

## 5.2 T210561 PA - Use and Development of the Land for a Dwelling and Outbuilding and the Removal of Vegetation at 31 Walford Road, Beaconsfield Upper

**Responsible GM:** Lili Rosic  
**Author:** Dean Haeusler

### Recommendation(s)

That Council refuse planning permit application T210561 for the use and development of land for a Dwelling and outbuilding and removal of native vegetation on the following grounds:

1. The proposal does not respond to the purposes or decision guidelines of Clause 35.06 Rural Conservation Zone and Schedule 2 – Conservation Values.
2. The proposal results in unnecessary bushfire risk, pursuant to Clause 44.06 Bushfire Management Overlay and associated Planning Policy and Local Planning Policy Framework provisions and is not a solely appropriate planning justification for the required 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.
4. The proposal does not respond to the decision guidelines of Clause 52.17 Native Vegetation (and results in significant habitat destruction of an endangered species (*Eucalyptus Fulgens*), registered under the Flora and Fauna Guarantee Act 1988 threatened species list).
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. Locality Map [5.2.1 - 1 page]
2. Development and Tree Removal Plans [5.2.2 - 5 pages]

### Executive Summary

<b>APPLICATION NO.:</b>	T210561
<b>APPLICANT:</b>	Alison Tunnard
<b>LAND:</b>	31 Walford Road, Beaconsfield Upper 3808
<b>PROPOSAL:</b>	Use and development of land for a dwelling and outbuilding, and removal of native vegetation

<b>PLANNING CONTROLS:</b>	Rural Conservation Zone – Schedule 2 (RCZ2) Bushfire Management Overlay Environmental Significance Overlay – Schedule 1 (ESO1)
<b>NOTIFICATION &amp; OBJECTIONS:</b>	Pursuant to Section 52 of the Planning and Environment Act 1987, the application was advertised by sending notices to nearby property owners and occupiers.  No objections received.
<b>KEY PLANNING CONSIDERATIONS:</b>	<ul style="list-style-type: none"> <li>• Response to Planning Policy Framework</li> <li>• Response to the Rural Conservation Zone</li> <li>• Vegetation Removal and environmental impacts</li> <li>• Bushfire considerations</li> </ul>
<b>RECOMMENDATION:</b>	Refusal of application.

### Background

- **T210561** was lodged in July 2021, and a Request for Further Information (RFI) was issued in October 2021 identifying concerns with the proposal including siting of the dwelling, impact upon the landscape, vegetation impacts and bushfire risk.
- A response to the RFI was provided in March 2022, and a subsequent Section 50 Amendment to the Application was received in April 2022.
- Prior to notification (advertising) of the application, ongoing discussions between Council Officers and the applicant occurred in relation to ongoing concerns with the proposal.
- Notification of the application occurred in May 2022, with no objections received.
- The appropriate internal and external referrals have been undertaken, as discussed within this report.

### Subject Site

The approximate 8.06ha (80,600m<sup>2</sup>) rectangular site is located on the northern side of Walford Road (gravel road), located approximately 4.8km east of Beaconsfield Upper and 4km west of Pakenham Upper.

The site is void of any structures and is heavily vegetated with the exception of a narrow cleared area of approximately 15-20m in width adjacent to the western property boundary. The title also includes a carriageway easement along the western property boundary which provides access to 95 Walford Road to the north (rear).

The majority of the canopy vegetation is *Eucalyptus fulgens* (Green Scentbark) and *Eucalyptus radiata* (Narrow-Leaved Peppermint). Understory is described as 'diverse' and dominated by indigenous species such as Burgan, Scrub Sheoak, Yellow Rice-flower, Wiry Spear-grass, Red-fruited Saw-sedge and native herbs and flowers including Chocolate Lily, Common Rice-flower, Milkmaids, Small Grass-tree, Bluebells and Twining Glycine. Weed species are limited on the site, with the exception of the vacant pasture grass along the western boundary. Site inspections have noted native bees, wombats and other ground-dwelling species. Further, assessment reports have identified the site is likely home to a number of protected species such as White Star Bush, Angahook Pink-Fingers and Purple Diuris.

The undulating topography of the site and dense vegetation makes much of the site inaccessible via vehicle. The site is located within a mosaic area of heavily vegetated areas, punctuated by scattered remnant vegetation and farmland / lifestyle living arrangements. Surrounds include:

- To the east of the site is open farm land, with properties that are accessed via Toomuc Valley Road. A number of dwellings are located within the open areas, generally located within close proximity to the road frontage.
- To the south is Walford Road, and further south is a mixture of open areas subject to dwellings and lifestyle properties, and more dense areas of vegetation.
- To the west is a similar sized property addressed as 25 Walford Road, Beaconsfield Upper which includes a dwelling in an open area (front portion of the property), with dense vegetation in the rear half of the property. Further west are a mixture of lot sizes, with the majority of lots having a vacant portion of land subject to a dwelling.
- To the north is a heavily vegetated area and Walford Creek, with a number of lots benefiting from vacant areas subject to dwellings.



Figure 1 - Aerial imagery of the site (highlighted in blue) and immediate surrounds (Nearmap, February 2022)



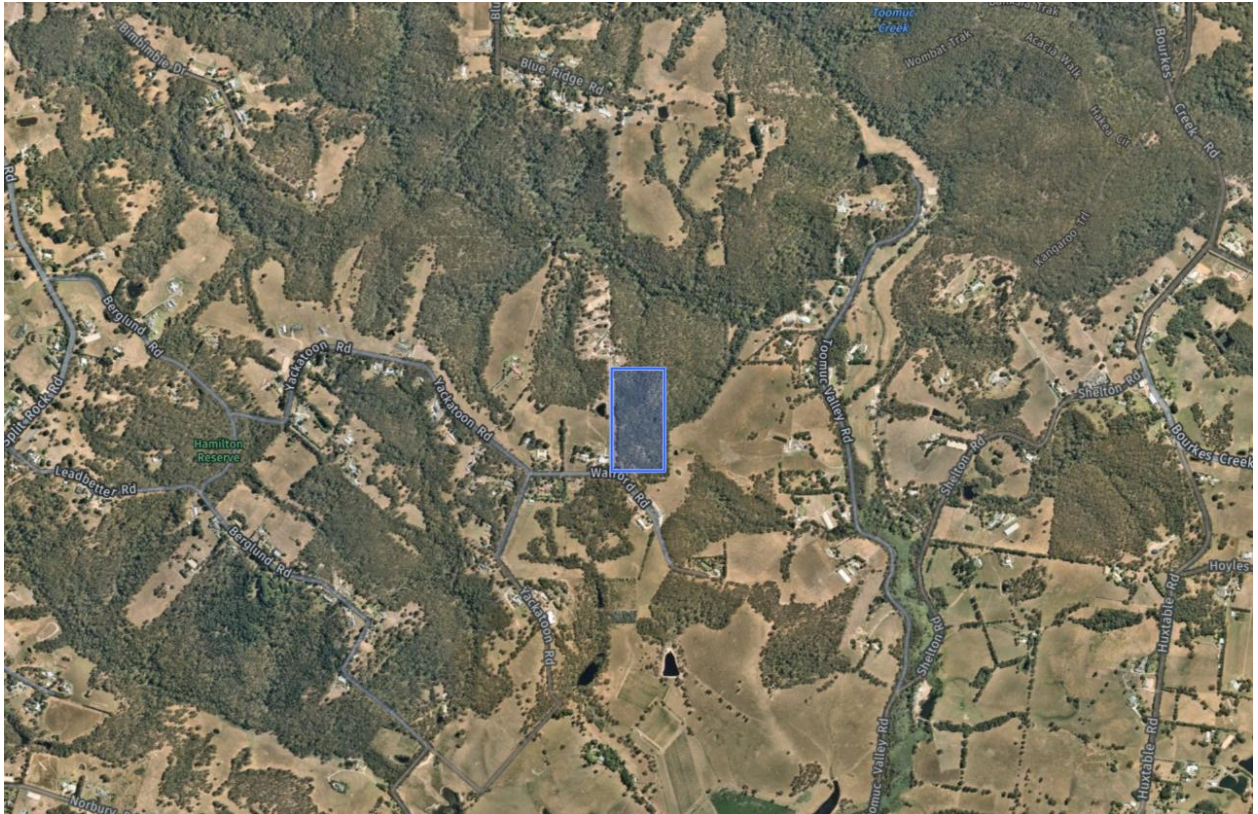


Figure 2 - Aerial imagery of the site (blue) and wider surrounds (Nearmap, February 2022)

## Relevance to Council Plan

3.1 We value our natural assets and support our biodiversity to thrive.

3.1.3 Work with community to improve and manage our natural assets, biodiversity and cultural heritage.

## Proposal

The proposal seeks to construct a dwelling and outbuilding accessed via a driveway, and remove native vegetation associated with bushfire risk and effluent field.

