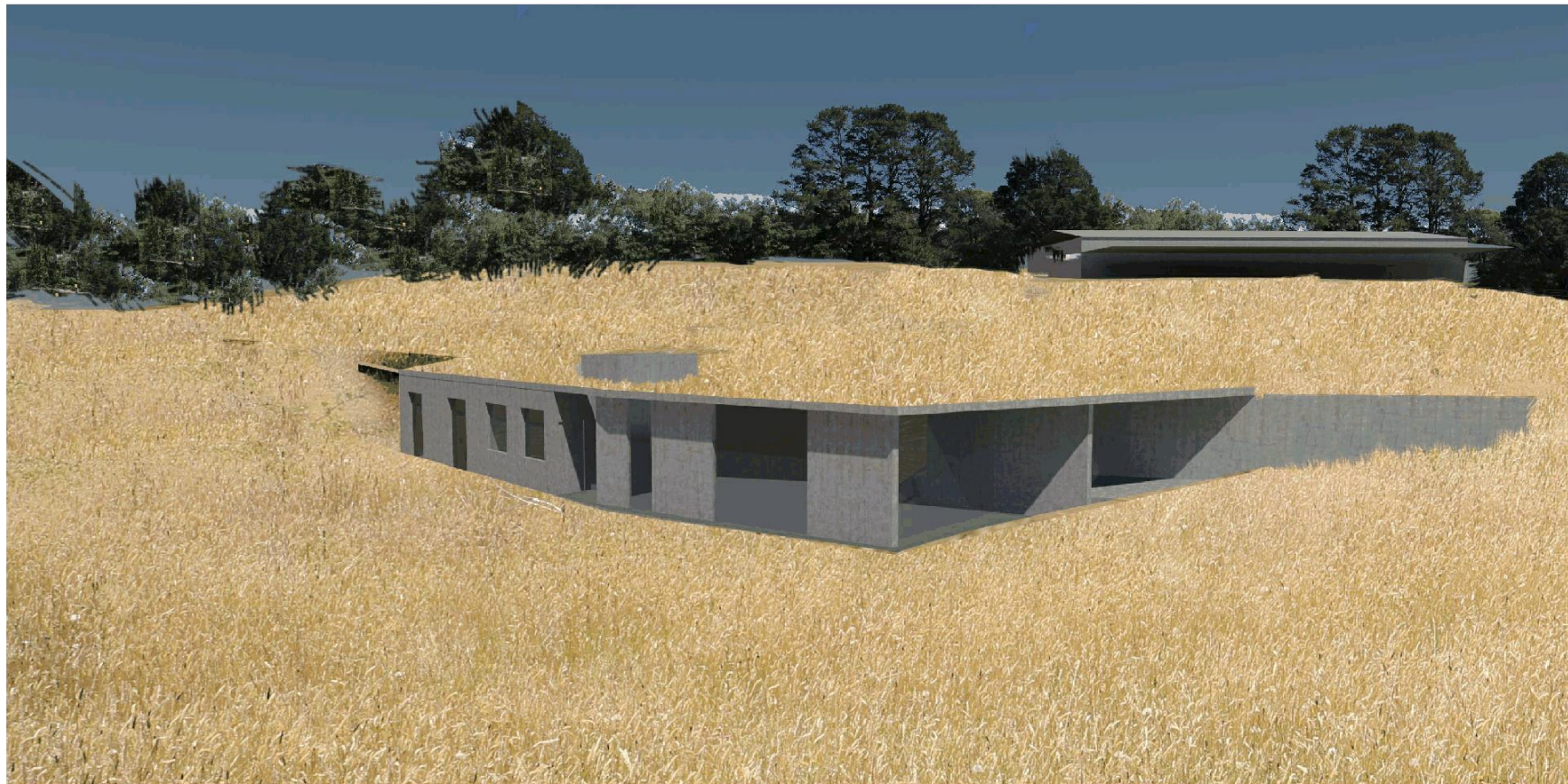
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CHRIS KRISHNA-PILLAY & MARY VAIL

A/CN 141 375 673
1 / 190 BOURKE STREET
MELBOURNE, VIC 3000
GPO BOX 4568 MELBOURNE, VIC 3001
+61 432 522 854
MELBOURNE@FRASERPAXTON.COM.AU





PERSPECTIVE VIEWS

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FRASER PAXTON ARCHITECTS PTY LTD

A.C.N.141.375.673
 1 / 190 BOURKE STREET
 MELBOURNE, VIC 3000
 GPO BOX 4568 MELBOURNE, VIC 3001
 +61 432 322 654
 MELBOURNE@FRASERPAXTON.COM.AU

CHRIS KRISHNA-PILLAY & MARY VAIL



