

2 USE AND DEVELOPMENT OF THE LAND FOR A DWELLING AT 18 BOTTOMLEY DRIVE EMERALD

FILE REFERENCE INT186022

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Vageesha Wellalage

RECOMMENDATION

That a Refusal to Grant Planning Permit T170301 be issued for Use and Development of the land for a dwelling at 18 Bottomley Drive, Emerald Victoria for reasons set out in this report.

Attachments

1	Locality plan	1 Page
2	Development plans (original plans submitted with the application)	6 Pages
3	Letters of objection circulated to councillors only	4 Pages

EXECUTIVE SUMMARY:

APPLICATION NO.: T170301

APPLICANT: Ms Maria Lewis

LAND: 18 Bottomley Drive, Emerald VIC 3782

PROPOSAL: Use and development of the land for a dwelling

PLANNING CONTROLS: Green Wedge A Zone Schedule 1
Bushfire Management Overlay,
Environmental Significance Overlay Schedule 1

NOTIFICATION & OBJECTIONS: The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987* by sending notices to adjoining land owners and occupiers and placing a sign on site.

Three objections have been received to date.

KEY PLANNING CONSIDERATIONS: Proximity of the dwelling to neighbouring broiler farms.
The negative visual impact of the dwelling

RECOMMENDATION: Refusal

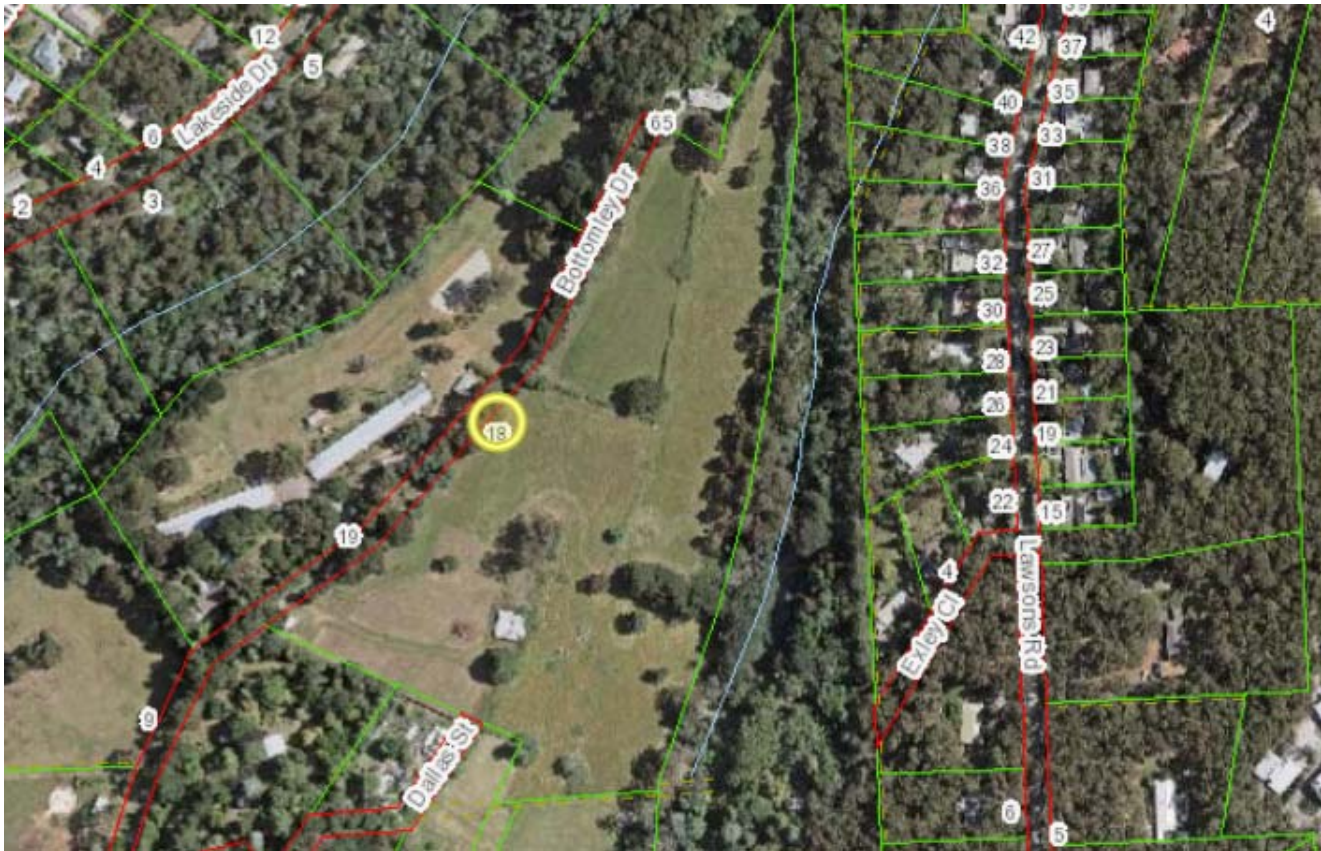
BACKGROUND:

