

## 5 Ordinary Business

### 5.1 Development of the Land for a Habitable Outbuilding, Two (2) Non-Habitable Outbuildings, Horse Arena and Associated Works at 95 Old Sawmill Road, Nar Nar Goon North VIC 3812

**File Reference:** T190478  
**Responsible GM:** Peter Benazic  
**Author:** Stephanie Preece

#### Recommendation(s)

That Council issue a Refusal to Grant Planning Permit T190478 for Development of the land for a habitable outbuilding, two (2) non-habitable outbuildings, horse arena and associated works at 95 Old Sawmill Road, Nar Nar Goon North VIC 3812 on the following grounds:

- The application is inconsistent with the relevant State and Local Planning Policy
- The application is inconsistent with the applicable zone and overlays
- Based on evidence, the intended use of the outbuilding aligns more closely with a second dwelling (prohibited under the zone) as oppose to a habitable outbuilding

#### Attachments

1. Development Plans [5.1.1 - 5 pages]

#### Executive Summary

<b>APPLICATION NO.:</b>	T190478
<b>APPLICANT:</b>	Phillip Crotty
<b>LAND:</b>	95 Old Sawmill Road, Nar Nar Goon North VIC 3812
<b>PROPOSAL:</b>	Development of the land for a habitable outbuilding, two (2) non-habitable outbuildings, horse arena and associated works
<b>PLANNING CONTROLS:</b>	Zone: <ul style="list-style-type: none"> <li>• Rural Conservation Zone - Schedule 1</li> </ul> Overlays: <ul style="list-style-type: none"> <li>• Environmental Significance Overlay - Schedule 1</li> <li>• Bushfire Management Overlay</li> <li>• Land Subject to Inundation Overlay</li> </ul>
<b>NOTIFICATION &amp; OBJECTIONS:</b>	Pursuant to Section 55 of the <i>Planning and Environment Act 1989</i> , the application was advertised by the placing of signs on site and notices in the mail to adjoining property owners. No objections have been received to date.

<b>KEY PLANNING CONSIDERATIONS:</b>	<ul style="list-style-type: none"><li>• Proposed use of the outbuilding versus the intended use of the outbuilding</li><li>• Visual impact of the proposed development on the rural character of the area</li><li>• Increased bushfire risk</li><li>• Relationship between the existing dwelling and non-habitable outbuilding</li></ul>
<b>RECOMMENDATION:</b>	It is recommended that the application be refused.

### Background

Planning Permit T050185 was issued on 10 October 2005 was issued for the excavation of land and the construction of a dwelling

The unauthorised construction of buildings has occurred on the site in the absence of the required Building Permits. A *Building Order to Stop Building Works* was sent to the landowner on 1 November 2019. An inspection of the site revealed five illegal structures (including 3 x portable buildings) were on the site.

### Subject Site

The site is located on the southern side of Old Sawmill Road.

The site has an irregular shape and has an overall area of 16.61 Hectares.

A crossover is located on the northern boundary. Two powerline easements traverse the site. E1 runs north-south through the site and has a width of 10 metres, E2 runs east-west across the site and has a width of 11 metres.

The site currently contains an existing dwelling, outbuildings and is moderately vegetated in the eastern corner.

The subject site is located in a small pocket of rural residential development. The adjoining properties each contain a dwelling and associated outbuildings. The surrounding area is moderately to densely vegetated.



*Figure A: The subject site and surrounding area.*

### **Relevance to Council Plan**

Nil.

### **Proposal**

#### Habitable Outbuilding

The applicant seeks a planning permit for the development of a habitable outbuilding on the subject site.

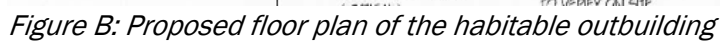
The habitable outbuilding will comprise of 2 bedrooms, a laundry, shower and bath, kitchen and separate meals and living areas. The building will have an overall size of 145.2 square metres.

Verandahs will be located on both the north and south elevation.

The outbuilding will have a wall height of 2.4 metres and a 22.30 degree pitched roof in Colorbond sheeting in the colour Iron Grey. The overall height of the habitable outbuilding cannot be determined as the natural ground level has not been shown on the plans.

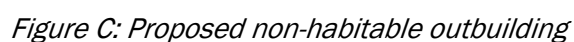
The habitable outbuilding will be located approximately 95 metres west of the existing dwelling and 30 metres from the northern boundary (please note these distances were not provided to Council, an estimation based on the site plan and aerial imagery available to Council has been made).

The habitable outbuilding will utilise the existing crossover however a new driveway will be constructed for accessibility.



The applicant seeks retrospective planning approval for the development of a hay/machinery shed (Non-habitable outbuilding).

The building is open on all sides and has an overall height of approximately 7.5 metres to the peak of a pitched roof.



