

6.1.7 Use and Development of the Land for a Dwelling and Building Associated with Agriculture at 130 Murphy Lane, Bunyip

File Reference: 4609300200TP/1
Responsible GM: Peter Benazic
Author: Mary Rush

Recommendation(s)

That Council issue a refusal to Grant Planning Permit T200080 for Use and development of the land for a dwelling and building associated with agriculture at 130 Murphy Lane, Bunyip VIC 3815 on the following grounds:

- The proposal is contrary to the strategic directions of Clauses 14.01-1S-Protection of agricultural land; 21.04-2-Agriculture and 22.05-Western Port Green Wedge Policy
- The proposal is inconsistent with relevant purposes and decision guidelines of the Green Wedge Zone-Schedule 1
- The proposal is inconsistent with relevant purposes and decision guidelines of the Restructure Overlay-Schedule 1
- The proposal is inconsistent with the relevant provisions of Clause 51.02 of Metropolitan Green Wedge Land: Core Planning Provisions

Attachments

1. Development Plans [6.1.7.1 - 7 pages]

Executive Summary

APPLICATION NO.:	T200080
APPLICANT:	Mr Marcus Boulter
LAND:	130 Murphy Lane, Bunyip VIC 3815
PROPOSAL:	Use and development of the land for a dwelling and building associated with agriculture
PLANNING CONTROLS:	Green Wedge Zone Schedule 1 Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	Notices to adjoining land owners
KEY PLANNING CONSIDERATIONS:	Appropriateness of land use Protection of agricultural land
RECOMMENDATION:	Refusal

Background

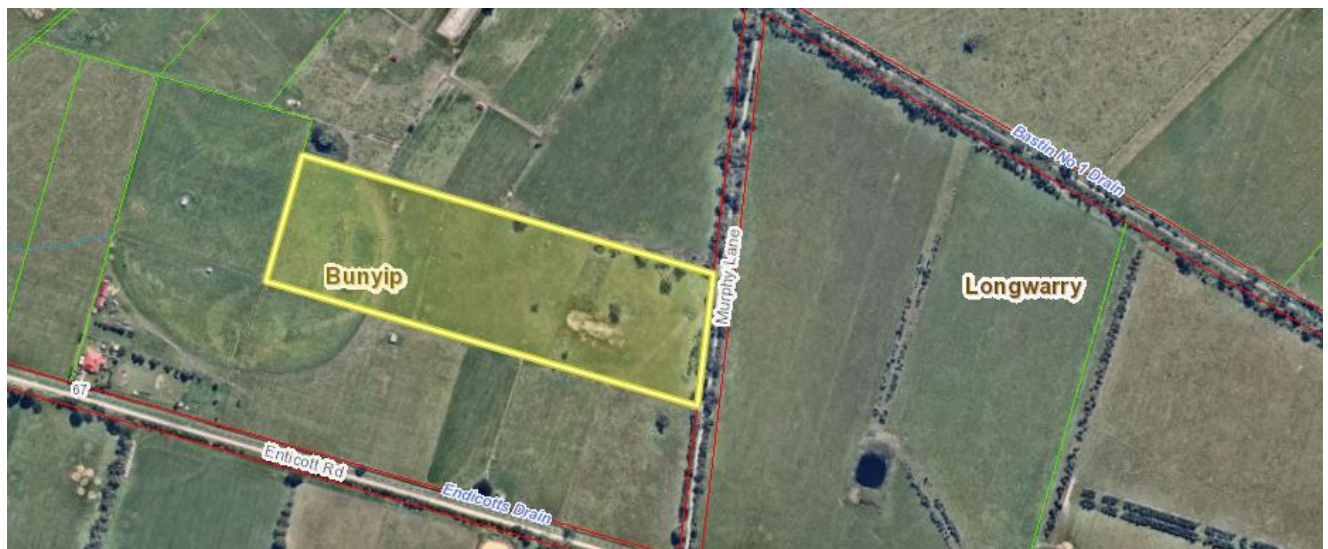
There is no planning permit history for this site.

Prior to the sale of the property to the current owner in May, 2017, Council provided written advice in March 2017 to a planning consultant advising that as the property was the whole of a tenement in April, 1975, that a permit could be applied for. The advice further concluded however:

“please be advised that a planning permit can be applied for and will be assessed against the provision and requirements of the Cardinia Planning Scheme. Please be reminded that although a planning permit can be applied for there is no certainty that the application will be supported.”

Subject Site

The site is located on the west side of Murphy Road.



A crossover is located toward the southern boundary and there are no easements.

The site currently vacant and has scattered remnant vegetation.

The topography of the land is flat.