An application for a planning permit (T160048) for a dwelling and an outbuilding to be used as a horse training facility was refused by Council at the TP Meeting 4 July 2016. This application does not vary greatly from the refused application.

Council Officers met with the applicant prior to their purchasing of the property and before this planning permit application being lodged, Council Officers detailed the previous refusal, the refusal

by VCAT of the neighbouring property and the difficulties in gaining a planning permit for this subject site.

SUBJECT SITE



The site is located on the southern side of Bottomley Drive Emerald. A crossover is located on the north alignment of the site, the land has a vacant shed and predominately clear of vegetation. The topography of the land is undulating towards the east.

The main characteristics of the surrounding area are:

- North Bottomley Drive abuts the site to the north, abutting this road is an existing broiler farm with two broiler sheds.
- South, East and West The properties abutting the subject land are developed as rural lifestyle properties containing dwellings
- North west A VCAT decision at 9 Bottomley Drive saw the tribunal refuse an application to use and develop the land for a house as the dwelling would be located within the buffer distance set out in the Broiler Code of Practice

PROPOSAL

Approval is sought for the use and development of the land for a dwelling and agricultural/rural activities such as growing vegetables and animal husbandry (free range cattle). The agricultural component of the application is as of right in the zone therefore, does not require planning approval.

The plans submitted to Council indicates that the proposed dwelling is sited with a setback of 60 metres from Bottomley Drive and 20 metres from the southern boundary. The dwelling will have a distance of 100 metres from the closest broiler shed located at 19 Bottomley Drive Emerald.

The dwelling is proposed to be 490 square metres with floor space comprising of four bedrooms, two bathrooms, study, laundry, kitchen, one double garage and one single garage, guest bedroom, alfresco and a carport. It is to be single storey in built form having a total building height of 5.58 metres and constructed of limestone walls with green Colorbond roof.

PLANNING SCHEME PROVISIONS

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.05-3 Rural Productivity
- Clause 13.04-2 Air Quality
- Clause 14.01-1 Protection of Agricultural Land
- Clause 16.02-1 Rural Residential Development

Local Planning Policy Framework (LPPF)

The relevant clauses of the SPPF are:

- Clause 21.03-3 Rural townships

Relevant particular/general provisions and relevant incorporated or reference documents

The relevant provisions/documents are:

- Clause 65 – Decision Guidelines
- Clause 65 – Referral and Notice Provisions

Zone

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

Overlays

The land is subject to the following overlays:

- Environmental Significance Overlay Schedule 1
- Bushfire Management Overlay

PLANNING PERMIT TRIGGERS

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

- Pursuant to Clause 35.05-1 of Green Wedge A Zone, a planning permit is required to use the land for a dwelling.

- Pursuant to Clause 35.05-1 of Green Wedge A Zone, a planning permit is required for buildings and works associated with a Section 2 Use (dwelling and outbuilding) and earthworks.
- Pursuant to Clause 44.06-1 of Bushfire Management Overlay, a permit is required for buildings and works associated with 'accommodation'.