*Please note: the applicant has also proposed a horse arena and a stable/tack room. Details of these developments have not been submitted to Council.*

### **Planning Scheme Provisions**

#### **Planning Policy Framework (PPF)**

The relevant clauses of the PPF are:

- *Clause 12.05-2S Landscapes*
- *Clause 13.02-1S Bushfire Planning*
- *Clause 15.01-6S Design for rural areas*

#### **Local Planning Policy Framework (LPPF)**

The relevant clauses of the LPPF are:

- *Clause 21.02-4 Wildfire management*
- *Clause 21.03-3 Rural townships*

#### **Relevant Particular/ General Provisions and relevant incorporated or reference documents**

The relevant provisions/ documents are:

- *Clause 53.02 Bushfire Planning*
- *Clause 65.01 Approval of an application or plan*
- *Clause 66 Referral and Notice provisions*

#### **Zone**

The land is subject to the **Rural Conservation Zone Schedule 1**

#### **Overlays**

The land is subject to the following overlays:

- Environmental Significance Overlay – Schedule 1
- Bushfire Management Overlay
- Land Subject to Inundation Overlay

### **Planning Permit Triggers**

The proposal for **habitable outbuilding, two (2) non-habitable outbuildings, horse arena and associated works** at **95 Old Sawmill Road** requires a planning permit under the following clauses of the Cardinia Planning Scheme:

Habitable outbuilding:

- Pursuant to Clause 35.06-5 of the Rural Conservation Zone a permit is required to construct an outbuilding associated with an existing dwelling where the floor area exceeds 100 square metres

- Pursuant to Clause 44.06 of the Bushfire Management Overlay a permit is required to construct a building associated with accommodation
- Pursuant to Clause 42.01-2 of the Environmental Significance Overlay a permit is required to construct a building with a height greater than 4 metres, where the gross floor area of all outbuildings will exceed 120 square metres

Proposed hay machinery shed (seeking retrospective planning permit):

- Pursuant to Clause 35.06-5 of the Rural Conservation Zone a permit is required to construct a building within 20 metres of a road
- Pursuant to Clause 42.01-2 of the Environmental Significance Overlay a permit is required to construct a building with a height greater than 4 metres, where the gross floor area of all outbuildings will exceed 120 square metres

Other buildings and works:

- The Planning Permit triggers cannot be identified accurately as the applicant has not submitted sufficient information.

### 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 surrounding land.*
- The notification has been carried out correctly, and Council has received zero (0) objections to date.

### Referrals

*Country Fire Authority (recommending)*

- The application was referred to the Country Fire Authority (CFA) as a statutory referral. A response from the CFA has not been received as of 22/08/2020. As the CFA are a recommending authority it is considered appropriate to proceed with the refusal of the application.

### Discussion

This application seeks a Planning Permit for the construction of four (4) total elements on this land. These four (4) elements are: a habitable outbuilding, two (2) separate non-habitable outbuildings, a horse arena, and associated works. Council recommends that the entire application should be refused, even if only one of the proposed elements of the application contravenes the relevant planning policy in the Cardinia Planning Scheme (CPS). This is regardless of whether or not the other elements in the application are compliant with the CPS. In this application, for the development at 95 Old Sawmill Road, the element which contravenes relevant policy in the CPS is the proposed construction of the habitable outbuilding. For that reason, the following paragraphs in this discussion will be solely centred on the element of the habitable outbuilding. With regard to the two non-habitable outbuildings, the horse arena and associated works, Council recommends that the applicant applies for a new, separate planning permit.

T190478 was originally submitted to Council as an application for the Use and development of the land for a Dependent Person's Unit (DPU). Under Clause 73.03 of the CPS, a DPU is defined



as 'a movable building on the same lot as an existing dwelling and used to provide accommodation for a person dependent on a resident of the existing dwelling'. The information provided by the applicant to Council on 13 August 2019 did not demonstrate that the persons (who intend to occupy the building) could be classed as dependent on any or all of the residents of the existing dwelling.

After learning that the proposed building did not satisfy the relevant criteria to classify it as a DPU, the applicant submitted an amended application to Council on 29 July 2020 pursuant to s57 of the *Planning and Environment Act 1987*. On the amended application, the applicant now claims that the building is no longer a DPU but is now a habitable outbuilding. The building was amended to a habitable outbuilding as the development of the land for a second dwelling is prohibited under the Rural Conservation Zone.

