

APPLICATION FOR CONSIDERATION
REFUSAL
OFFICER REPORT



Application Details:

Proposal	Buildings and Works (Construction of an Outbuilding) and Native Vegetation Removal
Applicant	Alyce Kidgell Melbourne Garages
Date Received:	26 March 2022
Statutory Days:	397 as of 19 July 2023
Section 50/50A/57A Amendment	<input checked="" type="checkbox"/> None Note: Amendments were made without the submission of a requested Section 57A form post-advertising.
Application Number	T220214
Planner	Hamish Mival
Land/Address	L1 LP71176 V8596 F770, 155 Gordon Road, Pakenham Upper VIC 3810
Property No.	1338400400
Zoning	RCZ2 - Rural Conservation Zone - Schedule 2
Overlay/s	BMO - Bushfire Management Overlay ESO1 - Environmental Significance Overlay - Schedule 1
Permit Trigger(s)	<p>Pursuant to Clause 35.06-5 Rural Conservation Zone (Schedule 2) a Planning Permit is required to construct or carry out a building or works associated with a Section 2 use (Dwelling), within 20 metres from a road and within 5 metres from any other boundary.</p> <p>Pursuant to Clause 42.01-2 Environmental Significance Overlay (Schedule 1) a Planning Permit is required to construct a building or construct or carry out works (exceeds 4m above natural ground level, results in removal of native vegetation, gross floor area exceeds 120sqm).</p> <p>Pursuant to Clause 42.01-2 Environmental Significance Overlay (Schedule 1) a Planning Permit is required to remove, destroy or lop any vegetation.</p> <p>Pursuant to Clause 44.06-2 Bushfire Management Overlay a Planning Permit is required to construct a building or construct or carry out works associated with Accommodation (Dwelling), without the benefit of an exemption as the outbuilding exceeds 100sqm.</p> <p>Pursuant to Clause 52.17-1 Native Vegetation a Planning Permit is required to remove, destroy or lop native vegetation.</p>
Aboriginal Cultural Sensitivity	<input checked="" type="checkbox"/> No

Zoological/Botanical Significance	<input checked="" type="checkbox"/> Zoological
Section 55 Referrals	<input checked="" type="checkbox"/> Yes, list below:
	<ul style="list-style-type: none"> ▪ Country Fire Authority
Registered restrictions on Title	<input checked="" type="checkbox"/> None
Recommendation	<input checked="" type="checkbox"/> Refusal
Ward Councillor communications	<input checked="" type="checkbox"/> None
Documents relied on	<ul style="list-style-type: none"> ▪ Development Plans prepared by Melbourne Garages ▪ Town Planning Submission prepared by Melbourne Garages ▪ Native Vegetation Removal Report ▪ Bushfire Management Plan prepared by Melbourne Garages ▪ Letter prepared by Bernard and Vanessa Tyers (property owners) ▪ Title Documents

Proposal

The proposal is for a new domestic shed and the removal of two (2) native trees to accommodate defensible space. The shed is to be located in the south-east corner of the lot. It is to be setback approximately 11m from the front boundary corner with Gordon Road and approximately 15.33m from the access point and driveway on the frontage. It is to be set back approximately 5m from the southern boundary and 29.15m from the existing dwelling on the land.

The shed itself is to be approximately 14m long and 9.5m wide, for a total floor area of 133sqm. It is to be placed on already cleared and levelled land. From finished ground level, the shed is to be approximately 3.85m in height at the wall, and 4.77m to the ridge. From natural ground level, the maximum height is to be approximately 5.57m (on the northern side).

The shed is proposed to have three full height roller doors on the northern side, along with a swinging access door. It is proposed to be constructed entirely from Colorbond steel, with the chosen colouring being Ironstone (dark blue grey) for the roof and Woodland Grey (dark grey) for the walls.

To comply with bushfire management requirements for defensible space, two (2) Stringybark Eucalyptus trees are proposed for removal. These are located approximately 5m to the west of the proposed shed. They are in close proximity to each other, with overlapping canopies. No other vegetation is proposed for removal, along with no additional earthworks aside from a standard site scrape.

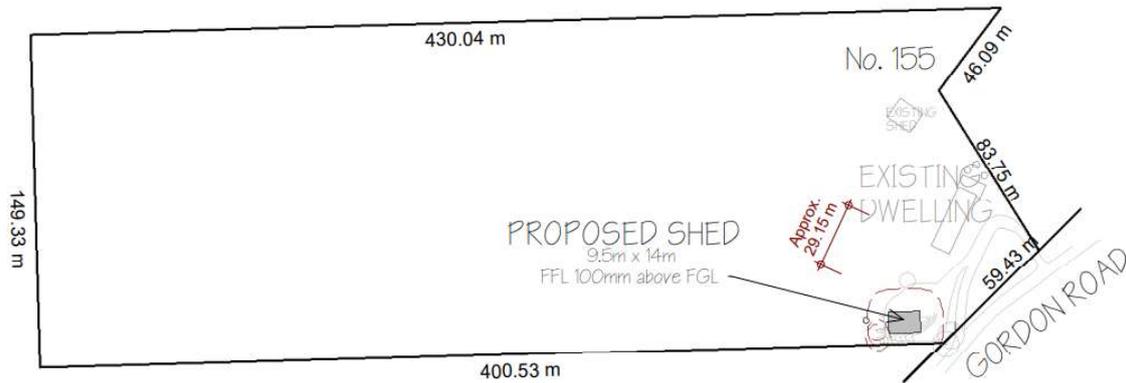


Figure 1 - Proposed site plan

62,826m² site area
 441m² 0.7% existing building area
 133m² 0.2% total proposed area
 574m² 0.9 % total coverage