PUBLIC NOTIFICATION

The application has been advertised as per Section 52 of the *Planning and Environment Act 1987*, by sending notices to the owners and occupiers of adjoining land and placing a sign on site.

Council has received 3 objections to date. The key issues that were raised in the objections are:

- Impact on views hence devaluing the surrounding properties
- Proposal does not meet the buffer distance required from the broiler farm
- Impact of the existing broiler farm on the proposed sensitive use (dwelling) due to separation distance provided, potential odour complaints from the new residents and impact on the continuation of the broiler farm.

REFERRALS

CFA

Originally, the applicant did not submit a Bushfire Management Statement (BMS) as required under the Planning Scheme. Although advised that this requirement cannot be waived the applicant requested referral to the CFA anyway. The application was referred to CFA as a statutory referral and the CFA requested additional information (BMS) in support of the application.

After sometime the applicant submitted the same BMS that was submitted as part of the previously refused application in 2016.

This BMS is not consistent with the proposed development plans of this application as it related to a different proposal and it was two years old, therefore the information was not referred back to CFA as it did not meet the requirements as per the Scheme.

EPA

The application was referred to the EPA for comment. The EPA was not satisfied that the buffer distance provided is sufficient in that the proposal encroaches upon an existing land use with adverse amenity impacts.

The EPA advised that appropriate weight should be given to protecting existing broiler farm operations and it is within Council's discretion to refuse an application for a new use or development if Council considers that it would adversely impact the existing broiler farms capacity to operate in accordance with existing approvals or existing use rights.

DISCUSSION

The proposal has been assessed against all relevant Clauses of Cardinia Planning Scheme and determined to be inappropriate for the site.

According to the current planning scheme, Intensive Animal Husbandry, such as a Broiler Farm is a prohibited use in the Zone. The broiler farm located at 19 Bottomley Drive abutting the subject site has been established with a planning permit, P887, being issued on 18 December 1973, thus can lawfully continue to operate as a broiler farm.

However, according to the requirements of the Victorian Boiler Code 2009, the broiler farm would not be able to expand due to the inability of meeting the buffer distances. The refusal of the sensitive use, in this case the proposed dwelling, is due to the potential to impact the broiler farm operation, such as odour, noise, traffic movement and so forth on the proposed sensitive use.

Victorian Broiler Code and Green Wedge A Zone

The Victorian Code for Broiler Farms 2009 advises that Responsible Authorities should consider the impacts of existing broiler farm emissions when deciding on applications for proposed sensitive land use developments, and ensure the separation distance is as large as reasonably possible. The code provides a formula to calculate the buffer distance based on the bird numbers:

Formula 1:

The separation distance for a Class A or Class B broiler farm must be at least 250m or as otherwise calculated in accordance with the following formula (whichever is larger):

$$D=27 \times N^{0.54}$$

D=Separation Distance (metres)

N= farm capacity /1000

In order to calculate the buffer distance, the bird numbers has to be established. The broiler code provides the following:

Farm capacity and existing farms

Sometimes it will be necessary to validate the capacity of an existing farm. Where possible, the existing farm capacity is defined within a valid planning permit. Where the existing farm capacity has not been defined within a valid planning permit, the existing farm capacity can be established from (in order of priority):

1. A current contract or other formal documentation that establishes the bird numbers on farm or
2. The area of the existing shed floor and determining bird numbers based on a placement density of 21.5 birds/m²

Council requested formal information on bird numbers to be provided as part of the application however, no formal evidence have been provided to date. As such, Council pursued under the second point to calculate the bird numbers based on the floor area of the existing broiler sheds.