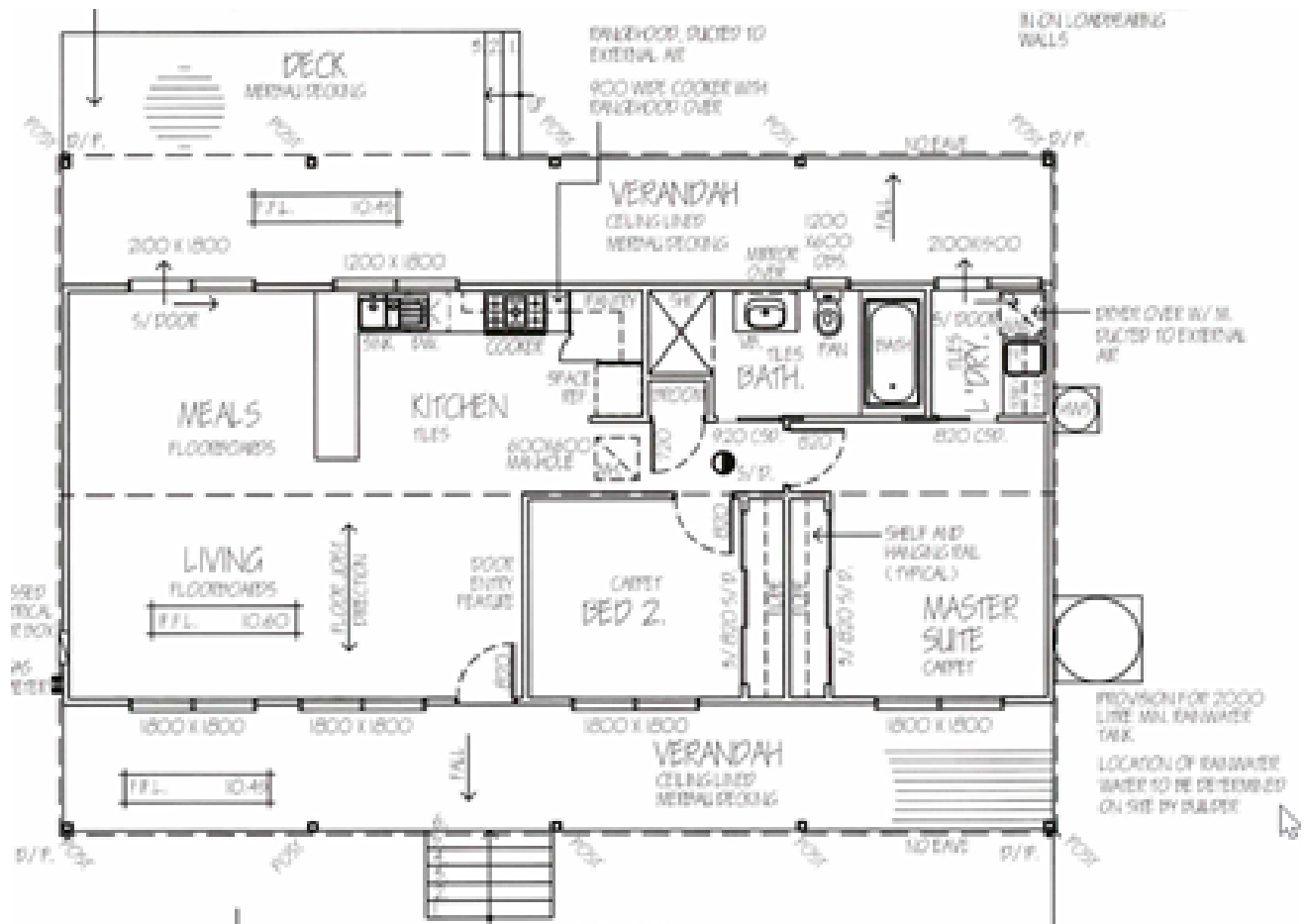
Under Clause 73.03 (Land Use Definitions), a dwelling requires 4 elements to be considered a dwelling. The building on the original application (see figure C), which was intended to be used as a DPU, satisfied these 4 elements, containing a kitchen sink, food preparation facilities, a bath or shower and a toilet and wash basin.

On face value, it appears that the applicant's amended floor plan does not contain the four requisite elements, and thus, would not be considered a dwelling. However, Council believes that the applicant has not sufficiently demonstrated that the original intended use of the outbuilding has changed in any substantive manner. On the amended floor plan (see figure D), the applicant has used a means to white out the icons which represent the toilet and wash basin, yet retains the separate room that is labelled as the proposed "bathroom". Apart from the removal of the icons, there have been no alterations to the floor plan whatsoever. The amended floor plan contains the exact same internal layout and built form as the original floor plan. The amended floor plan still details a bath, shower, two bedrooms, laundry a full-sized kitchen, and separate meals and living areas, which is 145.2 square metres in size.

Due to the fact that the amended floor plan is substantially the same as the original DPU, Council believes that the applicant has not sufficiently demonstrated that the building will not be used to provide full time residency. The removal of the toilet and wash basin in itself does not demonstrate that the original intended use will not be carried out. Council believes that the proposed outbuilding is intended to be used as a second dwelling, and notes that merely simple internal works could change the definition of the building back to a dwelling under 73.03.

Thus, Council believes the proposed 'habitable outbuilding' goes beyond the definition and purpose of a habitable outbuilding and in fact more closely aligns with the small second dwelling.

This intended use of the habitable outbuilding is further evidenced by a letter submitted to Council outlining that having the 'DPU on the land would allow their friends to help in the wildlife shelter and maintain the property'. The landowner also eluded to the fact that they would not be able to afford to keep the property should the application be refused, insinuating that they are wanting their friends to live on the land for joint financial benefit. This is also confirmed through an e-mail received by Council where it is stated that 'a secondary couple are going on the Title and paying out the registered proprietor's mortgage'.