Batter 1:2 starting 1m passed
 proposed structure footprint

Figure 2 - Dimensions of site and proposed structure

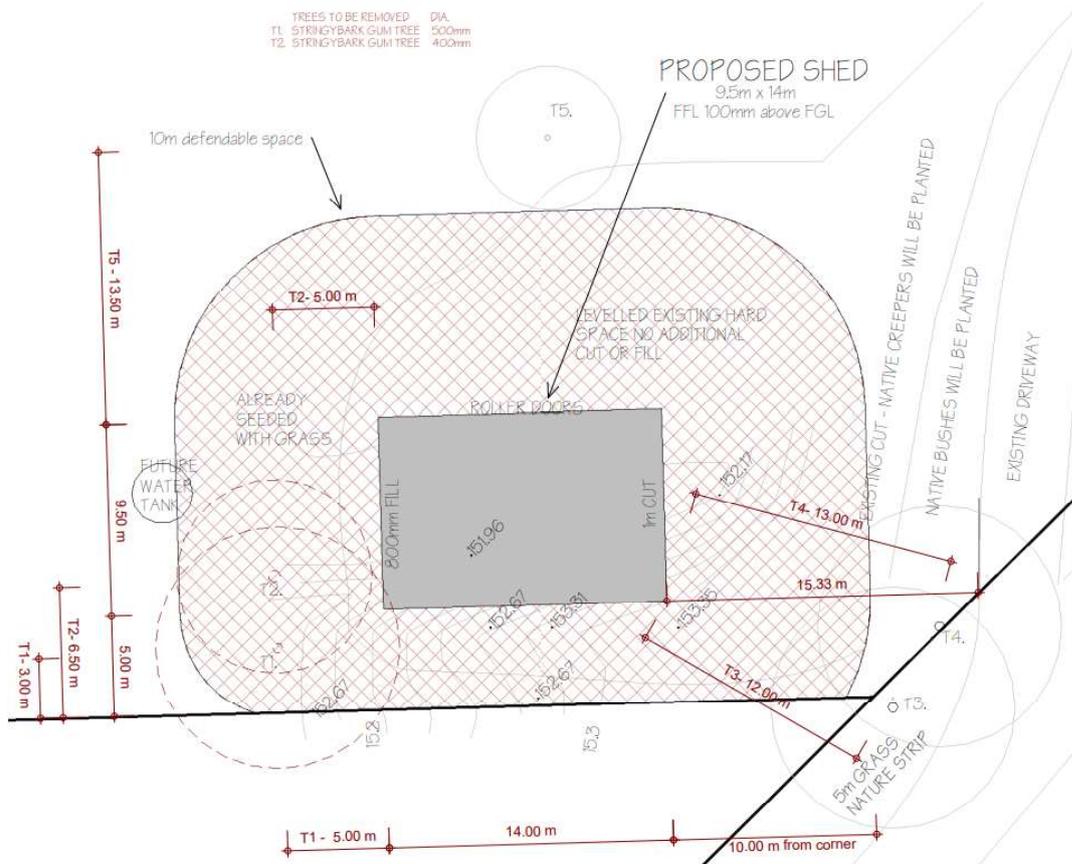


Figure 3 - Detailed inset site plan

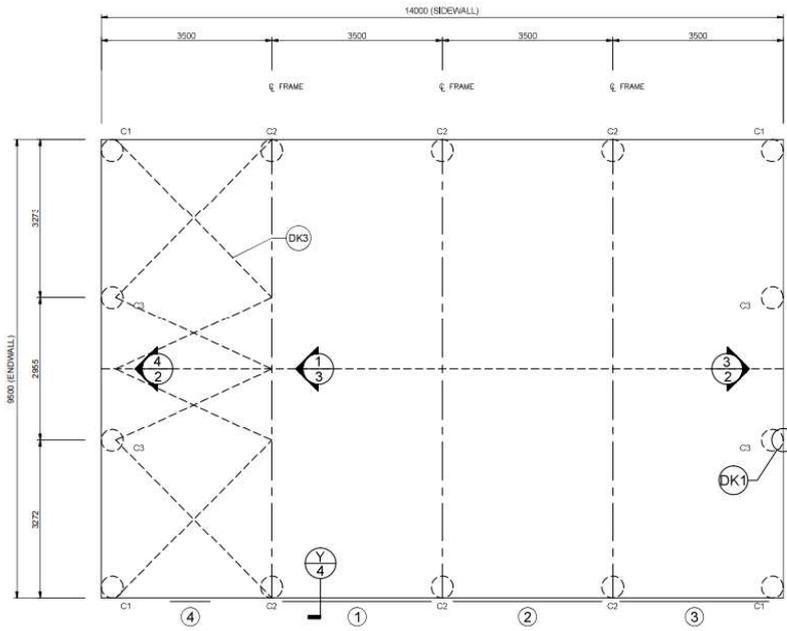


Figure 4 - Proposed floor plan

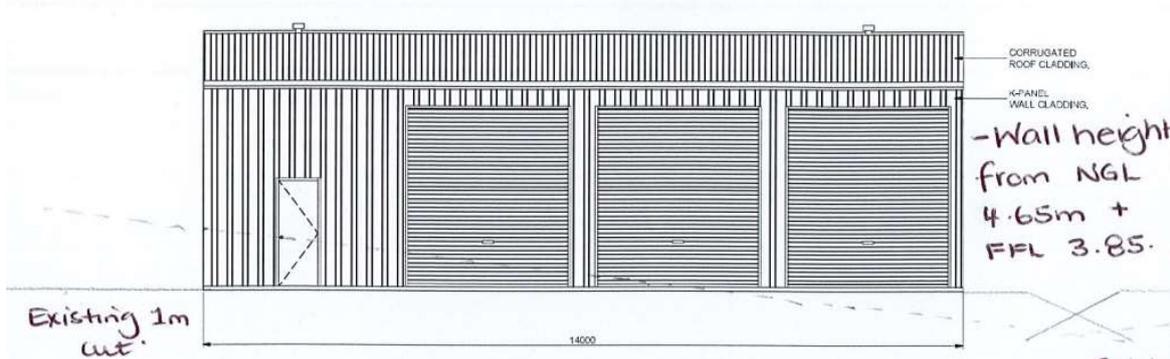


Figure 5 - Proposed north elevation