According to Council aerial images (as above), the total floor area of the two broiler sheds are 2442.95 square metres. According to the Victorian Broiler Code, the maximum capacity per square metres is 21.5 birds. Therefore, the maximum capacity of the broiler farm is calculated as below:

$$(2442.95 \text{ m}^2) \times (21.5 \text{ birds}) = 52523.45 \text{ birds.}$$

Hence, the buffer distance has been calculated as per below:

$$\begin{aligned} D &= 27 \times \text{No.54} \\ D &= 27 \times (\text{Farm Capacity}/1000) 0.54 \\ D &= 27 \times (52523.45/1000) 0.54 \\ D &= 27 \times (52.52) 0.54 \\ D &= \mathbf{229.26 \text{ metres}} \end{aligned}$$

The proposed dwelling at 18 Bottomley Drive should, according to the Victorian Code for Broiler Farms, have a separation distance of **229** metres from the 52,000 capacity bird broiler farm at 19 Bottomley Drive.

The separation distance for the proposed dwelling in this instance is approximately **100** metres from the closest broiler shed which is not considered to be as large as reasonably possible as per the requirements of the Code of Practice.

The Victorian Code for Broiler Farms 2009 details that “*Although the separation distance requirements found in the “Classification of broiler farms” section of this code apply only to the development or expansion of broiler farms, they can be used as a guide to identify locations of a future sensitive use that may be adversely affected by broiler farm emissions*”. The Code goes on further to say that “*The separation distance provided by the new dwelling should be as large as reasonably possible taking into account the likely additional risk of exposure to odour*”.

The primary issues in the consideration of this application are the proximity of this sensitive land use (dwelling) to an existing broiler farm, and whether the applicant has made sufficient effort to locate the dwelling as far as possible away from the farm.

While it is acknowledged that a large portion of the subject site is within the buffer distance of the neighbouring broiler farm, there is the potential to locate a dwelling in the north-eastern corner and south-eastern corners of the lot, which would result in it being outside of the buffer distance and a considerable distance from the broiler farm. The following picture illustrates the possible locations that the dwelling could be placed while meeting the buffer distances.



In discussions with the applicant during the planning permit process, the applicant has mentioned that those locations will not be suitable to accommodate the dwelling, as doing so will then make it challenging to meet the relevant bushfire regulations.

Council agrees that siting the dwelling outside the buffer area may result in higher costs to build, however it can be achieved and throughout the planning process Council has indicated that support would be more forthcoming if one of these locations were selected.

The EPA in its consideration of the application stated the following:

“EPA considers the current separation distance of approximately 100 metres proposed to be insufficient to mitigate possible adverse impacts due to the proximity of the broiler farm.

“It is EPA’s view that the existing dwellings do not warrant disregarding the restrictions and recommendations of the Code, and it is EPA’s understanding that the existing dwellings are not as close as the proposed dwelling to the broiler sheds. It is also EPA’s understanding that many of the existing dwellings have a significant vegetation buffer that could assist in reducing odour impacts”

In the case *Holder vs Cardinia Shire Council* in relation to the application for a dwelling at 9 Bottomley Drive the member stated the following:

“The important principle involved is keeping potentially incompatible uses apart. The Code provides guidance on how far apart they should be kept..... It is immaterial, having regard to the purpose of the separation, and for that matter of the Code, whether new broiler farms are kept away from existing houses, or new houses kept away from existing broiler farms. The purpose is defeated by establishing new houses in close proximity to broiler farms, just as it would be defeated by establishing new broiler farms in close proximity to existing houses.”

It is considered that the ‘buffer distance’ is a vital element to assess when allowing a sensitive use near a broiler farm. The reason behind this consideration is that a sensitive use, particularly a dwelling near a broiler farm, could raise issues in relation to odour, traffic movements (transporting

birds in and out of the site), and appearance. On the other hand, it would also put a burden on the broiler farm to operate in a manner to minimise impacts on the neighbouring dwellings.

A fundamental element of good planning is to avoid incompatible land uses in close proximity to each other. The development of a dwelling at the proposed location is considered not acceptable as it is within the buffer zone of the broiler farm. In the case *Holder vs Cardinia Shire Council*, the member stated the following:

“The first thing to be said about this proposition is that it is, after all, an argument for bad planning. Good planning keeps incompatible uses separate. It is not a reason for bad planning that the incomer is a volunteer. It is good planning to protect foolish volunteers from themselves.”