The main characteristics of the surrounding area are:

- North-large cleared rural lot used for grazing
- South large cleared rural lot used for grazing
- East-Across Murphy Land are large cleared rural lots used for grazing
- West- large cleared rural lot used for grazing

Relevance to Council Plan

Nil.

Proposal

An application has been received for the use and development of the land for a dwelling and building associated with agriculture.

The proposed dwelling measures 34 metres by 11 metres and has a gable 'Colourbond' roof with a maximum height of 6.7 metres. The dwelling is to be clad in weatherboard.

The proposed dwelling includes four bedrooms, kitchen, living, family/meals area and the usual amenities. The dwelling includes an attached double garage and alfresco outdoor area.

The proposed dwelling is to be located 26 metres from the front boundary, 40 metres from the northern boundary and greater distances from all other boundaries. The dwelling would be accessed from a new crossover located along the front boundary.

The proposed building associated with agriculture measures 36 metres by 18 metres and has a wall height of 5.1 metres and a gable roof with a maximum height of 6.7 metres. The proposed building is to be located

36 metres from the front boundary, 5 metres from the southern boundary and greater distances from all other boundaries.

The applicant has submitted a plan showing that the land is to be divided into 4 four paddocks, 3 to be used for cattle grazing and one paddock of 3000 square metres for domestic use.

Planning Scheme Provisions

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- 13.03-1S Floodplain management
- 14.01-1S Protection of agricultural land
- 14.01-1R Protection of agricultural land – Metropolitan Melbourne
- 16.01-5S Rural residential development

Municipal Planning Strategy (MPS)

The relevant clauses of the MPS are:

- 21.01-3 Key issues
- 21.03-4 Rural residential and rural living development
- 21.04-2 Agriculture
- 22.05 Western Port Green Wedge Policy
- 21.06-3 Subdivision restructure

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions
- Clause 65 Decision guidelines

Zone

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

Overlays

The land is subject to the following overlays:

- Land Subject to Inundation Overlay
- Restructure Overlay 51

Planning Permit Triggers

The proposal for the use and development of the land for a dwelling requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.04-2 (Green Wedge Zone – Schedule 1), a planning permit is required to use the land for a dwelling.
- Pursuant to Clause 35.04-5 (Green Wedge Zone – Schedule 1), a planning permit is required to construct a building or construct or carry out works.
- Pursuant to Clause 44.04-2 (Land Subject to Inundation Overlay), a planning permit is required to construct a building or to construct or carry out works.
- Pursuant to Clause 45.05-2-Dwellings and other buildings, a planning permit is required to construct or extend a dwelling or other building.

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.

Council has received no objections to date.

Referrals

Melbourne Water

The Application was referred to Melbourne Water as a statutory referral. Melbourne Water had no objection to the proposal subject to conditions.

Discussion

Clause 35.04 (Green Wedge Zone – Schedule 1)

The site is within the Green Wedge Zone – Schedule 1. The zone applies to large areas of the Koo Wee Rup Flood Protection District which contains soil recognised as being of high quality, making it agricultural land of state significance.

This highly productive agricultural and horticultural area plays a vital role in providing food for Victoria's population and food security. As such, the purposes of the Green Wedge Zone – Schedule 1 are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture. To recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources.

- To encourage use and development that is consistent with sustainable land management practices.
- To encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses.
- To protect, conserve and enhance the cultural heritage significance and the character of open rural and scenic non-urban landscapes. To protect and enhance the biodiversity of the area

The following decision guidelines of the Green Wedge Zone – Schedule 1 have been considered as relevant:

- The maintenance of agricultural production and the impact on the rural economy.
- 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 rural infrastructure.
- The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agriculture and other land uses.
- The protection and retention of land for future sustainable agricultural activities.

The proposal is inconsistent with the relevant purposes and decision guidelines of the Green Wedge Zone – Schedule 1 as follows:

- **To implement the Municipal Planning Strategy (MPS) and the Planning Policy Framework (PPF)**

The relevant clauses to consider are:

- Clause 14.01-1S-Protection of agricultural land; and
- 21.04-2-Agriculture
- 22.05-Western Port Green Wedge Policy

The above clauses require that agricultural land be protected to ensure food production into the future.

The land has previously been used for grazing. The current applicant has indicated his intent to continue to graze cattle on the land and has submitted a farm management plan showing paddock layout and a domestic area for the dwelling of 0.3 Ha.

There is however, no practical way of ensuring that the applicant will either commence or continue to use the land for cattle grazing or any other type of agricultural activity, once the permit has been issued and the dwelling has been constructed.