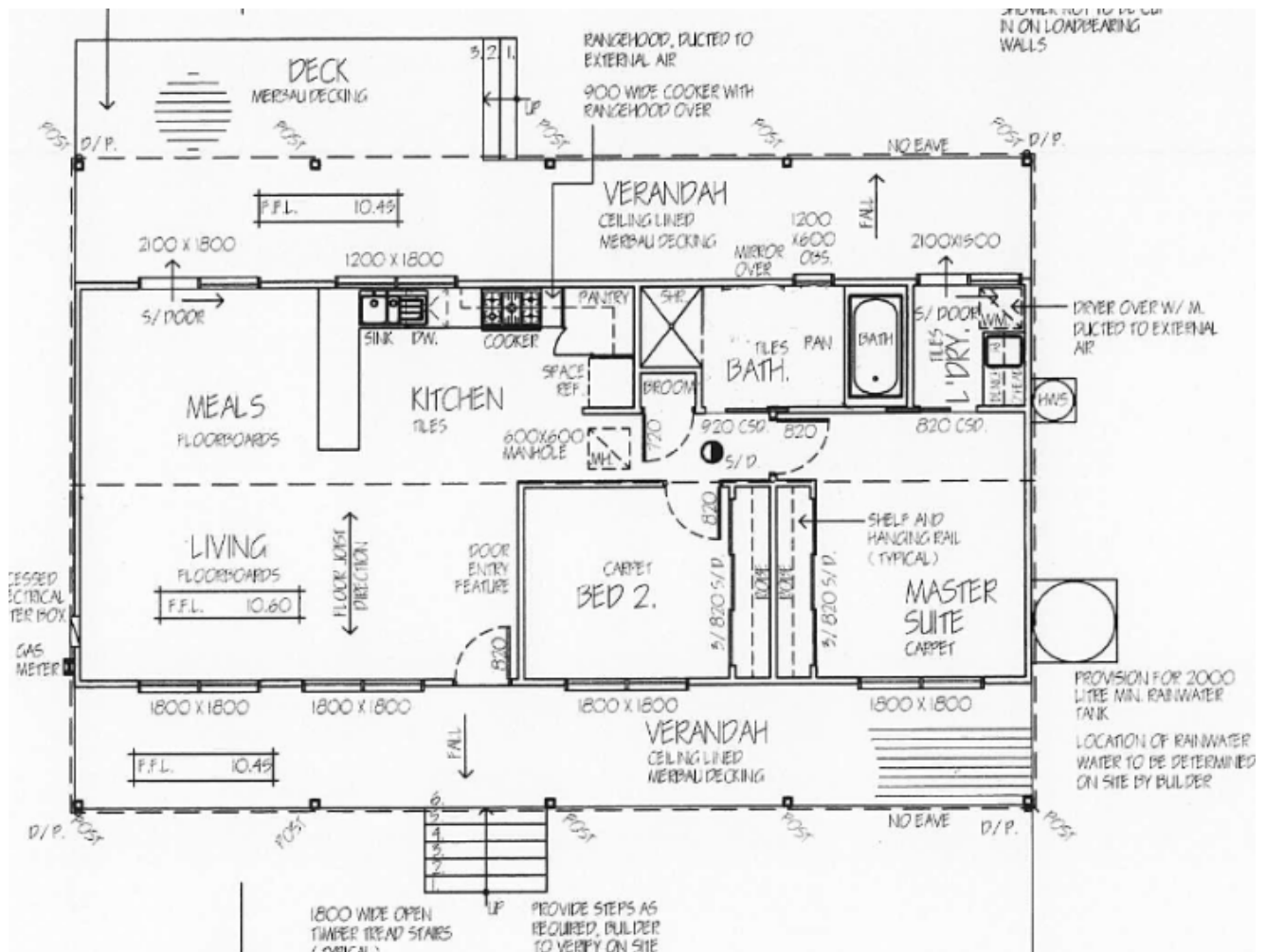


Figure D: Amended Floor plan of the habitable outbuilding

#### Planning Policy Framework and Local Planning Policy Framework

Ignoring the intended use of the outbuilding, the application, the habitable outbuilding together with the 2 non-habitable outbuildings and horse arena, fails to appropriately respond to the relevant state and local planning policies.

The proposed buildings, located along the northern boundary, fail to respond appropriately to the rural character of the area. Clause 15.01-6S and Clause 21.03-3 seek to maintain and enhance the rural character of rural townships. The scattered nature of all the outbuildings along the northern boundary, proximity to the northern boundary and the lack of visual screening from the road are all factors which detract from the rural character of the area.

The approval of this application would increase the number of people capable of residing at the site, which in turn would increase the risk to human life in the event of a bushfire. Residential development should not be located in areas of high bushfire risk and the preservation of human life must be considered above all other policy. The applicant has failed to provide information that demonstrates the risk to human life can be mitigated to an acceptable level.

The proposal is non-compliant with the relevant state and local planning policies.

#### Rural Conservation Zone – Schedule 1

Whilst the land is located in a small pocket of rural residential development and the proposed buildings are consistent with this use, the amount and scattered nature of the residential development located on the subject site does not meet the purpose of the zone. The Rural

Conservation Zone seeks to protect and conserve the environmental and landscape values of the land. The scattered nature of the existing dwelling and all proposed structures contributes to the fragmentation of the land which affects the land's capability to protect and enhance the natural environment and biodiversity of the area. All buildings on the site should be located in proximity to each other where consideration to the landscape and environmental values of the land has been given. Precedence should be taken from the adjoining and nearby properties whereby largely all residential development is subserviently located in the one area of the property.

Whilst there are no regulations that underpin the physical expectation of a habitable outbuilding (albeit the absence of 1 requisite elements that would see it classified as a dwelling) the size, layout and facilities included in the habitable outbuilding must be relevant to the use and purpose, and must demonstrate a clear relationship to the existing dwelling. The features of the proposed habitable outbuilding are considered to be excessive for its purpose. The proposed habitable outbuilding contains a bath, shower, two bedrooms, laundry, a full-sized kitchen, and separate meals and living areas. With all of these features the relationship between the dwelling and habitable outbuilding is weakened and sees little to no reliance on the existing dwelling. Additionally, the outbuilding is located approximately 95 metres west of the existing dwelling and will utilise a separate driveway, further fracturing the relationship between the two buildings. The plans have not been able to establish a clear relationship between the existing dwelling and proposed outbuilding.

Overall, the proposal is not considered to comply with the zone.

