

## 5.6 T220563 - Use and development of land for dwelling at 1200 Gembrook-Tonimbuk Road, Tonimbuk

**Responsible GM:** Lilli Rosic  
**Author:** Tanvi Rawat

### Recommendation(s)

That Council resolves to issue a notice of decision to Refuse to Grant a Permit for planning permit application T220563 for the Use and development of the land for dwelling under the following grounds:

1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that prioritise protection of human life over all other policy considerations, specifically:
  - Clause 13.02-1S bushfire planning
  - Clause 21.02-4 Bushfire management
2. The proposal does not respond to the purposes or decision guidelines of clause 44.06 Bushfire management overlay (BMO) and Clause 53.02 Bushfire planning.
3. The proposal does not appropriately respond to several visions, strategies and objectives of Clause 11 Settlement Clause 13 Environmental Risks and Amenity, Clause 21.03 Settlement and Housing and Clause 21.07 Local Areas – Hills Region.
4. The proposal does not represent the balanced planning outcome.

### Attachments

T220563 Locality Map [3.19.1 - 1 page]  
 T220563 Development plan [3.19.2 - 7 pages]  
 T220343 Officer Report [3.19.3 - 26 pages]

### Executive Summary

<b>APPLICATION NO.:</b>	T220563
<b>APPLICANT:</b>	Mrs Antonia Emerson Philip Harvey & Associates
<b>LAND:</b>	L1 TP253657, 1200 Gembrook-Tonimbuk Road, Tonimbuk VIC 3815
<b>PROPOSAL:</b>	Use and development of the land for Dwelling
<b>PLANNING CONTROLS:</b>	<u>Zone:</u> RCZ1-Rural Conservation Zone Schedule 1 <u>Overlays:</u> BMO - Bushfire Management Overlay ES01 - Environmental Significance Overlay - Schedule 1, LSIO - Land Subject to Inundation Overlay

<b>NOTIFICATION &amp; OBJECTIONS:</b>	Notice of the application was given pursuant to Section 52 of the Planning and Environment Act 1987. To date, Council has received no objections.
<b>KEY PLANNING CONSIDERATIONS:</b>	Protection of human life from bushfire Isolated location of development Higher bushfire risk from surrounding landscape.
<b>RECOMMENDATION:</b>	Notice of Decision to Refuse to Grant a Permit

The purpose of this report is to consider an application to use and develop 1200 Gembrook-Tonimbuk Road, Tonimbuk for a Dwelling.

The planning permit application proposes a moderate size single dwelling on subject site which is currently vacant. The site is located within the Rural conservation Zone, Schedule 1 (RCZ1) and affected by the Bushfire Management Overlay (BMO), Environmental Significance Overlay Schedule 1 (ESO1) and Land Subject to Inundation Overlay (LSIO).

An assessment against the relevant policies that apply to the subject site has determined that the proposed use and development for a Dwelling is not an acceptable planning outcome as it contradicts the strategy for protecting human life against the bushfire risk.

The proposed bushfire measures fail to mitigate bushfire risk arising from the broader landscape to an acceptable level and therefore use and development should not proceed further on subject site.

## **Relevance to Council Plan**

### **5.1 We practise responsible leadership**

#### **5.1.1 Build trust through meaningful community engagement and transparent decision-making.**



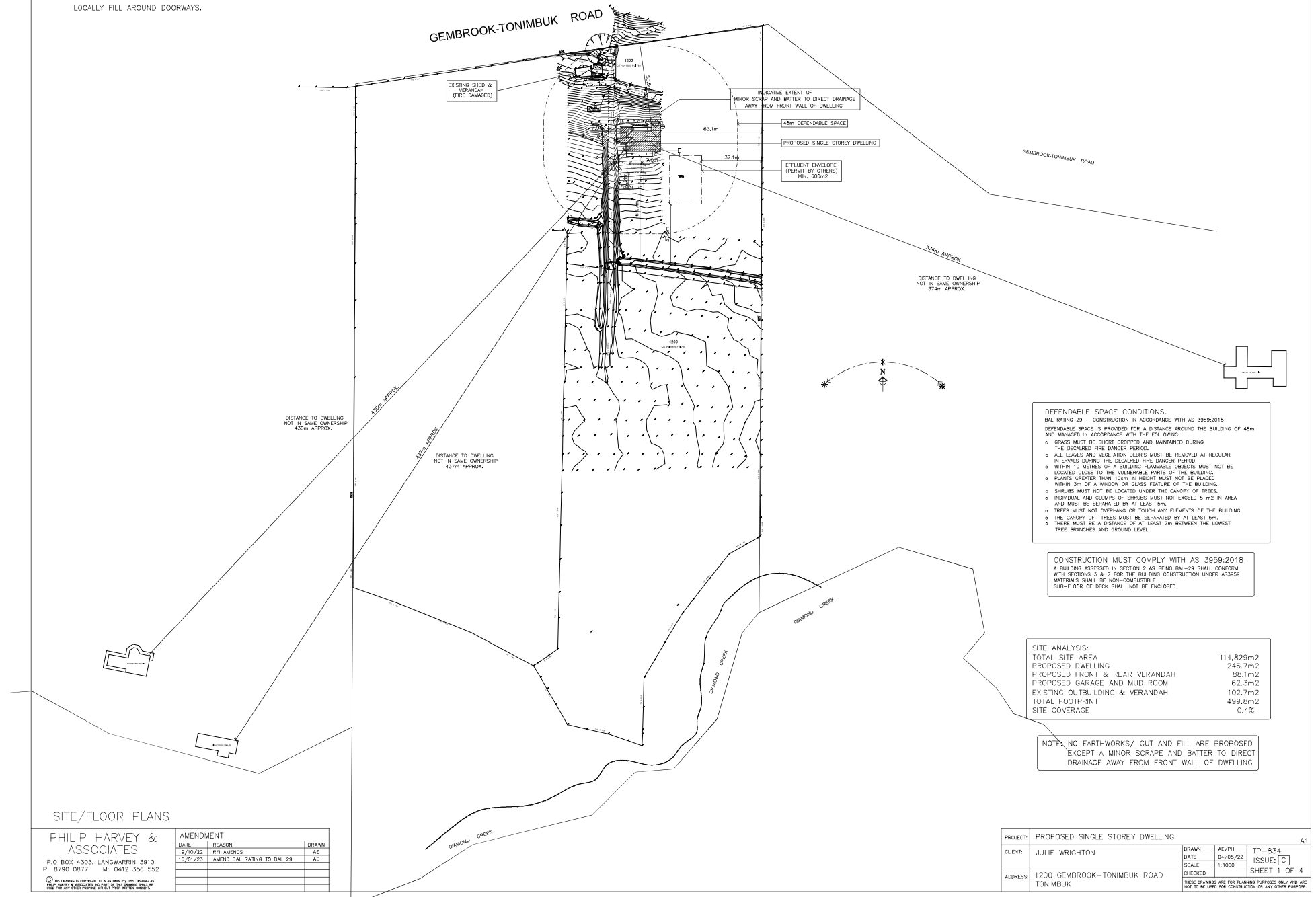
CardiMap

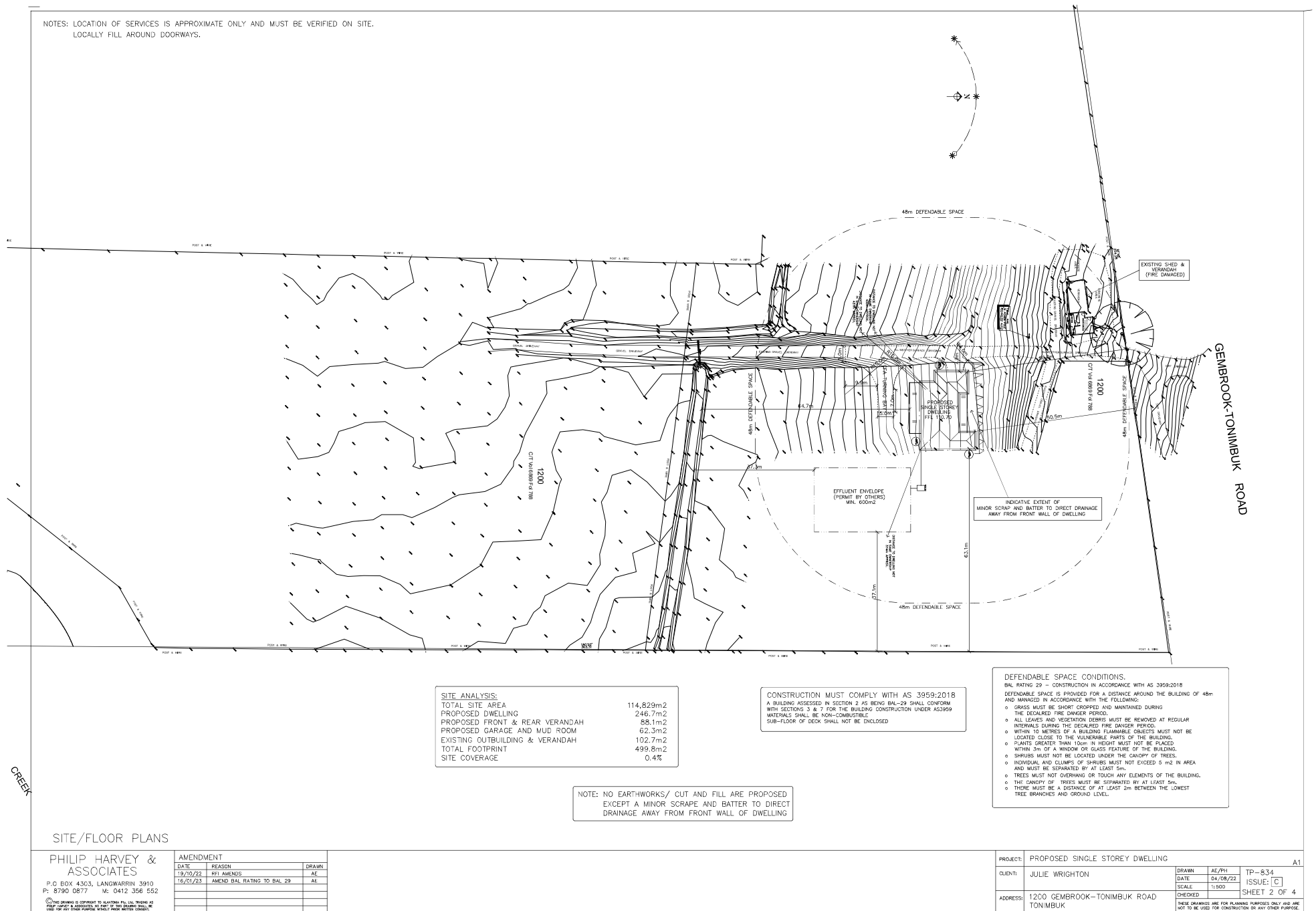
Disclaimer: This content is provided "as is" without warranty of any kind. 23-Oct-2023

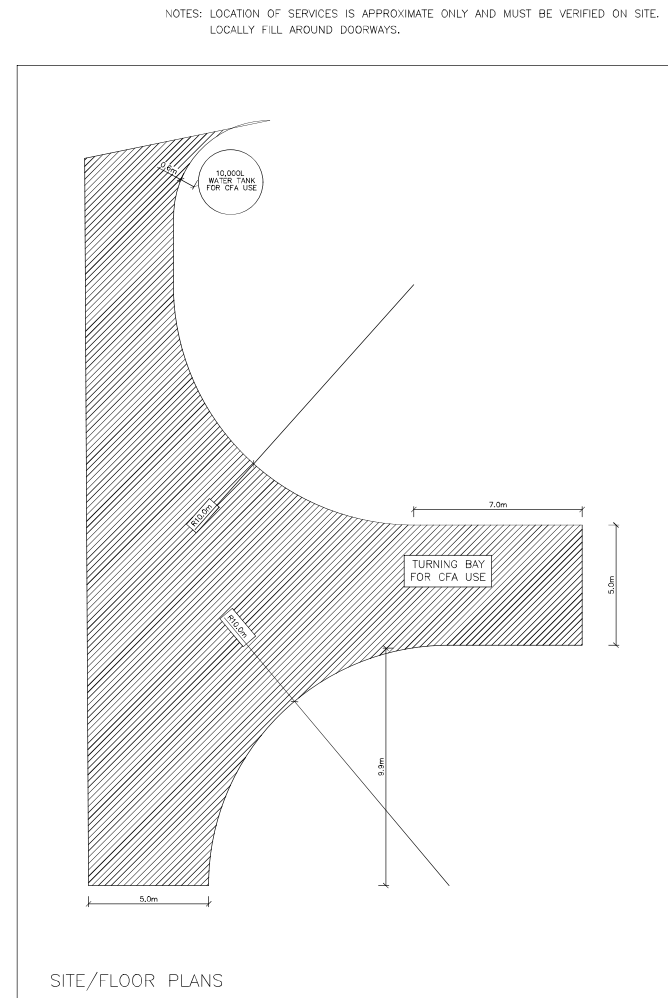
[View map online](#)



NOTES: LOCATION OF SERVICES IS APPROXIMATE ONLY AND MUST BE VERIFIED ON SITE.  
LOCALLY FILL AROUND DOORWAYS.







<b><u>SITE ANALYSIS:</u></b>	
TOTAL SITE AREA	114,829m <sup>2</sup>
PROPOSED DWELLING	246.7m <sup>2</sup>
PROPOSED FRONT & REAR VERANDAH	88.1m <sup>2</sup>
PROPOSED GARAGE AND MUD ROOM	62.3m <sup>2</sup>
EXISTING OUTBUILDING & VERANDAH	102.7m <sup>2</sup>
TOTAL FOOTPRINT	499.8m <sup>2</sup>
SITE COVERAGE	0.4%

NOTE: NO EARTHWORKS/ CUT AND FILL ARE PROPOSED EXCEPT A MINOR SCRAPE AND BATTER TO DIRECT DRAINAGE AWAY FROM FRONT WALL OF DWELLING

## SITE/FLOOR PLANS

**PHILIP HARVEY &  
ASSOCIATES**  
P.O. BOX 4303, LANGWARRIN 3910  
P: 8790 0877 M: 0412 356 552

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AMENDMENT		
DATE	REASON	DRAWN
19/10/22	RFI AMENDS	AE
16/01/23	AMEND BAL RATING TO BAL 29	AE

## DEFENDABLE SPACE CONDITIONS.

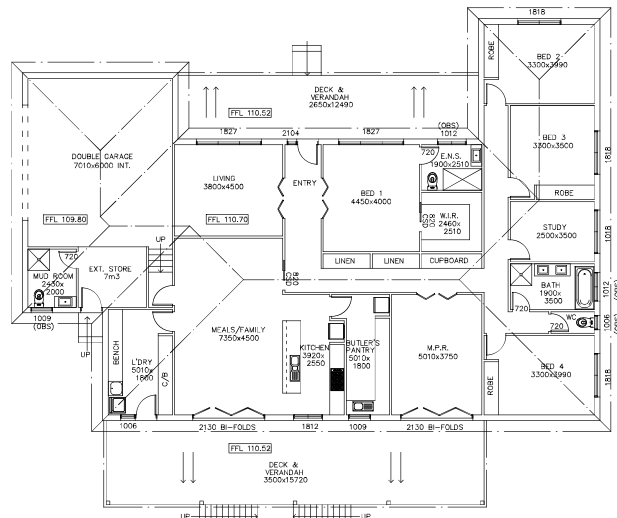
BASE RATINGS FOR CONSTRUCTION IN ACCORDANCE WITH AS 3599:2018

DEFENDABLE SPACE IS PROVIDED FOR A DISTANCE AROUND THE BUILDING OF 48m AND MANAGED IN ACCORDANCE WITH THE FOLLOWING:

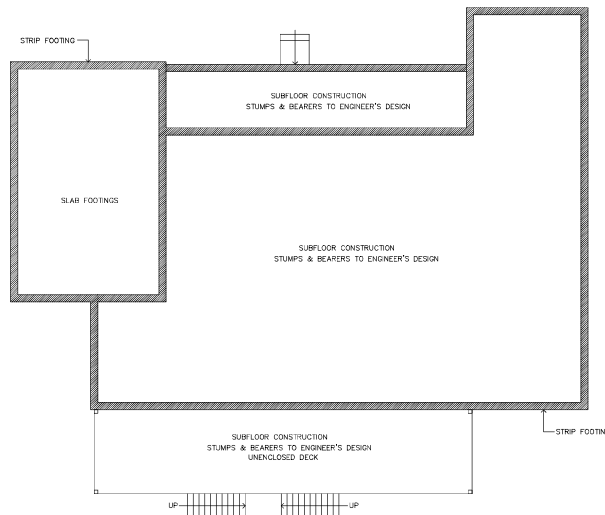
- GRASS MUST BE SHORT CROPPED AND MAINTAINED DURING THE DECADED FIRE DANGER PERIOD.
- ALL LEAVES AND VEGETATION DEBRIS MUST BE REMOVED AT REGULAR INTERVALS DURING THE DECADED FIRE DANGER PERIOD.
- WITHIN THE 48m DISTANCE OF BUILDING, ALL VULNERABLE OBJECTS MUST NOT BE LOCATED CLOSE TO THE VULNERABLE PARTS OF THE BUILDING.
- PLANTS GREATER THAN 10cm IN HEIGHT MUST NOT BE PLACED WITHIN 10m OF ANY VULNERABLE PART OF THE BUILDING.
- SHRUBS MUST NOT BE LOCATED UNDER THE CANOPY OF TREES.
- INDIVIDUAL, AND CLUMPS OF SHRUBS MUST NOT EXCEED 5 m2 IN AREA AND 1.5m IN HEIGHT.
- TREES MUST NOT OVERHANG OR TOUCH ANY ELEMENTS OF THE BUILDING.
- THE CANOPY OF TREES MUST BE SEPARATED BY AT LEAST 5m.
- WHERE THERE IS A DISTANCE OF LESS THAN 2m BETWEEN THE LOWEST TREE BRANCHES AND GROUND LEVEL.

CONSTRUCTION MUST COMPLY WITH AS 3959:2018  
A BUILDING ASSESSED IN SECTION 2 AS BEING BAL-29 SHALL CONFORM  
WITH SECTIONS 3 & 7 FOR THE BUILDING CONSTRUCTION UNDER AS3959  
MATERIALS SHALL BE NON-COMBUSTIBLE  
SUB-FLOOR OF DECK SHALL NOT BE ENCLOSED

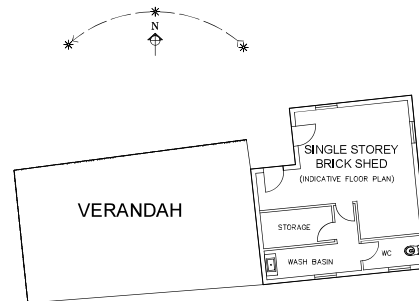
PROJECT:	PROPOSED SINGLE STOREY DWELLING			<div style="border: 1px solid black; padding: 5px; text-align: center;"> <b>A1</b> </div>
CLIENT:	JULIE WRIGHTON	DRAWN	AE	
		DATE	04/08/22	
		SCALE	1:100	
ADDRESS:	1200 GEMBROOK-TONIMBUK ROAD TONIMBUK	CHECKED		<div style="border: 1px solid black; padding: 5px; text-align: center;"> TP-834  ISSUE: <span style="border: 1px solid black; padding: 2px;">C</span>  SHEET 3 OF 4 </div>
		<small>THESE DRAWINGS ARE FOR PLANNING PURPOSES ONLY AND ARE NOT TO BE USED FOR CONSTRUCTION OR ANY OTHER PURPOSE.</small>		



FLOOR PLAN - PROPOSED DWELLING



FOOTING DIAGRAM - PROPOSED DWELLING (FOOTINGS TO ENGINEER'S DESIGN)



FLOOR PLAN (INDICATIVE) - EXISTING SHED

## SITE ANALYSIS:

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## DEFENDABLE SPACE CONDITIONS.