It is considered that the refusal of a dwelling will likely result in the land being used for its base value i.e. agriculture. If no dwelling is possible, it is likely that the land value will drop and enable existing farmers to increase their landholdings. This would assist with the maintenance of agricultural production in the future with a positive impact on the rural economy.

On the contrary, supporting a dwelling on the land will reduce the productivity of the land given that 0.3 ha is proposed for domestic area and the likelihood that the remainder of the land will not be farmed to its maximum productivity.

The land is identified as being part of the Western Port Green Wedge area and subject to a specific policy aimed to protect agricultural land to ensure food production into the future.

Given the above, it is considered that the proposal is in direct conflict with the aims of the policy and inconsistent with the directions of the MPS and PPF.

- **To provide for the use of land for agriculture. To recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources**

The same reasons that are provided above are also relevant here. The proposal will immediately remove 0.3 ha from agricultural production and there is no need for a dwelling to be constructed on the land to supervise grazing animals.

In an analogous proposal described by *Troy Spencer Town Planning Services v Wangaratta Rural CC* [2013] VCAT 314 (18 March 2013), VCAT upheld Councils' refusal for dwelling on the grounds that, *inter alia*, the dwelling was not 'reasonably required for the operation of the agricultural activity conducted on the land'.

In the decision, Member Wilson concluded that whilst the 2 hectare site was small, it was still capable of being used for agriculture in conjunction with the adjoining farm. The addition of a new dwelling would instead result in the permanent loss of agricultural land

The Tribunal has reached a similar conclusion in many other refusals of permits for dwellings in agricultural zones lacking a nexus between the dwelling and any rural activity being conducted on the subject site itself. *See, e.g., Noonan v Mount Alexander SC* [2017] VCAT 412 (22 March 2017), *Milan v Macedon Ranges SC* [2014] VCAT 717 (16 June 2014), *Mischkulnig v Moyne SC* [2013] VCAT 2110 (17 December 2013), *Zobec v Campaspe SC* [2013] VCAT 1830 (29 October 2013), *Andrews v Hepburn SC & Anor* [2013] VCAT 408 (5 April 2013), *Strachan v LaTrobe CC* [2012] VCAT 414 (12 April 2012), *Panter & Ors v Mt Alexander SC* [2012] VCAT 248 (6 March 2012), *Rehn v Mitchell SC* [2011] VCAT 229 (18 February 2011), *Nicholas v South Gippsland SC* [2009] VCAT 1470 (30 July 2009), *Stone v Colac Otway SC* [2009] VCAT 2251 (23 October 2009), *Gippsland Coastal Board v South Gippsland SC & Ors (No 2)* (Red Dot) [2008] VCAT 1545 (29 July 2008), *Awty v Greater Bendigo CC* [2008] VCAT 14 (16 January 2008), *Pratt v Greater Geelong CC* [2006] VCAT 2654 (20 December 2006).

- **To encourage use and development that is consistent with sustainable land management practices.**

Supporting a dwelling on the subject site can lead to direct conflict with other existing agricultural practices. The proposal for a dwelling is likely to increase the potential for conflict between residents and normal farming practices that are related to the conduct of agricultural activities.

In *Lehmann v Indigo SC* [2009] VCAT 470 (24 March 2009), Member O'Leary succinctly described the conflict between rural residential living and adjacent farming uses:

"The usual illustration of a farm conflict is householders introducing domestic pets which can then escape and threaten livestock or where a farmer may use noisy machinery, or spray or run live stock in close proximity to a dwelling or plough a paddock and cause dust and disturbance to the occupants of the dwelling. Other conflict arises when a landowner may sell off small farming lots for a house or rural residential lot at residential land prices. This exercise artificially inflates the value of the land and places pressure on other farm holdings to follow. It also undermines the opportunity for a nearby farmer to purchase farming land and expand existing farm holdings at farm values."

- **The maintenance of agricultural production and the impact on the rural economy.**

As identified above, the proposal has an immediate impact on the agricultural productivity of the land with a domestic area associated with the dwelling being removed from production. There is also no effective method of ensuring that the land will continue to be used for agriculture and there is a great risk that it will not be used for its maximum agricultural potential. Farmers are aware and understand appropriate management practices as they have a direct

link to productivity. Hobby farmers are unlikely to outlay significant financial investment into pasture management and improvement practices as they are costly. The current applicant is unlikely to rely on the income from the land, being employed full time in another occupation and would therefore lack the time and financial incentive to improve productivity.