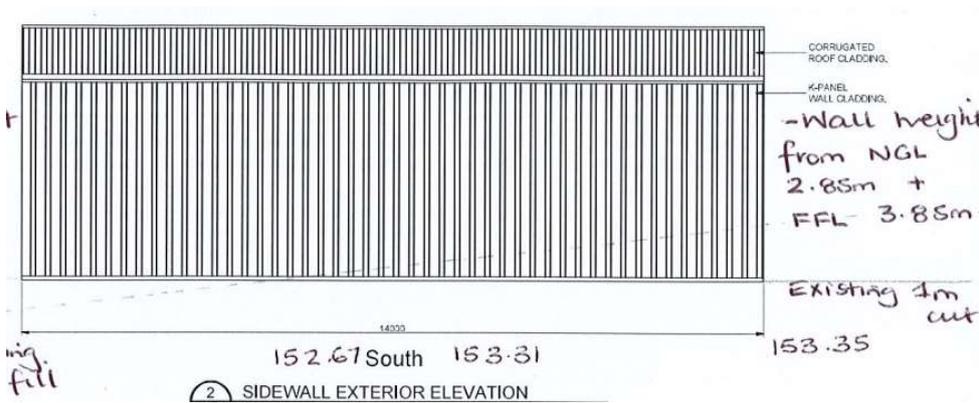


Figure 6 - Proposed south elevation

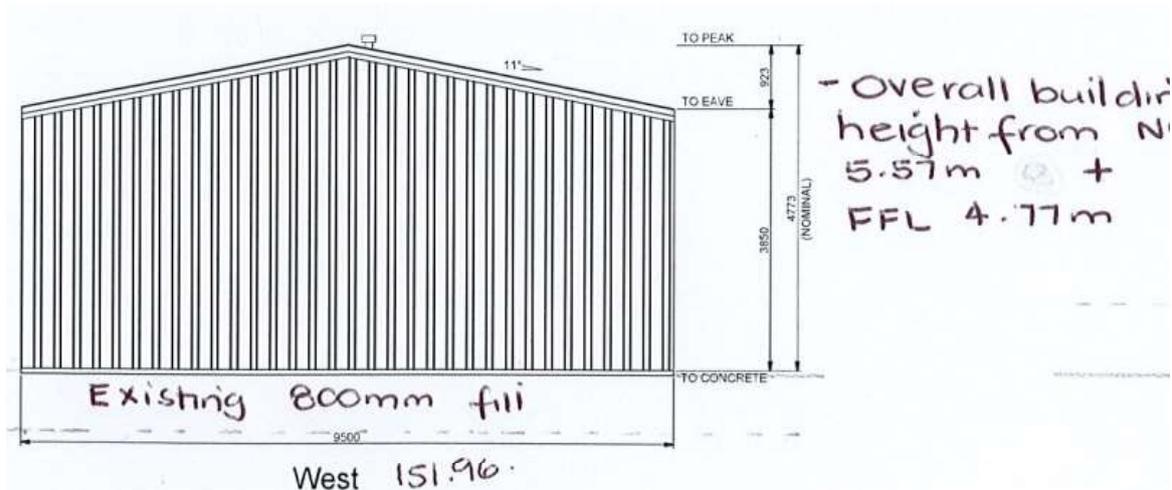


Figure 7 - Proposed west elevation

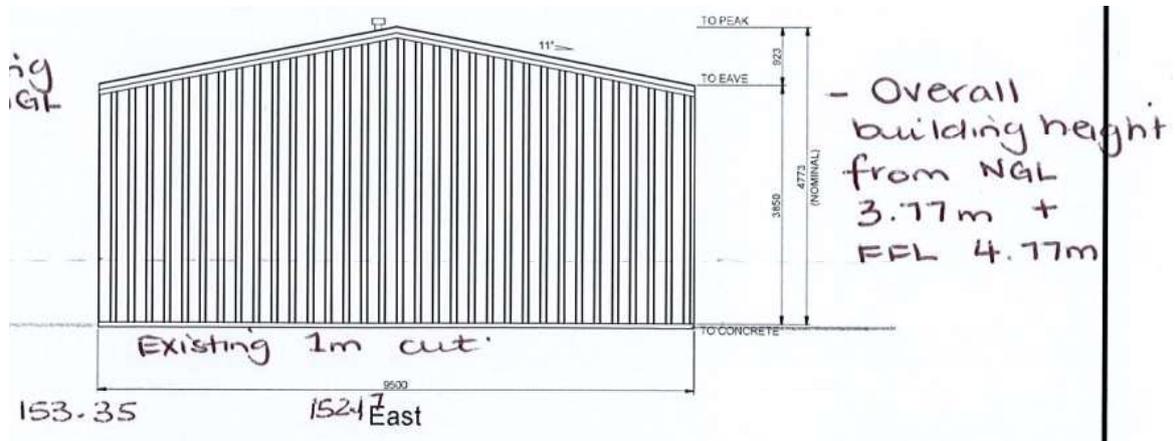


Figure 8 - Proposed east elevation

To be constructed in all over Colorbond steel
 Roof: Ironstone
 Walls: Woodland Grey