- BAL RATING 29 - CONSTRUCTION IN ACCORDANCE WITH AS 3959/2018
- DEFENDABLE SPACE IS PROVIDED FOR A DISTANCE AROUND THE BUILDING OF 48m AND MAINTAINED IN ACCORDANCE WITH THE FOLLOWING:
- GRASS MUST BE SHORT CROPPED AND MAINTAINED DURING THE DECALARED FIRE DANGER PERIOD.
  - ALL LEAVES AND VEGETATION DEBRIS MUST BE REMOVED AT REGULAR INTERVALS DURING THE DECALARED FIRE DANGER PERIOD.
  - WITHIN 10 METRES OF A BUILDING FLAMMABLE OBJECTS MUST NOT BE LOCATED CLOSE TO THE VULNERABLE PARTS OF THE BUILDING.
  - PLANTS GREATER THAN 100cm IN HEIGHT MUST NOT BE PLACED WITHIN 2m OF A WINDOW OR GLASS FEATURE OF THE BUILDING.
  - SHRUBS MUST NOT BE LOCATED UNDER THE CANOPY OF TREES.
  - INDIVIDUAL AND CLUMPS OF SHRUBS MUST NOT EXCEED 5 m<sup>2</sup> IN AREA AND MUST BE SEPARATED BY AT LEAST 5m.
  - TREES MUST NOT OVERHANG OR TOUCH ANY ELEMENTS OF THE BUILDING.
  - THE CANOPY OF TREES MUST BE SEPARATED BY AT LEAST 5m.
  - THERE MUST BE A DISTANCE OF AT LEAST 2m BETWEEN THE LOWEST TREE BRANCHES AND GROUND LEVEL.

## CONSTRUCTION MUST COMPLY WITH AS 3959/2018

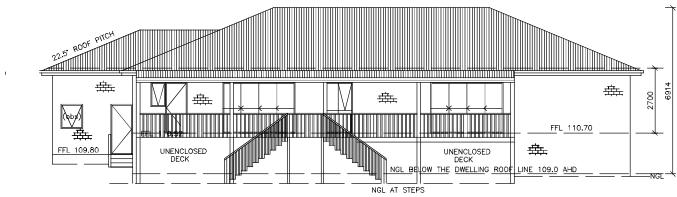
A BUILDING ASSESSED IN SECTION 2 AS BEING BAL-29 SHALL CONFORM WITH SECTIONS 3 & 7 FOR THE BUILDING CONSTRUCTION UNDER AS3959

MATERIALS SHALL BE NON-COMBUSTIBLE

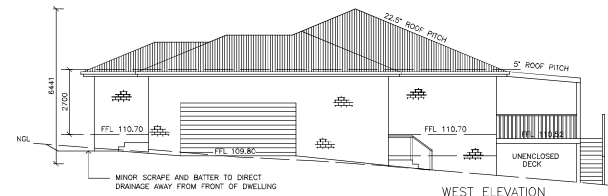
SUB-FLOOR OF DECK SHALL NOT BE ENCLOSED

## COLOURS &amp; MATERIALS SCHEDULE

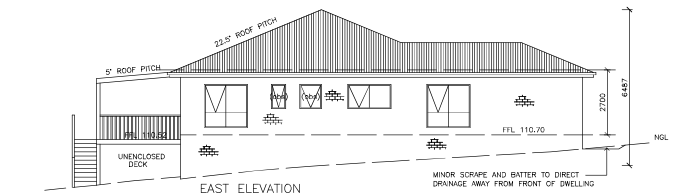
		LEV %
ROOF	"WOODLAND GREY" COLORBOND	NON-COMBUSTIBLE METAL 12%
FASCIAS & GUTTERS	"WOODLAND GREY" COLORBOND	NON-COMBUSTIBLE METAL 12%
WALLS	"ELMHURST RED" BRICK VENEER	NON-COMBUSTIBLE MASONRY 11%
WINDOW FRAMES	"WOODLAND GREY" COLORBOND	NON-COMBUSTIBLE METAL 12%
GARAGE DOOR	"WOODLAND GREY" COLORBOND	NON-COMBUSTIBLE METAL 12%
TIMBER POSTS AND DECKING	"STAINED" NATURAL	NON-COMBUSTIBLE TIMBER
FRAMING OF DECKS AND STEPS		NON-COMBUSTIBLE TIMBER



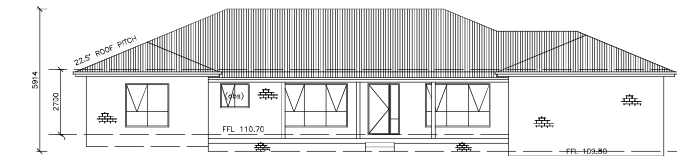
SOUTH ELEVATION



WEST ELEVATION



EAST ELEVATION



NORTH ELEVATION

## FLOOR PLAN &amp; ELEVATIONS

PHILIP HARVEY &  
ASSOCIATES

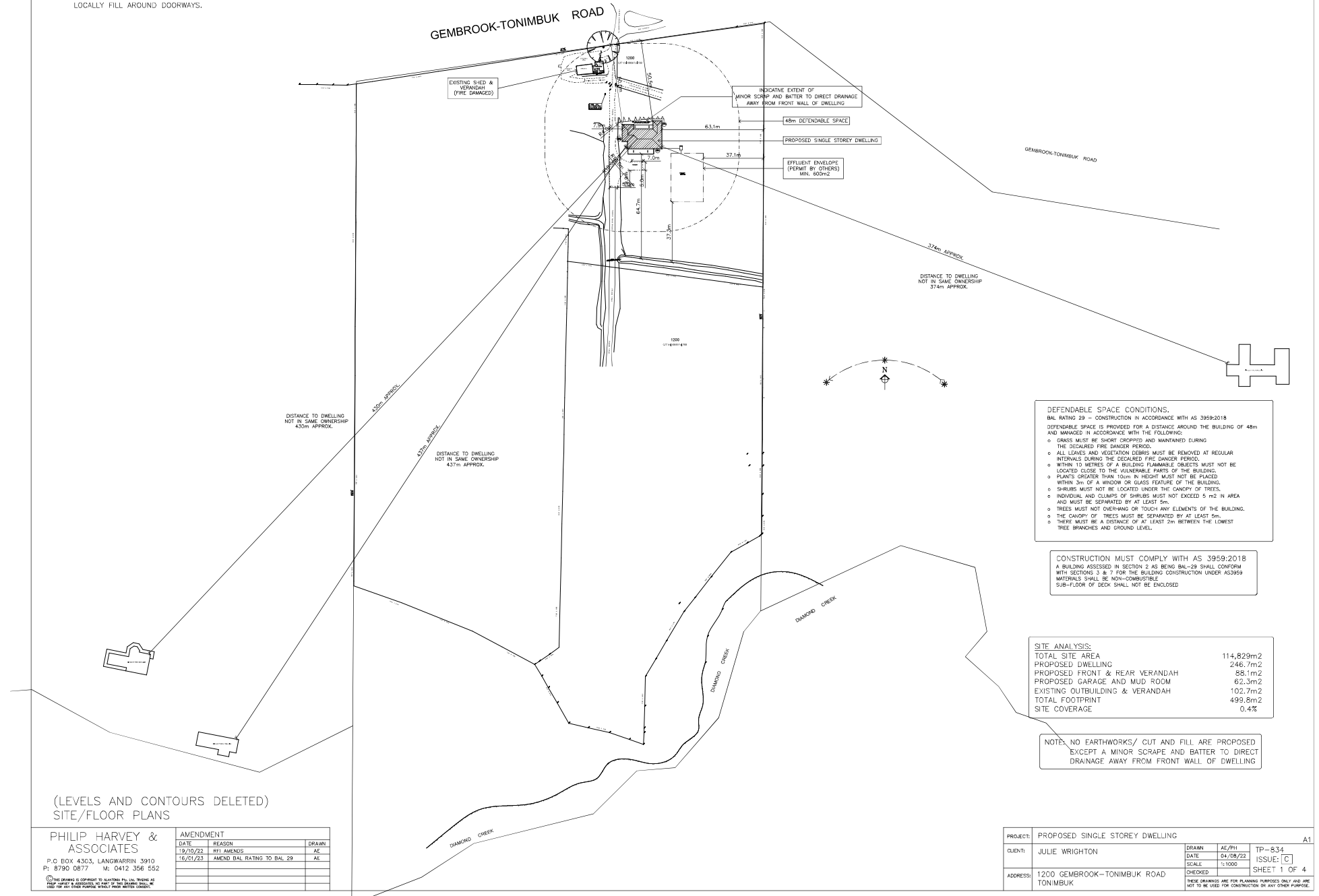
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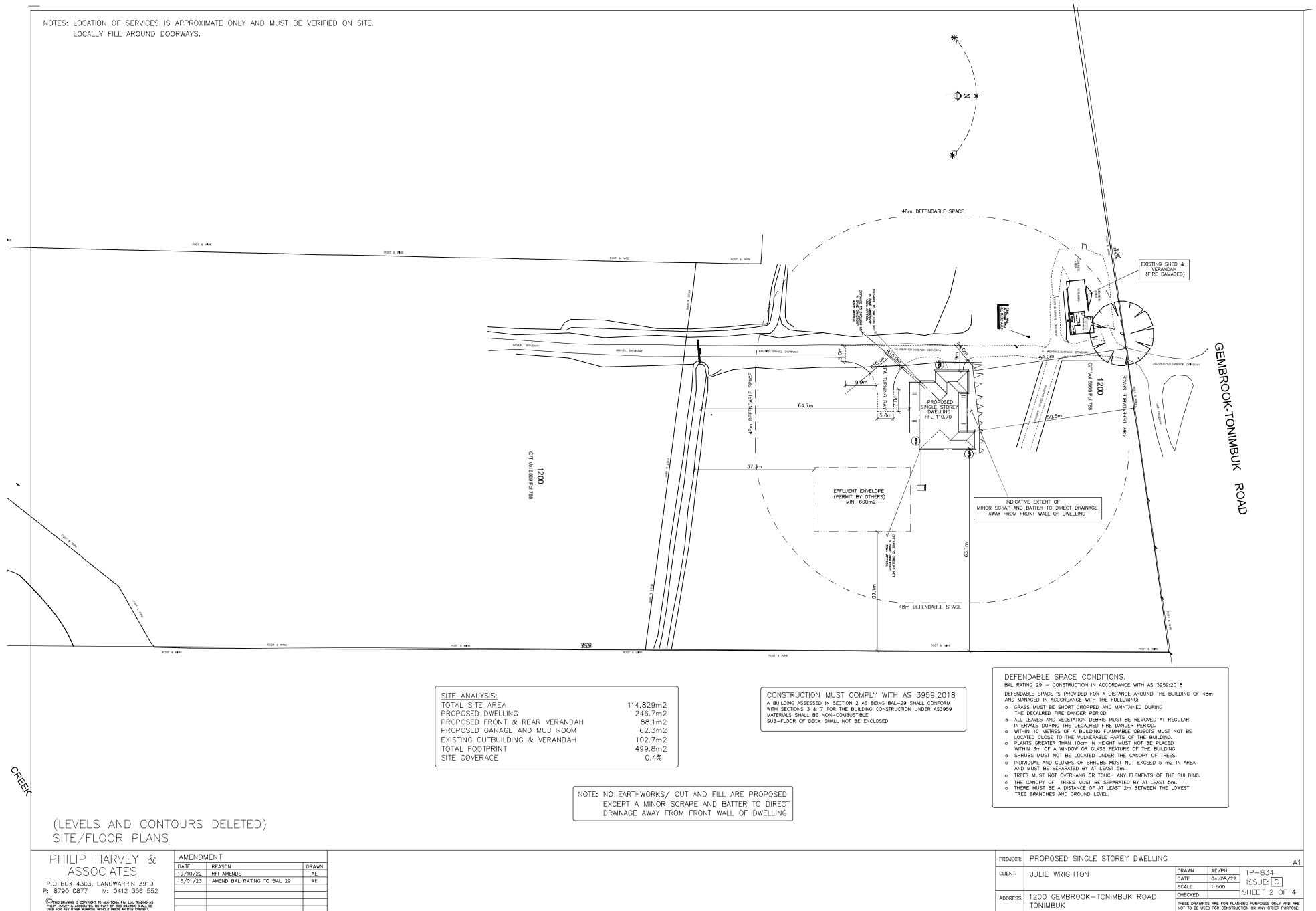
THIS DRAWING IS CONFIDENTIAL TO THE CLIENT. IT IS TO BE USED ONLY FOR THE PROJECT SPECIFICALLY IDENTIFIED IN THE DRAWING. IT IS NOT TO BE REPRODUCED OR USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF PHILIP HARVEY & ASSOCIATES.

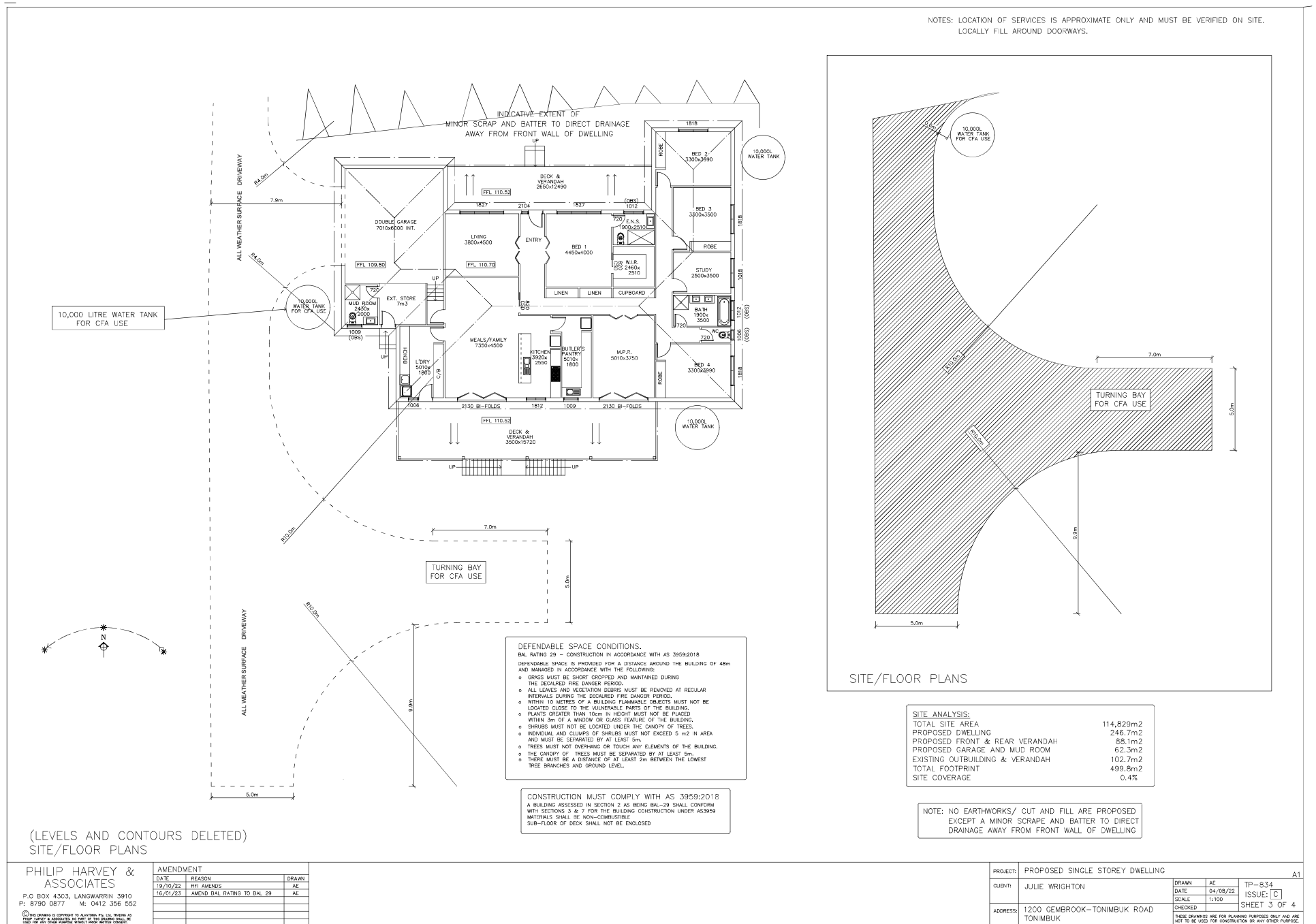
DATE	REASON	DRAWN
19/10/22	RFI AMENDS	AE
16/01/23	AMEND BAL RATING TO BAL 29	AE

PROJECT:	PROPOSED SINGLE STOREY DWELLING	AE/PH	TP-534
CLIENT:	JULIE WRIGHTON	DATE	04/08/22
		SCALE	1:100
ADDRESS:	1200 GEMBROOK-TONIMBUK ROAD	CHECKED	ISSUE: [C]
	TONIMBUK		SHEET 4 OF 4

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LOCALLY FILL AROUND DOORWAYS.







# APPLICATION FOR CONSIDERATION

## REFUSAL

### COUNCIL REPORT



#### Application Details:

Proposal	Use and development of the land for a Dwelling.		
Applicant	Mrs Antonia Emerson Philip Harvey & Associates		
Date Received:	19 August 2022		
Statutory Days:	156		
Section 50A Amendment	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Yes, date: 1 February 2023	
Application Number	T220563		
Planner	Tanvi Rawat (Senior Statutory Planner)		
Land/Address	L1 TP253657, 1200 Gembrook-Tonimbuk Road, Tonimbuk VIC 3815		
Property No.	5000015694		
Zoning	<ul style="list-style-type: none"> <li>RCZ1 - Rural Conservation Zone Schedule 1</li> </ul>		
Overlay/s	<ul style="list-style-type: none"> <li>BMO - Bushfire Management Overlay</li> <li>ES01 - Environmental Significance Overlay - Schedule 1,</li> <li>LSIO - Land Subject to Inundation Overlay</li> </ul>		
Permit Trigger(s)	<ul style="list-style-type: none"> <li>Clause 35.06- 1 (RCZ1), a planning permit is required to use the land for the purpose of a Dwelling.</li> <li>Clause 35.06-5 (RCZ1) a planning permit is required to construct buildings associated with a section 2 use (dwelling) and               <ul style="list-style-type: none"> <li>100 metres from a waterway, wetlands or designated flood plain</li> </ul> </li> <li>Clause 44.06-2 (BMO), a planning permit is required for buildings and works associated with a dwelling.</li> </ul>		
Aboriginal Cultural Sensitivity	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes; a CHMP is: not required for the proposed activity (single dwelling development)	
		<input checked="" type="checkbox"/> Not required Only partial site is with in aboriginal cultural sensitivity and the proposal is not with in that area.	<input type="checkbox"/> Required

Section 55 Referrals	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Yes, list below:
	<ul style="list-style-type: none"> <li>▪ Country Fire Authority (CFA)</li> <li>▪ Melbourne Water</li> </ul>	
Registered restrictions on Title	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, list below
Recommendation	<input type="checkbox"/> Permit <input type="checkbox"/> NOD <input checked="" type="checkbox"/> Refusal	
Ward Councillor communications	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, item in Councillor Bulletin
Documents relied on	<ul style="list-style-type: none"> <li>▪ Development Plans prepared by <i>Philip Harvey and Associates Dated 16/01/23</i></li> <li>▪ Town Planning Submission prepared by <i>Philip Harvey and Associates</i></li> <li>▪ Bushfire Management Statement prepared by <i>Keystone Alliance Bushfire Assessment</i></li> <li>▪ Title Documents</li> <li>▪ Bushfire planning risk assessment prepared by Alan March (council obtained expert advice)</li> <li>▪ Bushfire advise prepared by Kavin Hazell from <i>Bushfire Planning</i> (council obtained expert advice)</li> </ul>	
Full plans and documents	<a href="#">T220563 Updated Docs Package.pdf</a>	
Plans to be endorsed?	<input type="checkbox"/> Yes	
	<input checked="" type="checkbox"/> No (Refusal)	

### Proposal

Approval is sought for the use and development of the land for a Dwelling and associated works.

### Site layout

The site is rural property, irregularly shaped with an area of 11.4 hectares. Access to the property is from Gembrook-Tonimbuk Road from via an unsealed driveway. The property is currently vacant of any use and consists of a dilapidated outbuilding (damaged in the 2019 Bushfire).

The proposed development will comprise of a single storey brick dwelling which comprises of following additional amenities:

- A double garage
- A mud room and
- Front and rear verandah.