#### Environmental Significance Overlay – Schedule 1

The Environmental Significance Overlay – Schedule 1 relates to the northern hills area of the municipality and the need to protect and enhance the significant environmental and landscape values of the area. This includes the retention and enhancement of indigenous vegetation, and to ensure that the siting and design of buildings and works do not adversely affect environmental and landscape values through ensuring that environmental hazards and risks are addressed.

As discussed above, the location of the proposed outbuilding is considered inappropriate and contributes to a proliferation of buildings along the northern boundary, detracting from preferred and existing landscape character of the area. Whilst the height, materials, colours and form of the outbuildings is not offensive to the environment of the area the siting is considered to have a significant visual impact on the area.

Overall, the proposal does not comply with the Environmental Significance Overlay.

#### Bushfire Management Overlay

The application has not addressed the requirements of the Bushfire Management Overlay, nor has it been demonstrated that appropriate bushfire protection measures can be implemented to reduce risk to life and property in the event of a bushfire. The habitable outbuilding will increase the number of potential occupants able to reside on the property, thus creating a greater bushfire risk. Council cannot be satisfied, without the relevant information that risk to property and life can be mitigated to an acceptable level, particularly when the surrounding landscape and context of the site is considered.

The application is not considered to comply with the Overlay.

#### Clause 65.01 Approval of an application or plan

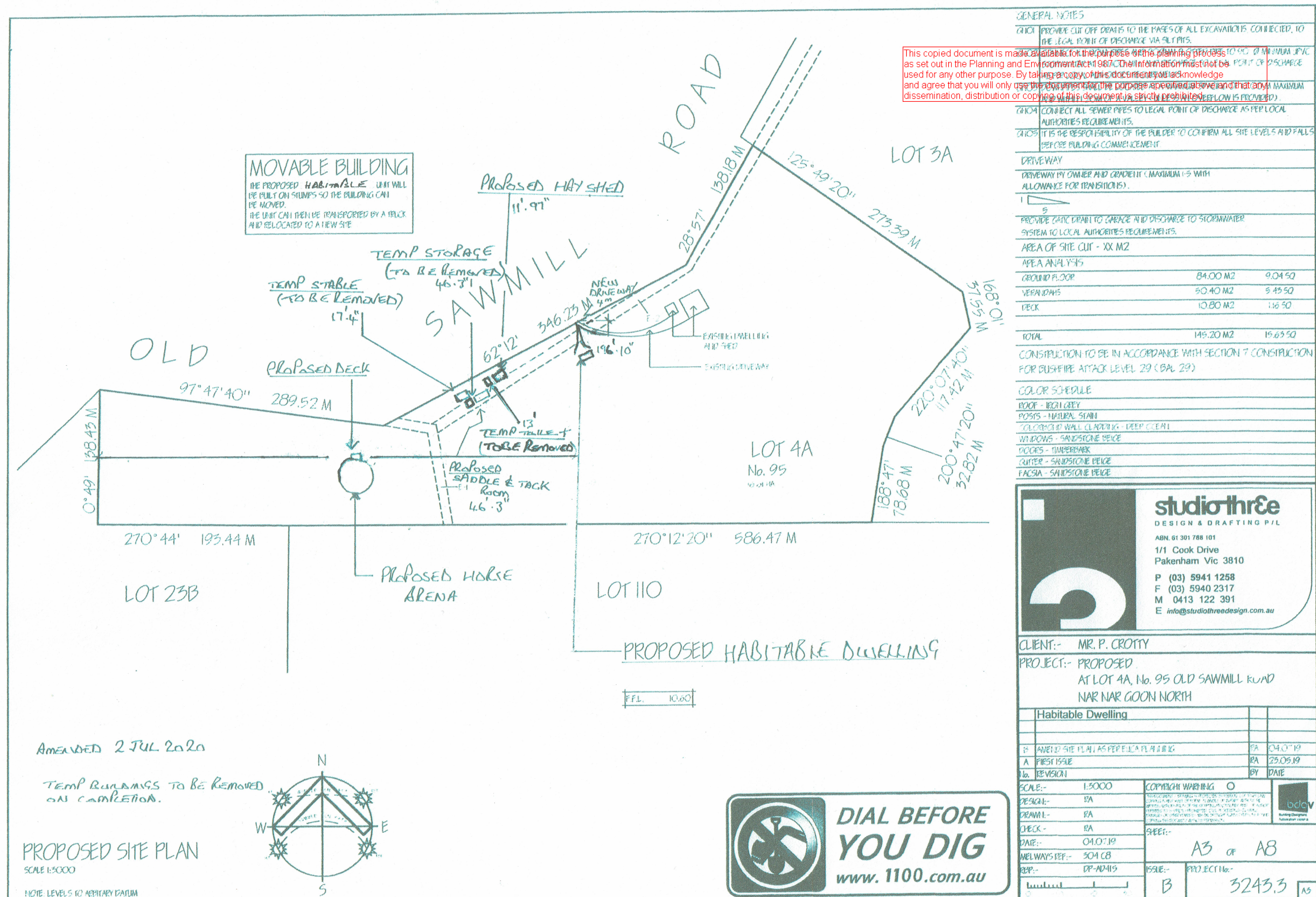
As discussed above the proposal does not comply with the relevant state and local planning policies, the purpose of the zone and applicable overlay. For these reasons it is not considered that the application contributes to the orderly planning of the area and erodes the existing and preferred neighbourhood character.