The proposed **double-story dwelling** is to be set back 39m from the front property boundary, and 36.8m from the site property boundary. The dwelling is to comprise of three bedrooms however is to have a total building area of 640m<sup>2</sup> as follows:

- Ground Floor to comprise of three bedrooms (1 x master with walk in robe and ensuite), study, family bathroom, open plan kitchen/dining/living and a 147m<sup>2</sup> alfresco/deck area
- Sub-Floor area to include a gym, billiard room, sitting room, bar area, theatre, laundry, powder room, 62m<sup>2</sup> of alfresco/balcony area and a double car garage.

To the rear of the dwelling is a **proposed 11 x 17m (187m<sup>2</sup>) outbuilding** associated with the dwelling ("barn") incorporating a shed area and workshop area. The outbuilding requires 3m of fill to create a flat pad for the 4.259m outbuilding.

A driveway is proposed to connect to the existing crossover and accessway located within the carriageway easement, providing vehicular access to the dwelling, with a large gravel pad area connecting the dwelling and the outbuilding.



Further, a **540m<sup>2</sup> effluent envelope** is proposed, which is to be located approximately 16m to the east of the outbuilding.

To accommodate the dwelling (and associated bushfire risk), outbuilding and effluent area a total of

**0.76ha of land is to be partially cleared, and 0.26ha is to be fully cleared of native vegetation, totalling an area of 1.024ha to be impacted which incorporates a minimum of 92 trees to be removed.**



Figure 3 - Floor Plan (left) and Sub Floor Plan (right).

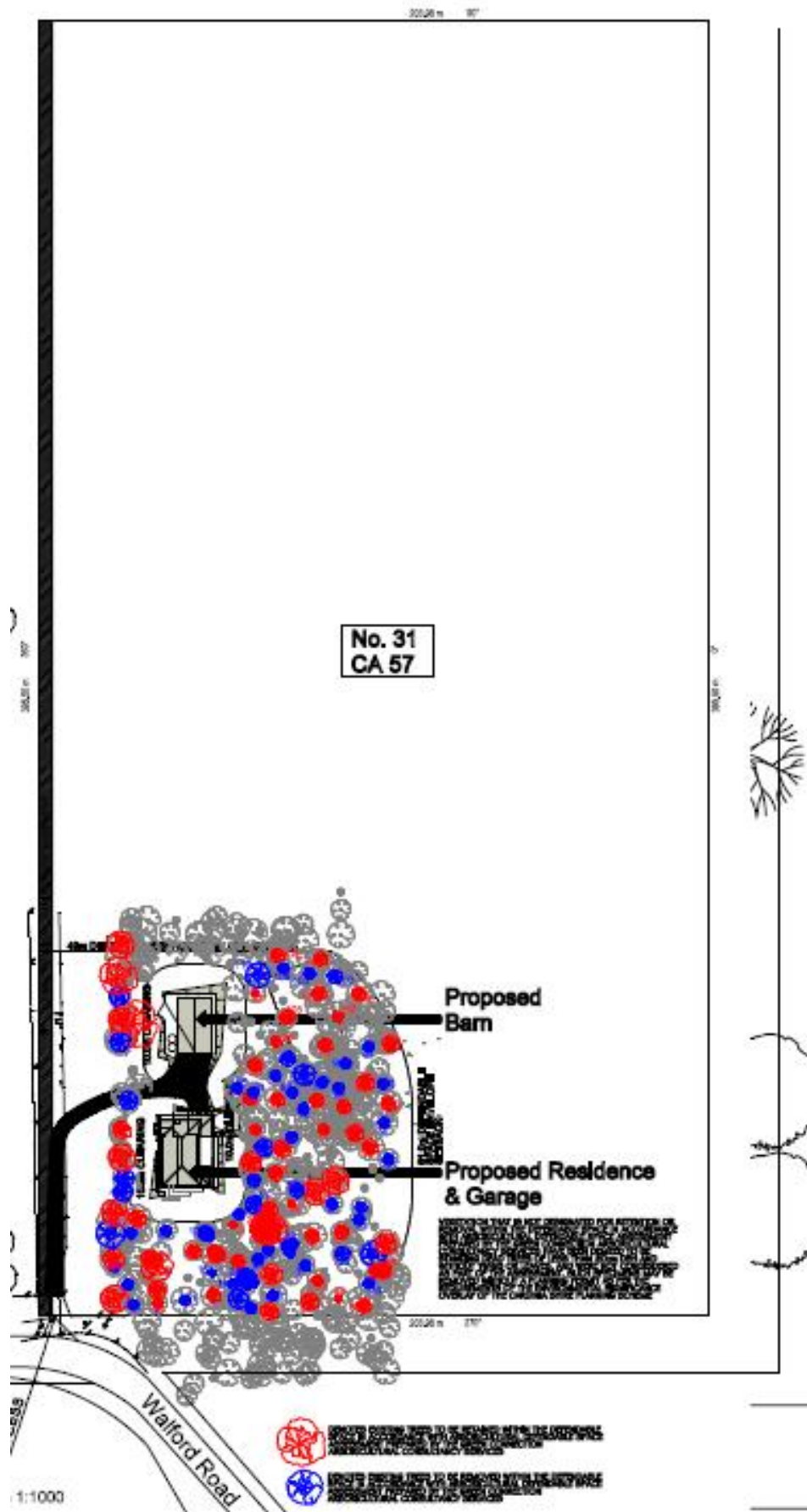


Figure 4 - Site Plan identifying proposed development is to be located within the south-west corner of the site.