Having considered the aforementioned factors allowing a dwelling in the proposed location would not result in a good planning outcome.

Objector's concerns

The owners of the broiler farm have placed an objection mentioning the adverse impact of the broiler farm on the proposed dwelling. This is due to the odour generated by the broiler farm. Council considers the proposed buffer distance to be insufficient to minimise the impacts generated by the broiler farm. The applicant has not provided a response to the potential noise and odour impact of the broiler farm on the proposed residential use.

The main concerns of other objections were the close proximity of the proposed dwelling to the southern boundary which impacts the views of the adjoining properties and the potential to devalue the properties. It has been established in VCAT that views is not a planning consideration nor the consideration of devaluing of properties.

CONCLUSION

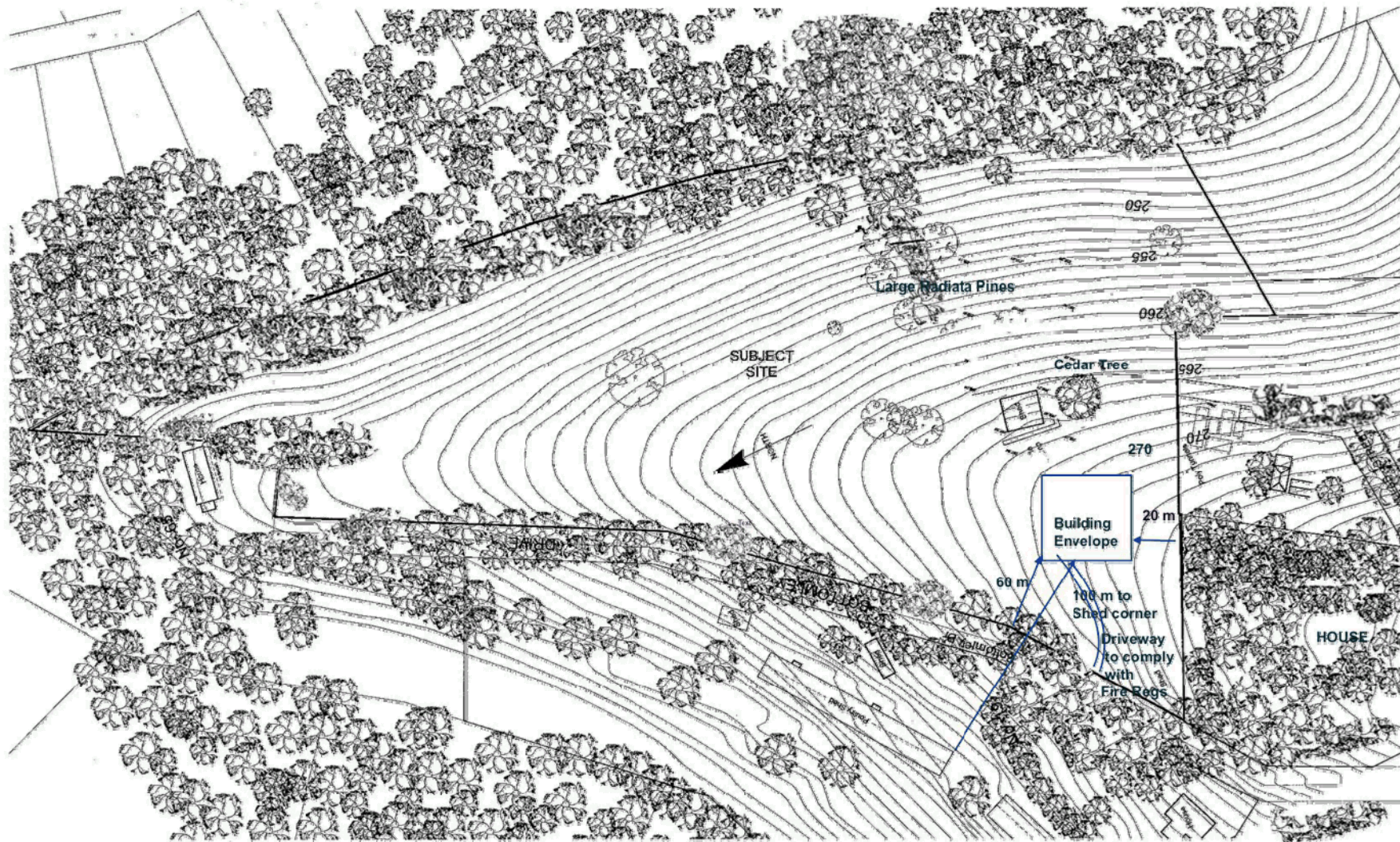
Council has requested several times that the applicant sites the dwelling in accordance with the buffer zone requirements. The past application, which was refused by Council, EPA non-support, the VCAT precedent and Council concerns, all warrant that the proposed dwelling, with a close proximity to the existing broiler farm, is not appropriate for the site.