**Conclusion**

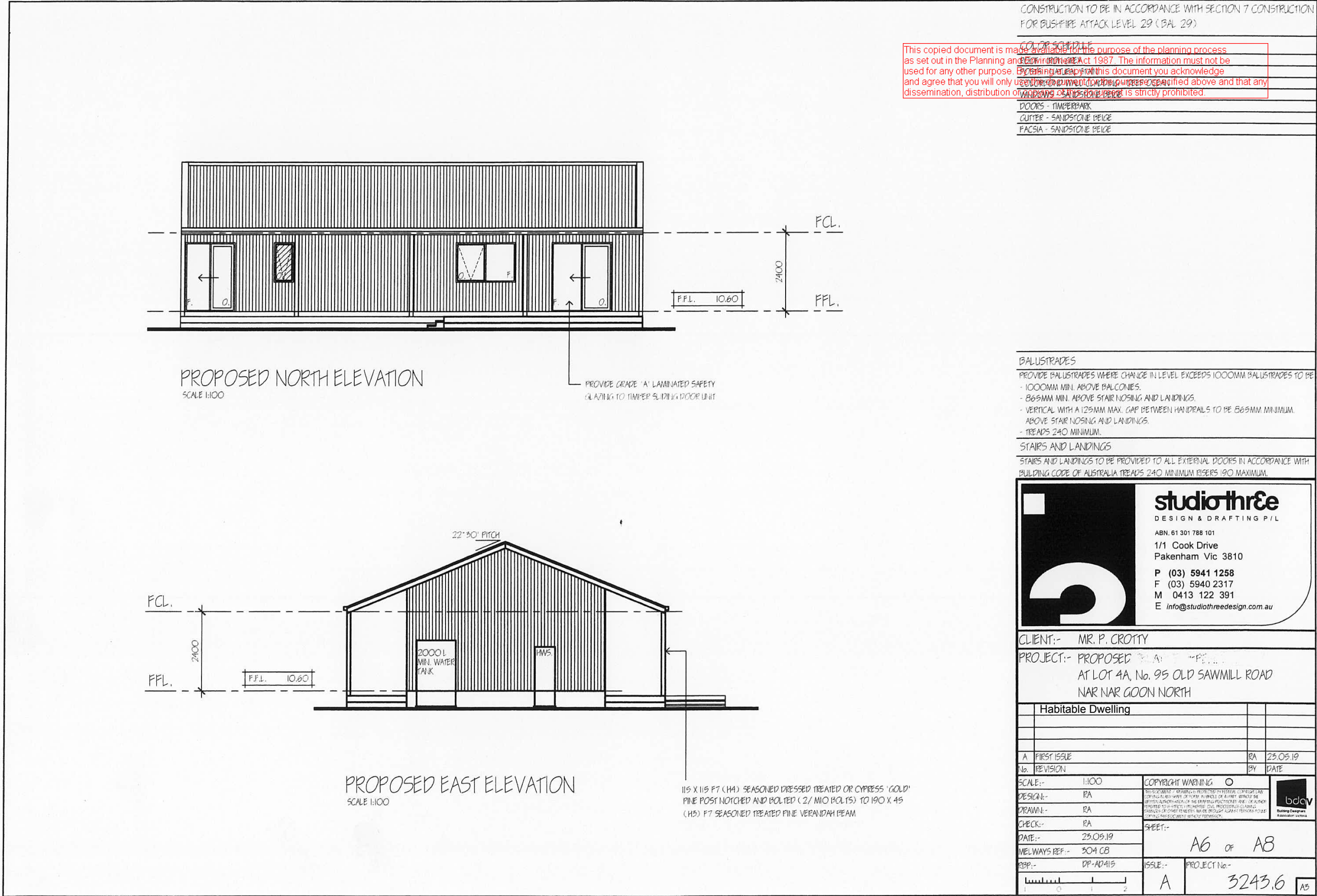
As demonstrated above, the application does not comply with the relevant state and local planning policies, the purpose of the zone and applicable overlays. Additionally, it is also recommended that the application is refused, on the basis that the applicant is merely masquerading the true intended use of the habitable-outbuilding for the sole purpose of eliciting approval of the application.