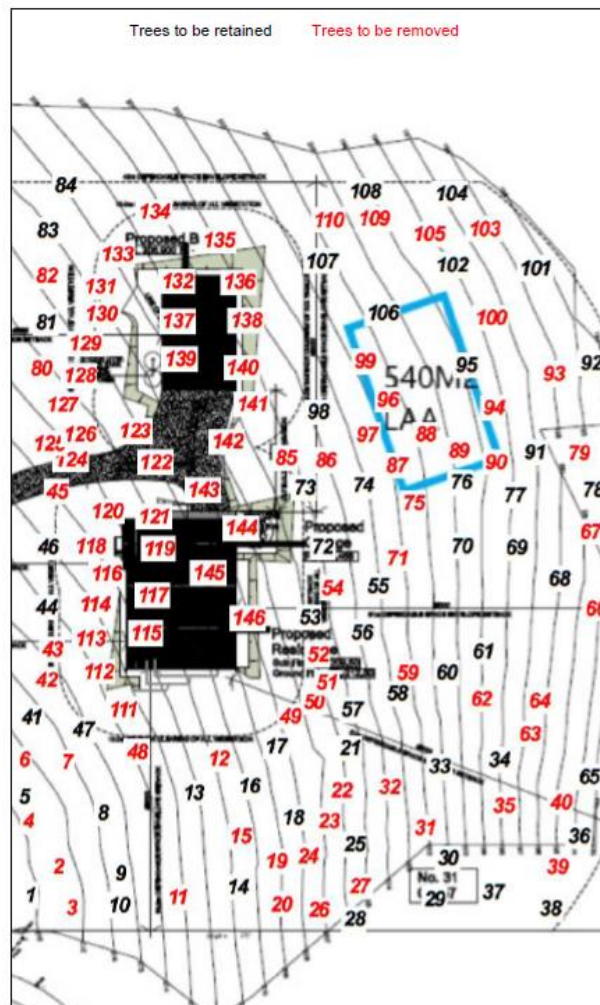


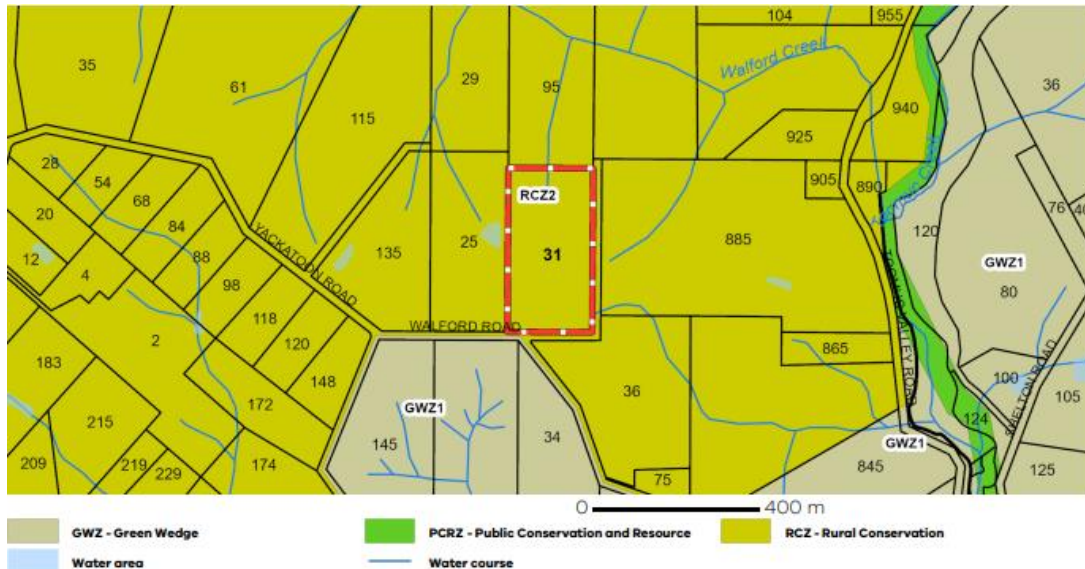
Figure 5 - Tree Removal Plan (The Green Connection, Version 2, February 2022)

## Planning Scheme Provisions

### Zone

The land is subject to the Rural Conservation Zone – Schedule 2 (RCZ2 – Conservation Values).





Note: labels for zones may appear outside the actual zone - please compare the labels with the legend.

*Figure 6 - Zoning Map of the subject site.*

### Overlays

The land is subject to the following overlays of the Cardinia Planning Scheme:

- Bushfire Management Overlay
- Environmental Significance Overlay – Schedule 1 (ESO1 – Northern Hills)

### Planning Policy Framework (PPF)

The relevant provision of the PPF include:

- 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 provision of the LPPF include:

- 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

### Particular / General Provisions and Incorporated / Reference Documents

The relevant provisions and documents are:

- Clause 52.12 Bushfire Protection Exemptions
- Clause 52.17 Native Vegetation
- Clause 53.02 Bushfire Planning
- Clause 65 Decision Guidelines

### Planning Permit Triggers

The proposal requires a planning permit under the following provisions 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 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 notification has been carried out correctly, and the statutory declaration has been submitted to Council on 25<sup>th</sup> May 2022.

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

### Referrals

#### External Referrals

Referrals/ Notice	Referral Authority	Brief summary of response
S.55	Fire Rescue Victoria (Country Fire Authority)	No objection, subject to conditions.
S.55	DELWP	No objection, subject to conditions

#### Internal Referrals

Internal Council Referral	Advice/ Response/ Conditions
Environment	Unsupportive of the proposal.
Engineering	No objection, subject to conditions

## Discussion

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, 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 needed to both use the land, as well as to undertake 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 development proposed has merit to allow for continued environmental protection and enhancement.

Whilst a single dwelling on a lot can 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 1.024ha of land, with a minimum of 92 trees to be removed and an unknown quantity of groundcovers, herbs and flowers to be removed.

The level of removal needed to allow for the use and development of the land for a dwelling – at a simplistic level – 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 (tied to the purposed of the RCZ) and recommended alternate locations for the dwelling, outbuilding and effluent area be explored, however the applicant has chosen to proceed as per the plan set and documentation subject to this assessment.

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 merely seems to provide for a rural living / hobby farm development within an area that seeks to protect, enhance and conserve the environment. These two elements do not necessarily mix.

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 handling an effluent system, however a 540m<sup>2</sup> area of dense 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 are subject to dwellings and/or farming/agricultural pursuits, these sites have been subject to historical partial clearing to allow for such developments. The key difference with the proposal at hand is that permission is required to further alter over 1ha of diverse indigenous vegetation.

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 a 'diverse' understory dominated by native grasses, herbs and groundcovers. 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 site has not been subject to development, and has generally been maintained as native vegetation
- The surrounds include a mosaic of farmland and retained vegetation
- The proposal will *"result in the loss of a total extent of 1.024 hectares of native vegetation"*
- Whilst the development results in the loss of vegetation and habitat, connectivity for species will remain
- The removal of vegetation is required to achieve the required defensible space for the dwelling, however it is unlikely that the development would result in the loss of any ecological communities

#### **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 farm land 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 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 impact to the public realm or adjoining properties as it will be screened appropriately due to required cut/fill and vegetation screening.

The extensive vegetation removal required to facilitate for the effluent envelope is of concern, lending an argument to the consideration that not every site is suitable for appropriate development.

In short, the above assessment identifies that the proposal will negatively 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 first and foremost seeks to protect and enhance vegetation and landscape.

It is considered that more appropriate designs or siting of built form are possible on the site which may reduce the scar upon the landscape compared with this proposal. However, Council are not assessing a site within a different zone, or a differing design or siting. Council are required to form a position on the application at hand, and in this instance the proposal does not appropriately respond to the purposes or decision guidelines of the Rural Conservation 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 versus 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/quantify 'acceptable' levels of risk for a dwelling when it is likely there are other opportunities to site the dwelling to a) reduce vegetation removal and b) result in lesser bushfire risk. 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 develop the land for a dwelling. Further, whilst the application is able to meet distance and vegetation thresholds to reach the relevant bushfire attack level rating, 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 is subject to well-known bushfire events (Ash Wednesday, 1983), and a number of 'credible bushfire scenarios' are discussed at length within the provided Bushfire Management Assessment. It is additionally concerning that the closest Neighbourhood Safer Place is the Mountain Road Reserve Indoor Sports Complex, which is located 16km / 20 minute drive (in 'normal' conditions) and the report identifies it may be safer to exit the site in the opposite direction of the designated Safer Place.

Provision of a dwelling in this location results in an additional 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 accommodate the development, 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 purposes of the zone.

### **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 DELWP have consented to the proposal, noting the application has '*satisfied the information requirements of Clause 52.17 Native Vegetation.*' It is noted the DELWP referral response highlights that "*the proposed development and use may reasonably satisfy the objectives of this clause subject to the implementation of a CEMP and ILMP (or equivalent) that ensures the protection and enhancement of retained native vegetation, faunal habitats, and waterways across the property*" however no Land Management Plan has been provided as part of the application to assess or rely on. Notwithstanding, a wider assessment of vegetation and biodiversity matters is required.

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 92 trees and modify over one hectare of land inclusive of canopy vegetation and groundcovers, the proposal does not appropriately respond to the relevant purposes and decision guidelines.

Council's Environmental Department is also unsupportive of the proposed level of removal and associated environmental impacts. Reasons for concern regard:

- Throughout the application process and concerns being raised from Council's initial assessment, there has not been any reduction in the defensible space area and associated vegetation impacts. This could/should have been investigated and addressed to respond appropriately to the need to seek to avoid and minimise removal.
- The extent of vegetation removal remains an unacceptable loss of biodiversity in a Rural Conservation Zone that prioritises the retention of conservation values and does not have an inherent right to construct a dwelling.
- There has not been any reduction in the impacts to *Eucalyptus fulgens*, a listed threatened species under the Flora and Fauna Guarantee Act that is protected under ESO1.
- The Environment Unit query and disagree with the low habitat hectare score of 56/100 allocated to the high-quality vegetation present on this property.
- Some of the characteristic species of the EVC benchmark were missed in the initial flora survey, which could be influencing the outcome of some habitat hectare scores.
- The slashed area along the western boundary includes native vegetation over 25% cover (definition of a patch) and must therefore be included in the extent of native vegetation.
- Environment considers that the fragmentation impacts to landscape connectivity are significant.

No specific protection measures or ongoing enhancement of the site has been proposed, and no other development exist on site that would result in a more negligible impact.

#### **Response to Planning Policy Framework and Local Planning Policy Framework**

The proposal responds appropriately to some relevant policies, however does not appropriately respond to all relevant policies.

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 less 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 (bushfire, 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 applicable ESO. Whilst offsets would apply for removal of some vegetation, consideration as to whether the proposal has sought to 'avoid' or 'minimise' vegetation impacts must 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, it is considered the proposal presents an unnecessary risk and that mitigation measures are to the detriment 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 of the built form (and associated need to remove over 1ha of vegetation) 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**

Three provisions apply which are all intrinsically linked, being Clause 52.12 Bushfire Protection Exemptions, Clause 52.17 Native Vegetation and Clause 53.02 Bushfire Planning.