The proposed dwelling is farm style single story design with a pitched roof, brick walls, and open veranda deck which consist of following:

- Entry Deck/verandah

- A living room
- Open Kitchen and meals area
- Multipurpose Room
- Master bedroom with Ensuite and WIR
- Three (3) Bedrooms; and
- Study room

Feature	Description
Roof	Colourbond Woodland Grey
Walls	Brick Veneer – Elmhurst red (Dwelling) Windows – Woodland Grey Stained timber decking
Front setback	50.5 Meters
Other setbacks	East (side): 63.1 metres South (Rear): 64.7 m
Building height	6.441 meters
Earthworks	None
Vegetation rem.	None

The proposed dwelling will have an access from crushed rock driveway to the west of proposed garage and at the rear of the dwelling for emergency vehicle. The dwelling is proposed to be constructed on Stumps due to the current topography of the site. Therefore, no excavation or retaining wall required for the proposal. The dwelling is proposed to be of 5.91 meters overall height. An effluent envelope is located to the southeast side of the proposed dwelling, A defendable space of 50 meters is provided for the proposed dwelling within the site.

The proposal does not result in any vegetation removal (including for defendable space) given it located on the cleared area of site.

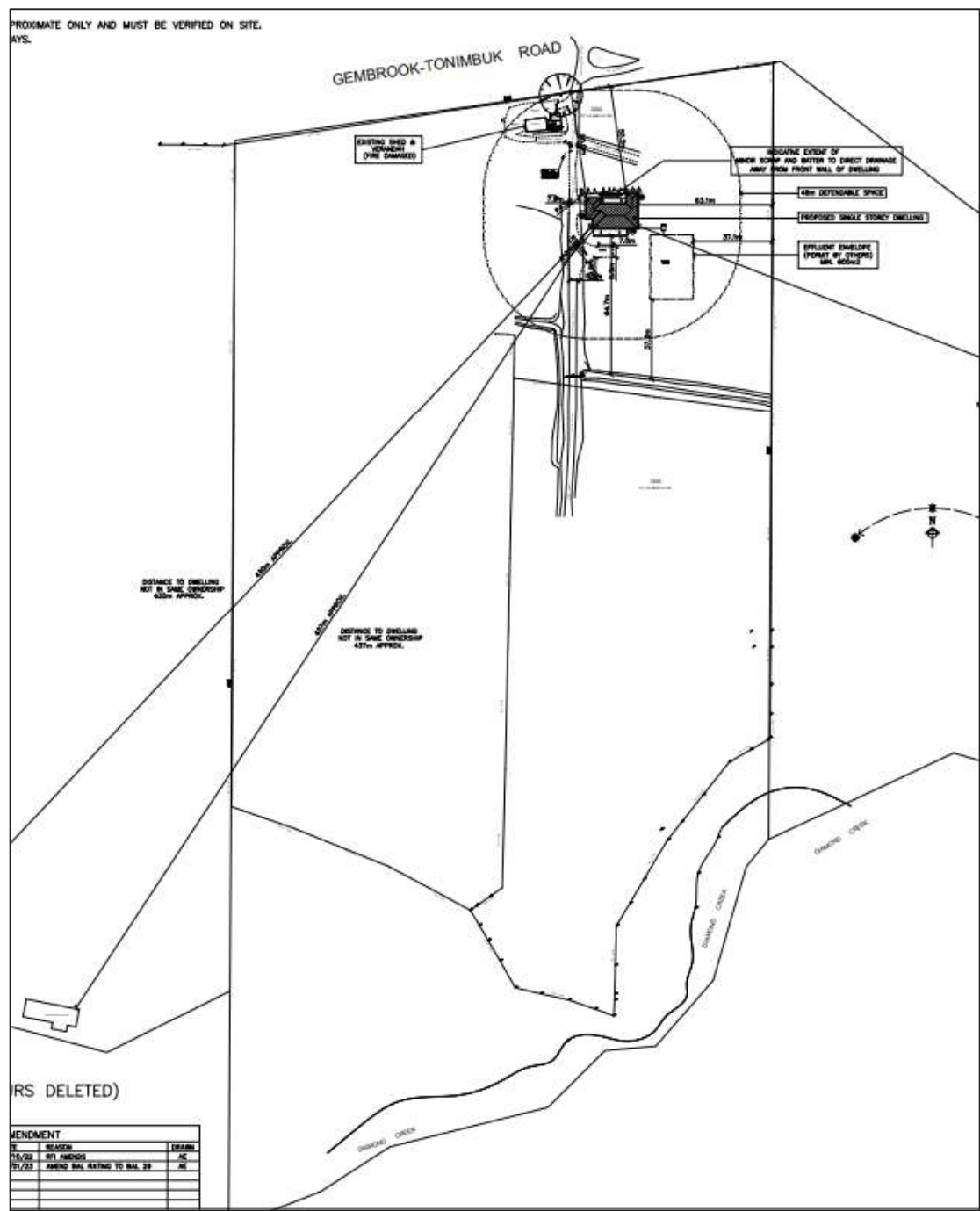
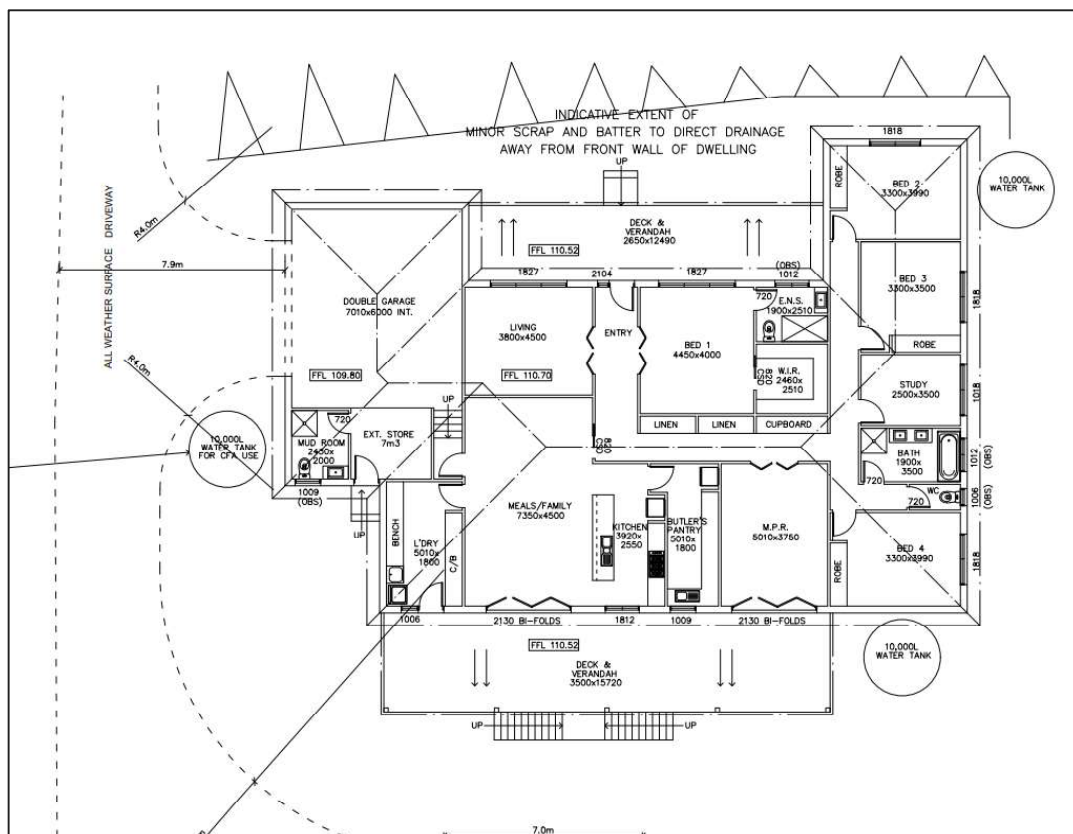


Figure 1 – Proposed site plan and dwelling surround (Source: Applicant submission Philip Harvey and associates)



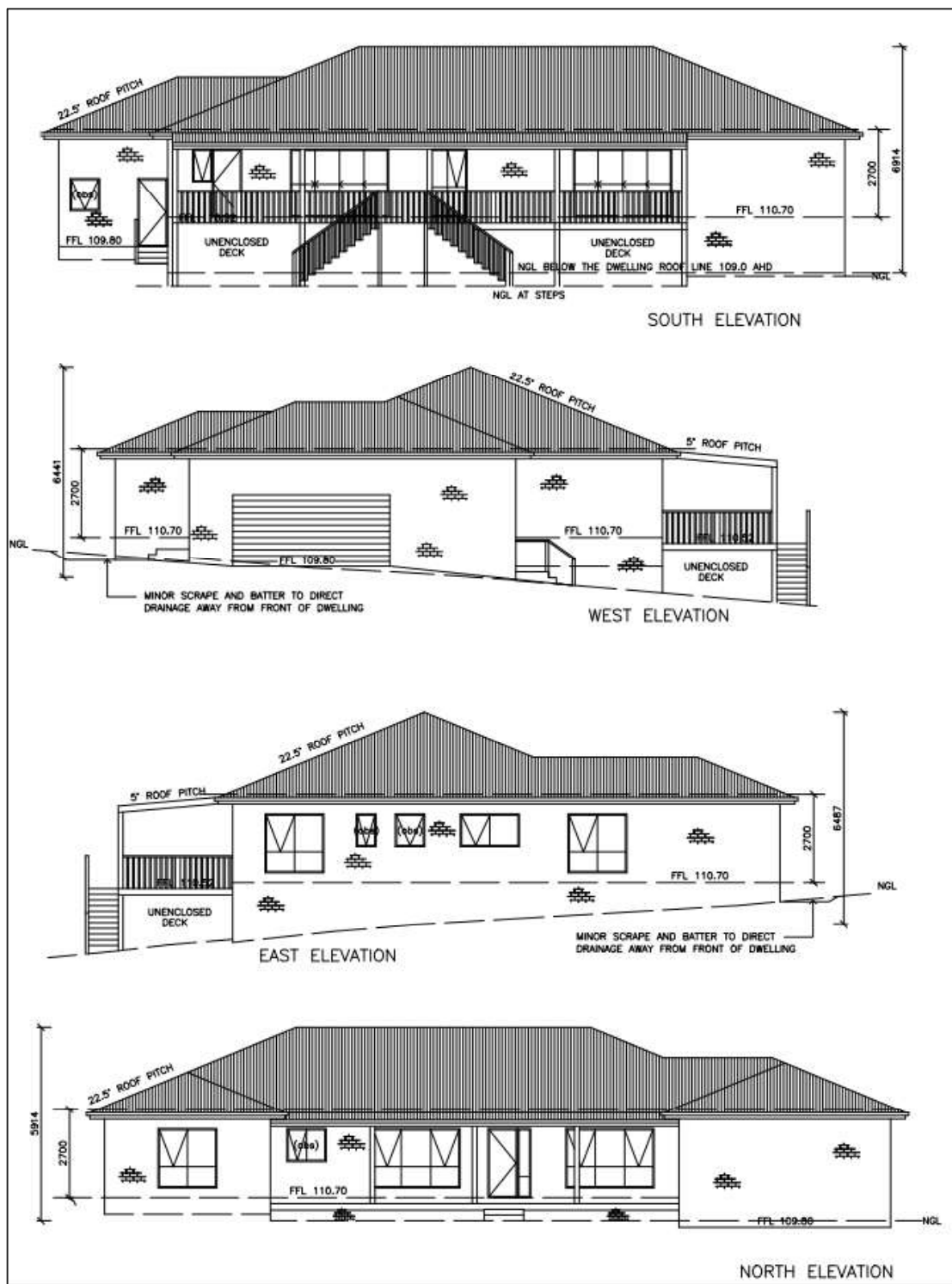


Figure 3 – Proposed elevations (Source: Applicant submission Philip Harvey and associates)

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**Subject site & locality**

*Figure 4 – Map of subject site (source: Cardimap, 2023)*

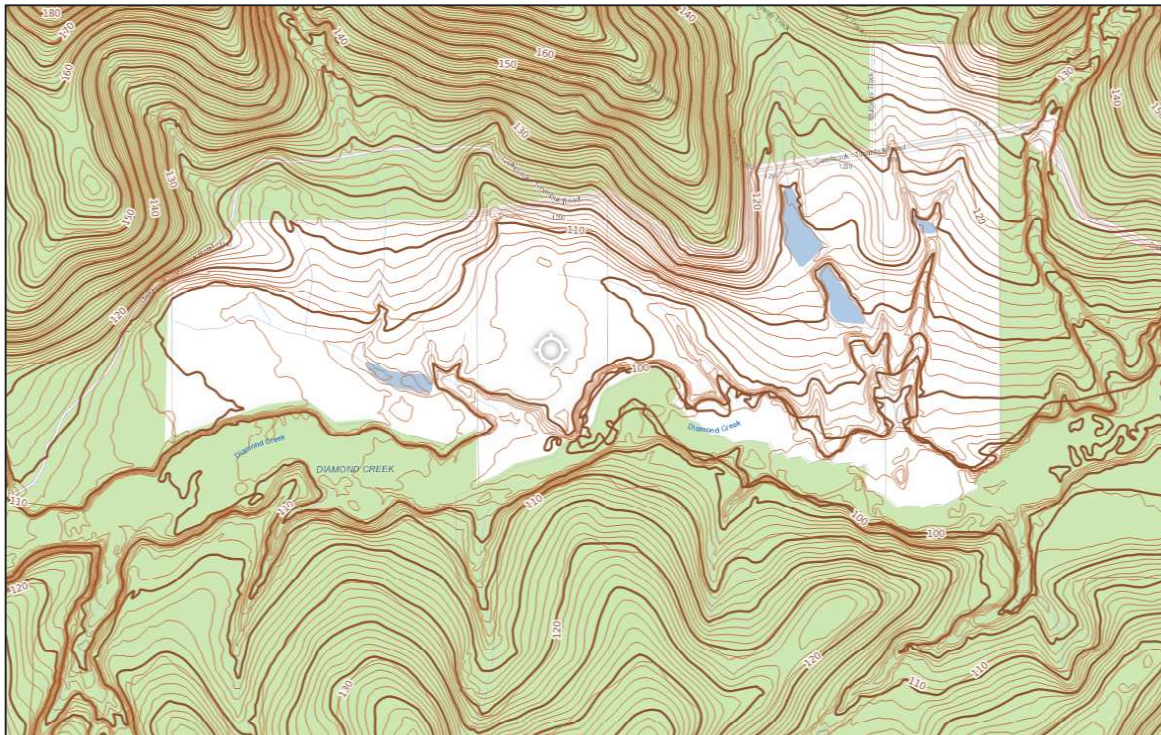


Figure 5 – Topography of site and surrounding within Bunyip state park (Near Maps 2023)



Figure 6 – Location map of site within Bunyip state park (Near Maps 2023)

The subject site is located on the periphery of Gembrook, which is a settlement of six (6) rural properties located approx. 17 kilometres from Gembrook township, within the Bunyip State Park.

The subject land is accessed by Gembrook-Tonimbuk Road which is a gravel road that provides access from Gembrook town centre (to the east) to Tonimbuk rural township (to the south). The site is located

16.8 kms from Gembrook Town Centre, 17.9 kms from Bunyip Town Centre and 21 kilometres from Garfield Town Centre which are the closest towns around the subject site. Broadly as shown in figure 6 the subject land is surrounded by forest for approx. 6.5 km on either side of the access road.

The subject site is irregular in shaped with a frontage of 250 metres (wide) adjoining Gembrook-Tonimbuk Road and maximum depth of 500 metres to the diamond creek, resulting in an area of 114778Sqm. The Figure 5 shows the current topographic features of the site and surround, the site slopes downward from Gembrook-Tonimbuk Road south towards the diamond creek, while the subject site itself is gently sloping, the majority of Bunyip State Park, including the land surrounding the site, is steep and hilly. The site has extensive native vegetation along the southern end of the property and is nestled within the Bunyip State Park with adjoining land parcels associated agriculture and associated dwelling uses.

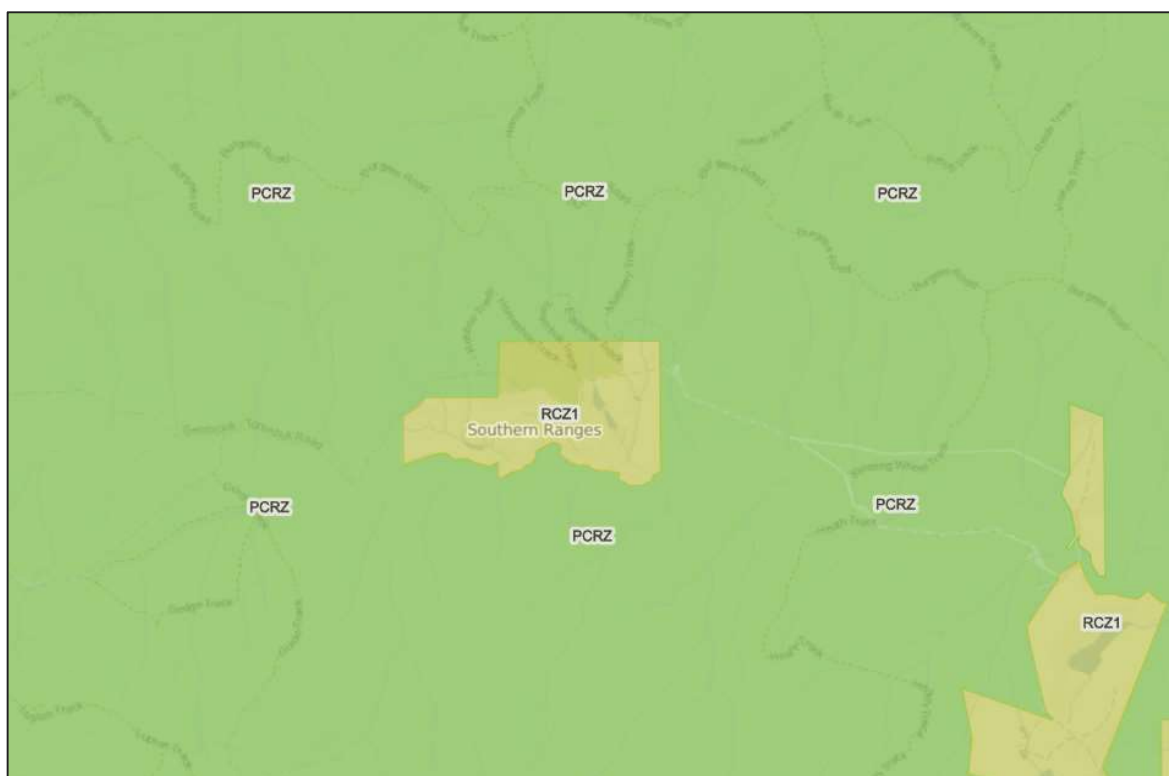
The zoning within the site and surround is shown in Figure 7 below. The surrounding area exhibits distinctive features as follows:

**North:** Situated across Gembrook-Tonimbuk Road, is a substantial expanse of land within the Bunyip State Park, distinguished for its environmental significance and designated under zoning RCZ1. Adjacent to this, at 1315 Gembrook-Tonimbuk Road, is a rural dwelling site. Planning Permit T200280, issued in 2020, authorised the reconstruction of a dwelling that had suffered damage during the 2019 Bushfires.

**South:** Directly abutting the site to the south is Diamond Creek, characterised by substantial native vegetation. The land in this direction is located within the Public Conservation and Res within the Bunyip State Park.

**East:** 1280 Gembrook-Tonimbuk Road adjoins the eastern boundary, where a sizeable parcel of land boasts a historic rural dwelling and agricultural usage. This dwelling has a permit history dating back to 1997. Further eastwards, you'll find 1290 Gembrook-Tonimbuk Road Tonimbuk, which features an existing rural dwelling that has been in place since 2005, its establishment having been approved under planning permission T050526.

**West:** To the west, across Gembrook-Tonimbuk Road at 1140 Gembrook-Tonimbuk Road, Gembrook, is an extensive, clear parcel of land measuring 21.7 hectares. This land has been developed for historic dwelling use since 1989 and has been utilized for agricultural purposes.