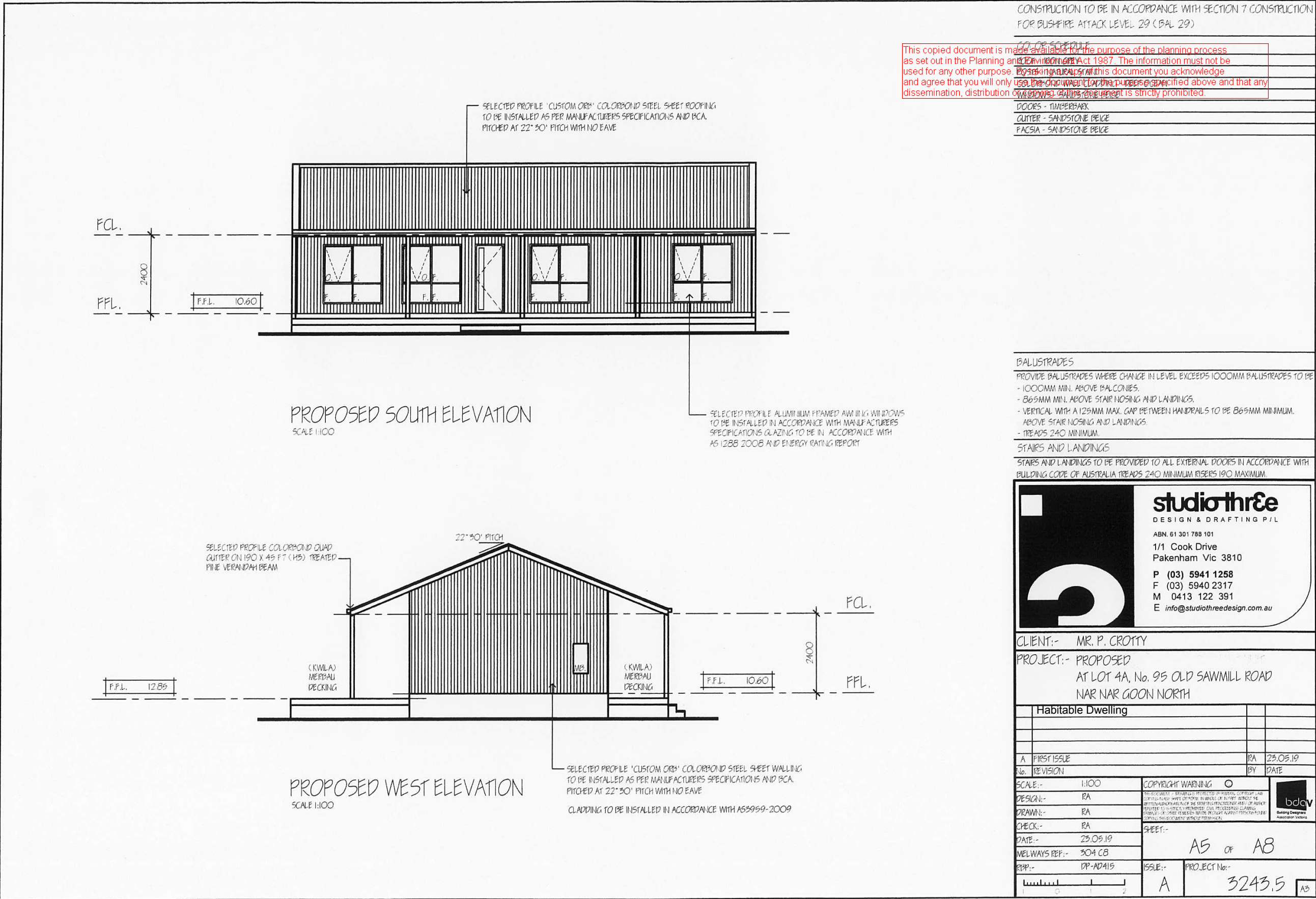
The applicant was given sufficient time to address the concerns raised by Council, and whilst the habitable outbuilding was relocated and the internal layout (minimally) amended, the changes do not demonstrate that the intended use of the outbuilding has changed.