See site plan for detailed cut/fill.
 The area is a levelled existing hard space. No additional cut or fill required

Figure 9 - Proposed material and colour schedule, and cut/fill details

Subject site & locality

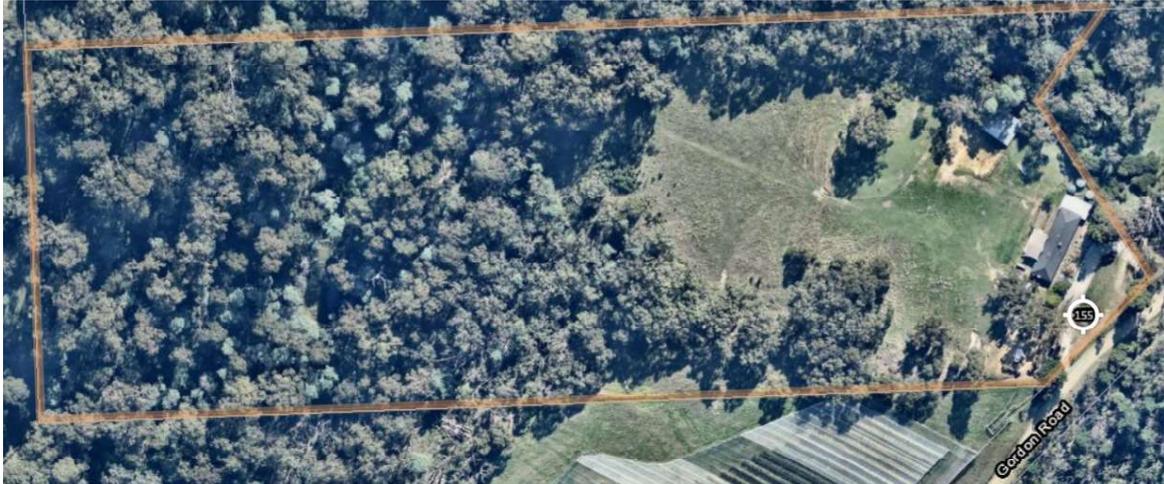


Figure 10 - Aerial image of entire site

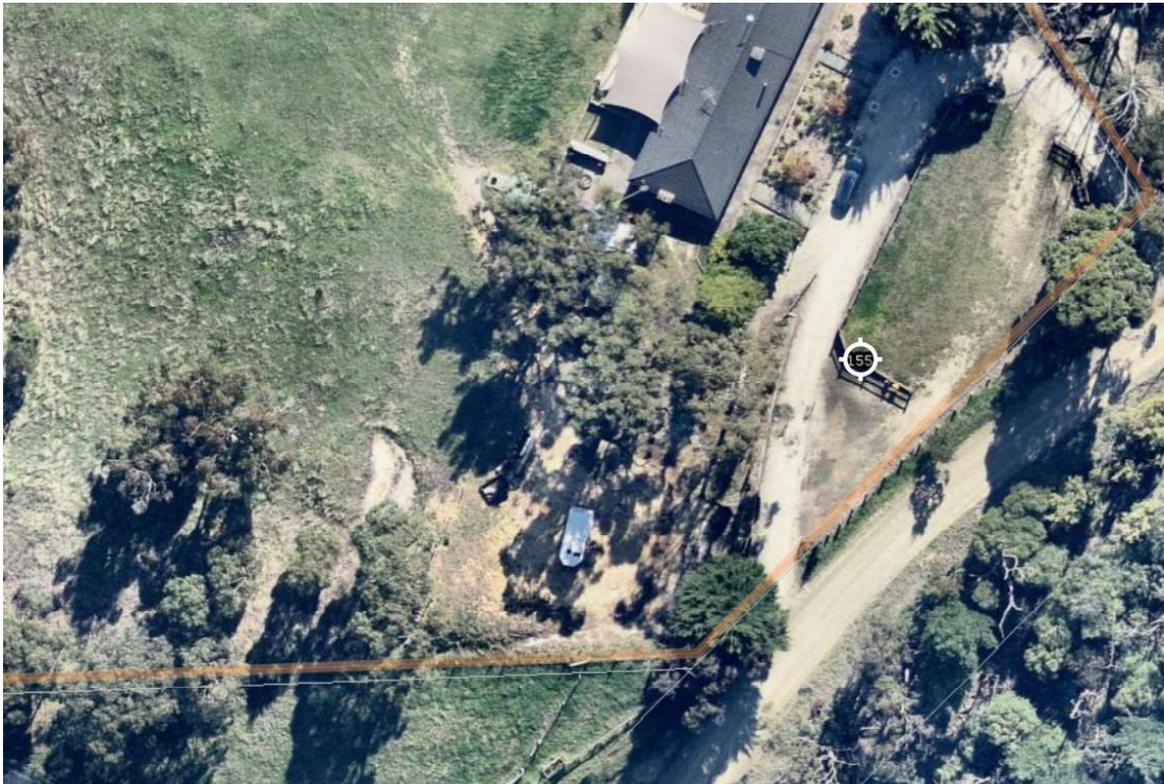


Figure 11 - Aerial image of site of shed

An inspection of the site and the surrounding area has been undertaken.