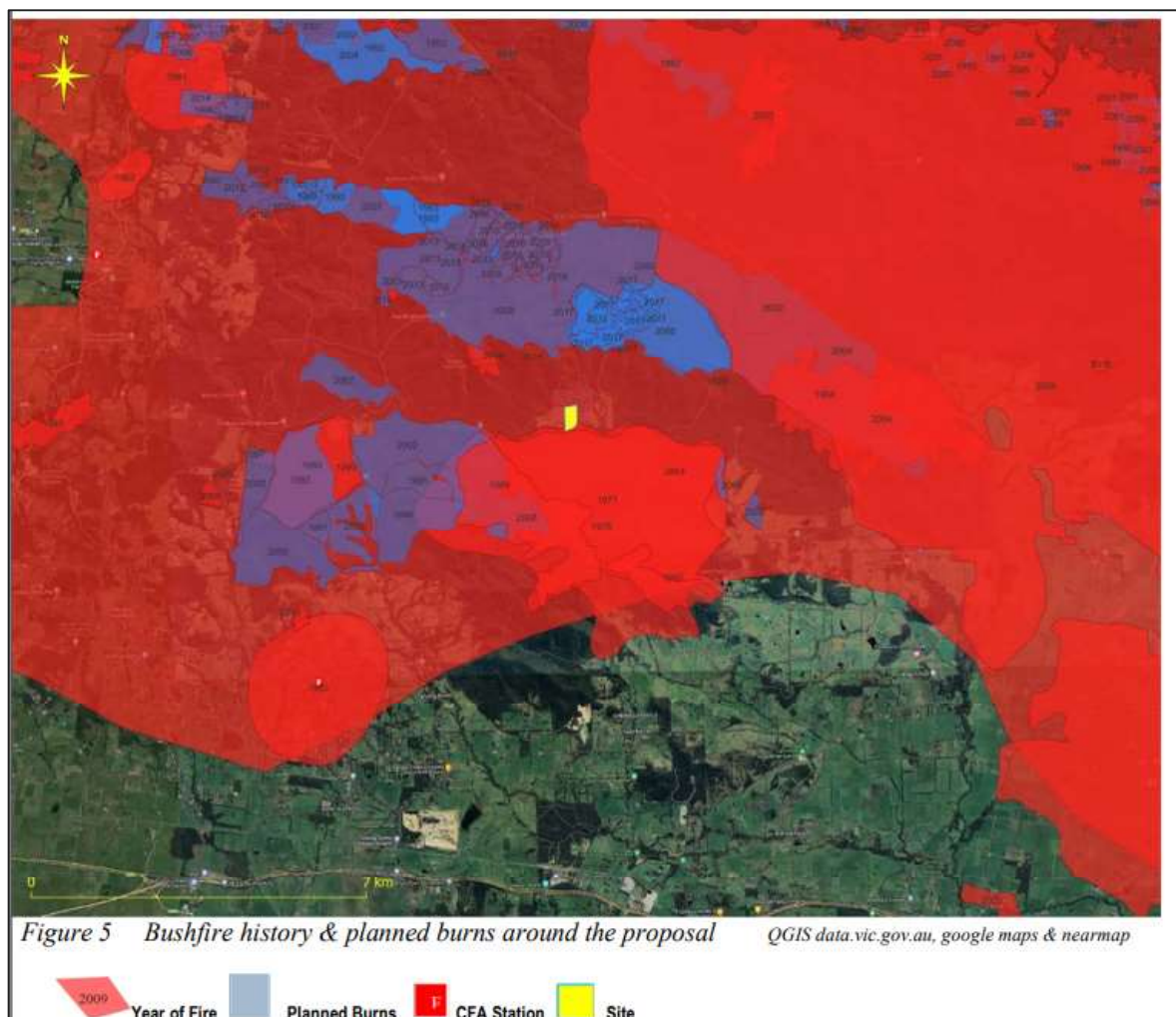
*Figure 7 Land zoning on site and surrounding area (Source: Cardimap 2023)*

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#### **Permit/Site History**

There is no recent Planning Permit history for the subject site however the site was affected during the 2019 Bunyip Bushfires. The extent of the 2019 bushfire is visually depicted below:





*Figure 9: Extent of planned and unplanned fire history within site and surround (Source: Applicant documentation)*

## Planning Scheme Provisions

### Zone

The land is subject to the following zone:

- Clause 35.06 Rural Conservation Zone- Schedule 1 (RCZ1)

### Overlays

The land is subject to the following overlays:

- Clause 44.06 Bushfire Management Overlay (BMO)
- Clause 42.01 Environmental Significance Overlay - Schedule 1(ES01)
- Clause 44.04 Land Subject to Inundation Overlay (Partly) (LSIO)

### Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 Settlement, inclusive of Clause 11.01-1S Settlement and Clause 11.01-1R Green wedges - Metropolitan Melbourne.
- Clause 13 Environmental Risks and Amenity, inclusive of Clause 13.02-1 Bushfire Planning.
- Clause 14.01-1S Protection of Agricultural Land.
- 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 clauses of the LPPF are:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.02 Environment, inclusive of 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

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

The relevant provisions/ documents are:

- Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions.
- Clause 52.12 Bushfire Protection Exemptions
- Clause 53.02 Bushfire Planning.
- Clause 65 Decision Guidelines
- Clause 71.02-3 Integrated decision making

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#### **Planning Permit Triggers**

The proposal requires a planning permit under the following clauses 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.

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#### **Public Notification**

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.

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

## Referrals

### External Referrals/Notices:

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	Melbourne Water (Determining)	<p>No objection, subject to following conditions-</p> <ul style="list-style-type: none"> <li>– <i>Prior to the commencement of works, a separate application direct to Melbourne Water must be made for approval for any new or modified storm water connection to Melbourne Water's drains or watercourses.</i></li> </ul> <p>Melbourne water advise includes - The <i>estimated flood level for the property grades from 102.47 metres to Australian Height Datum (AHD) at the south west corner down to 101.01 metres to AHD at the south east corner.</i></p> <p><i>The proposed building envelope is not subject to flooding.</i></p>
Section 55 Referral	Fire rescue Victoria (CFA) [Recommending]	<p>CFA raised a further information request for amendment to Bushfire management statement (BMS) to adequately mitigate against the extreme landscape risk given:</p> <p>The subject site is identified as being in an area of extreme bushfire risk (Landscape Type 4) with the potential for a bushfire to cause significant impact to the proposed dwelling. Further, access and egress from the site is poor enhancing the need for a viable shelter in place option. In these circumstances enhanced, bushfire protection measures should be proposed. CFA also suggest a compliant private bushfire shelter is considered.</p> <p>Following the amendment to BMS, the subject application was conditionally approved from CFA.</p> <p>Conditions:</p> <p><b>1. Endorsement of Bushfire Management Plan</b></p> <p>Before the development starts, the Bushfire Management Plan Ref# B3874/3.0, dated Jan-2023 and prepared by Keystone Alliance Bushfire Assessments must be endorsed by the Responsible Authority. Once endorsed the plan must not be altered unless agreed to in writing by CFA and the Responsible Authority.</p>

### Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Health	No objection (subject to conditions)

## Assessment

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:

- Is the application supported by Planning Policy Framework and Local Planning Policy Framework provisions?
- Is the proposal consistent with development within the Green Wedge and the purposes and decision guidelines of the Rural Conservation Zone?
- Is the bushfire risk appropriately managed?
- 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?

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

The proposal exhibits appropriate responses to certain relevant policies; however, it does not align with all significant policies:

Clause 11.01-1S Settlement, which outlines strategies to protect and conserve sensitive areas contributing to the area's identity and character, emphasizing the need for developments to minimize exposure to natural hazards, including increased risks due to climate change.

Clause 11.01-1R, which focuses on strategies to consolidate new residential development in existing settlements, locations with planned services, and the preservation of green wedge values. These considerations are also reflected in Cardinia's local planning policies at Clause 21.03-4 (Rural township) and Clause 21.03-4 (Rural Residential and Rural Living Development).

Clause 13.02-1S, which requires decision-makers to prioritise the protection of human life above all other policy considerations. The objective of this clause aims to strengthen settlement and community resilience to bushfires through risk-based planning, directing population growth and development to low-risk areas, and ensuring access to safer areas during bushfires. This objective is repeated in Clause 21.02-4 (bushfire management) within the Local Planning Policy Framework (LPPF), which recognizes the impact of climate change on the shire and the heightened bushfire risk.

Furthermore, Clause 15 (Built Environment) emphasizes planning to promote excellence in the built environment and minimize adverse impacts on both built and natural surroundings. It underscores the need to create urban environments that are safe, healthy, functional, and enjoyable, contributing to a sense of place and cultural identity. Clause 15.01 (Built Environment) elaborates on this, calling for development to be responsive to the surrounding natural features and landscape while avoiding detrimental impacts on the natural and built forms. Clause 15.01-6S (Design for Rural Areas) urges development to respect "valued areas" and rural character.

Clause 16 (Housing) underlines the necessity to provide housing diversity and efficient supporting infrastructure in appropriate locations. Clause 16.01 delves deeper into housing supply, emphasizing the need for diverse, well-serviced residential housing and rural residential development while considering environmental impacts on existing landscape values.

Regarding the Planning Policy Framework, the following points are noted:

- The proposed residential use preserves the natural environment of the surrounding area. The design adapts to the cleared site, using materials and finishes that blend with the rural surroundings, and it ensures on-site wastewater management.
- The proposed dwelling is thoughtfully designed in terms of built form, presenting an attractive design with materials and meet the character of the surrounding area. The dwelling's siting avoids detrimental impacts on natural systems.
- Given the site's location within a state forest with elevated fire risk, intensification should be approached cautiously or even avoided. This is not only for residents' safety but also for the safety of emergency service personnel and others who risk their lives to protect the community. This application cannot effectively handle the broader landscape around the site, which makes it unlikely that the proposed measures will be able to significantly reduce the risk of large-scale landscape bushfires.
- In line with the previous sections of this report concerning bushfire, it is concluded that the proposal introduces an unnecessary risk and is unsuitable for the proposed use and development.

In light of the above, it is determined that the proposal does not adequately align with several policies.

#### **Clause 35.06 - Rural Conservation Zone, Schedule 1**

The use of land for dwelling and the associated building and works both require a planning permission under the Rural Conservation zone. The proposed use of dwelling is not as of right within this zone and must meet the requirements of clause 35.06-3, which are as follows:

- *Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.*
- *The dwelling must be connected to reticulated sewerage if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.*
- *The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire fighting purposes.*
- *The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.*

The purpose of the RCZ is:

- *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.*

Though the proposed use of a dwelling on the subject site meets all the requirements of Clause 35.06-3 and can be considered acceptable in terms of surrounding land uses, it is important to consider that the dwelling is not as of right within this zone and the subject land is for protection and conservation purposes. An assessment against the Decision Guidelines is provided below.

**General Issues:**

This site is located within the green wedge land, and the planning policy for green wedge areas seeks to protect them from inappropriate development while balancing the interests of net community benefit and sustainable development. Under Clause 11.01-1R of the planning scheme, the objectives for Green Wedge areas promote the protection of environmental, landscape, and scenic values and the consolidation of new residential development within existing settlements. This is reinforced through the provisions of Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions.

Similar to the PPF, the local Cardinia planning policies at Clause 21.03-3 (Rural township) aim to limit residential development in the hill's towns unless such development results in significant environmental or community benefits. Clause 21.03-4 (Rural residential and rural living development) identifies the need to plan housing and development appropriately, considering environmental and servicing constraints, and encourages rural residential development within existing urban areas and townships.

Though the site can accommodate the proposed dwelling, given its 11.47 Ha size along with provision of defensible space, effluent area and the site is accessible by a public road where an appropriate driveway can be constructed.

However, It's important to note that the proposed dwelling has no impact on the environmental and landscape qualities of the site and surrounding properties and is compatible with neighbouring land uses within RCZ1.

**Environmental issues**

The proposed dwelling is located in an area currently devoid of vegetation, with no trees requiring removal within the defensible space area or for the construction of the dwelling. The development footprint will not impact any watercourse which runs through the site specifically Diamond Creek which traverses the eastern and western boundaries. There are no direct environmental impacts as a consequence of the use and development. Therefore, it is not considered that the development of the dwelling in this location will adversely impact the environmental values of the site.

**Accommodation issues**

The proposed dwelling has a modest footprint with minimal impact on the site and surrounding agricultural activities, thus preserving any potential future agricultural pursuits of the site and the surrounding agricultural properties.

**Design and siting Issues:**

The necessity to minimise adverse impacts in terms of siting, design, height, bulk, colours, and materials has been met. The dwelling is set back from adjoining properties and complies with the setback requirements of the RCZ1, except for the restriction on works within 100 meters from a waterway, wetlands, or designated floodplain. Nevertheless, as discussed previously, the proposal was referred to Melbourne Water, and conditional consent has been obtained.

The dwelling will be constructed using materials such as masonry, metal, and timber-look cladding, with a Colourbond roof and aluminium window and door frames. The architectural style of the dwelling is considered in harmony with the rural character of the area. The chosen colours and materials are also deemed compatible with the rural character of the area, featuring muted and non-reflective tones. The proposal is designed on stumps, reducing the necessity for extensive earthworks. All things considered, it is believed that the dwelling should not cause any additional visual or material detriment.

The subject site is included in Schedule 1 which has the following conservation values:

*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.*

The primary focus within the zoning of this site is on "protection" and "conservation" rather than anticipating significant changes. Schedule 1 is aimed at preserving the existing rural character, with limited emphasis on rural residential development, unless it aligns with sustainable land management principles.

The proposal effectively aligns with the zone's objective, particularly within the broader context of the entire site, which is to safeguard and preserve the natural environment. However, this does not automatically warrant the granting of a permit. Because, the site is not situated within an existing serviced settlement, and relevant policy considerations, most notably the increased risk of bushfires. Consequently, the proposed use is deemed inappropriate for the location of the subject site.

#### **Clause 42.01 - Environmental Significance Overlay – Schedule 1 (ESO1)**

The ESO encourages the protection of land identified with environmental qualities specific to 'the Northern Hills' region including landscape view lines, maintaining bio-links and vegetation retention to mitigate erosion and preserve the character and ecology of the area.

There is no vegetation impact as all existing vegetation is well separated from the construction and defensible space areas. As the proposal meet all the permit requirements as per clause 42.01-3 given the external colours and material which have low reflectivity index and will blend in well within the landscape, with proposed height of max 6.91 meters above natural ground level and no excavation required for the works proposed.

The proposal does not trigger a planning permit within this overlay and therefore an assessment against this provision is not required.

#### **Clause 44.04 - Land Subject to Inundation Overlay (LSIO)**

The Land Subject to Inundation Overlay (LSIO) identifies areas where a 1 in 100 Year flood or floodplain area determined by a floodplain management authority warrants protection from flood hazards. These measures ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

Though the site is within the LSIO (partly) the proposal is not within the area subjected to flooding and does not trigger a planning permit in this overlay. However, the Application was referred to Melbourne Water, which had no objection subject to conditions.

#### **Clause 44.06 - Bushfire Management Overlay (BMO) 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 specify location, design and construction measures for a single dwelling that reduces the bushfire risk to life and property to an acceptable level.*

Pursuant to Clause 53.02-1 as the site is not within an existing settlement, the provisions at Clause 53.02-4 (Pathway 2) apply.

The applicant has provided assessment against all the requirements of clause 44.06-3, which are discussed in depth under this section of the report, following an assessment against the decision guidelines of clause 53.02-4.5

1. Bushfire Hazard Site Assessment

A Bushfire Hazard Assessment has been submitted by the applicant which sets the dwelling to be 50 meters from the northern (front) property boundary and characterises the classified vegetation and relevant slopes within the 150-metre assessment area as below:

- North - Forest, Upslope / Flat -25
- East - Grassland Downslope 0-5° -10
- South - Grassland Downslope 0-5° -10
- West - Grassland Downslope 0-5° - 10

The assessment of the site conditions characterizes this site as A BAL29 fire risk and recommends a defendable space of 48 meters within the site boundaries.

**Assessment:** As detailed above, the site is a clear parcel of land with no vegetation within the site boundaries and clearly has the capability to achieve the defendable space and construction standard of BAL 29 as recommended by the bushfire consultant.

2. Bushfire Hazard Landscape Assessment

This is a critical assessment for this application as the site falls within Landscape type four. This landscape type poses an extreme risk, allowing fires hours or days to grow and develop before impacting the area. Evacuation options are limited or not available. Therefore, a comprehensive Landscape Assessment of the site is presented below. The factors considered within this assessment are guided by the technical guide, applicant materials, and expert advice received by the council.

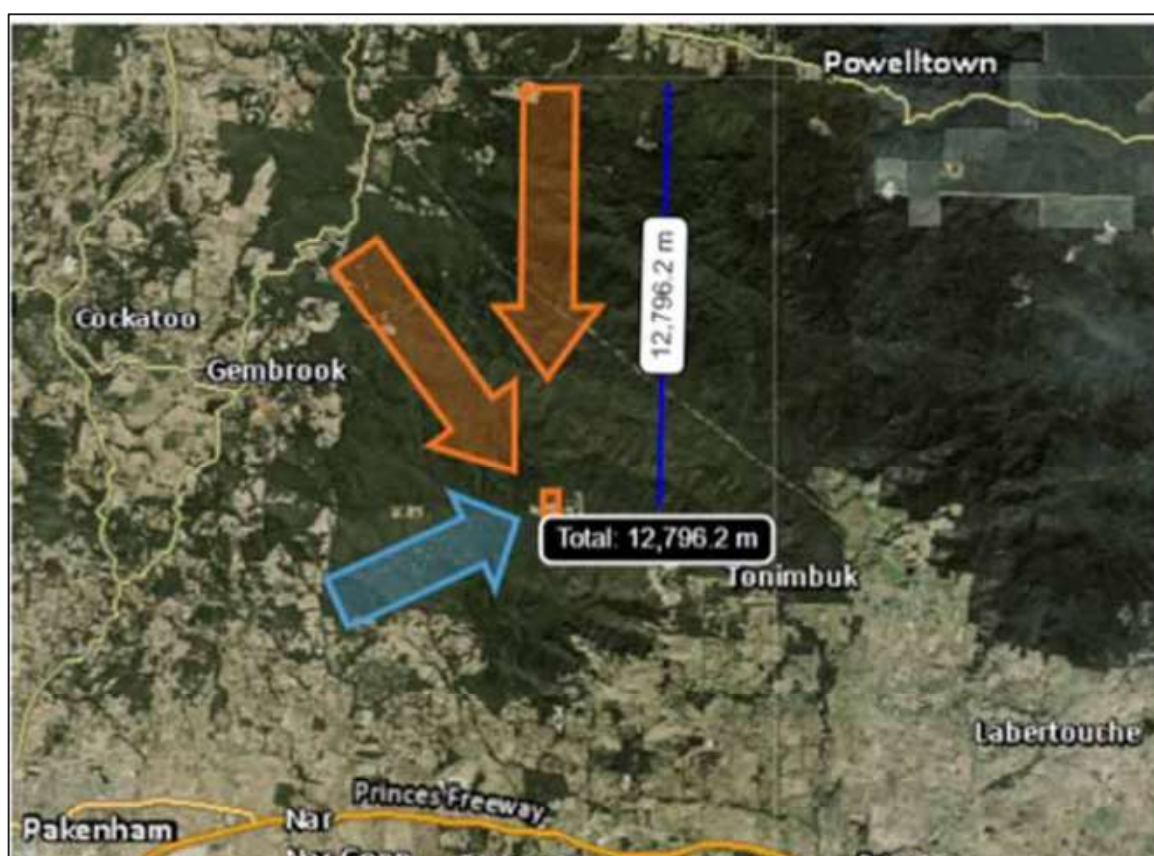


Figure 10: Fire run scenarios (Source: Bushfire risk assessment prepared by Alan March)