- **The protection and retention of land for future sustainable agricultural activities.**

As previously discussed, supporting a dwelling on the land will immediately reduce the productivity of the land in the short term given that 0.3 ha is proposed for domestic area with the likelihood that the remainder of the land will not be farmed to its maximum productivity. Once the dwelling has been constructed there is no practical way of ensuring that the land will be used or available for future sustainable agricultural activities.

Restructure Overlay-Schedule 51 (R051)

Clause 45.05-2 of the Restructure Overlay-Schedule 51(R052) requires that a planning permit be obtained to construct a dwelling.

In particular it states:

- A permit must be in accordance with a restructure plan for the land listed in a schedule to this overlay. This does not apply if:
- No restructure plan is listed in the schedule and the permit is required to extend an existing dwelling or other building.
- The land is a lot for which a permit has been granted under Clause 45.05-1

The land within the restructure overlay is shown on separate tenement maps which are effectively the restructure plan for this Schedule.

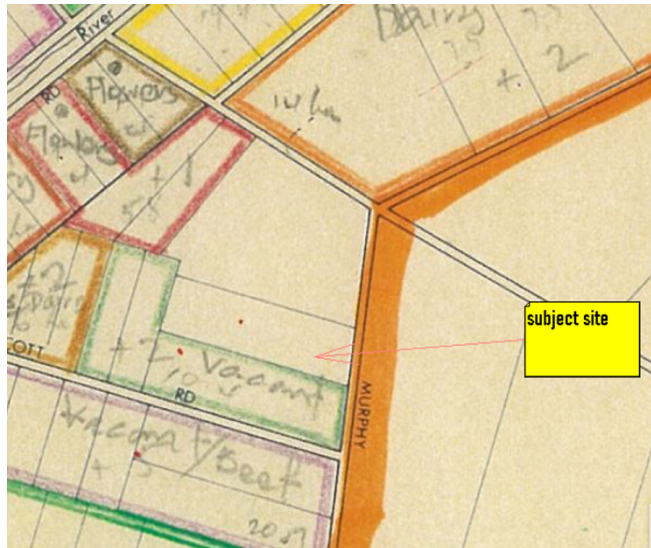
The purposes of the Restructure Overlay are:

- Purpose To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify old and inappropriate subdivisions which are to be restructured.
- To preserve and enhance the amenity of the area and reduce the environmental impacts of dwellings and other development.

The Decision guidelines of the Restructure Overlay require consideration of:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The objectives of the restructure plan for the area.
- Appropriate measures to cope with any environmental hazard or constraint affecting the land, including slope, drainage, salinity and erosion.
- The protection and enhancement of the natural environment and the character of the area including the retention of vegetation and fauna habitats and the need to revegetate along waterways, gullies, ridge lines and property boundaries.
- The availability of utility services, including sewerage, water, drainage, electricity, gas and telecommunications. The relationship of the intended use and development to the existing or likely use and development of adjoining and nearby land.
- The effect on surrounding uses, especially agricultural uses and nearby public land.
- The design of buildings.

The tenement map for the subject lot is shown below:



Whilst the lot is not outlined by a highlight colour, the lot has been determined to constitute a separate tenement at the time the restructure plan was created in April, 1975. That is, the lot existed as the same title at that date.

As Council is able to consider an application for a dwelling, it must now consider whether or not this proposal is consistent with the purpose of the Overlay.

The purposes of R051 are to:

- a) Limit the construction of dwellings on properties to ensure the long term viability of the land; and
- b) Protect the high quality agricultural soils and recognise that the area is subject to regular flooding.

It is considered that supporting a dwelling on the subject site is not consistent with the purpose of Overlay to limit dwellings and ensure the long term (agricultural) viability of the land. As discussed else where in this report, approving a dwelling has the immediate result of the loss of agricultural land for the domestic area associated with the dwelling ie 0.3 ha. Furthermore, there is no way to ensure that the land will continue to be used for agriculture and ensure that it is utilised to its best and highest use given that the occupants main source of employment is offsite.

Approving a dwelling would reinforce the expectation of a dwelling on other sites within the restructure area. This would result in landowners advertising properties at higher prices which is normally reflective of its ability to achieve a dwelling and purchasers also having this expectation. This places additional pressure on Council to defend the planning scheme.

Refusing dwellings will protect the long term viability of the land to be owned and used for agriculture for several reasons. Firstly, the land will not be locked away for unproductive hobby farm uses which cannot be controlled. Secondly, the property prices will drop if the hobby farmers realise that they are unlikely to achieve a dwelling, which means they are more affordable for someone to own and farm without the need to live on the property or consolidate with their existing landholdings.