Clause 52.12 Bushfire Protection Exemptions provides relevant exemptions for vegetation removal (except for canopy trees) within 50m of a dwelling. As such, vegetation removal requirements regard the large scattered trees which have a modelled Strategic Biodiversity Score of 0.401.

Clause 52.17 Native Vegetation 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 1.019ha is proposed to be disturbed, including the removal of 92 trees. The application material includes a Native Vegetation Removal Report for the 1.019ha of disturbed land via the

Detailed Assessment Pathway. The resulting offset is 0.642 general habitat units within a minimum strategic biodiversity score of 0.401.

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, which the application material has suitably responded to.

#### **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.

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 7 - 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.

### **Conclusion**

Not every site is appropriate for development. The site is heavily constrained, and the proposal greatly impacts vegetation on the site to an unacceptable level which does not accord with the relevant Planning Policy.

As such, the application should be refused.

### **Reasons for Refusal**

1. The proposal does not respond to the purposes or decision guidelines of Clause 35.06 Rural Conservation Zone and Schedule 2 – Conservation Values.
2. The proposal results in unnecessary bushfire risk, pursuant to Clause 44.06 Bushfire Management Overlay and associated Planning Policy and Local Planning Policy Framework provisions and is not a solely appropriate planning justification for the required 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.
4. The proposal does not adequately respond to the decision guidelines of Clause 52.17 Native Vegetation (and results in significant habitat destruction of an endangered species (Eucalyptus Fulgens), registered under the Flora and Fauna Guarantee Act 1988 threatened species list).
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.





CardiMap

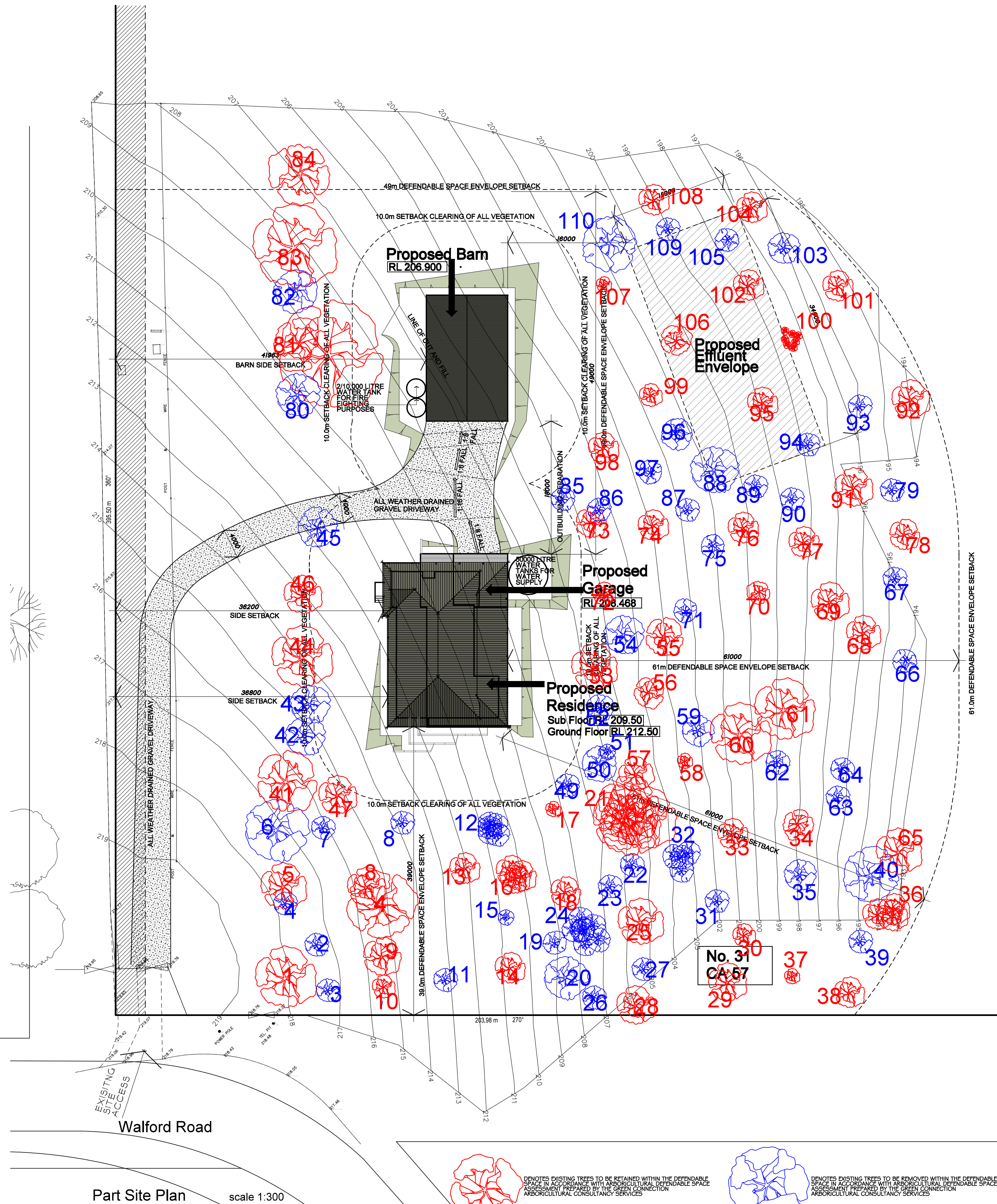
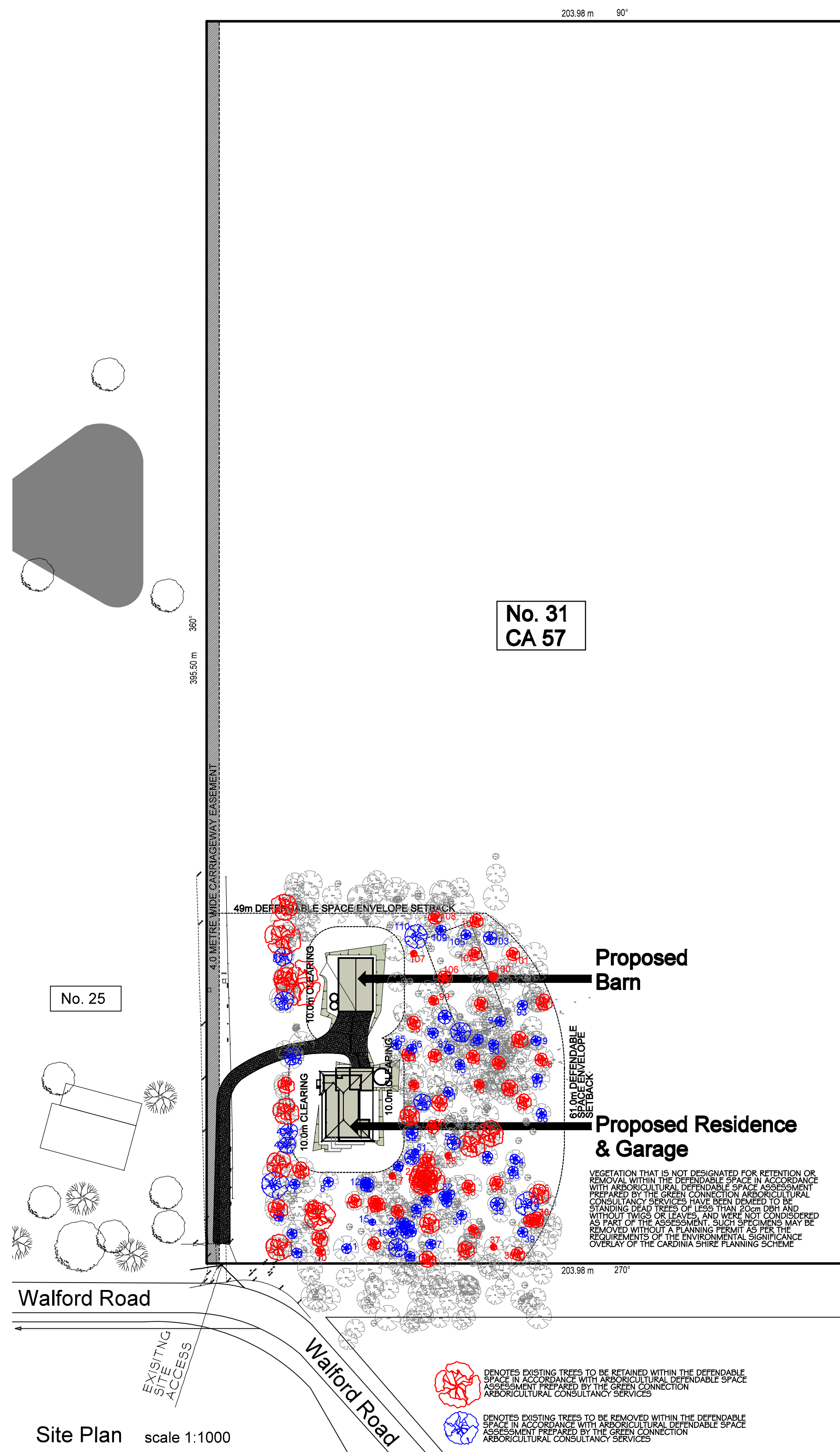
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E	COUNCIL RPT RESPONSE	DG	15/02/22
D	TOWN PLANNING APPLICATION ISSUE	DG	21/07/21
C	CLIENT AMENDMENTS	DG	1/05/21
B	CLIENT AMENDMENTS	DG	05/03/21
A	PRELIMINARY SKETCH AND 3D MODEL	DG	10/12/20
NO	REVISION	BY	DATE