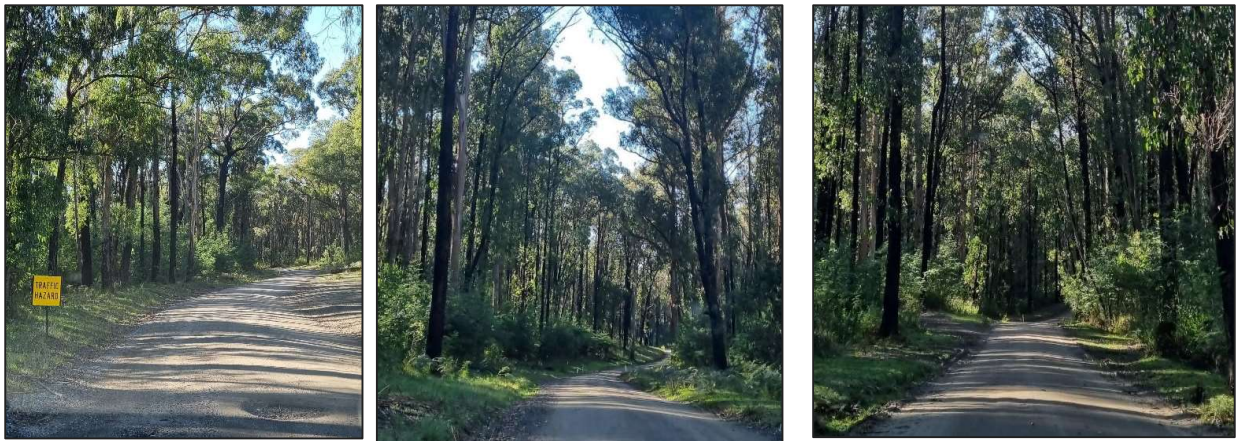
<b>Site context and possible fire runs</b>	<p>The site is surrounded by dense forest in all directions, spanning over 5 kilometers. While the site itself features open pasture and carries a relatively low bushfire risk, it's essential to highlight the high bushfire risk in the surrounding landscape.</p> <p>Situated in a remote location within the Cardinia Shire, nestled within Bunyip State Park, the vegetation surrounding the site is continuous, with limited natural breaks that could help mitigate the progress or intensity of a fire. In certain conditions, as illustrated in Figure 8, there's the potential for fires to travel substantial distances, up to 12 kilometres, towards the property from various directions, particularly from the north, north-west, and south-west. Additionally, during more intense fire seasons, there's an increased risk of ember attacks, which could ignite multiple fires in the vicinity of the site.</p>
<b>Surrounding topography</b>	<p>The broader landscape exhibits diverse topography with hills, steep ridges, and gullies, often containing seasonal streams and rivers. Furthermore, there are numerous small tracks throughout the area, though they are sporadic and vary in quality. These tracks are typically challenging to navigate and are best suited for specialised off-road vehicles.</p>
<b>Emergency Accessway</b>	<p>The primary accessway to the site is from Gembrook-Tonimbuk Road. It's worth noting that most of the roads within Bunyip Park are unsealed and have a trafficable width ranging from 4 to 6 meters. These roads often wind their way around creeks that feed into the Diamond Creek. At these creek crossings, the road narrows significantly, frequently featuring drains and culverts at its edges.</p>

	Generally, these crossing points can accommodate only one vehicle at a time.
<b>Neighbourhood Safer Places (NSP)</b>	<p>The nearest Country Fire Authority (CFA) Fire Station to the location is located in Gembrook, precisely at 22 Innes Road, approximately 16.8 kilometres away by road. It's important to recognize that, due to the prevailing fire risk coming from the north, traveling north to reach the Gembrook CFA station is associated with a high risk and may be unfeasible in emergency situations. In the surrounding region, several Neighbourhood Safer Places (NSPs) are available, including those in Longwarry and Bunyip, which are situated at a distance of more than 18-20 kilometres from the subject site.</p> <p>It is noted that when evaluating landscape risks, the proximity of the subject site to these NSPs should not be the exclusive or primary factor to consider.</p>

The attributes of the surrounding landscape as abovementioned are depicted by Figures 8-17 which demonstrates the access and surrounding landscape characteristics.



*Figures 11 and 12 show the subject site (Damaged outbuilding in 2019 fires )and North from the site entrance to forest. (Source: Bushfire risk assessment prepared by Alan March).*



Figures 13, 14 and 15 – East of Gembrook on Gembrook-Tonimbuk Road to Subject Site (Burn scars and regrowth on trees from 2019 fires) (Source: council planner site visit).

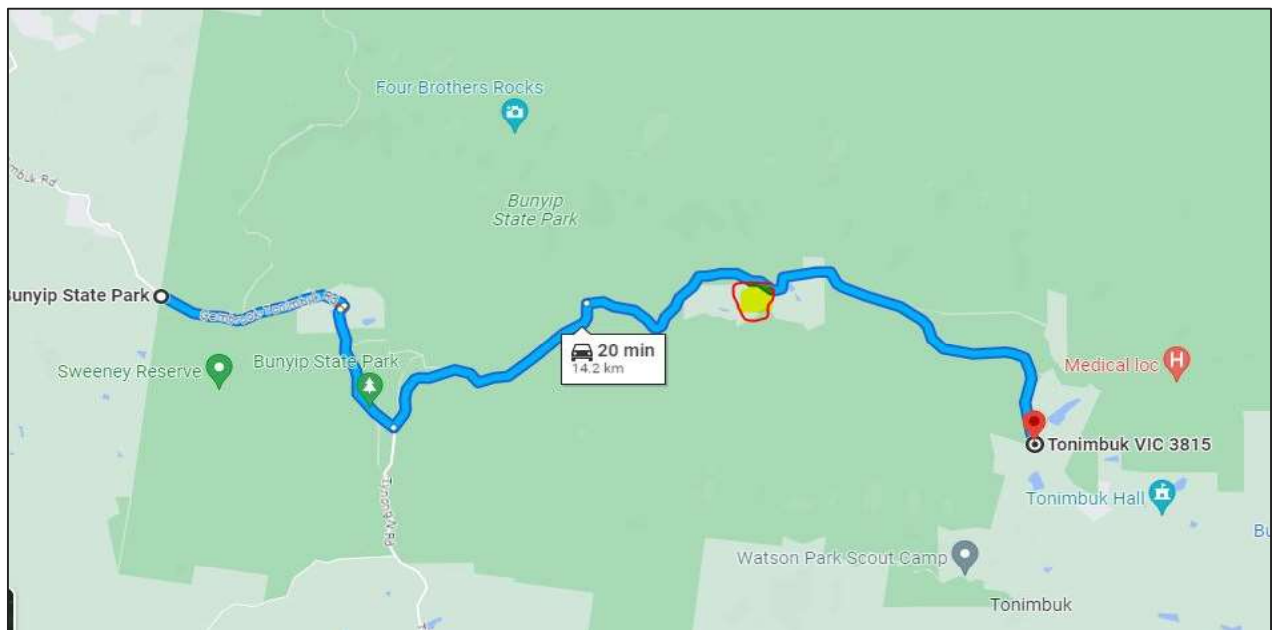


Figure 14: Drive to and from the Gembrook-Tonimbuk road with reference to the site ( Source: google maps)



*Figures 16, 17 and 18 - Heading east from subject site from Gembrook-Tonimbuk Road. ( Trafficable road 4.5 metres wide) (Source: council planner site visit ).*

Following a comprehensive evaluation of the site's context, which includes factors including access, the nature of the surrounding landscape, and historical events, it becomes evident that the primary bushfire risk arises from the extensive forested areas surrounding the land. This risk is further amplified by the absence of nearby low-fuel areas where people could seek refuge should on-site bushfire protection measures prove inadequate.

Furthermore, during periods of significant fire weather conditions, the potential for extreme ember attacks poses a substantial threat to any development on the site. Having regard to the site context, a fire could approach from any direction, significantly increasing the risk to structures. Additionally, under such conditions, spot fires in the surrounding area can ignite well before the primary fire front reaches the location.

These fundamental risks cannot be mitigated or addressed through the current application as they are external to the site. This critical assessment highlights the site's vulnerability to bushfire events and the inherent challenges associated with ensuring the safety of structures and residents in such a high-risk environment.

### 3. Bushfire Management Statement

A Bushfire Management Statement was submitted with the application, given the site is not within an established residential area, clause 53.02-4 applies to the subject site, an assessment of the following is provided as per the flowing:

#### 53.02-4.1 Landscape, siting, and design objectives

##### **AM 2.1**

<b>AM 2.2</b>	The applicant, in their Bushfire Management Statement, has indicated that they can effectively reduce the bushfire risk to the development by carefully managing the land to minimise flammable materials, thus achieving low fuel levels around the site. Additionally, the site lacks vegetation, further reducing the speed and intensity of an approaching fire. The proposed development is strategically situated to maximize its distance from hazardous vegetation, maintaining a sufficient separation to meet the BAL 29 defendable space requirements. The development is also designed to provide convenient access to the main road, Gembrook-Tonimbuk Road, in full compliance with BMO (Bushfire Management Overlay) requirements for emergency vehicles.
<b>AM 2.3</b>	

However, Council holds a different perspective regarding the management of bushfire threats arising from the broader landscape, asserting that the requirements of AM 2.1 have not been met. The landscape in this area is categorised as being at an extremely high bushfire risk due to continuous fuel sources, challenging terrain, a history of fires, and difficulties in terms of isolation and access. While the proposed on-site measures related to siting, design, and access align with the requirements for addressing local bushfire risks, including AM 2.2 and AM 2.3 in Clause 53.02-4.1, the proposal falls short of achieving the objective that *development is appropriate having regard to the nature of the bushfire risk arising from the surrounding landscape*.

#### 53.02-4.2 Defendable space and construction objective

<b>AM 3.1</b>	The proposal meets the requirement for defendable space, as specified in Table 2 (column A), which requires 48 meters of defendable space within the site boundaries. This exceeds the standard set out in Table 2. The building will be constructed to the BAL 29 standard in compliance with the defendable space requirements. The applicants propose a defendable space that exceeds that required for the BAL 12.5 construction standard, using the more generous BAL 29 defendable space prescribed in Table 2 to Clause 53.02-5. It is suggested that this may provide some resilience to local-scale bushfire exposure.
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However, compliance with AM 3.1 (providing defendable space according to Table 2) will not satisfy the objective of Clause 53.02-4.2 because the proposed defendable space and construction standard are not capable of addressing the bushfire exposure of potential extreme landscape magnitude in this region to an acceptable level.

#### 53.02-4.3 Water supply and access objectives

<b>AM 4.1</b>	The proposal includes a 10,000-litre water supply with appropriate fittings and access for fire services, as specified in Table 4. The proposed vehicle access complies with Table 5.
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#### Assessment under the relevant Decision Guidelines of Clause 53.02-4.

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider:

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

The Clause 13.02-1S (Bushfire applies to all planning and decision making under the Planning and Environment Act 1987 relating to land that is:

- *Within a designated bushfire prone area.*
- *Subject to a Bushfire Management Overlay; or*
- *Proposed to be used or developed in a way that may create a bushfire hazard.*

The site is situated within a designated bushfire-prone area and is additionally affected by the Bushfire Management Overlay. The area directly experienced the impacts of the 2019 Bushfires. The applicant has diligently submitted comprehensive bushfire protection measures to prioritise the protection of human life and reduce the vulnerability of the community to bushfire risk. However, as previously discussed, whilst these on-site measures are worthy in addressing the immediate bushfire risk, the broader landscape beyond the site's boundaries introduces a level of risk that is challenging to mitigate, and it falls short of ensuring that the proposed development can effectively protect human life.

As a result, Council remains unsatisfied with- the applicant's submission that the proposal aligns with this objective or strategy for several compelling reasons:

- The area is inherently characterised by a very high bushfire risk, primarily due to the extensive forested landscape and the mountainous terrain that extends in all directions for at least 6 kilometers. Despite the applicant's assertions and the independent assessments provided by bushfire experts, it is evident that the subject land is not located in a low-risk area. Existing policy guidance does not support population growth and development in high bushfire risk areas such as the subject land.
- Access to the nearest township in Gembrook heavily relies on a gravel road that meanders through densely forested regions, often featuring steep gullies on either side in certain sections. Under favourable conditions, it takes approximately 25 minutes to reach Gembrook via this road. However, during a bushfire, this route could become hazardous due to reduced visibility caused by smoke and other vehicles on the road. Travel times may significantly increase, and the road could be obstructed by fallen trees. While the applicant suggests that Gembrook serves as the nearest Neighbourhood Safer Place (NSP) at 16 kilometres to the north-west of the subject land, the council is concerned that evacuation options are limited, and access to a place of relative safety where lives can be better protected from the effects of a bushfire remains uncertain.

This PPF is also considered as key issues in Cardinia's local policies at clause 21.01-3, which prioritise the *protection of life and property in terms of flooding and bushfire*, and clause 21.02-4 (Bushfire management) where the key issues within the shire in relation to Bushfire management are:

- *to Recognising that climate change will increase the risk from bushfires.*
- *Prioritising human life over all other policy considerations.*
- *Directing new development to low-risk locations.*
- *Where new development is permitted in high-risk areas, safe access is provided.*
- *Ensuring that any further strategic work has regard to the significant bushfire risk faced by many parts of the Shire, including the development of township strategies and structure plans.*

- *Ensuring that any development in bushfire risk areas can implement bushfire protection without unacceptable biodiversity impacts.*

With regards to the proposed development, it is evident that the objectives outlined in the LPPF are unattainable for the subject site. The proposed new use is unable to adequately prioritise human life in light of increased bushfire risk. Consequently, it is necessary to redirect this development to other areas within the municipality where such risks can be minimised, aligning with the PPF and LPPF objectives, specifically in terms of potential risk to life and property. This also aligns with the balanced approach needed in the zone, as assessed earlier. Given the ample opportunities for land use and development in the Cardinia municipality, it is not deemed appropriate for the subject site to justify or quantify 'acceptable' levels of risk for a dwelling.

- *The bushfire hazard landscape assessment, the bushfire hazard site assessment and the bushfire management statement submitted with the application.*

This has been discussed above in greater depth and the conclusion drawn from above discussion is though the applicant has provided response to each criterion and the proposal meets the Bushfire protection objective to an extent, however it is bushfire hazard from wider landscape which cannot be mitigated for this site and location from the proposed measures.

- *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.*

As discussed previously, while fuel reduction activities have occurred on an ongoing basis, the wider landscape demonstrably remains a high risk one, this is evidenced by historical and recent fires and surrounding house destruction.

- *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.*

While the proposal aligns with, and in some respects exceeds, the criteria outlined in Clause 53.02-4, it falls short of fulfilling the overarching objectives of this clause, especially concerning.

- *Development is appropriate having regard to the nature of the bushfire risk arising from the surrounding landscape.*
- *Whether the risk arising from the broader landscape can be mitigated to an acceptable level or warrants the development not proceeding.*

Additionally, the decision to upgrade construction standards to BAL29 is a common step to mitigate landscape risks, enhancing protection against embers and radiant heat. Whilst Council can consider extra precautions such as private bushfire shelters, sprinkler systems, and advanced construction techniques, in this instance, there is fundamental concern about the site context which overrides any additional bushfire mitigation measures carried out on the site itself.

#### Independent advice sought.

For completeness, Council sought the advice of two independent bushfire consultants, Bushfire Planning (Kevin Hazell) and Alan March. Assessments from both consultants expressed concerns about the proposed use and development of a dwelling on the subject site which is primarily due to the broader bushfire risk associated within the wider landscape and site's isolated location.

The assessment prepared by Bushfire Planning (Kevin Hazell), recommends granting approval subject to specific conditions to enhance bushfire protection through the installation of a private bushfire shelter and implementing construction measures to reinforce the dwelling's resilience to bushfire risk. Whilst this assessment raises concerns with the broader landscape, it has been considered acceptable to increase the mitigation measures within the subject site itself to offset the broader landscape risk (particularly considering the extent of cleared area on the site). Whilst Council accepts the additional mitigation measures on-site exceed the required standards, this assessment does not take into consideration the features of the wider road network, terrain and difficulties vacating the site to a safe location. This outcome essentially relies on the landowner remaining on the subject land in the event of a bushfire.

In contrast, the advice from Alan March recommends refusal due to the broader landscape risk. This assessment is more detailed and takes into account the nature of the broader road network, terrain, extent of fuel and proximity to safe areas. In light of the extreme landscape setting and noting these matters cannot be controlled by the permit applicant, Council's wholesale concerns remain.

#### Previous VCAT decisions

This proposal is akin to VCAT case *XO Network Pty Ltd v South Gippsland SC [2019] VCAT 1789* where the applicant relies upon the Bushfire report, BMP and BEP. For context, approval was sought for the use and development of the land for Group Accommodation and the subject site sits within Landscape Type 3. To summarise, the CFA responded with conditional support for the proposal. The applicant relies on the support of the CFA to demonstrate that the risk from bushfire can be appropriately managed in a manner that reduces the risk to life and property to an acceptable level. The Council considers risk from bushfire originates and develops off-site, beyond the control of the landowner and is unacceptable. However, the decision was affirmed by the member solely on policy grounds, giving priority to protecting human life as outlined in clause 13.02 and the imperative stated in Integrated decision-making under Clause 71.02-3 of the planning scheme, even when the CFA consented to the proposal.

Drawing parallels with the recent VCAT determination, *Miles v Baw Baw SC [2021] VCAT 807*, where the Council's decision to refuse the permit was affirmed due to the bushfire risk from the broader

landscape. For context, approval was sought for the use and development of the land for a Dwelling and the subject site sits within Landscape Type 4. The VCAT member expressed the following reasons:

- *The applicants are aware of the bushfire risk and the measures required under the BMP. However, this may not be the case for future owners and occupiers of the proposed dwelling. Even if the requirements of the BMP were endorsed as part of the permit, I am not persuaded that what is proposed is adequate to ensure the measures proposed in the BMP can be practically maintained in conjunction with the ongoing use of the land, for the following reasons:*
  - a. *The ongoing maintenance of the measures set out in the BMP relies on the awareness and behaviour of future occupants to ensure that the bushfire risk is managed according to the requirements of the BMP;*
  - b. *There is no certainty that future occupants will be aware of the extreme nature of the bushfire risk presented by the broader landscape here, and the measures required to mitigate against this risk in the BMP; and*
- *The removal of vegetation may provide greater separation from the forest hazard, which could achieve some reduction in the bushfire hazard at a local level (although I have no material before me to indicate how much vegetation would be removed). However, I am not persuaded that the protection of human life would be prioritised, and that the resilience of the Aberfeldy community would be strengthened against the extreme risk presented by the broader landscape by mitigation measures carried out on the subject land such as vegetation removal and the provision of a private bushfire shelter. I consider that the proposal is not consistent with the policy at clause 13.02-1S that seeks to plan to strengthen the resilience of settlements and communities and prioritise the protection of human life for the following reasons:*
  - a. *The applicants have no ability to manage the broader landscape surrounding the subject land. It is this broader landscape that presents an extreme bushfire risk to the subject land and the Aberfeldy community.*
  - b. *The proposal does not prioritise the protection of human life because it does not direct development into a low-risk location. Instead, it directs development to a location of extreme bushfire risk where bushfire behaviour has the potential to exceed the design parameters within AS 3959-2009, according to the CFA and Ms Smith (as stated in the Bushfire Report); and*
  - c. *The availability of, and safe access to an area where human life can be better protected from the effects of a bushfire is uncertain because the sole means of access to the subject land along Walhalla Road may be difficult to traverse (or obstructed) in a bushfire.*

While each site and proposal is required to be evaluated on its own merits, the policy considerations related to bushfire planning are notably similar for the subject site. Consequently, the proposal fails to prioritise human life over other policy considerations, making it an inappropriate response to the Cardinia Planning Scheme.

#### Clause 65 - Decision Guidelines

The application has been assessed against the Clause 65 – Decision Guidelines and the strategies of the relevant state and local policies, applicable zones, overlays, and the particular and general provisions of the Cardinia Planning Scheme.

Based on this assessment, the proposal is inconsistent with the overall strategy for protecting human life outlined in clause 13.02-1S and the principles for integrated decision-making in clause 71.02-3, which prioritise human life over all other policy considerations.

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## Conclusion

Whilst there are aspects of the proposal that Council considers acceptable, the primary concern relates to the broader site context and extreme bushfire risk which cannot be mitigated. Although Council can consider additional bushfire mitigation measures on-site which exceed the standards, this does not offset the broader extreme bushfire risk in this locality.

As the Cardinia Planning Scheme directs the Responsible Authority to prioritise the protection of human life from bushfire above all planning considerations, it is recommended that the application be refused.