Refusing dwellings will also support the purpose of R051 by preventing non-agricultural pursuits which are likely to result in the long term degradation of soils. Farmers know and understand the importance of pasture maintenance involving weed suppression, fertilising and regenerating pasture to achieve the highest productivity. Hobby farmers do not generally

understand these requirements and overgraze and deplete soils to the point where erosion can result in significant loss of soils. This is increasingly important with climate change and increasing likelihood of droughts and dust storms where valuable soils can be lost.

The need to limit the number of dwellings has previously been supported by Council's refusal of a similar case to this application.

In *Regan v Cardinia SC* [2005] VCAT 804 (3 May 2005), VCAT upheld Council's refusal of a dwelling on lot which formed the whole of a tenement in April 1975.

Member Margaret Baird stated:

"I am not satisfied that a dwelling ... would assist the long term viability of the land, as is sought by the Restructure Overlay. The Overlay states that *"development of housing on lots at the density of the original subdivision will compromise the long term agricultural productivity of the land and would substantially alter the character of the area"*.

Member Baird further went on to state:

"the land could be sold and used for rural residential purposes and that is completely at odds with the directions pursued by the Scheme for this area. There are no safeguards against that. Instead the potential outcome would be to add to a proliferation of dwellings that the Overlay is in place to avoid."

Given the above discussion and precedent, it is considered that the proposal is inconsistent with the purposes of R051 to limit dwellings and the need protect the agricultural areas from degradation and should be refused.

Other relevant considerations

Clause 13.03-1S (Floodplain management)

The objective of Clause 13.03-1S is to assist the protection of (1) life, property and community infrastructure from flood hazard, (2) the natural flood carrying capacity of rivers, streams and floodways, (3) the flood storage function of floodplains and waterways, and (4) floodplain areas of environmental significance or of importance to river health. A key strategy is to avoid intensifying the impact of flooding through inappropriately located use and development.

The property is located within the Koo Wee Rup Flood Protection District and is subject to flooding. In accordance with the Land Subject to Inundation Overlay, the susceptibility of the development to flooding and flood damage has been considered. With adequate construction measures implemented, the proposed development can appropriately address these concerns.

Clause 44.04 (Land Subject to Inundation Overlay)

The proposal is consistent with the provisions of the Land Subject to Inundation Overlay. This overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority, and seeks to that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

A permit is required for buildings and works on land affected by the Land Subject to Inundation Overlay, and the relevant decision guidelines include:

- Any comments from the relevant floodplain management authority;
- The existing use and development of the land;

- Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this overlay; and
- The susceptibility of the development to flooding and flood damage.

The Application was referred to Melbourne Water, which had no objection subject to the following conditions:

Prior to the endorsement of plans, amended plans must be submitted to Council and Melbourne

Water addressing Melbourne Water's conditions. Plans must be submitted with surface and floor

levels to Australian Height Datum (AHD) and modified to show:

- a) The dwelling must be set with finished floor levels set no lower than 900 mm above the natural ground level, which is 600mm above the applicable flood level.
- b) The garage must be set with finished surface levels set no lower than 300 mm above the natural ground level which is the applicable flood level.

With the conditions above satisfied, appropriate measures to manage and mitigate flood risk can be implemented during the construction stage of the development.

Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions)

The proposal is contrary to the purposes of Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions). The relevant purposes within this particular provision are: (1) To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values, and (2) To protect productive agricultural land from incompatible uses and development for the reasons outlined above.

Conclusion

The proposed use and development of the land for a dwelling is considered to be inconsistent with the provisions of the Cardinia Planning Scheme. It is recommended that a Refusal to Grant Planning Permit **T200080** be issued for the use and development of the land for a dwelling at 130 Murphy Lane, Bunyip.