The site is located on the western side of Gordon Road, an unsealed road. It is approximately 6.3ha in size. Approximately half of the lot (western half) is undeveloped, consisting of thick remnant bushland. The remainder of the lot is cleared, with the exception of lines of native trees along the northern and southern boundaries.

A crossover to the site is located in the south-east corner of the lot, with a short driveway towards the existing dwelling. The site also contains an existing shed close to the northern boundary.

The land slopes down moderately towards the west into a gully, with Gordon Road running roughly along a ridgeline. It then rises again towards the western boundary. The specific site of the proposed shed is cleared and has been previously levelled.

The main characteristics of the surrounding area are:

East

- 165 Gordon Road: Smaller irregular shaped lot, approximately 8850sqm in size. Contains a dwelling and an outbuilding. Is mostly cleared, but contains some remnant vegetation along boundaries.
- 120 Gordon Road: Large 45ha lot. Undeveloped, almost entirely covered in thick remnant vegetation.
- Gordon Road (unsealed).

North

- 185 Gordon Road: Large 15ha lot. Almost entirely covered in remnant vegetation, with a small clearing containing a dwelling.

West and South

- 37 Gordon Road: Large 43.2ha lot that stretches around the subject lot. Contains approximately equal parts remnant vegetation and cleared land. This cleared land is used for agriculture. Site also contains a dwelling at its northern end (Planning Permit T050406).

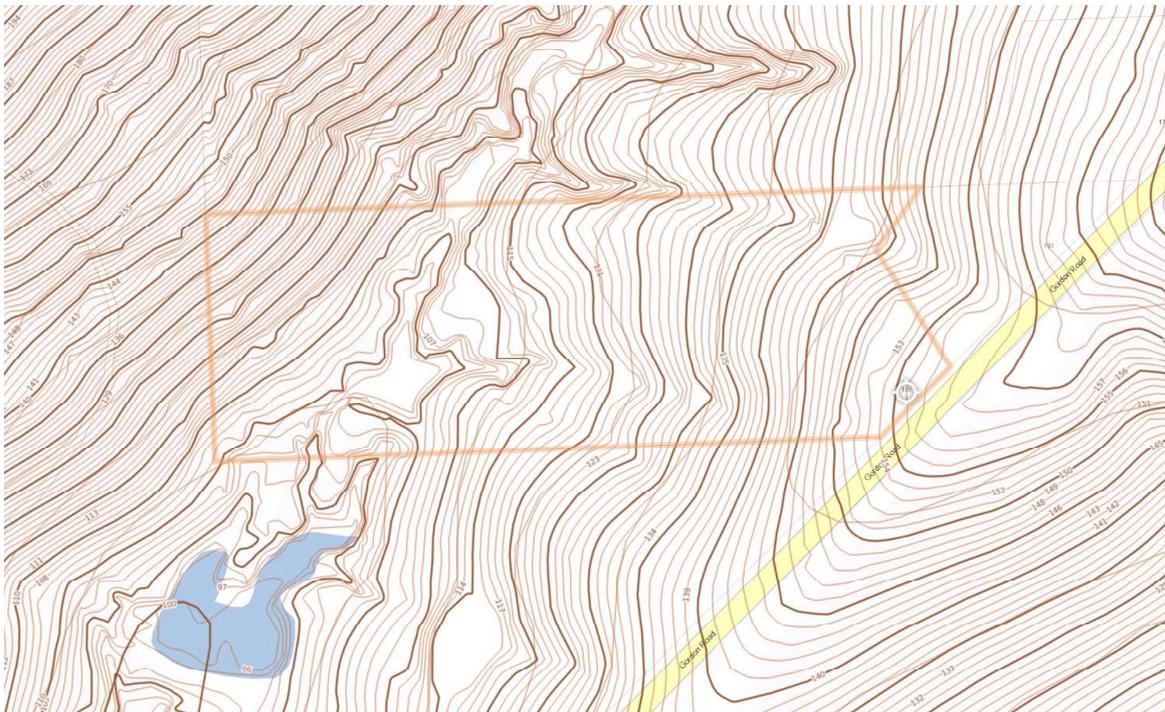


Figure 12 - Contour map of site and surrounding area



Figure 13 - Aerial image of surrounding area

Permit/Site History

There is no recent Planning Permit history for the subject site.

However, the site has been subject to Council investigation for prior native vegetation removal and earthworks without a permit.

No further action was taken, and this will not unfairly prejudice the decision of the subject application.

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- RCZ2 - Rural Conservation Zone - Schedule 2

Overlays

The land is subject to the following overlays:

- BMO - Bushfire Management Overlay
- ES01 - Environmental Significance Overlay - Schedule 1

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11.03 Planning For Places
 - Clause 11.03-5S Distinctive areas and landscapes
- Clause 12.01 Biodiversity

- Clause 12.01-1S Protection of biodiversity
- Clause 12.01-2S Native vegetation management
- Clause 12.05 Significant Environments and Landscapes
 - Clause 12.05-1S Environmentally sensitive areas
 - Clause 12.05-2S Landscapes
- Clause 13.02 Bushfire
 - Clause 13.02-1S Bushfire planning
- Clause 13.04 Soil Degradation
 - Clause 13.04-2S Erosion and landslip
- Clause 15.01 Build Environment
 - Clause 15.01-1S Urban design
 - Clause 15.01-2S Building design
 - Clause 15.01-6S Design for rural areas