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## Recommendation



### Refusal to Grant a Planning Permit

That Council having caused notice of Planning Application No. T220563 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to Refuse to Grant a Permit in respect of the land known and described as L1 TP253657, 1200 Gembrook-Tonimbuk Road Tonimbuk, for the use and development of land for dwelling under the following grounds:

1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that prioritise protection of human life over all other policy considerations, specifically:
  - Clause 13.02-1S Bushfire Planning
  - Clause 21.02-4 Bushfire management
2. The proposal does not respond to the purpose or decision guidelines of Clause 44.06 Bushfire Management Overlay (BMO) and Clause 53.02 Bushfire Planning.
3. The proposal does not appropriately respond to several visions, strategies and objectives of Clause 11 Settlement Clause 13 Environmental Risks and Amenity, Clause 21.03 Settlement and Housing and Clause 21.07 Local Areas – Hills Region.
4. The proposal does not represent a balanced planning outcome.

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<b>Planner Responsible:</b>	Tanvi Rawat	<b>Team Leader / Coordinator</b>	Frances Stipkovic
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Signature:		Signature:	
Date:	23/10/2023	Date:	3 November 2023

Kevin Hazell

BUSHFIRE PLANNING

9 JUNE 2023

Frances Stipkovic  
Coordinator Statutory Planning  
20 Siding Avenue  
Officer VIC 3809

Dear Frances,

**1200 GEMBROOK-TONIMBUK ROAD, TONIMBUK**

I write in relation to the planning application at 1200 Gembrook-Tonimbuk Road, Tonimbuk to develop the land with a dwelling. You have requested advice on the merits of the application against *c44.06 Bushfire Management Overlay* and *c53.02 Bushfire Planning*.

The land is within a Rural Conservation Zone Schedule 1 (RCZ1) and is affected by the Bushfire Management Overlay (BMO), Environmental Significance Overlay (ESO) and Land Subject to Inundation Overlay (LSIO). The land is largely cleared but is surrounded by forests contained within a Public Conservation and Resource Zone (PCRZ).

A planning permit is required under several provisions of the planning scheme. This advice pertains to the permit requirement pursuant to clause 44.06-2 to construct a building or construct or carry out works for dwelling.

The Country Fire Authority (CFA) has provided conditional consent to the proposal (17 March 2023). This arose following a CFA request for further information (RFI) where the CFA sought a better response to the landscape risk. Following this a revised Bushfire Management Statement (BMS) was prepared (Jan 2023).

You have sought our advice on how the wider site context, including the land being nestled within the Bunyip State Park, impacts on whether a dwelling should be approved on the land.

Kevin Hazell

BUSHFIRE PLANNING

**Discussion**

*c53.02 Bushfire Planning* provides the framework for the decision. It sets out objectives, approved measures and alternative measures that an applicant uses to assess bushfire risk, apply bushfire protection measures and prepare a bushfire management plan (BMP).

In the ordinary operation of *c53.02*, an application applies the approved measures and usually gets to an acceptable outcome. However, as the bushfire risk increases, strengthened responses may be needed. This has already occurred in the application, where in response to the CFA RFI the bushfire attack level was increased to BAL29.

*c13.02-1S Bushfire Planning* and discretionary decision making under *c53.02* becomes more important as the risk increase. This is because acceptable life safety outcomes may not always arise despite bushfire protection measures in *c53.02* being applied. This invites the decision maker to consider further strengthening bushfire protection measures or refusing the application based on locational factors.

The (amended) application has provided Column A defendable space, BAL29 construction and water supply & site access. The defendable space has been made even on all sides using the higher risk 'forest' aspect (48m). The BAL29 provided enhanced ember protection than the BAL12.5 originally proposed. The approach to defendable space and the BAL29 based on the landscape bushfire risk is a typical and needed response in higher risk locations such as this.

It is not disputed in the application, or by inference the CFA, that this is a high risk location. The assessed Landscape Type 4 in the BMS confirms this. It appears the land was affected by the 2019 Bunyip bushfires and that nearby dwellings were destroyed in that event. The key question for the Council is **whether the application has *done enough* in response to the landscape bushfire risk.**

The bushfire risk largely arises from the extent of forests on all sides of the land and the lack of access to a low fuel area in the neighbourhood where shelter could be sought if site-based bushfire protection measures fail. Neither of these is capable of being changed in the application.

Kevin Hazell

BUSHFIRE PLANNING

The proposed strengthen bushfire protection measures

A large area of defendable space (Column A) is provided meaning flame contact and radiant heat from the fire front is reduced to manageable levels. At a planning scheme decision level the extent of defendable space is reasonable. Efforts to further extend defendable space return diminishing life-safety outcomes and can create more problems (for example, moving the dwelling deeper into the land or creating an even larger area for management that is not practical to actually deliver throughout the bushfire season).

The residual risk is from ember attack onto the dwelling and into the defendable space, threatening the dwelling and creating localised fires. Most houses are destroyed by ember attack in bushfires. During the passage of a bushfire, sheltering on the land will be fraught. Despite the BAL29, there is no guarantee that the dwelling would survive the passage of a bushfire under likely bushfire conditions. The application should reasonably contemplate that this is a possible outcome.

Weight accorded to the CFA advice

Significant weight should be afforded to the CFA advice, although the CFA has not provided any explanation of its risk conclusions (which is not required to be provided). This could have been of assistance to the Council and sometimes forms part of the CFA referral responses.

*c13.02-1S Bushfire Planning* identifies that a key element of a risk assessment is to:

*Consult [...] with [...] the relevant fire authority early in the process to receive their recommendations and implement appropriate bushfire protection measures.*

Having regard to the CFA referral response, it would be reasonable to conclude that the land **can be made safe enough for a dwelling to proceed**. This almost entirely arises from the area of cleared land meaning a large area of defendable space can be provided.

Kevin Hazell

BUSHFIRE PLANNING

Can more protection be provided?

Increasing the construction standard to a BAL29 as proposed is a typical response to landscape risk as it draws in additional ember protection and radiant heat protection in dwelling construction.

However, failure of the dwelling even at BAL29 is reasonably contemplated in this bushfire landscape.

Key elements in *c13.02-1S Bushfire Planning* reinforce why locational factors are important in providing passive mitigation that support life safety:

- *c13.02-1S Bushfire Planning* seeks a location in easy reach that provides better protection for life from the harmful effects of bushfire. This is not available to the land.
- *c13.02-1S Bushfire Planning* seeks a response to the landscape risk based on the likely bushfire behaviour it will produce at a landscape [...] scale, including the potential for neighbourhood-scale destruction. Destruction of the dwelling is reasonable contemplated on this land.
- *c13.02-1S Bushfire Planning* seeks to direct development to low risk locations, which the land is not.

Column A defensible space and a BAL29, which comprise the 'strengthened' bushfire protection measures of the application, are not sufficient to overcome the policy considerations and policy deficiencies of the location of the land. Additional measures should be considered.

Private bushfire shelter

A private bushfire shelter (a Class 10c building within the meaning of the Building Regulations 2006) can be constructed on the land. The CFA website describe a private bushfire shelter as follows:

- *Purpose built structure, for private use intended to provide temporary shelter for people from a bushfire event; protection from flames, radiant heat and smoke.*
- *A private shelter may form part of a household's 'back up' plan if the household's primary bushfire plan has failed or is unable to be implemented.*
  - *It may be too late to safely leave the area, or*
  - *It is unlikely that you will be able to safely protect your home from a bushfire.*

Kevin Hazell

BUSHFIRE PLANNING

The above is highly applicable to the land where the failure of the dwelling is reasonably contemplated and there is no shelter option in the neighbourhood. A private bushfire shelter would provide another option if the dwelling fails. We consider this is necessary to overcome the locational disadvantages of the land and to better response to the intent of *c13.02-1S Bushfire Planning*.

*Applying the Bushfire Hazard Landscape Assessment in a Bushfire Management Overlay*, which is the CFA guidance on responding to landscape risk, identifies that a private bushfire shelter may be 'considered' in response to landscape risks.

#### Other ways to strengthen bushfire protection

There are other ways that on-site protection could be enhanced, including through a sprinkler system on the dwelling and enhanced construction techniques which would seek to minimise the potential for the dwelling to fail (for example, from extreme winds). Whilst these could be investigated further, the private bushfire shelter can be critical element that makes the proposal acceptable as it enables life-safety to be decoupled from the structural survivability of the dwelling, creating an independent layer of resilience.

#### **Conclusion**

Decision making under *c13.02-1S Bushfire Planning* and discretionary decision making under *c53.02* becomes more important as the bushfire risk increases.

The land benefits from a cleared area where a large area of defensible space can be provided. Without this, an application would be reasonably refused in this location. The strengthened bushfire protection measure of a BAL29 is advantageous, as is the CFA referral response which does not object to a planning permit being granted.

Strengthened bushfire protection in the form of a private bushfire shelter would be a proportionate and necessary response to the landscape risk and the locational deficiencies of the land. This includes being exposed to extreme bushfire behaviour and not having access to shelter in the neighbourhood. Failure of the dwelling is reasonably contemplated in the likely bushfire, so providing another option is important.

Kevin Hazell

BUSHFIRE PLANNING

Where a private bushfire shelter was included in the planning permit, we consider that on balance a planning permit could issue.

The Council could secure this enhanced protection measure by a permit condition:

*A dwelling constructed in accordance with this planning permit must not be occupied until a private bushfire shelter (a Class10c building within the meaning of the Building Regulations 2006) is:*

- *Constructed on the same land as the dwelling.*
- *Available for use by the occupants of the dwelling at all times.*
- *Maintained in accordance with the requirements of the building permit issued for that private bushfire shelter.*

The Council could also advise the applicant that it is minded not to grant a planning permit without further strengthened bushfire protection measures, inviting the applicant to respond with their own views on our advice.

**Next steps**

Please contact me if you require any further information or clarification.

Yours sincerely,



Kevin Hazell  
**DIRECTOR**

# Bushfire Planning Risk Assessment

Application T220563 Cardinia Shire Council  
1200 Gembrook-Tonimbuk Road Tonimbuk 3815.

Alan March  
11 August 2023

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## EXECUTIVE SUMMARY

This report assesses the bushfire risks associated with the proposed use and development of land relating to application T220563 Cardinia Shire Council at 1200 Gembrook-Tonimbuk Road Tonimbuk 3815.

The proposal is for a new dwelling to be constructed on largely vacant, cleared farming land. A previously burnt structure is located at the entrance to the property. The site is approximately 16km to the East-South-East of Gembrook, within the Bunyip State Park.

Under the provisions of the Cardinia Planning Scheme the land is affected by the following:

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

This assessment deals with the bushfire risks and applies the relevant Due to their minimal impact on the assessment being made, the provisions of the ESO and LSIO have been largely put aside for the purposes of this assessment.

***It is recommended that the proposal be refused for the following reasons.***

While the proposal meets the basic criteria for defensible space, access, water and Bushfire Attack Level, it does not meet the objectives for wider landscape risk.

The subject site is within Bunyip State Park, approximately 16km to the east of Gembrook. There is a single road heading east to Gembrook or west to Tonimbuk from the site.

The access road has many narrow points and turns and is surrounded by forest.

The site and surrounds have an extensive history of wildfires, despite fuel reduction measures.

Considerations of likely fire scenarios in the context of the site's fire history suggests that is appropriate to assume that any future occupants would be likely to be exposed to risks associated with wildfire, and to have to leave the site or shelter in place during a fire at some time in the future.

The criteria and decision criteria of the Cardinia Planning Scheme:

- require that human life be prioritised over all other considerations.
- requires that wider landscape risk and likely fire scenarios be taken into account.
- recognises that bushfire risk is an ongoing issue in the Municipality, and that climate change is likely to make this more severe.
- discourages new development in high-risk and remote locations, such as the subject site.
- discourages the creation of new risk.
- facilitates merit-based assessment and does not assume a permit will issue simply because it can.

## **INTRODUCTION & SCOPE**

This report assesses the bushfire risks associated with the proposed use and development of land relating to application T220563 Cardinia Shire Council at 1200 Gembrook-Tonimbuk Road Tonimbuk 3815.

I understand from the information supplied that, during the process of the application to date referrals have been made to relevant authorities, further information has been requested, and that amended drawings have been submitted. These matters have been taken into consideration in this appraisal. The assessment provided relates to the latest iteration of the proposal, summarised in the next section.

To prepare this assessment a site visit was undertaken, including roads and surrounds as relevant. Pertinent parts of the Cardinia Planning Scheme and other provisions, guides, supporting information and incorporated documents have been referred to as appropriate.

## **EXPERTISE, EXPERIENCE AND QUALIFICATIONS**

This assessment was prepared by Dr Alan March, a specialist in Bushfire and Disaster Risk Reduction. His qualifications and expertise include the following.

BA (dist) Urban and Regional Planning (Curtin University)  
MTP Town and Country Planning (Newcastle upon Tyne)  
PhD Urban Planning (Melbourne University)

Alan March is Professor of Urban Planning and Disaster Risk Reduction. Dr March is a corporate member of the Planning Institute of Australia has practised as an Urban Planner since 1992 in a wide range of private and public sector roles. These include statutory, strategic and advisory settings in Australia and overseas. He has also researched and taught urban planning and bushfire risk reduction since 2002. He has worked for or consulted to many agencies and institutes relevant to the subject of the current report. These include Emergency Management Australia, Australian Institute for Disaster Resilience, Bushfire Natural Hazards Cooperative Research Centre, Natural Hazards Research Australia, Resilience NSW, Emergency Management Victoria, Fire Protection Association Australia, and numerous local government authorities.

Alan was co-founder of the post graduate Bushfire Management qualifications in Victoria in 2012, accredited Fire Protection Association Australia (BPAD Scheme), working collaboratively with state government planning, building and fire agencies. He is the author of the national policy document Land Use Planning for Disaster Resilient Communities Handbook (2020), prepared with wide cross-sectoral consultation and published by Australian Institute of Disaster Resilience. Alan continues to research and teach Statutory Planning and Planning Law, and Bushfire Urban Planning to Masters students and practitioners.

Dr March has published over 100 peer reviewed research articles on disaster risk reduction, mainly focussing on bushfire and urban planning. He co-edited the book Urban Planning for Disaster Recovery (2017). He was an invited witness in the Royal Commission into National Natural Disaster Arrangements following the 2019-2020 Bushfires and gave evidence relating to urban planning and bushfire. He is a co-author of the Online Guide for Home Bushfire Resilience published by CSIRO in collaboration with The University of Melbourne and the Victorian Country Fire Authority funded by

the Australian Government in partnership with the States and Territories under the National Partnership Agreement for National Disaster Resilience.

### THE PROPOSAL

The proposal is for a new dwelling to be constructed on largely vacant, cleared farming land at 1200 Gembrook-Tonimbuk Road Tonimbuk VIC 3815. A previously burnt and now derelict structure is located at the entrance to the property. The site is approximately 16km to the East-South-East of Gembrook, within the Bunyip State Park, as shown in Figure 1 and Figure 2.

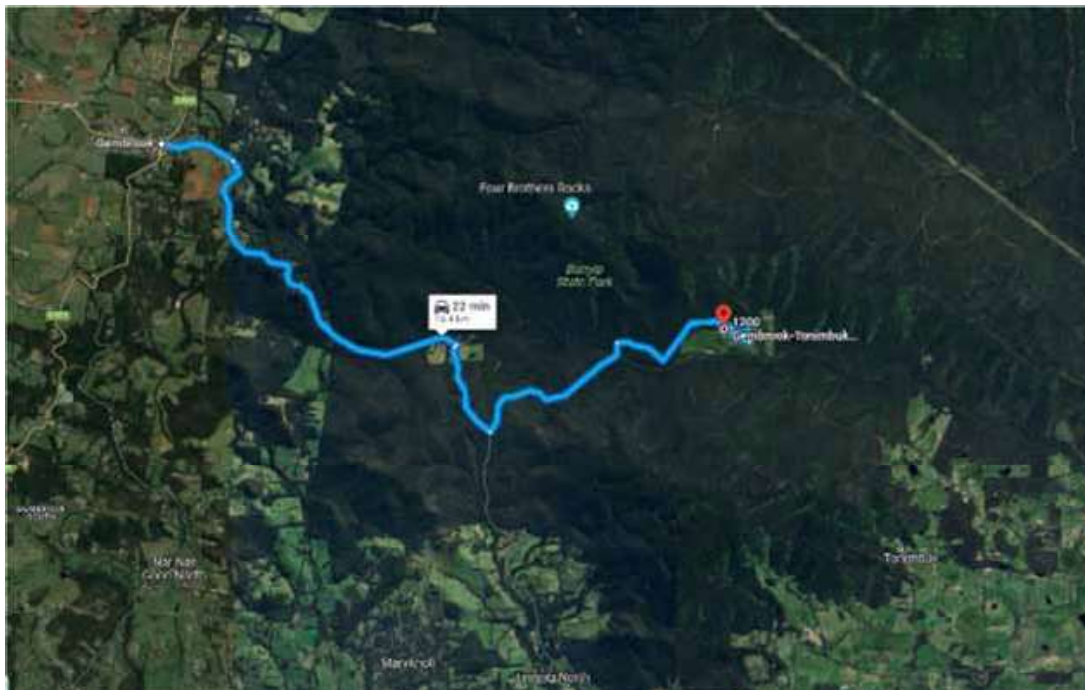


Figure 1 – Location of proposed dwelling at 1200 Gembrook-Tonimbuk Road Tonimbuk. Source: Google Maps.



Figure 2 - 1200 Gembrook-Tonimbuk Road Tonimbuk. Source: VicPlan.

The site is accessed from the Gembrook-Tonimbuk Road to its north. The site slopes downwards to the south towards Diamond Creek. Cleared agricultural land is located to the site's east and west. Forest is located to the north and south of the land. Diamond Creek runs along the southern boundary of the land. The land is currently used primarily for grazing purposes.

The proposed dwelling is a single storey structure comprising a four-bedroom home built on stumps and bearers, with a slab forming the floor of the double garage. The materials proposed are Colorbond roofing, brick veneer walls, wooden decks to the north and south, and Colorbond window frames.

The dwelling is proposed to be located 50 metres at its closest point from the northern boundary of the land. There is an existing driveway providing access to the burnt structure near to the northern boundary, and a driveway running from the entrance some distance to the south along the approximate middle of the land.

The drawings I assessed include reference to BAL 29 building standards as per AS3969-2018 and a defendable space area of 48m. I understand that this is a new BAL rating different to that initially submitted and that this was decided upon after advice and discussion with the CFA during, and as part of, the referral process. I note that the changes were accompanied by a s57A form dated 13 February 2023.



Figure 3 – Subject Site at 1200 Gembrook-Tonimbuk Road Tonimbuk. Looking south from northern entrance.

#### **SUMMARY OF RELEVANT PERMIT TRIGGERS AND ASSESSMENT CRITERIA**

The land is within the Cardinia Planning Scheme and is specifically affected by the:

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

Due to their minimal impact on the assessment being made, the provisions of the ESO and LSIO have been largely put aside for the purposes of this assessment.

#### **Rural Conservation Zone 35.06**

In the RCZ, a permit is required use for a Dwelling. Additionally, use requires compliance with 35.06-2, including requirements for access and reticulated services. A permit is also required for Buildings and Works according to 35.06-5

In the RCZ, Clause 35.06-6 Decision Guidelines require consideration of a number of matters, including:

- The decision guidelines in Clause 65
- The Municipal Planning Strategy and the Planning Policy Framework.

### **Bushfire Management Overlay 44.06**

In the BMO, a permit is required for buildings and works associated with a Dwelling (included within Accommodation) in accordance with the provisions of 44.06-2.

Additionally, Clause 44.06 triggers other considerations and requirements in the planning scheme. These include the following.

44.06-3 Application requirements including a Bushfire Hazard Site Assessment; Bushfire Hazard Landscape Assessment; and a Bushfire Management Statement.

44.06-4 Assessment according to relevant parts of Clause 53.02

44.06-5 Mandatory Conditions for buildings and works

44.06-6 Referrals

44.06-8 Decision Guidelines

### **Other Provisions of the Planning Scheme**

The requirement for a permit and subsequent decision criteria include reference to considerations other provisions of the planning scheme. Notably, there are requirements in a number of relevant provisions (referred to in the assessment below) to have consideration for:

- The decision guidelines in Clause 65
- The Municipal Planning Strategy and the Planning Policy Framework
- The purpose of the zone, overlay or other provisions.

### **BUSHFIRE RISK ASSESSMENT**

The following sections of this report assess bushfire risks according to relevant provisions of the planning scheme. In doing this, the planning application materials provided were considered.