Client  
**Mr. & Mrs. TUNNARD**

Proposed Residence at  
**No.31 Walford Road**  
Upper Beaconsfield, Vic. 3808

Hamilton Design Pty. Ltd. ABN: 84 606 798 974 Trading as:

**Berwick  
DRAFTING**

Unit 2/35 Woods Street Beaconsfield Ph (03) 97071824

Registered Building Practitioner - DP - AD1030



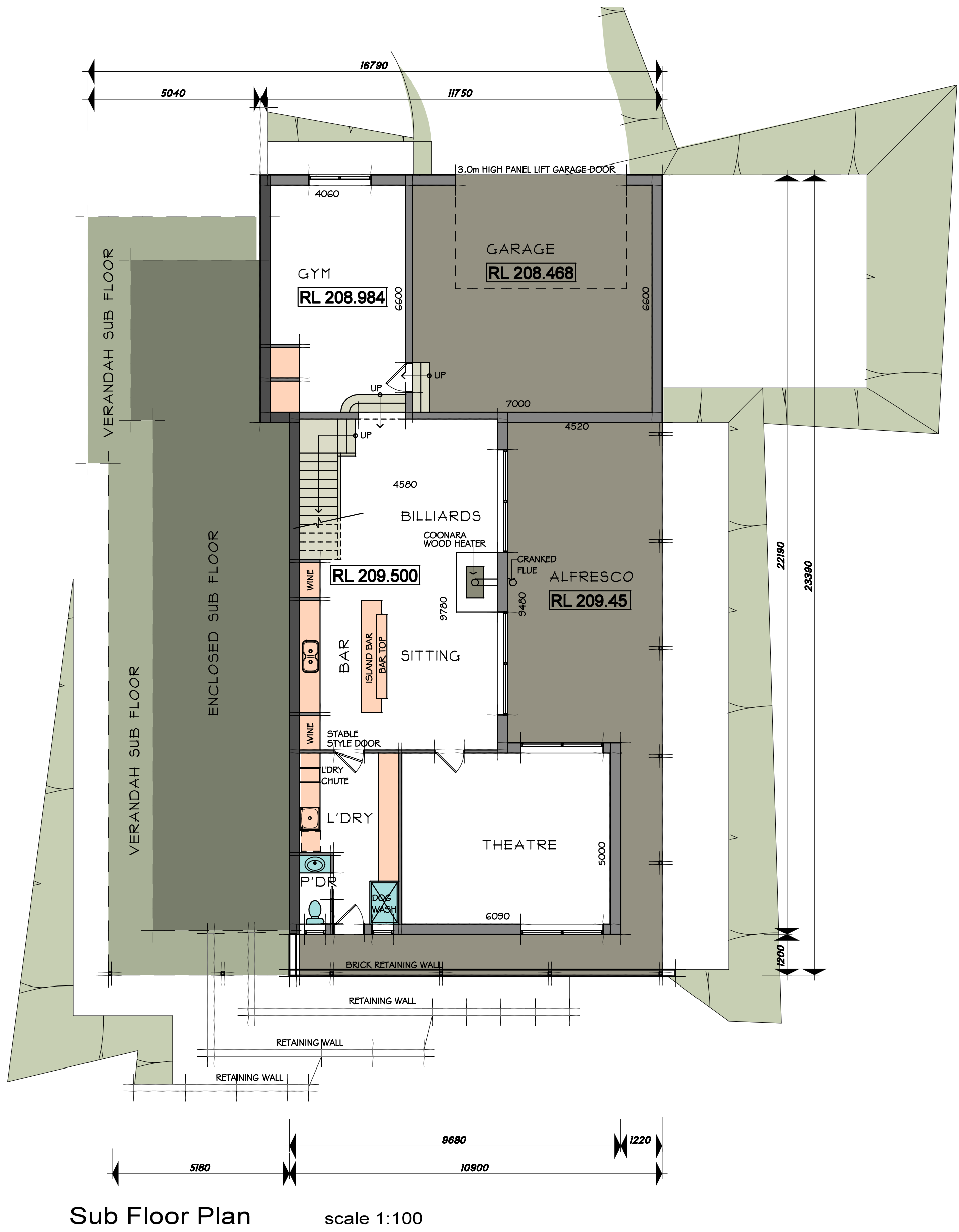
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Site Plan

<b>Scale:</b>	<b>Plan designation:</b>	<b>Sheet No.</b>
AS SHOWN	175501T01	T01

Plan size:	Date:	Revision
ISO A1	09/12/20	E

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Area Analysis			
GROUND FLOOR PLAN -	230.94m²	OR	24.9sq
SUB FLOOR PLAN -	147.10m²	OR	15.8sq
TOTAL LIVING AREA =	378.04m²	OR	40.7sq
GARAGE -	51.96m²	OR	5.6sq
BALCONY/ALFRESCO -	147.81m²	OR	15.9sq
SUN FLOOR VERANDAH/ALFRESCO -	62.54m²	OR	6.7sq
TOTAL BUILDING AREA =	640.35m²	OR	68.9sq

Revision			
1	CONCEPT RESPONSE	DS	8/10/22
2	TOWN PLANNING APPLICATION ISSUE	DS	24/02/23
3	CLIENT AMENDMENTS	DS	1/03/23
4	CLIENT AMENDMENTS	DS	05/03/23
5	PRELIMINARY SKETCH AND 3D MODEL	DS	13/02/23
6	REVISION	BY	DATE

Client  
**Mr. & Mrs. TUNNARD**

Proposed Residence at  
**No.31 Walford Road**  
**Upper Beaconsfield, Vic. 3808**

Hamilton Design Pty. Ltd. ABN:84 036 798 974 Trading as:

**Berwick DRAFTING**

Unit 2/35 Woods Street Beaconsfield Ph: (03) 97071824  
Registered Building Practitioner - DP - AD1030

**Hamilton DESIGN**

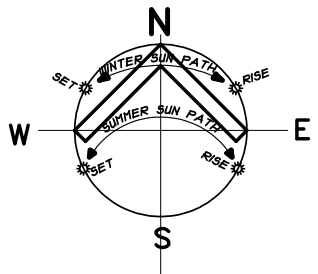
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Building Designers  
Association Victoria