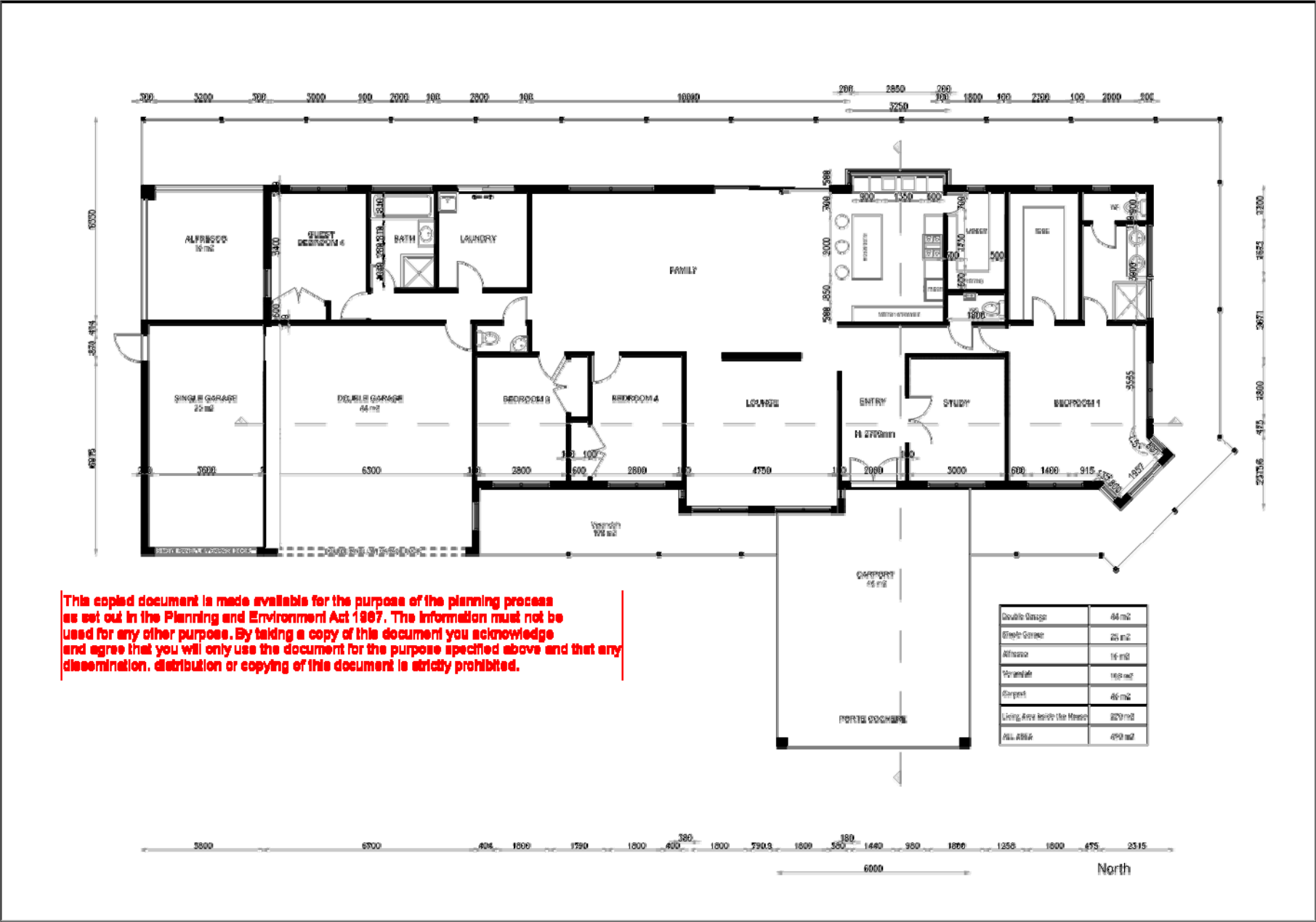
The applicant has not supplied a current Bushfire Management Statement that reflects the present proposal, this must be submitted as per the requirements of the Planning Scheme. Support of the proposal cannot be provided due to insufficient information provided.