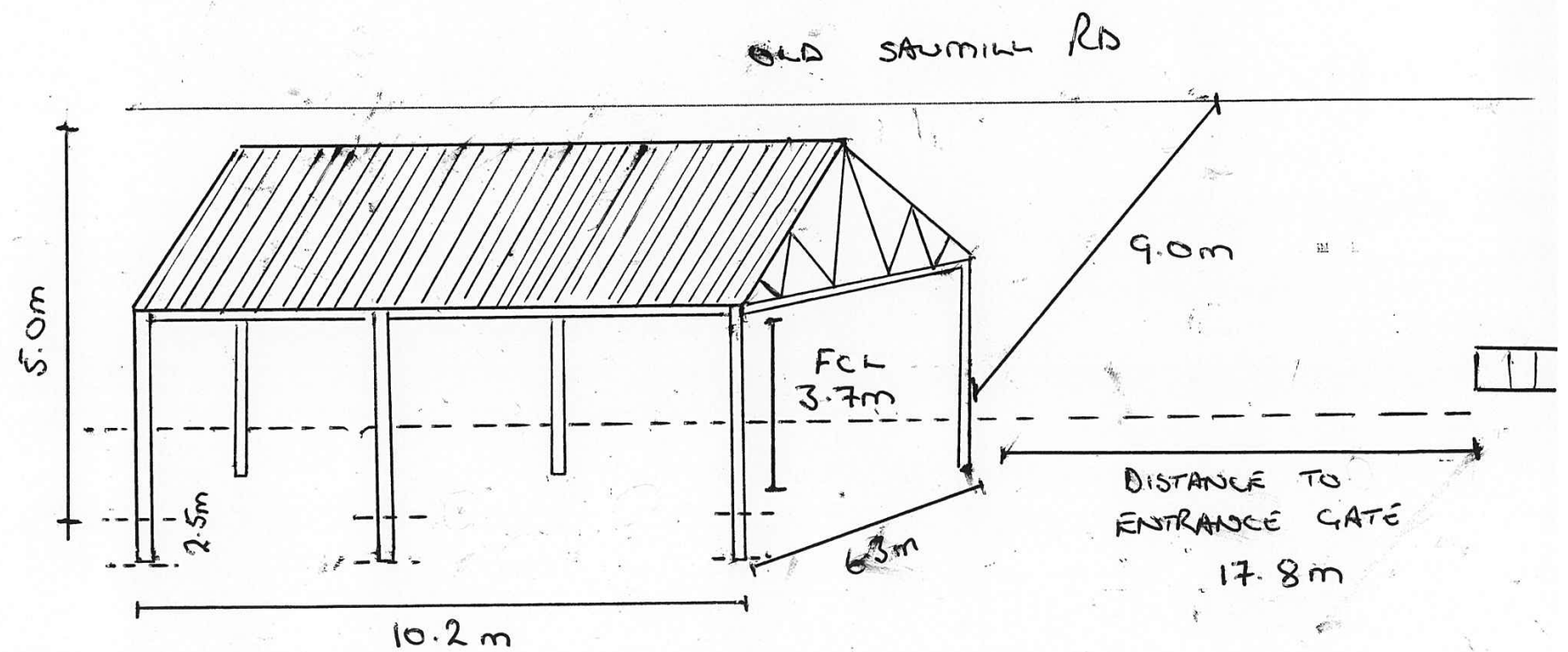
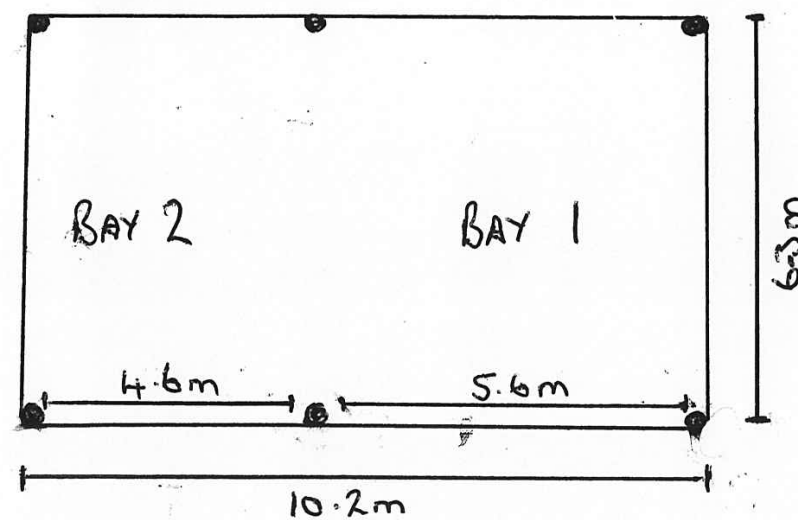
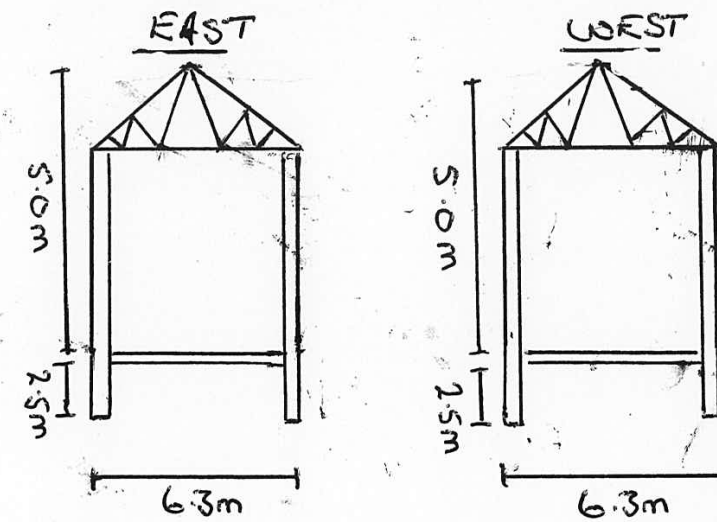
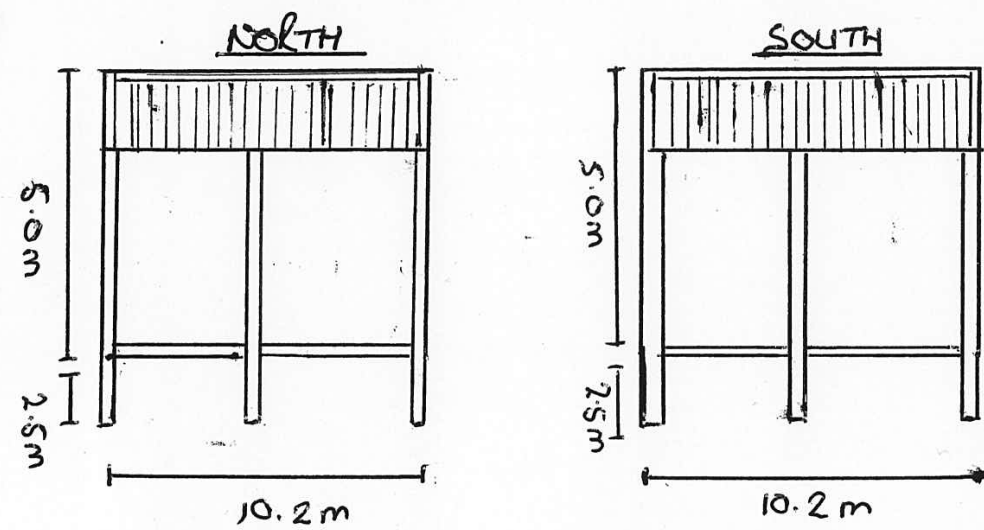






PROPOSED HAY / MACHINERY SHED.  
95 OLDSAUMILL RD NAR NAR GOON NORTH.

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