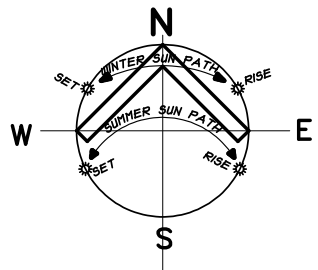
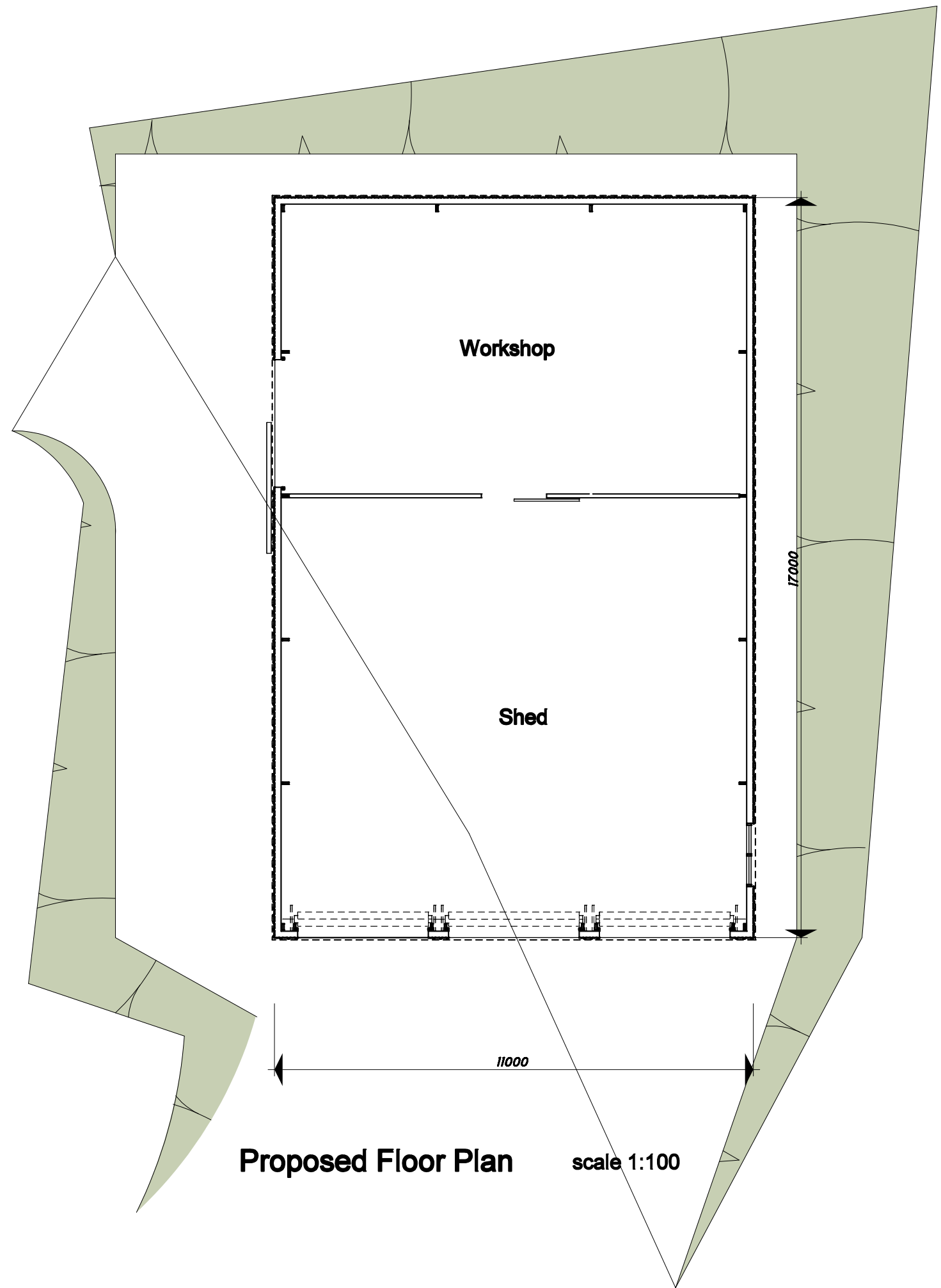
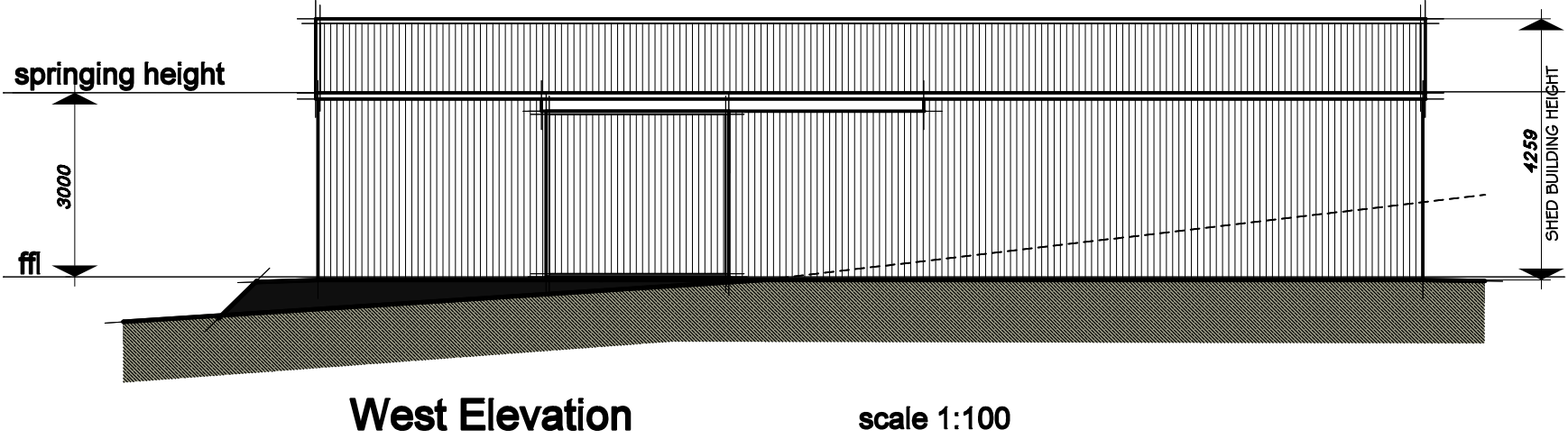
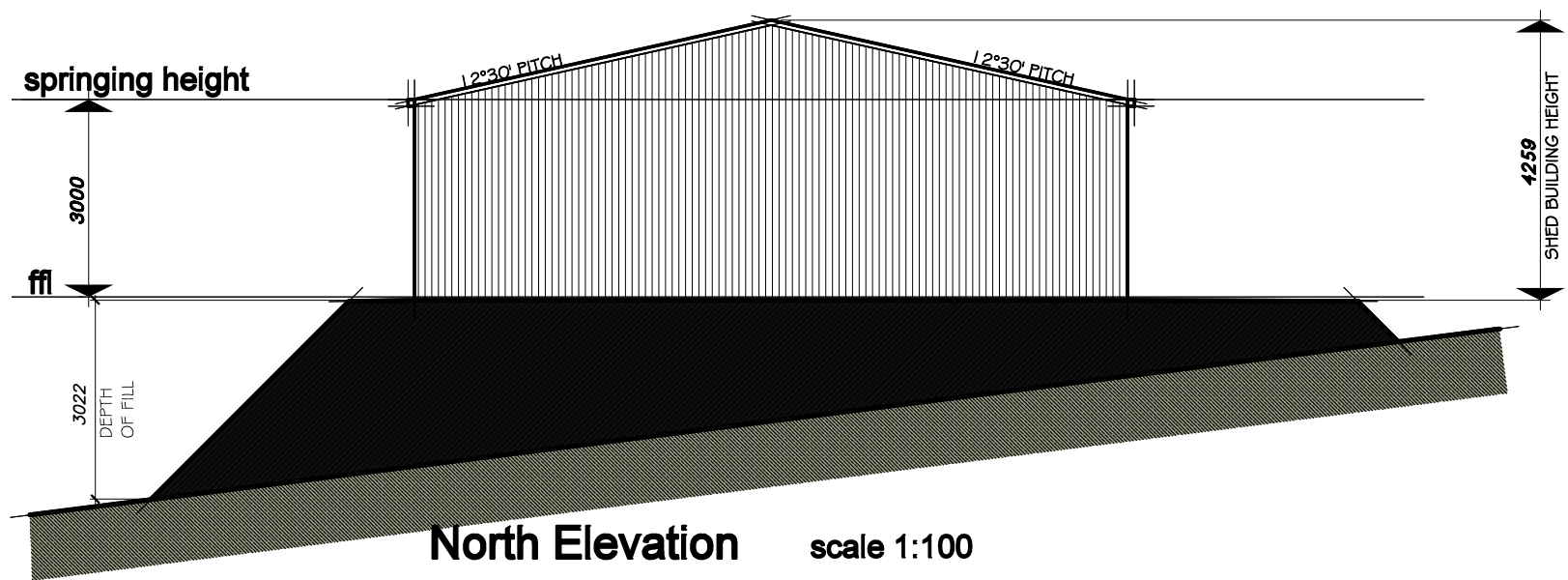