130 Murphy Lane, Bunyip – Site Plan - PROPOSED



130 Murphy Lane, Bunyip – Site Plan - Proposed

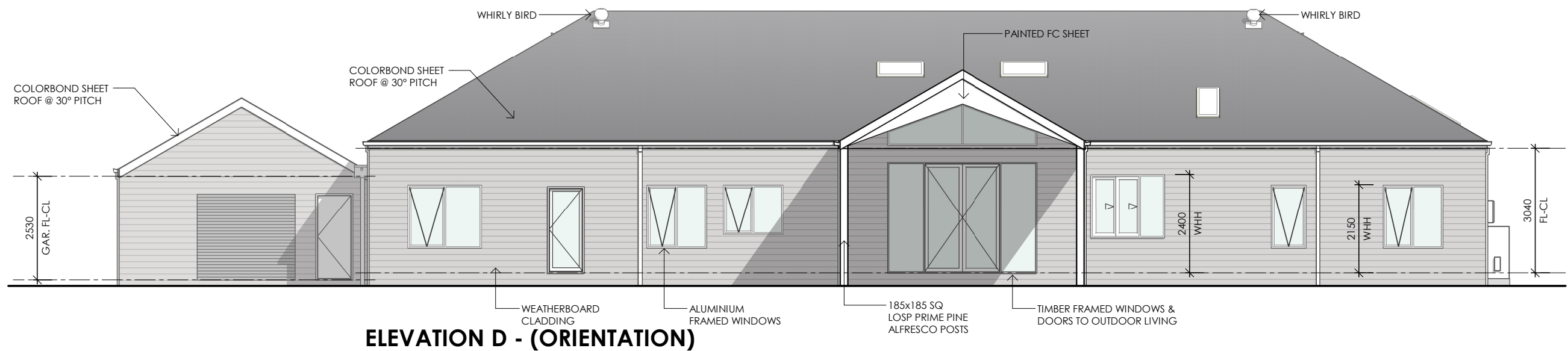
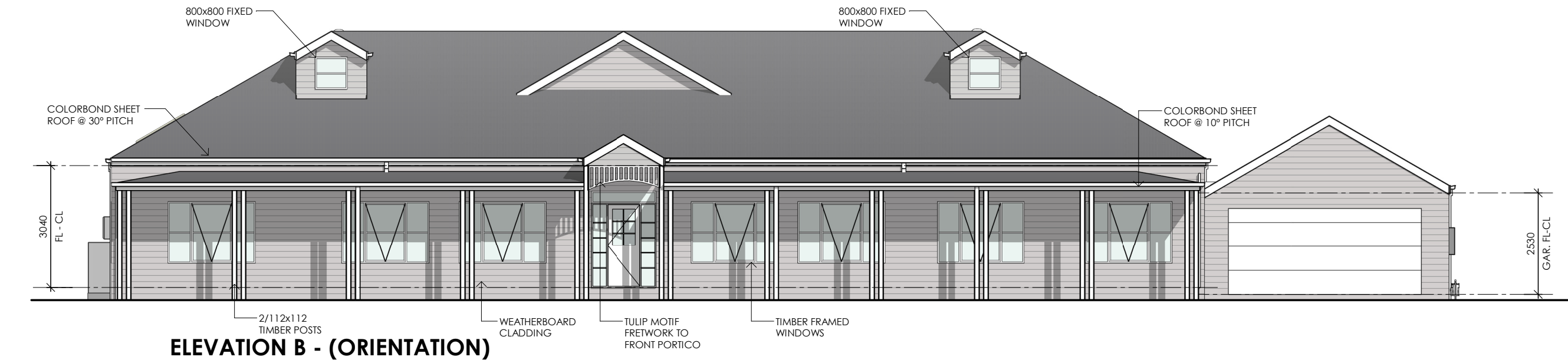


130 Murphy Lane, Bunyip – Paddock Allocation



130 Murphy Lane, Bunyip – Site Plan - PROPOSED





smarthomes
REGISTRATION: CDB-U 48987

EXTERNAL DOOR THRESHOLDS:
THRESHOLDS OF EXTERNAL DOORS TO BE
NO GREATER THAN 230MM ABOVE THE
ADJOINING SURFACE

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proposed: **HOUSE AND GARAGE**