It is therefore recommended that the use and development of a dwelling at 18 Bottomley Drive, Emerald be refused on the following grounds:

1. The proposal is inconsistent with the requirements of Victorian Broiler Code and may create future land use conflicts between potentially conflicting land uses and developments
2. The proposal is contrary to the State Planning Policy Framework
3. The application does not provide sufficient information.







This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited.

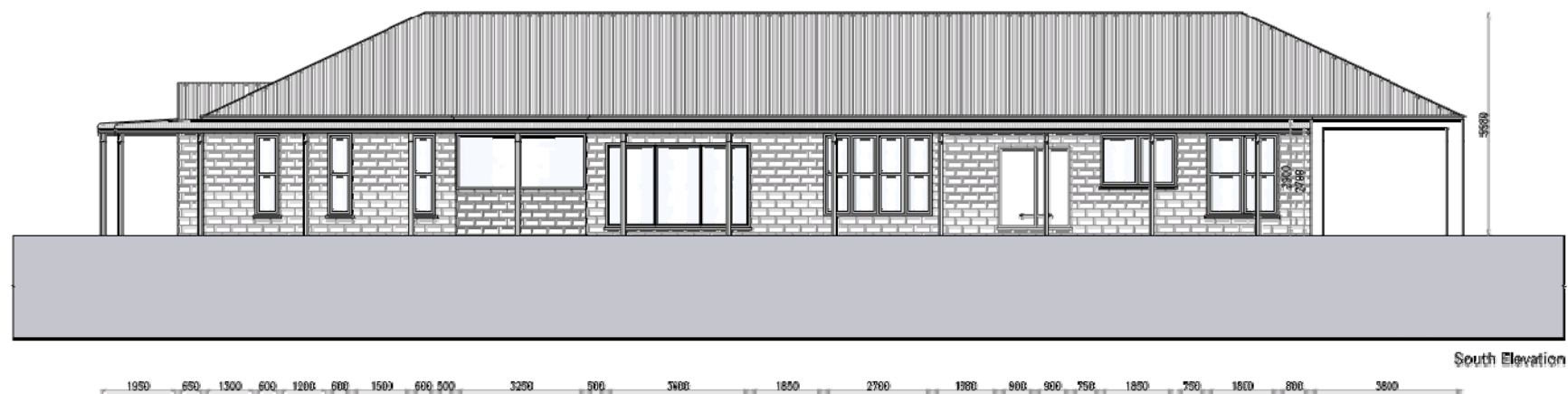


Material Schedule	
Roof	Colourbond green
External walls	Limestone
Windows	Black Powder Coated Aluminium
Garage Door	Colourbond Buylastic Green

This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited.



This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1997. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited.



This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited.