#### **BMO 44.06-3 Application requirements: Bushfire Hazard Site Assessment**

At Clause 44.06-3 an application requirement is:

A bushfire hazard site assessment, including a plan that describes the bushfire hazard within 150 metres of the proposed development. The description of the hazard must be prepared in accordance with Sections 2.2.3 to 2.2.5 of AS3959:2018 Construction of buildings in bushfire prone areas (Standards Australia) excluding paragraph (a) of section 2.2.3.2. Photographs or other techniques may be used to assist in describing the bushfire hazard.

The Bushfire Hazard Site Assessment submitted with the application, assuming the dwelling to be located 50 metres south of the norther boundary, characterises the classified vegetation and relevant slopes within the stipulated 150 metre assessment area as below:

North	Forest, Upslope / Flat
East	Grassland Downslope 0-5°
South	Grassland Downslope 0-5°
West	Grassland Downslope 0-5°

*Assessment – I independently arrived at the same conclusions as the submission document in respect of the classified vegetation and slope.*

#### **BMO 44.06-3 Application Requirements: Bushfire Hazard Landscape Assessment**

At Clause 44.06-3 an application requirement is:

A bushfire hazard landscape assessment including a plan that describes the bushfire hazard of the general locality more than 150 metres from the site. Photographs or other techniques may be used to assist in describing the bushfire hazard.

I have read and considered the Bushfire Landscape Assessment submitted with the application. I also made my own assessment, using the criteria set out in Clause 44.06.

While I am in agreement with many aspects of the submitted Bushfire Landscape Assessment, I consider that a more comprehensive approach is appropriate for this site. In doing so, I have referred to relevant parts of the Planning Scheme and other documents, such as the Technical Guide (Planning Permit Applications Bushfire Management Overlay).

#### *Characterisation of Landscape*

The application is not within an existing settlement and accordingly is assessed according to the provisions of Clause 53.02-4 (Pathway 2). A key aspect of this assessment is recognition of the impacts of the wider landscape upon any proposal.

The Technical Guide indicates that is an application falls within Pathway 2, a Bushfire Hazard Landscape Assessment be undertaken. Factors to be included are (inter alia):

- extent and continuity of vegetation
  - topography
  - the potential fire run and ... area that is likely to be impacted by the fire.
  - the location and exposure of the ... isolated rural area to bushfire
  - the extent of neighbourhood-scale damage the bushfire may produce
- (Technical Guide: 9, 10).

In more complex locations, the Technical Guide indicates that additional information is necessary, depending on the location and type of development proposed:

- describe the likely bushfire scenarios
  - consider and note any state, regional or local bushfire management and prevention actions occurring around the site that is relevant to understanding the bushfire hazard and the level of risk to the site
  - assess nearby locations in urban, township or other areas where protection can be provided from the impact of extreme bushfire behaviour to determine:
    - if they are managed in a minimum fuel condition and there is sufficient distance or shielding to protect people from direct flame contact or harmful levels of radiant heat
    - access involves distances
    - the risks that may arise on the journey from the subject site to the place of greater protection, for example, from roadside vegetation or congestion
  - provide additional information on any matter relevant.
- (Technical Guide: 12).

As shown in Figure 4 below, the site is located within the Bunyip State Park. Bunyip State Park consists of 16, 600 hectares of wet forest and heathland on the foothills of the Great Dividing Range (Bunyip State Park Management Plan).



**Figure 4 – Location of Subject Site within Bunyip State Park. (Source Google Maps).**

The majority of vegetation within the bounds of Bunyip State Park is Forest. The site is located in a relatively remote location within the park. As shown in Figure 5, the vegetation is highly continuous with limited breaks that would modify fire progress or intensity. Accordingly, there is the possibility for long fire runs to the property from a number of directions, most notably from the North, North-West and South-West (the latter in the event of a cool change).

As shown, it is possible that fire runs from the north and north-west will be up to 12km long, and from the south-west 5km or 6km long. In a worst-case scenario, it is possible that a long northerly or north-westerly fire run could be followed by a south-west change, leading to a fire front of 12km in the vicinity of the subject site. Additionally, depending on weather conditions, it is possible that spotting and ember attack could lead to multiple fires around the subject site.



Figure 5 – Possible Fire Run Scenarios. (Source: VicMaps).

As shown in Figure 6, the topography in the wider landscape is hilly and varied includes many steep ridges and gullies that include seasonal streams and rivers. There are numerous discontinuous small tracks that are variable in quality, but are generally difficult to traverse except by using specialist off-road vehicles.

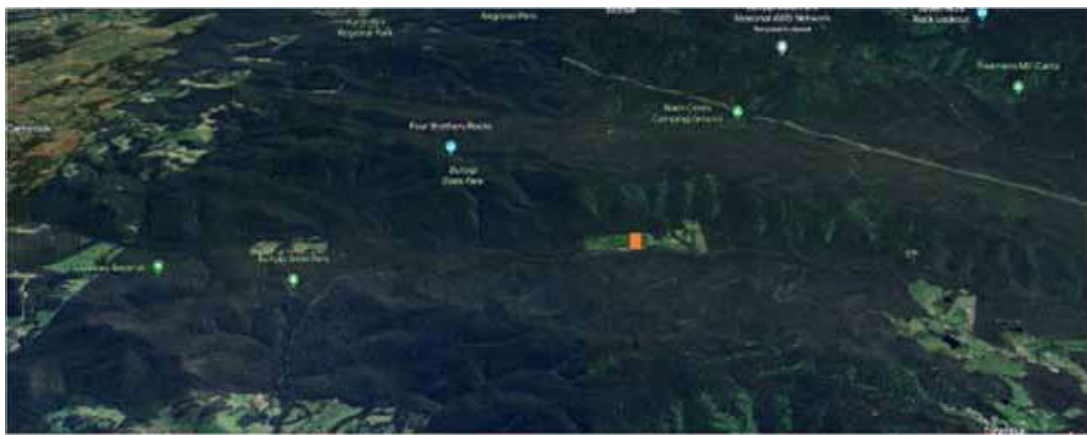


Figure 6 - Topography of Bunyip State Park in proximity to the Subject Site. (Source: Google Earth).

As shown by the 20 metre contours near to the subject site in Figure 7, even while the subject site itself is gently sloping, the majority of Bunyip State Park, including the land surrounding the site, is steep and hilly.



Figure 7: 20 metre contour diagram surrounding the subject site. (Source: Vic Maps).

As shown on Figure 8, the site is accessed by one main road, the Gembrook-Tonimbuk Road. It is 22km to Gembrook.

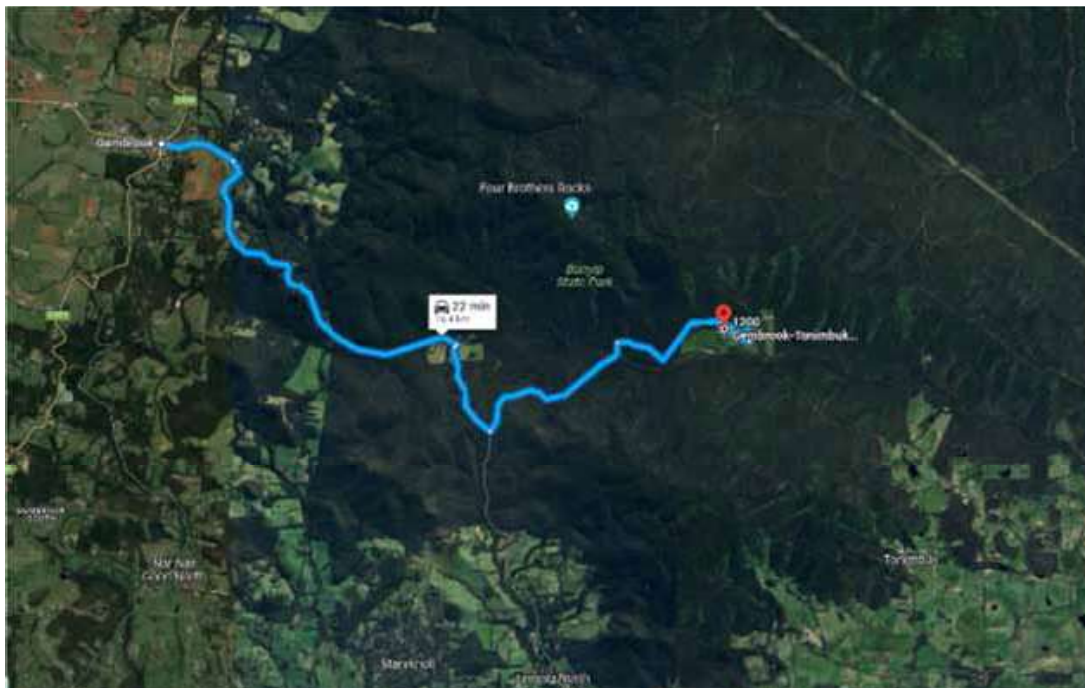


Figure 8 – Location of proposed dwelling at 1200 Gembrook-Tonimbuk Road Tonimbuk. Map shows road to Gembrook. Source: Google Maps.

Figure 9 shows the other closest settlements to the subject site reached by travelling to the east and south east to Bunyip 17.9km, Garfield or Longwarry.

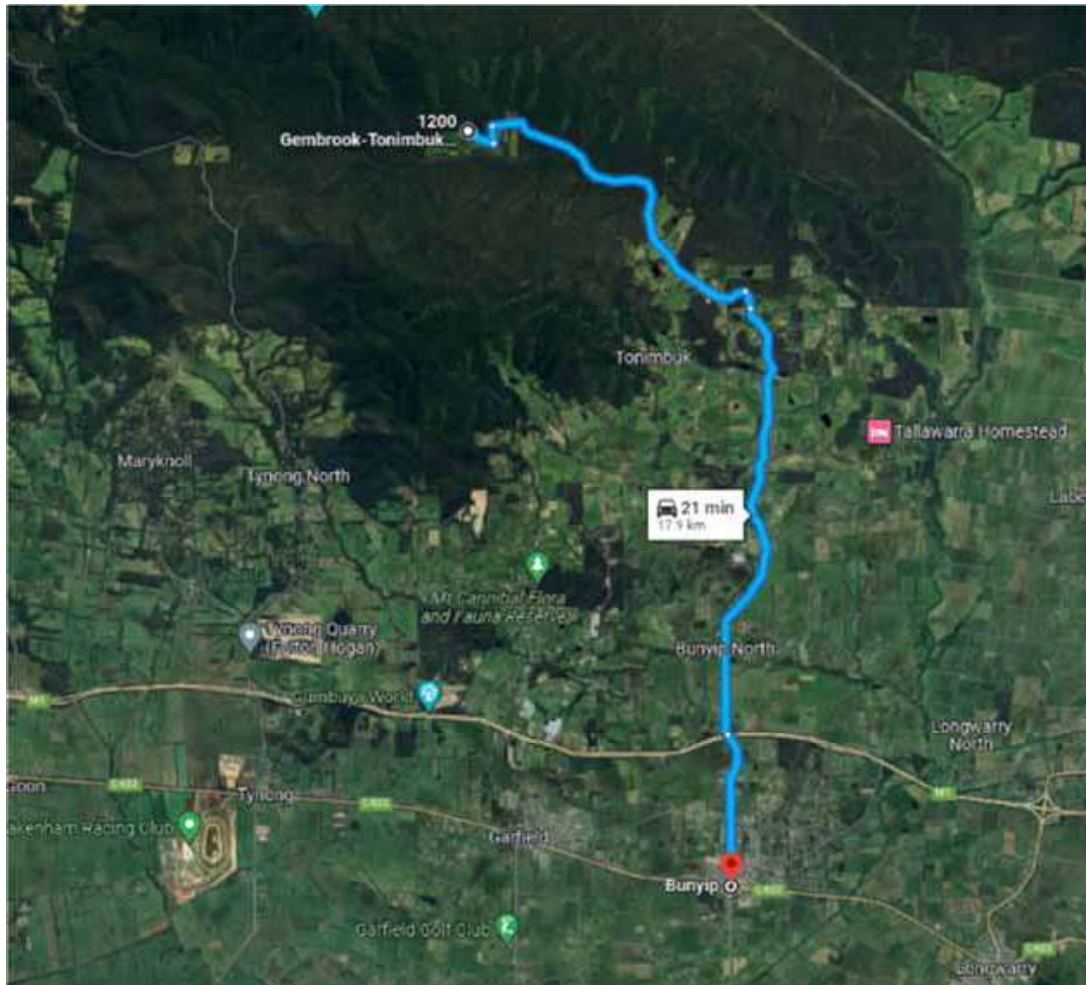


Figure 9 showing the closest settlements to the subject site reached by travelling to the east and south east. (Source: Google Maps)

Numerous Neighbourhood Safer Places (NSP) are located in the wider area. These include: Gembrook, Longwarry, and Bunyip. It is submitted that the distance of the site to these NSPs renders them largely immaterial to the primary consideration of landscape risks, and that they may even lead to poor decision making under certain circumstances if persons were seeking to reach them under duress.

The fire history of the site and the surrounding area is significant. As shown in Figure 10 the Bunyip State Park was extensively burnt in the 1939 fires.

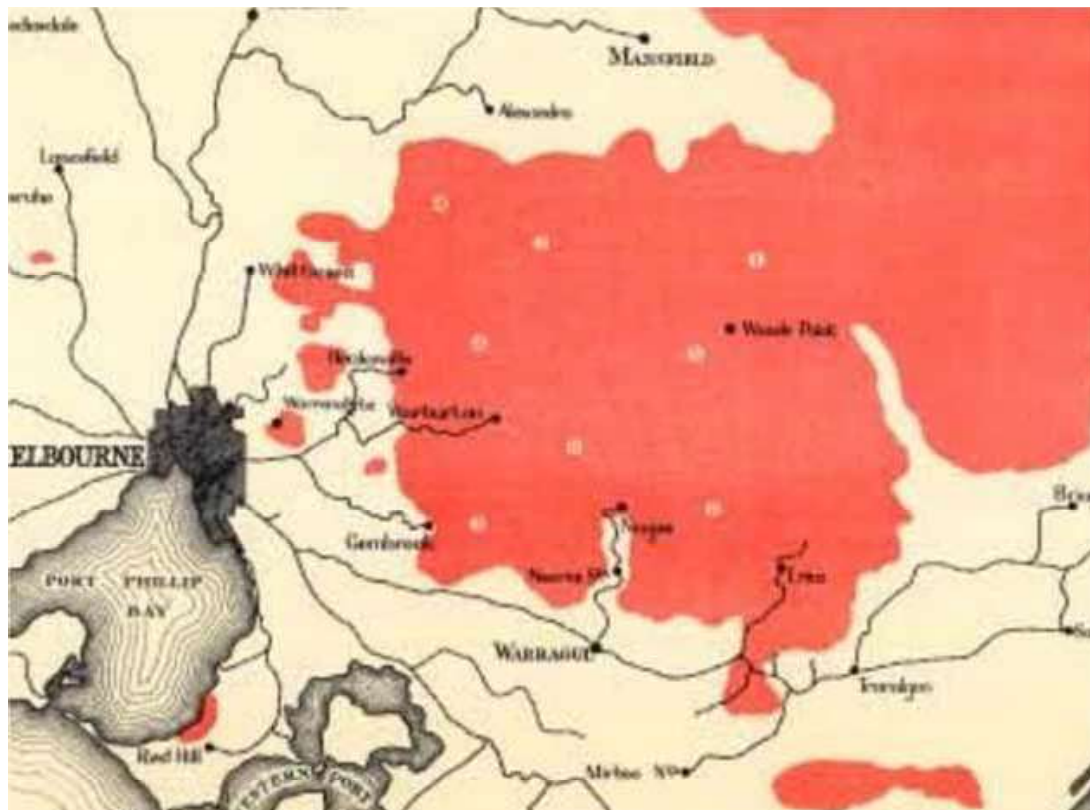


Figure 10: 1939 Fires (Source: Forest Fire Management Victoria)

As shown in Figure 11, the 1983 Ash Wednesday fires burnt a substantial footprint to the west of the Bunyip State Park.

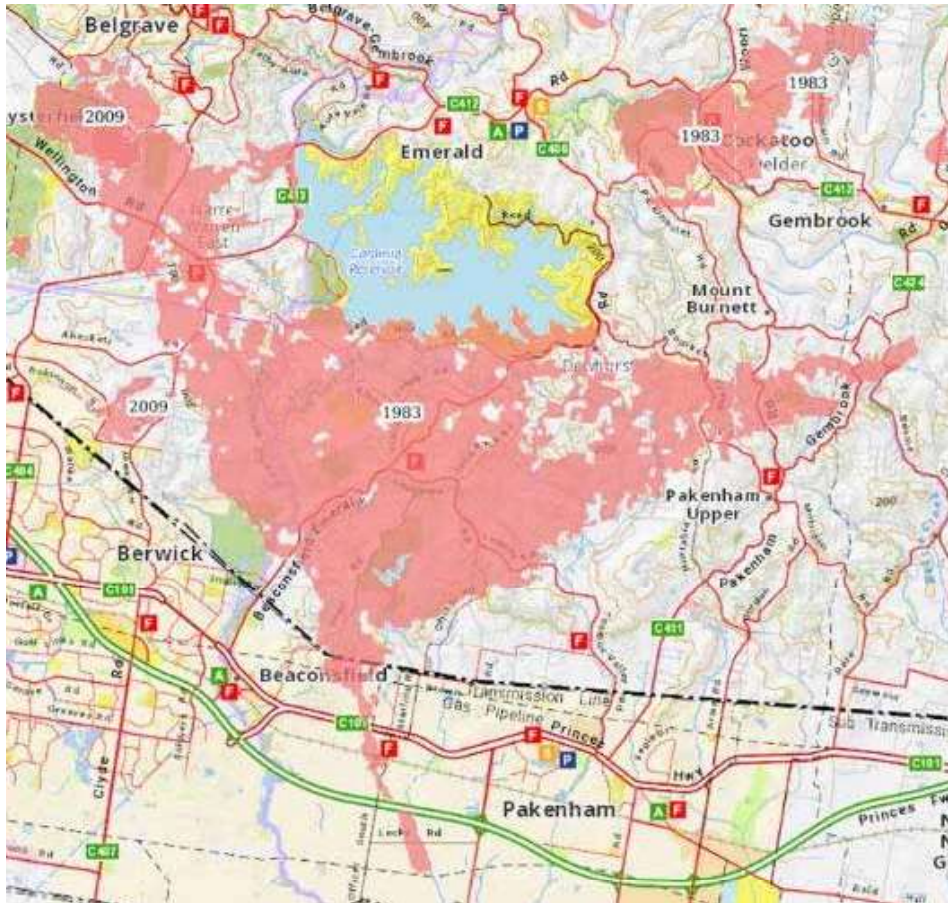


Figure 11: Ash Wednesday 1983 Fires to the west of the subject site. (Source: Forest Fire Management Victoria)

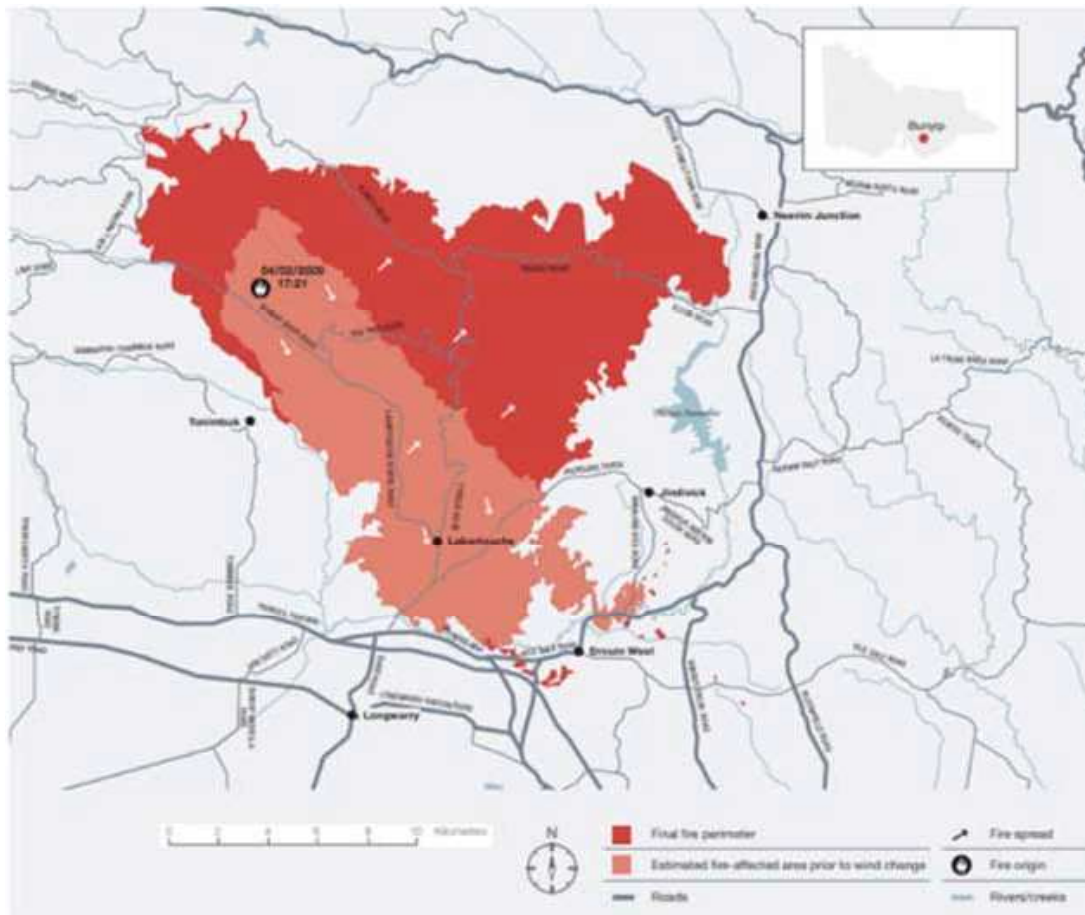


Figure 12: 2009 Bunyip Fires to the East of subject site (Source: Royal Commission 2009 Fires)

Figure 12 shows the extent of the 2009 fires to the east of the subject site.