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.02 Environment
 - Clause 21.02-2 Landscape
 - Clause 21.02-3 Biodiversity
 - Clause 21.02-4 Bushfire management
- Clause 21.03 Settlement and Housing
 - Clause 21.03-5 Rural residential and rural living development

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.17 Native Vegetation (permit trigger)
- Clause 53.02 Bushfire Planning
- Clause 65.01 Approval of an Application or Plan
- Clause 66 Referral and Notice Provisions

Planning Permit Triggers

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

- Pursuant to Clause 35.06-5 Rural Conservation Zone (Schedule 2) a Planning Permit is required to construct or carry out a building or works associated with a Section 2 use (Dwelling), within 20 metres from a road and within 5 metres from any other boundary.
- Pursuant to Clause 42.01-2 Environmental Significance Overlay (Schedule 1) a Planning Permit is required to construct a building or construct or carry out works (exceeds 4m above natural ground level, results in removal of native vegetation, gross floor area exceeds 120sqm).
- Pursuant to Clause 42.01-2 Environmental Significance Overlay (Schedule 1) a Planning Permit is required to remove, destroy or lop any vegetation.

- Pursuant to Clause 44.06-2 Bushfire Management Overlay a Planning Permit is required to construct a building or construct or carry out works associated with Accommodation (Dwelling), without the benefit of an exemption as the outbuilding exceeds 100sqm.
- Pursuant to Clause 52.17-1 Native Vegetation a Planning Permit is required to remove, destroy or lop 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 land.

The notification has been carried out correctly.

Council has received no objections.

New plans have subsequently been submitted without the accompaniment of a Section 57A amendment, and therefore not constituting an official amendment. These changes include:

- Addition of the removal of two (2) native trees to comply with defensible space requirements.
- Addition of a Native Vegetation Removal Report.

The application has not been subsequently advertised, on the basis of the decision to refuse.

Referrals

External Referrals/Notices:

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	CFA [Determining]	No objection (subject to conditions) <ul style="list-style-type: none"> ▪ Note: Applications for outbuildings are exempt from referral requirements if they meet the requirements set out within Clause 66.03. As the original proposal did not meet these requirements, the application was referred.

Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Environment	Object to the proposal for the following reasons: <ul style="list-style-type: none"> ▪ Sufficient opportunity for alternative siting avoiding impact on native vegetation.

Assessment

The site is subject to various planning provisions and policies. All provisions on the land trigger a permit, this being the Rural Conservation Zone (Schedule 2), Bushfire Management Overlay and Environmental Significance Overlay. The native vegetation removal also requires a permit pursuant to Clause 52.17.

State and Local Planning Policy

- *Clause 11.03 Planning For Places*
 - *Clause 11.03-5S Distinctive areas and landscapes*

The lot is subject to the Rural Conservation Zone and Environmental Significance Overlay, recognising its environmental and landscape values and the intention to protect the land from development. It is also recognised as being of Zoological significance. The proposal to remove vegetation is not consistent with these strategies.

- *Clause 12.01 Biodiversity*
 - *Clause 12.01-1S Protection of biodiversity*
 - *Clause 12.01-2S Native vegetation management*
- *Clause 21.02 Environment*
 - *Clause 21.02-3 Biodiversity*

Being within an area of Zoological significance, the area serves as an important habitat for native fauna. The subject site presently acts as a link between two large expanses of remnant vegetation. The removal of trees within this link is not consistent with these strategies, causing a fragmentation of habitat.

- *Clause 12.05 Significant Environments and Landscapes*
 - *Clause 12.05-1S Environmentally sensitive areas*
 - *Clause 12.05-2S Landscapes*
- *Clause 21.02 Environment*
 - *Clause 21.02-2 Landscape*

These policies seek to protect significant landscape areas. The proposed vegetation removal is not consistent with the strategies within this policy.

- *Clause 13.02 Bushfire*
 - *Clause 13.02-1S Bushfire planning*
- *Clause 21.02 Environment*
 - *Clause 21.02-4 Bushfire management*

This policy seeks to reduce impact of bushfire on human life. It specifies that development be directed towards low risk locations as practical. This policy notes that settlement growth should be implemented in locations where bushfire protection measures can be implemented without unacceptable biodiversity impacts, and in locations where this is likely that development should be discouraged.

As the proposed building is a non-habitable outbuilding, its bushfire protection measure requirements are less stringent than those for a dwelling, however defensible space is still required. Due to canopy separation requirements, the shed in its proposed location requires the removal of at least one (1) tree. In this instance, the applicant has proposed the removal of two (2) native trees that are touching. It is unclear why the applicant has proposed the removal of both when the removal of one would fulfil the canopy separation requirements. A further assessment against the Bushfire Management Overlay can be found below.

- *Clause 13.04 Soil Degradation*
 - *Clause 13.04-2S Erosion and landslip*

The shed is proposed to be located in an already cleared and levelled area, however it should be noted that relocation to another part of the site would likely require earthworks to level the land. The proposal is consistent with the strategies within this policy.

- *Clause 15.01 Build Environment*
 - *Clause 15.01-1S Urban design*
 - *Clause 15.01-2S Building design*
 - *Clause 15.01-6S Design for rural areas*

From an urban design perspective, the location can be considered to be acceptable. There are other instances of outbuildings within close proximity to the front boundary on Gordon Road, including at 165 Gordon Road. Gordon Road itself is unsealed and provides mainly local access. It should be noted that Gordon Road runs along a ridgeline, and the view from this road will be partially impacted. However due to the topography of the land, sloping down into the lot, its visual impact would be minimised. Vegetation along the front boundary along with most of the vegetation within the lot would also be maintained, providing screening.