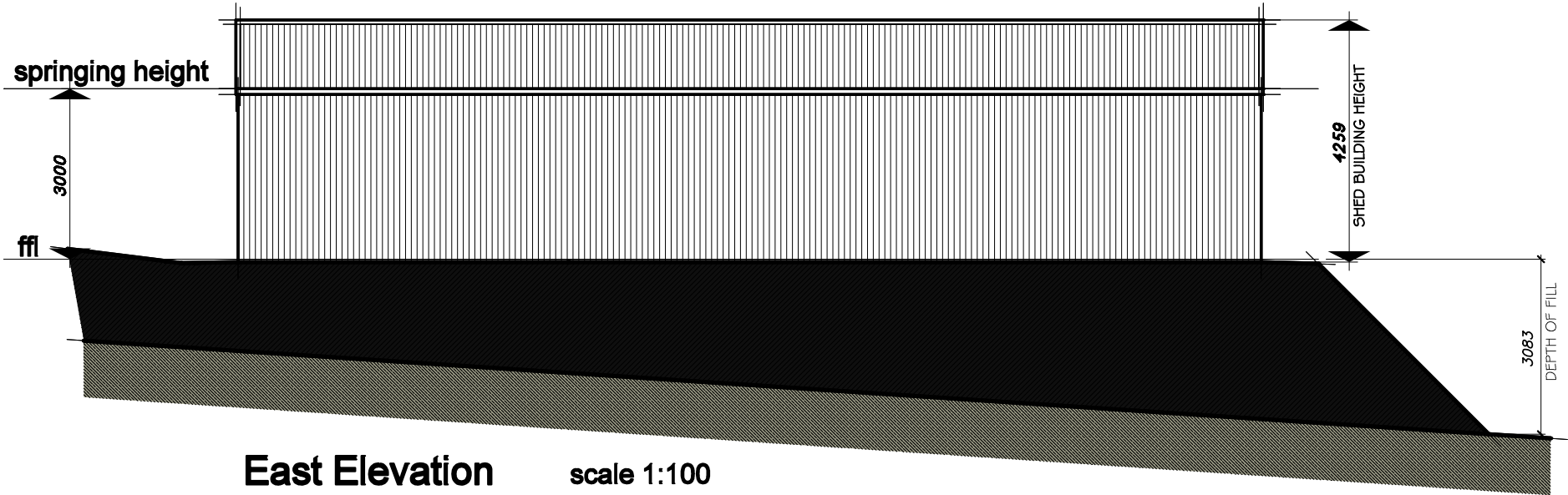
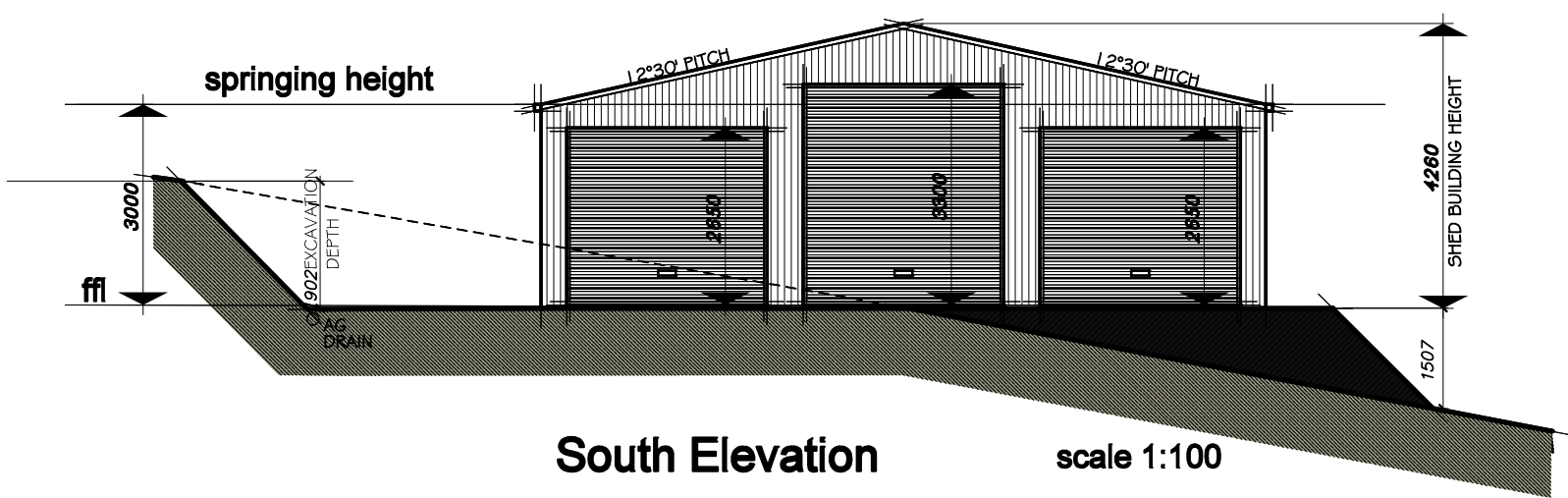
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Lower & Sub Floor Plans