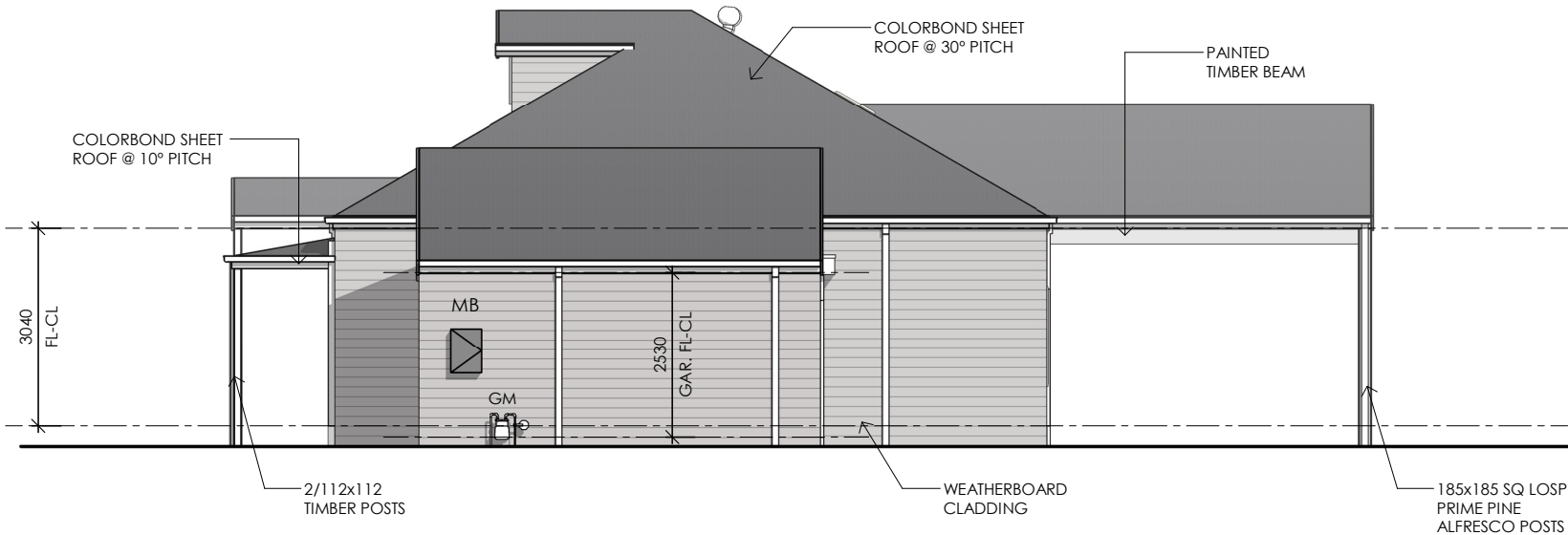
for: **SMART HOMES**
drawing: **ELEVATIONS**

address: **ADDRESS**
SUBURB, POSTCODE

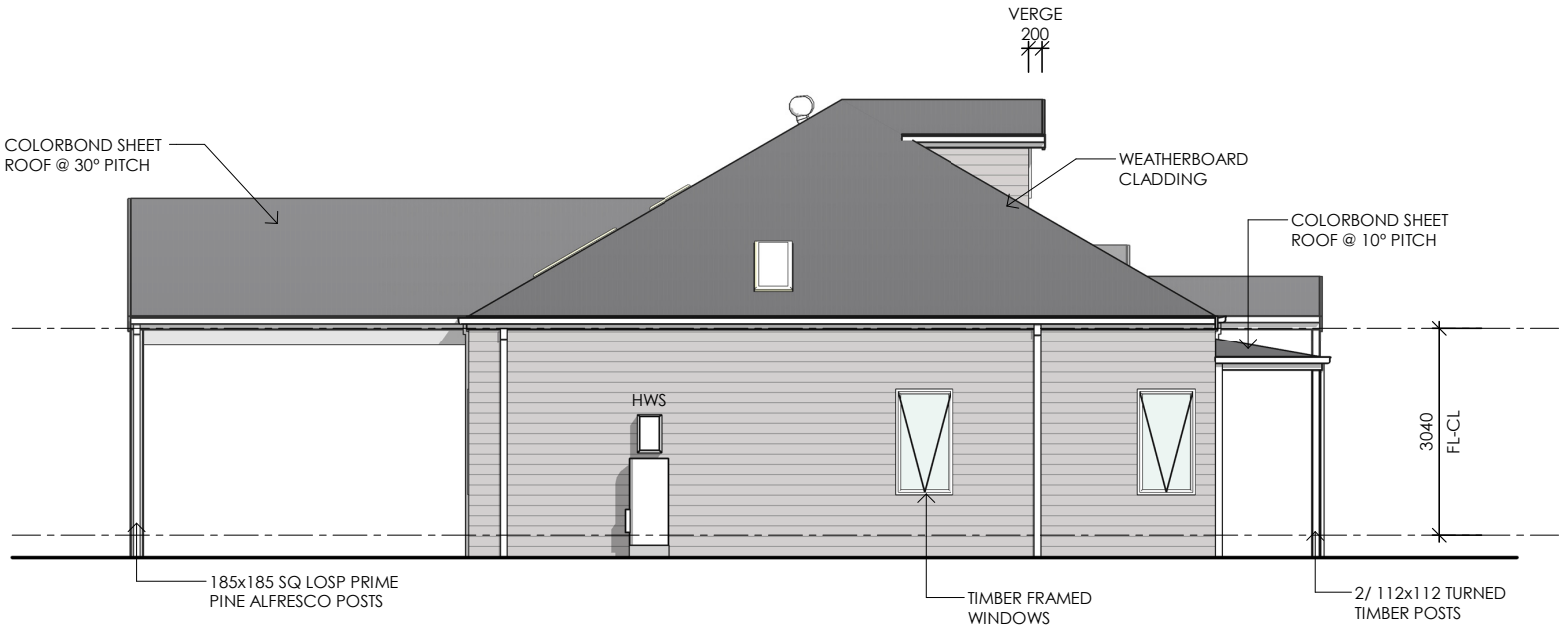
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job no.: **19-00000**