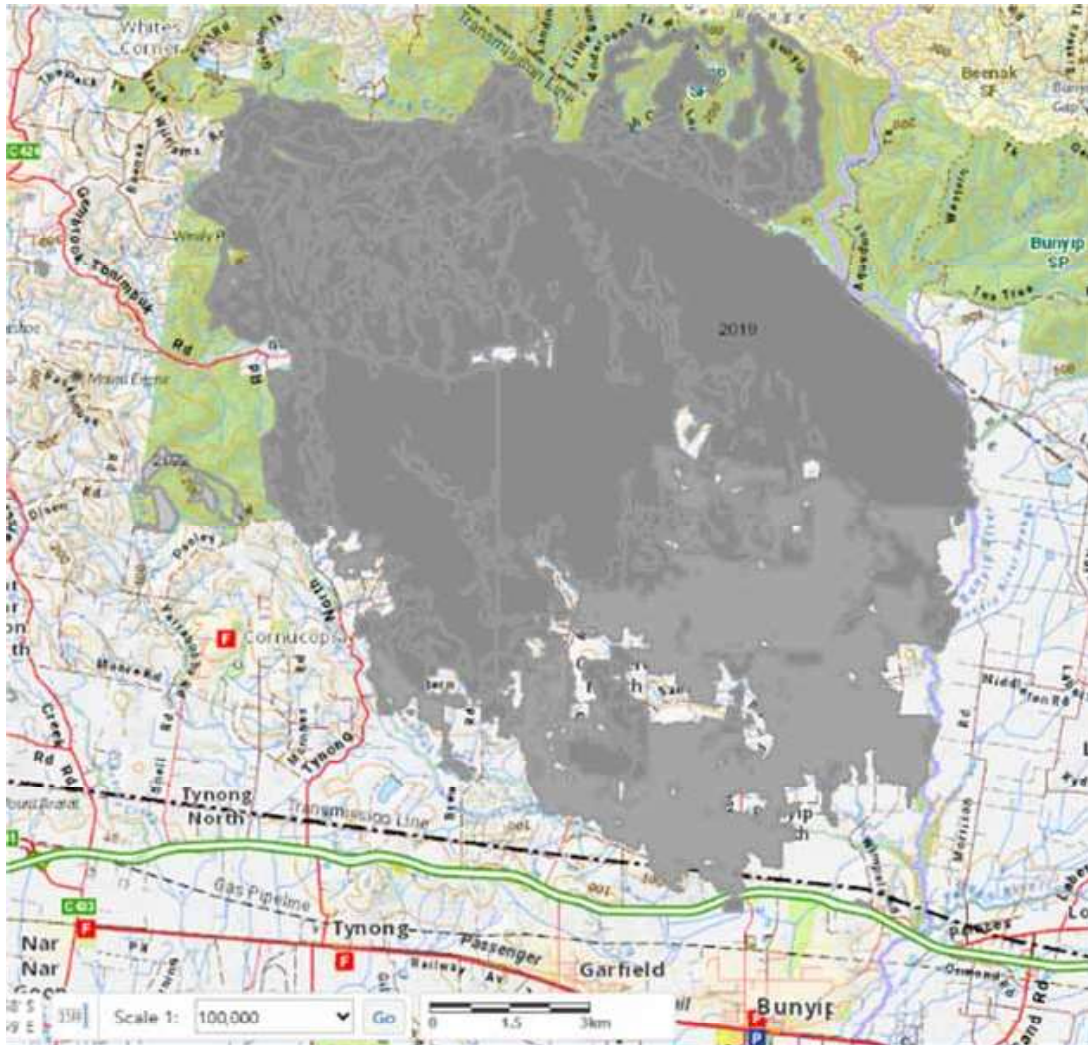


Figure 13: 2019 Bunyip State Park Fires in which 29 homes were destroyed (Source: Forest Fire Management Victoria)

The extent of the 2019 Bunyip State Park fires are shown in Figure 13. Many planned burns have been undertaken over time in Bunyip State Park, as shown in Figures 14 and 15 below. It is noteworthy that the 2019 Bunyip State Park fires occurred even while fuel reduction activities had been carried out over time.



Figure 14 – Past Planned Burns History near Subject Site (Source: Forest Information Portal).



Figure 15 – Past Planned Burns History near Subject Site (Source: Forest Information Portal).

Overall, there have been numerous planned and unplanned fires around and near to the subject site, as shown in Figures 16 and 17.



Figure 16 – Past Bushfires near Subject Site (Source: Forest Information Portal).



Figure 17 – Past Bushfires near Subject Site (Source: Forest Information Portal).

Additionally, ongoing planned burns are expected to be conducted in the future as shown in Figure 18 below.

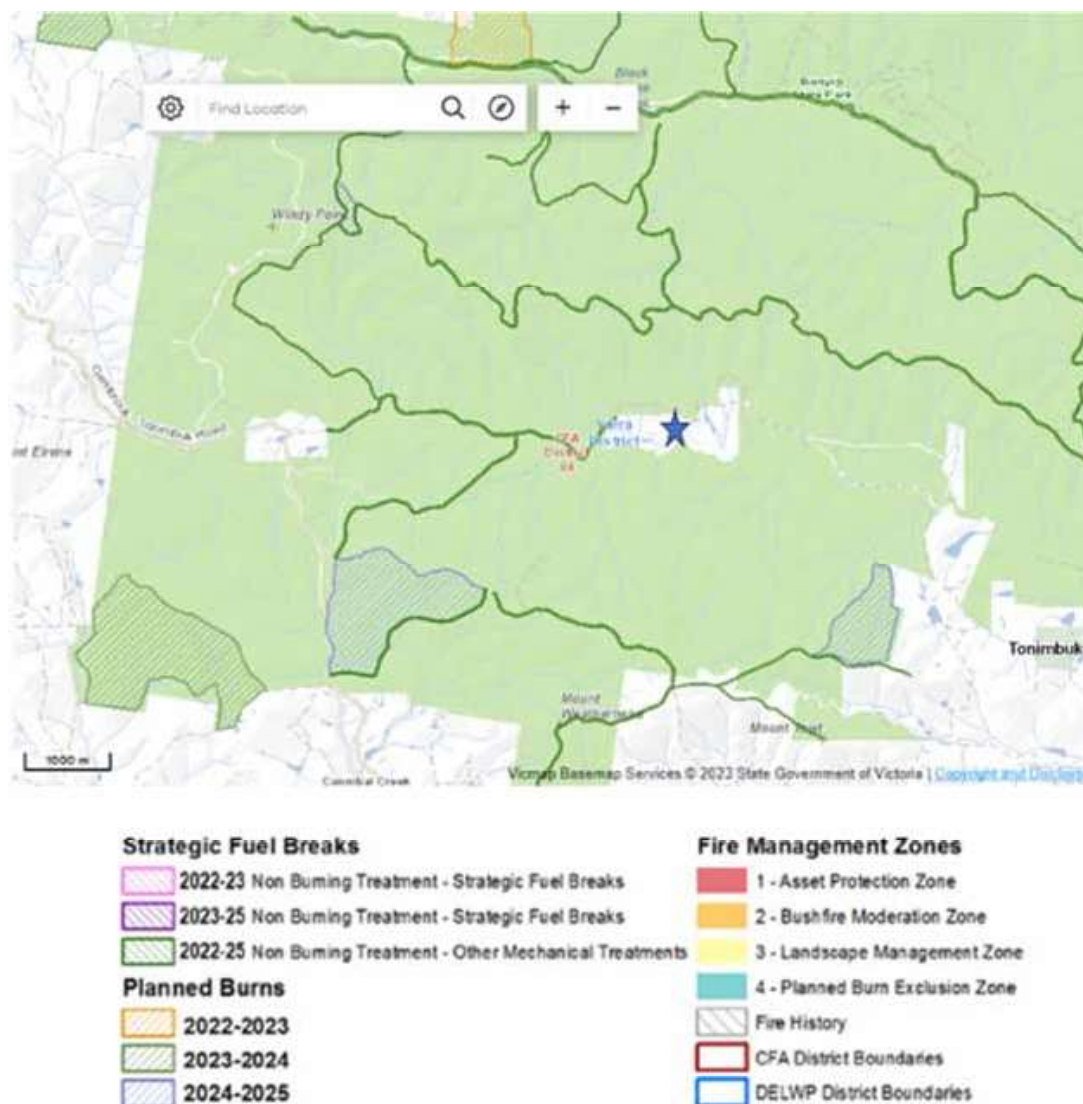


Figure 18 – 2022-2025 Schedule of Planned Burns near to subject site. (Source: Forest Fire Management Victoria)

Figures 19 and 20 below show the subject site's road access and topographical features to the east and west from its northern entrance. The majority of the road within the Bunyip Park is unsealed and varies between four and six metres in trafficable width. This road includes many turns to negotiate the creeks flowing into the Diamond River. As is shown in the subsequent photographs, the roadway is often narrow at these creek crossing points and includes drains and culverts at its edges. These points are typically wide enough for one vehicle only.



Figure 19 – Topographical Features Including Road to Subject Site (Source: Forest Information Portal).



Figure 20 – Detail of Topographical Features Including Road to Subject Site (Source: Forest Information Portal).



Figure 21 –Heading east on outskirts of Gembrook on Gembrook-Tonimbuk Road towards Subject Site.



Figure 22 –Heading east on outskirts of Gembrook on Gembrook-Tonimbuk Road to Subject Site.



Figure 23 –Heading east on outskirts of Gembrook on Gembrook-Tonimbuk Road to Subject Site.



Figure 24 –Heading east on Gembrook-Tonimbuk Road to Subject Site after entering Bunyip State Park.



Figure 25 –Heading east on Gembrook-Tonimbuk Road to Subject Site.



Figure 26 –Heading east on Gembrook-Tonimbuk Road to Subject Site. Trafficable roadway 4.5m wide at narrowest point (ignoring potholes).



Figure 27 –Heading east on Gembrook-Tonimbuk Road to Subject Site.



Figure 28 –East of Gembrook on Gembrook-Tonimbuk Road to Subject Site. Regrowth after 2019 fires and showing burn scars on trees.



Figure 29 – Damaged structure near site's entrance on northern side.



Figure 30 – Looking north from site entrance to forest.



Figure 31 – Looking south over Gembrook-Tonimbuk Road to site entrance.



Figure 32 - Heading east from subject site from Gembrook-Tonimbuk Road.



Figure 33 - Heading east from subject site from Gembrook-Tonimbuk Road.



Figure 34 - Heading east from subject site from Gembrook-Tonimbuk Road. Trafficable road 4.5 metres wide.



Figure 35 - Heading east from subject site from Gembrook-Tonimbuk Road.



Figure 36 - Heading east from subject site from Gembrook-Tonimbuk Road.



Figure 37 - Heading east from subject site from Gembrook-Tonimbuk Road.



Figure 38 – Sealed road after leaving Bunyip State Park heading east from subject site on Gembrook-Tonimbuk Road.

*Characterisation of Landscape Type.*

Based on the above, I consider that the site is within a Type 4 landscape according to the Technical Guide, the type which poses the greatest risks, based on fuel continuity, terrain, fire history, and isolation and access issues.

*Likely Worst-Case Fire Scenarios*

A number of fire inter-related or co-incidental fire scenarios are possible.

- Long high-intensity fire runs from the north and north west.
- Fires from the south west after a cool change, possibly including a long fire front moving to the north east.
- Spotting and ember fires creating a fire complex surrounding the subject site and including multiple fire fronts.

In this circumstance, occupants would ideally not be present if there is the prospect of a fire, in keeping with current policy. This would require ongoing pre-planning, access to one or more motor vehicles and a suitable destination for all persons, pets or livestock. Current policy discourages reliance on Neighbourhood Safer Places in these circumstances, except in extreme situations.

If occupants were to leave when a fire is occurring, they would need to be able to have some certainty that the road is accessible, particularly at night, in heavy smoke conditions, or with the prospect of tree falls blocking the road during the high winds commonly associated with extreme fire weather. Considerable care would need to be taken driving along narrow parts of the road, particularly under duress and with the prospect of other oncoming road users.

If occupants were to shelter in the structure during the passing of a fire they face the prospect of possibly having to defend it, if able. The structure may become filled with smoke, lose power and water and communications may be lost. Additionally, given that AS3959-2018 states that meeting the standard “does not guarantee that a building will survive” (page 6) occupants may need to leave the dwelling, if able, and move into defensible space if the structure catches fire, hopefully after the fire front has passed and heat, ember, flame and smoke impacts are sufficiently reduced.

**BMO 44.06-3 Application Requirements: Bushfire Management Statement**

At Clause 44.06-3 an application requirement is:

A bushfire management statement describing how the proposed development responds to the requirements in this clause and Clause 53.02.

A Bushfire Management Statement was submitted with the application, assuming the dwelling to be located 50 metres south of the norther boundary.

*My own assessment differed from that lodged with the proposal in some ways. I summarise similarities and differences in assessment below.*

**53.02-4****Bushfire protection objectives****53.02-4.1 Landscape, siting and design objectives**

Approved measures	
Measure	Requirement
<b>AM 2.1</b>	The bushfire risk to the development from the landscape beyond the site can be mitigated to an acceptable level.
<b>AM 2.2</b>	A building is sited to ensure the site best achieves the following: <ul style="list-style-type: none"> <li>• The maximum separation distance between the building and the bushfire hazard.</li> <li>• The building is in close proximity to a public road.</li> <li>• Access can be provided to the building for emergency service vehicles.</li> </ul>
<b>AM 2.3</b>	A building is designed to be responsive to the landscape risk and reduce the impact of bushfire on the building.

*Assessment – While the proposed siting, design and access provisions of the structure meet the approved measures it does not achieve the stated objective of the clause “Development is appropriate having regard to the nature of the bushfire risk arising from the surrounding landscape.”*

**53.02-4.2 Defendable space and construction objective**

Defendable space and building construction mitigate the effect of flame contact, radiant heat and embers on buildings.

Approved measures	
Measure	Requirement
<b>AM 3.1</b>	A building used for a dwelling (including an extension or alteration to a dwelling), a dependent person’s unit, industry, office or retail premises is provided with defendable space in accordance with: <ul style="list-style-type: none"> <li>• Table 2 Columns A, B or C and Table 6 to Clause 53.02-5 wholly within the title boundaries of the land; or</li> <li>• If there are significant siting constraints, Table 2 Column D and Table 6 to Clause 53.02-5.</li> </ul> <p>The building is constructed to the bushfire attack level that corresponds to the defendable space provided in accordance with Table 2 to Clause 53.02-5.</p>

*Assessment – I concur with the applications characterisation of vegetation and slope. The proposal includes 48 metres of defendable space and is a BAL29 structure. This exceeds the standard set out in Table 2.*

**53.02-4.3 Water supply and access objectives**

A static water supply is provided to assist in protecting property.

Vehicle access is designed and constructed to enhance safety in the event of a bushfire.

Approved measures	
Measure	Requirement
<b>AM 4.1</b>	A building used for a dwelling (including an extension or alteration to a dwelling), a dependent person’s unit, industry, office or retail premises is provided with:

- A static water supply for fire fighting and property protection purposes specified in Table 4 to Clause 53.02-5.
- Vehicle access that is designed and constructed as specified in Table 5 to Clause 53.02-5.

The water supply may be in the same tank as other water supplies provided that a separate outlet is reserved for fire fighting water supplies.

*Assessment - The proposal is to include a 10,000 litre water supply with appropriate fitting and access for fire services as specified in Table 4. The proposed vehicle access complies with Table 5.*

#### **ASSESSMENT ACCORDING TO RELEVANT DECISION GUIDELINES AND CRITERIA.**

*Assessment – A number of clauses are relevant to this application and indicate that the development should not be approved due to the high risk associated with the site's location within Bunyip State Park, combined with the risks associated with the road access to the site. Reasons are given below.*

#### **53.02-4.5 Decision guidelines**

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider:

- The Municipal Planning Strategy and the Planning Policy Framework.

#### **13.02-1S Bushfire planning**

##### *Policy application*

This policy must be applied to all planning and decision making under the Planning and Environment Act 1987 relating to land that is: Within a designated bushfire prone area; Subject to a Bushfire Management Overlay; or Proposed to be used or developed in a way that may create a bushfire hazard.

##### *Objective*

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

##### *Strategies*

##### *Protection of human life*

Give priority to the protection of human life by:

- Prioritising the protection of human life over all other policy considerations.
- Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire...

Considering and assessing the bushfire hazard on the basis of:

- Landscape conditions - meaning conditions in the landscape within 20 kilometres (and potentially up to 75 kilometres) of a site;
- Local conditions - meaning conditions in the area within approximately 1 kilometre of a site;
- Neighbourhood conditions - meaning conditions in the area within 400 metres of a site; and
- The site for the development

A key issue identified in Cardinia's Planning Scheme at Clause 21.01-3 is:

The protection of life and property in terms of flooding and bushfire.

Clause 21.02-4 Bushfire Management states that key issues are:

- Recognising that climate change will increase the risk from bushfires.
  - Prioritising human life over all other policy considerations.
  - Directing new development to low risk locations.
  - Where new development is permitted in high risk areas, safe access is provided.
- 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.

*Assessment – while fuel reduction activities have occurred on an ongoing basis, the wider landscape demonstrably remains a high risk one, evidenced by historical and recent fires and house destruction.*

- 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.
- 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.

*Assessment - While the proposal meets and in one aspect exceeds the criteria of Clause 53.02-4, it does not achieve the clause's overarching objectives in terms of:*

- *Development is appropriate having regard to the nature of the bushfire risk arising from the surrounding landscape.*
- *Whether the risk arising from the broader landscape can be mitigated to an acceptable level or warrants the development not proceeding.*

*Assessment - The wider landscape is demonstrably high-risk, also evidenced by numerous fires and destruction of structures. The site is located within this landscape with limited road access that includes many narrow points and tight corners. On this basis, the development should not be approved.*

## **CONCLUSIONS WITH REFERENCE TO OVERARCHING DECISION CRITERIA**

The Victoria Planning Provisions include guidance on decision making at Clause 71. In particular, Clause 71.02-1 Purpose of Planning Policy Framework states:

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

More specifically Clause 71.02-3 Integrated Decision Making states:

... The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour to integrate the range of planning 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 and responsible authorities must prioritise the protection of human life over all other policy considerations.

#### 71.04 Operation of Overlays

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the Municipal Planning Strategy, the Planning Policy Framework, the purpose and decision guidelines of the overlay and any of the other decision guidelines in Clause 65.

The Purpose of the Bushfire Management Overlay at Clause 44.06 state:

- 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.

***Assessment - On this basis, taking into account the range of relevant criteria set out above, I submit that the proposal be refused.***