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ISO A1	09/12/20	E

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E	COUNCIL RP RESPONSE	DG	15/02/22
D	TOWN PLANNING APPLICATION ISSUE	DG	26/07/21
C	CLIENT AMENDMENTS	DG	1/05/21
B	CLIENT AMENDMENTS	DG	09/03/21
A	PRELIMINARY SKETCH AND 3D MODEL	DG	10/02/20
NO	REVISION	BY	DATE

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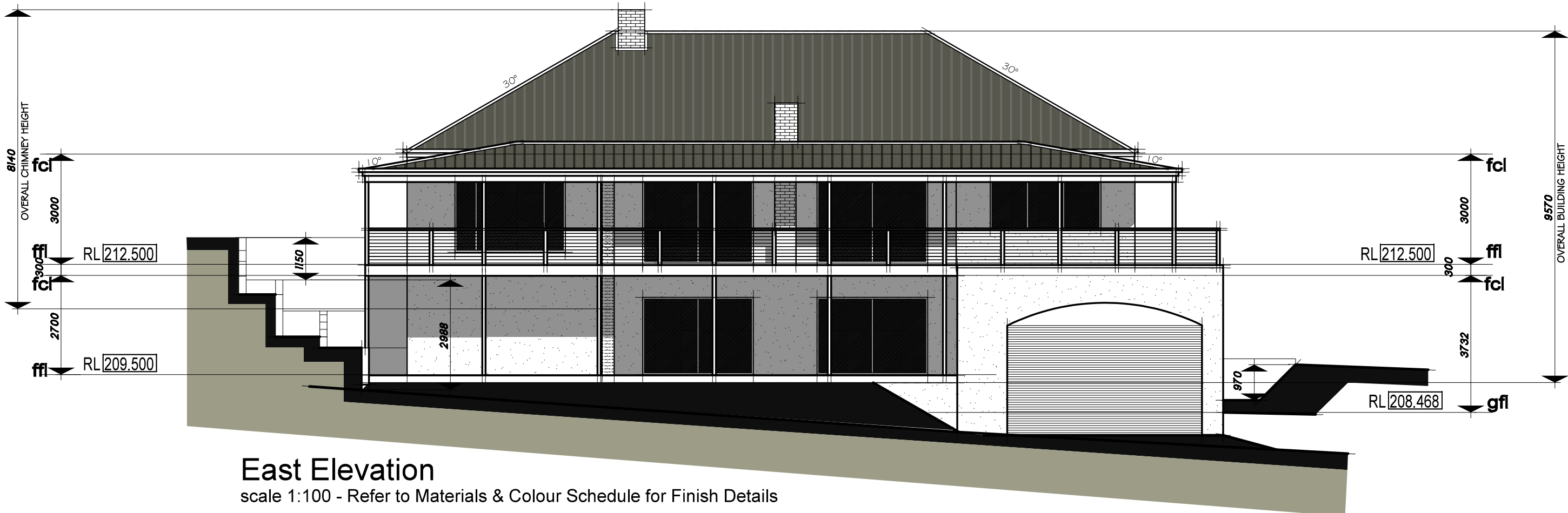
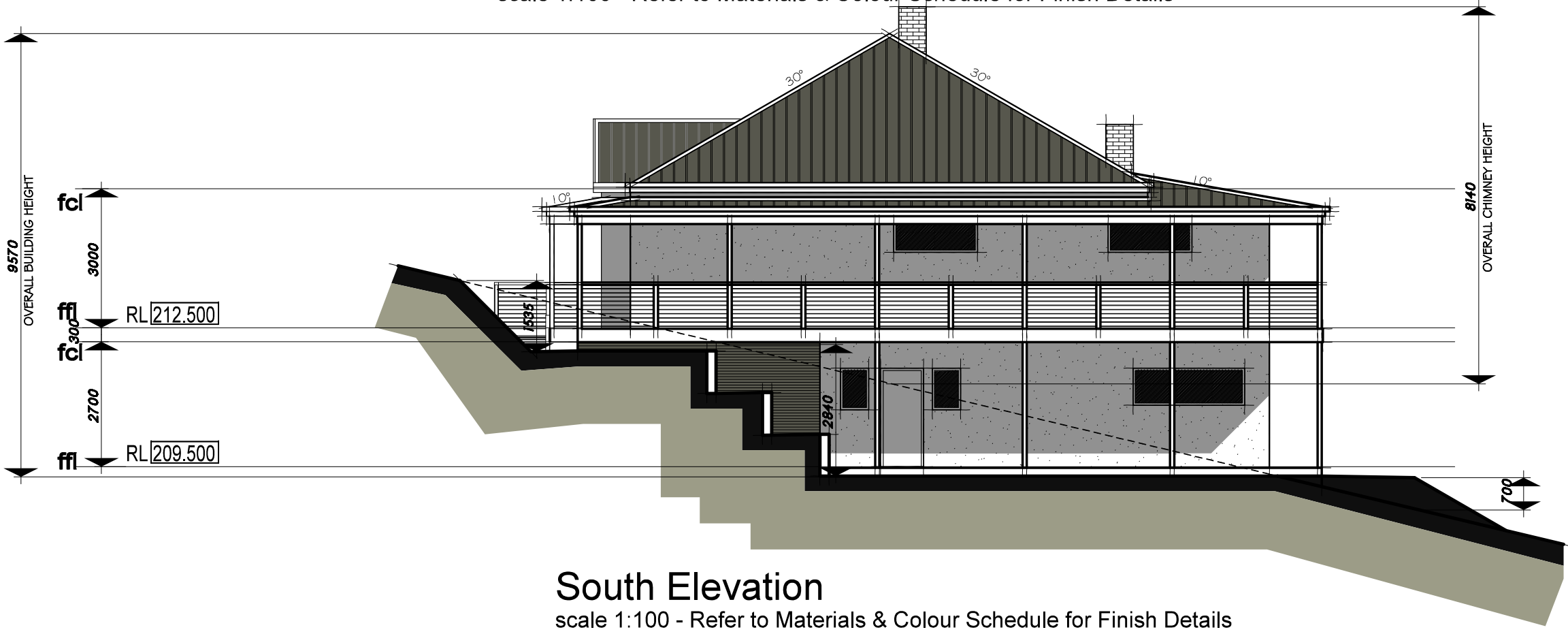
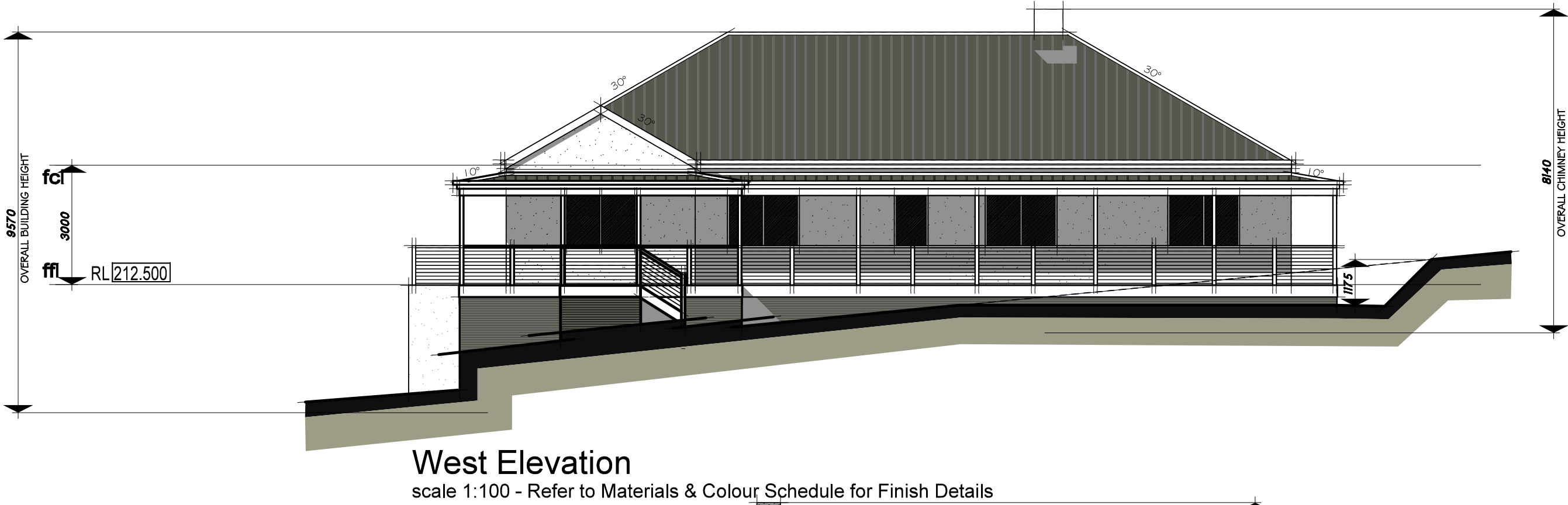
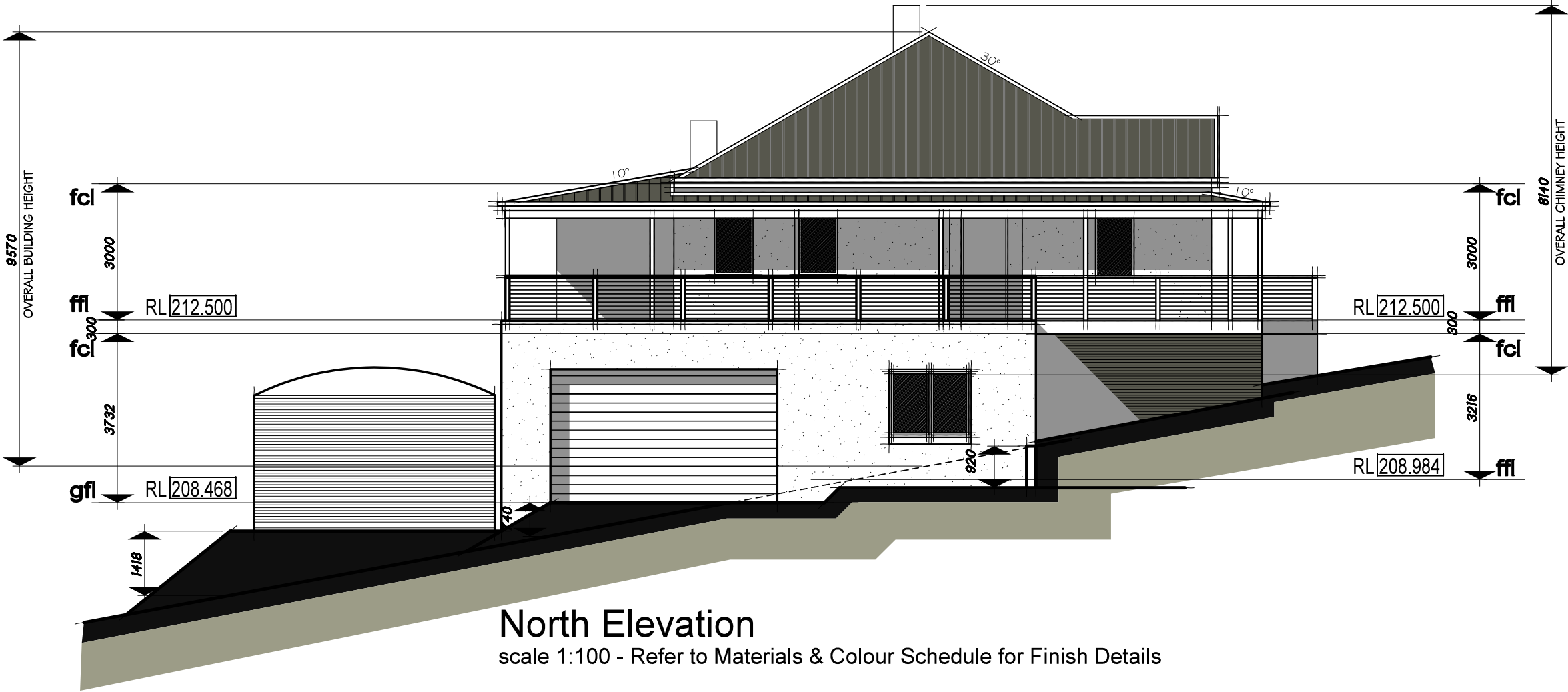
Plan:  
**Barn Plan & Elevations**

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ISO A1	09/12/20	E

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## 6 Site map

The following map indicates the approximate locations of trees within defensible space to be retained or removed;