While close to the boundary to the south, this land is used for agriculture and so impact on amenity will be low. The closest dwelling not in same ownership is approximately 150m away, and not visible. Therefore the proposal is considered to be relatively consistent with the strategies within this policy.

- *Clause 21.03 Settlement and Housing*
 - *Clause 21.03-5 Rural residential and rural living development*

The land already contains an established dwelling. This policy seeks to ensure that rural residential development on land affected by environmental hazards and constraints is undertaken in a manner which prevents environmental degradation and minimises risk. In this instance, while effort has been made to reduce bushfire risk, it is at the expense of native vegetation. On balance, the proposal is not consistent with the objectives of this policy, with alternative siting opportunities on the land to fulfil both strategies.

Rural Conservation Zone – Schedule 2

Purpose

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.

General Issues

- *The Municipal Planning Strategy and the Planning Policy Framework.*

As assessed above, while the proposal does comply with some aspects of the State and Local Planning Policy, on balance it is not consistent with the Planning Policy as a whole.

- *Any Regional Catchment Strategy and associated plan applying to the land.*

Not applicable.

- *The capability of the land to accommodate the proposed use or development.*

The land is capable of accommodating an outbuilding, with large expanses of cleared land.

- *How the use or development conserves the values identified for the land in a schedule.*

Schedule 2 of the RCZ specifies values relating to the protection and conservation of the environment and landscape, including habitats of zoological significance and native vegetation. The proposal is not consistent with these values, impacting on native vegetation and an important biolink in the landscape.

- *Whether use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.*

As above, the proposal does not protect or enhance the environmental or landscape qualities of the site.

- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.*

While this specific siting is not suitable for the proposed development, the land itself is capable of accommodating an outbuilding due to large clearings within the lot. While this may result in earthworks to create a level ground, alternative siting could potentially fulfil the core purpose of the zone.

Rural Issues

- *The environmental capacity of the site to sustain the rural enterprise.*

There is no rural enterprise taking place on the land.

- *The need to prepare an integrated land management plan.*

An integrated land management plan has not been provided, and not deemed necessary for a domestic shed.

- *The impact on the existing and proposed infrastructure.*

Not applicable.

- *Whether the use or development will have an adverse impact on surrounding land uses.*

The proposed development would have a low impact on surrounding land uses, including the agriculture taking place on the lot to the south. If a permit were to be issued, adequate stormwater and drainage conditions would be attached.

Environmental Issues

- *An assessment of the likely environmental impact on the biodiversity and in particular the flora and fauna of the area.*

The likely environmental impact is considered to be unacceptable, especially when the land is capable of accommodating the proposed development within an already cleared site. The retention of native vegetation within the RCZ is considered the ultimate priority, and so the proposed development and vegetation removal do not comply with the purpose of the zone.

- *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.*

The proposal will neither protect nor enhance the natural environment of the area, directly impacting on native vegetation in a strategic location between two expanses of remnant vegetation. The site is along a slope between a ridgeline and a gully, and directly along a property boundary.

- *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.*

There will be no ongoing use or development, and so an integrated land management plan is considered unnecessary.

- *The location of on site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*

The proposed development will not require, nor impact on, any effluent disposal area.

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.*

While Gordon Road runs along a ridgeline, providing vistas towards the west, the visual impact of the proposal is considered to be acceptable, being located down the slope. It utilises suitably muted colours and materials. Vegetation will remain along the front fenceline and within the lot, providing screening.

- *The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape.*

Not applicable.

- *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 proposed structure is consistent with the character of the area, with other instances of outbuildings and dwellings close to the front boundary in close proximity to the subject site. As noted above, the visual impact on the streetscape is considered to be acceptable.

- *The location and design of roads and existing and proposed infrastructure services to minimise the visual impact on the landscape.*

Not applicable.

- *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.*

Not applicable.

Environmental Significance Overlay – Schedule 1

Purpose and Objectives

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.

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.

Decision Guidelines

- *Whether the removal of any vegetation has been avoided and/or minimised.*

Removal of vegetation has not been avoided or minimised, with opportunities for alternative sitings further within the lot on largely cleared land.

- *The Land Capability Study for the Cardinia Shire (February 1997).*

Not applicable.

- *The protection and enhancement of the natural environment and character of the area.*
- *The retention, protection and enhancement of remnant vegetation and habitat, and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.*
- *The impact of any buildings and works on areas of remnant vegetation, and habitat of botanical and zoological significance and threatened species.*

The proposal will neither protect nor enhance the natural environment of the area, directly impacting on native vegetation in a strategic location between two expanses of remnant vegetation. The subject lot provides an important biolink between these two expanses. The site is also along a slope between a ridgeline and a gully, and directly along a property boundary.

- *The impact of proposed buildings and works on the landscape character of the area, including prominent ridgelines and significant views.*

- *Whether the siting, height, scale, materials, colours and form of the proposed buildings and works have been designed to have the least visual impact on the environment and landscape.*

As noted, the proposal will have a low visual impact, and the height, scale, materials and colour are considered to be acceptable. On balance however, its siting is unacceptable due to the vegetation removal required to accommodate it.

- *The availability of other alternative sites, alternative building designs or alternative construction practices for the proposed buildings and works that minimise cut and fill and would better meet the environmental objectives of this schedule, having regard to the size and topography of the land, retention of vegetation and the form and nature of the proposed buildings and works.*

A large expanse of the lot is cleared, providing multiple alternative sites for the proposed outbuilding. While visual impact in the proposed location is considered acceptable, re-siting would also further reduce this impact, fully obscuring it from the street.