ELEVATION A - (ORIENTATION)



ELEVATION C - (ORIENTATION)

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proposed: **HOUSE AND GARAGE**

for: **SMART HOMES**
drawing: **ELEVATIONS**

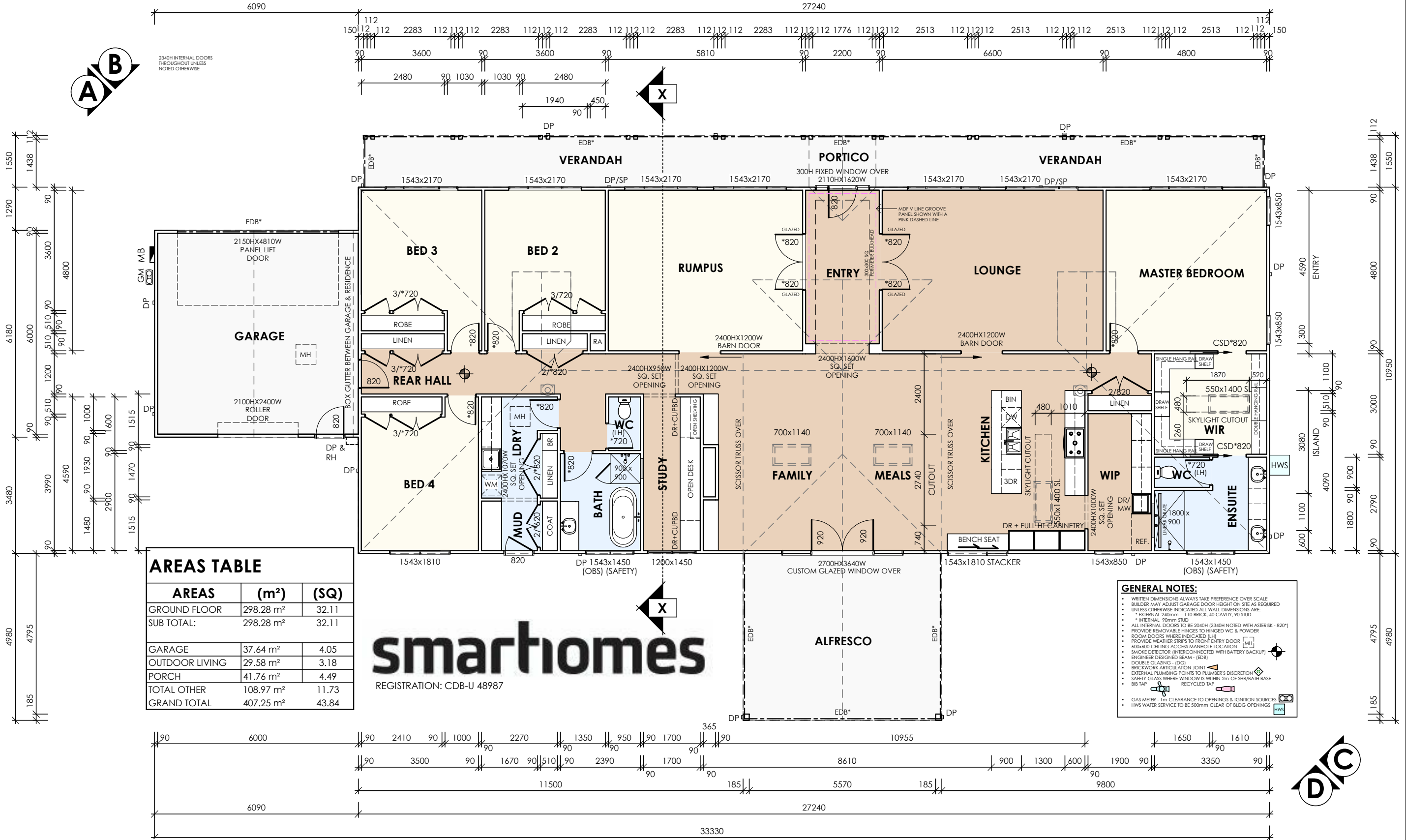
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proposed: **HOUSE AND GARAGE**

for: **SMART HOMES**

drawing: **GROUND FLOOR PLAN**

drawn: **NT** date: **04/07/19** scale: **1 : 100**

address: **ADDRESS**

SUBURB, POSTCODE

sheet: **3** of **12** issue: **A** date: **04/07/19** job no.: **19-00000**