

## **5 DEVELOPMENT OF THE LAND FOR TWO (2) OUTBUILDINGS (WORKS COMMENCED) AND THE REMOVAL OF ONE (1) HERITAGE TREE**

FILE REFERENCE INT1867220

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Evangeline McGauley-Kennedy

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T180165 be issued for Development of the land for two (2) outbuildings (works commenced) and the removal of one (1) Heritage Tree, construction of a driveway and associated works at Walker Street, Koo Wee Rup VIC 3981 for reasons outlined in this report

### **Attachments**

- 1 [↓](#) T180165 - Locality Map 1 Page
- 2 [↓](#) T180165 - Development Plans 4 Pages

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T180165
APPLICANT:	Mr David McLeod
LAND:	Walker Street, Koo Wee Rup VIC 3981
PROPOSAL:	Development of the land for two (2) outbuildings (works commenced) and the removal of one (1) Heritage Tree, construction of a driveway and associated works.
PLANNING CONTROLS:	Neighbourhood Residential Zone - Schedule 1 Land Subject to Inundation Overlay, Heritage Overlay – Schedule 127
NOTIFICATION & OBJECTIONS:	Pursuant to Section 55 of the <i>Planning and Environment Act 1989</i> , the application was advertised by the placing of signs on site and notices in the mail to adjoining property owners.  No objections have been received to date.
KEY PLANNING CONSIDERATIONS:	Heritage, visual scale and bulk, heritage tree removal, flood risk.
RECOMMENDATION:	Refusal

### **BACKGROUND:**

The subject site was created by Planning Permit T030871, which was issued for the subdivision of the land into seventy-nine (79) lots on 16 September 2004. There is no recent Planning Permit history for the subject site.

### **ENFORCEMENT BACKGROUND:**

A number of unauthorised works have been carried out on the site without the permission of Planning Permits and Building Permits since the start of 2018. These works include the removal of a Heritage Tree, the lopping of a Heritage tree, alterations and extensions to a Heritage Dwelling, the construction of a driveway and the (partial) construction of 'Shed 1' associated with this Planning Permit application.

Compliance Officers advised the owner to Stop Works on the site and to obtain a Planning Permit for the extension to the dwelling and to construct the sheds, driveway and other works. A Planning Permit has not been submitted for the dwelling extension.

Although the owner submitted this application for the shed, heritage tree and works, the owners continued to undertake works on site, without waiting for the application to be decided on. This is consider a disregard to the Heritage Overlay and the Planning process.

Both a Building Notice to Stop Works and Planning Compliance Infringement have been issued in relation to these works.

### **HISTORICAL BACKGROUND:**

The site itself is known locally as 'The Grange' (H0127), one of the earliest homes built in Koo Wee Rup and was known for its great trees and garden and was also a key place in the community for weddings before any churches were built.

The statement of significance below summarises:

*"The Grange, built in 1888 for the Hudson family, is significant to Cardinia Shire for its historical links with the earliest settlers of the district (Mickles, Hudsons) and its evident early date among other farms in the Yallock or Koo Wee Rup district. It's siting, facing away from the street is evocative of its role as a predecessor of the town subdivision, and it was the home of one of the more prominent Koo Wee Rup town's people and became a de facto social centre for the new community". – Cardinia Shire Heritage Study – The Grange – 1999 – Graeme Butler & Associates.*

### **SUBJECT SITE**

The site is located on the north-western side of Walker Street, on the corner of Bailey Road and Grange Court.

A crossover is located toward the middle of the lot, providing access to Walker Street and there is a four-metre-wide easement running diagonally through the southern portion of the site.

The site currently contains a Heritage listed dwelling 'The Grange' constructed circa 1887-88, which has specific significance to the Koo Wee Rup Township, as well as to the Shire for its links to the Shires early settlers. In addition to the heritage dwelling there are a number of heritage listed trees on the site (some of which have been removed or lopped without Council's authorisation). The dwelling is a Victorian-era, double-fronted weatherboard home, with the original rear of the dwelling facing Walker Street and the original frontage facing north-east, into the subdivision and away from the street. The condition of the heritage dwelling is said to be in good condition and retains many of the features from its original construction.

The topography of the land is relatively flat.

The main characteristics of the surrounding area are:

- The site is located within an established residential area, just west of Sybella Avenue. There are smaller residential allotments, surrounding the site, generally containing single residential dwellings, with some parcels also containing sheds and outbuildings.
- Koo wee Rup Town Centre is located approximately 500 metres to the north of the site

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1775.23 m2 (0.18 ha)

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## PROPOSAL

Approval is sought for the development of the land for two (2) outbuildings (works commenced), the removal of one (1) heritage tree, construction of a driveway and associated works. The proposed outbuildings are to be located on either side of the dwelling:

Shed 1 will be setback 1 metre from the north-western title boundary (2 Grange Court) and 1 metre from the north-eastern title boundary (5 Bailey Boulevard). It should be noted the works on Shed 1 have already commenced since this application was made (see aerial images above). Shed 1 measures 6.5 metres in length and 6 metres in width, totalling an area of 39sqm. This outbuilding has been constructed with corrugated Colorbond steel. A colours and material schedule on the plans provided proposes this shed to have 'Cream/off-white' walls and a corrugated Colorbond roof in 'Red', however it is clear from inspections that the colour of the roof is not in accordance with these proposed plans. This outbuilding is proposed to be used as a garage and will store vehicles of the landowner. A driveway (not shown on the plans) has also been constructed to service this outbuilding, which would have also required planning approval under HO127 and the LSO.