- *Measures to address environmental hazards or constraints including slope, erosion, drainage, salinity and fire.*

The site has been partially cleared and levelled. It is acknowledged that the proposed vegetation removal would reduce bushfire risk, although not to the extent that a siting within the larger clearing would.

- *The protection of waterways and water quality through the appropriate management of effluent disposal, erosion and sediment pollution.*

Any permit to issue would provide adequate conditions relating to the reduction of erosion and stormwater management. It is noted that the site slopes down to the west into a gully.

Clause 44.06 Bushfire Management Overlay and Clause 53.02 Bushfire Planning

Purpose

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.

To ensure that the location, design and construction of development appropriately responds to the bushfire hazard.

Decision Guidelines

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The bushfire hazard landscape assessment, the bushfire hazard site assessment and the bushfire management statement submitted with the application.*
- *The impact of any State, regional or local bushfire management and prevention actions occurring around the site and in the wider area on the bushfire hazard and the level of risk to the proposed development.*
- *Whether the proposed development meets the objectives of Clause 53.02-4 regardless of other measures which may be available, including private bushfire shelters, community shelters and the presence of places of last resort.*

- *Whether the proposed measures can be practically implemented and maintained in conjunction with the ongoing use of the land.*
- *Whether the use of an alternative measure meets the relevant objective having regard to the bushfire hazard and the nature of any constraint that prevents the applicable approved measure from being implemented.*
- *If one or more of the objectives in Clause 53.02-4 will not be achieved in the completed development, whether the development will, taking all relevant factors into account, reduce the bushfire risk to a level that warrants it proceeding.*
- *Whether the risk arising from the broader landscape can be mitigated to an acceptable level or warrants the development not proceeding.*

A suitable Bushfire Management Plan has been provided, outlining bushfire protection measures required for a non-habitable outbuilding. This would be endorsed with any permit that may be issued. This was submitted to Council in response to a referral response from the CFA, in which they specified that the measures must be complied with.

It should be drawn into question however whether the proposed siting is the most appropriate to minimise bushfire risk. While superficially the BMP is acceptable, there are other siting opportunities on the land that would reduce bushfire risk further, with larger setbacks from areas of vegetation and no removal required.

As the proposal is for a non-habitable outbuilding, requirements are less stringent to that of a dwelling, with 10 metres of defendable space required. The applicant has proposed the removal of two (2) Eucalypt trees to comply with canopy separation requirements. It is noted that the removal of only one would still fulfil these requirements, while alternative locations could reduce this to zero.

When taking into account that the structure is to be non-habitable, and is located within the Rural Conservation Zone where the use of land for a dwelling is discouraged, it is questionable whether development ancillary to a dwelling use should be permitted when it impacts on the stated values of the area while only negligibly fulfilling the purpose of the Bushfire Management Overlay.

Clause 52.17 Native Vegetation

Purpose

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

- 1. Avoid the removal, destruction or lopping of native vegetation.*
- 2. Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*
- 3. Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*

To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

The proposal requires a permit pursuant to Clause 52.17 Native Vegetation as two (2) native Eucalypts are proposed for removal.

The original application did not include this proposed removal of vegetation, with the application being informally amended after referral to the CFA in order to meet their conditions for defendable space. This was accompanied by a completed Native Vegetation Removal Report, a statutory requirement for native vegetation removal under Clause 52.17. The application was then subsequently referred to Council's Environment team, who were unsupportive on the basis of alternative siting opportunities.

As outlined further above, a key purpose of Clause 52.17 is to avoid native vegetation removal. It is evident that the removal of native vegetation has not been avoided, and while superficially the proposed location may seem acceptable due to being levelled, mostly cleared of vegetation and easily accessible off the existing driveway, this does not mean that vegetation will not require removal.

While a statement was provided by the owners of the land outlining their reasoning for not re-siting the shed, these are not considered to be acceptable. The majority of the planning policy and provisions relating to this land prioritise the protection of the environment and specifically vegetation. While alternative locations may require earthworks, this may be considered acceptable on balance due to the retention of vegetation. While it is acknowledged that a dwelling exists on the land, further development relating to this use is not a guarantee, and the purpose of the zone, in this case Rural Conservation, should take precedence.

Clause 65.01 Approval of an Application or Plan

The proposal has been assessed against the Municipal Planning Strategy and Planning Policy Framework, to which it does not comply. It is not consistent with the purpose of the zone or overlays, nor Clause 52.17 Native Vegetation. It is not considered to be orderly planning of an area specified for conservation. It will have an undue effect on the environment of the area, further eroding the values of the area and directly impacting on biolinks in an area of zoological significance.

It is acknowledged that the owners have made efforts to plant further vegetation, although this is not considered adequate justification for the removal of mature and remnant trees. The area is considered to have a high degree of fire hazard, and while measures have been proposed to reduce this (vegetation removal), it is considered that this is inadequate in comparison to alternative siting.

Conclusion

The development of rural land, and specifically that with thick remnant vegetation and significant landscapes, for dwelling purposes has long been desired. Unfortunately, this development can erode what makes these landscapes so desirable, reducing the amenity of the area and impacting on flora and fauna habitats. While it is acknowledged that this land does already contain a dwelling, the further development of the land is not a guarantee, and the planning provisions above have been put in place to ensure the protection of the land as much as possible. In this instance, the removal of vegetation cannot be justified, and so the application must be refused.