Shed 2 will be setback 2 metres from the north-eastern title boundary (5 Bailey Boulevard) and 1 metre from the south-eastern title boundary (Bailey Boulevard). Construction of Shed 2 has not yet commenced, however some works (including a driveway and the lopping of the English Oak) to service this proposed outbuilding have been completed. Shed 2 is proposed to measure 10.5 metres in width and 15 metres in length totalling an area of 157sqm. The outbuilding will be constructed with corrugated Colorbond steel with 'Cream/off white' walls and a corrugated roof in 'Red'. This outbuilding is proposed to be used by the landowner for storage of a caravan, cabin cruiser, trailers, additional motor vehicles and further storage.

An additional gravel driveway is proposed to service 'Shed 2', as well as the removal of a heritage listed 'Cypress tree' to accommodate this outbuilding.

Earthworks for fill pads for each outbuilding will be required to raise the finished floor level to Melbourne Waters standards.

This application does not include the retrospective works that have already been undertaken on the site, except for the works that have already commenced for 'Shed 1' and its driveway (which has not been shown on the plans).

## **PLANNING SCHEME PROVISIONS**

### **State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 15.03-1 Heritage conservation
- Clause 13.03-1 Floodplain management

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

The relevant clauses of the LPPF are:

- Clause 21.02-6 Post-contact heritage
- Clause 21.02-1 Catchment and coastal management
- Clause 21.07-7 Koo Wee Rup

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

The relevant provisions/ documents are:

- Clause 65 Decision Guidelines
- Clause 66 Referral and Notice Provisions
- Cardinia Shire (Emerald & Cranbourne Districts) Heritage Study 1998 – The Grange Homestead
- Koo Wee Rup Township Strategy 2015

## **Zone**

The land is subject to the **Neighbourhood Residential Zone - Schedule 1**

## **Overlays**

The land is subject to the following overlays:

- Land Subject to Inundation Overlay
- Heritage Overlay 127

## **PLANNING PERMIT TRIGGERS**

The proposal for development of the land for two (2) outbuildings (works commenced) and the removal of one (1) heritage tree, construction of a driveway and associated works, requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 44.04-2 (LSIO) a planning permit is required to construct a building or carry out works.
- Pursuant to Clause 43.01-1 (HO) a planning permit is required to construct a building or carry out works and to remove, destroy or lop a tree where tree controls apply.

## 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.*
- *Placing 2 signs on site*

Council has not received any objections to date.

## REFERRALS

### *Melbourne Water*

The application was referred to Melbourne Water as a statutory referral. Melbourne Water had no objection to the proposal subject to conditions.

## DISCUSSION

The proposal has been assessed against the decision guidelines of all relevant clauses of the Cardinia Planning Scheme, the development proposed is determined to be inconsistent with the Heritage Overlay requirements.

### **Neighbourhood Residential Zone – Schedule 1**

The key purpose of this zone is to recognise areas of predominately single and double storey residential dwellings and ensures development respects the identified neighbourhood character, heritage, environmental or landscape characteristics of an area. Pursuant to Clause 32.09-2 a Planning Permit is not required to carry out buildings and works associated with a dwelling, and as such, this application for the two (2) outbuildings, tree removal and other associated works were not required to be assessed under the Neighbourhood Residential Zone.

### **Land Subject to Inundation Overlay**

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.

As the entire site is covered by the LSIO it is not possible for the proposed outbuildings to be located on flood-free land or land with a lesser hazard outside this overlay. Pursuant to Section 55 the application was referred to Melbourne Water, who had no objection to the proposal, subject to conditions, which included the submission of amended plans requiring the finished floor levels of both sheds to be no lower than 5.7 metres to Australian Height Datum (AHD) and for imported fill to be kept to a minimum.

Given that Melbourne Water had no objection to the proposed development, it is considered that proposed outbuilding's would not increase the potential risk to life, health or safety a 1 in 100 Year flood poses, and would not affect or obstruct floodwater, stormwater or drainage over the property, subject to their conditions being met. If Council's recommendation was to approve this application, these conditions would form part of the permit. However, as the recommendation is to refuse this application for a Planning Permit, the conditions imposed by Melbourne Water are not applicable.

### **Heritage Overlay – Schedule 127 & Cardinia Shire (Emerald & Cranbourne Districts) Heritage Study 1998 – *The Grange Homestead***

The key purpose of this overlay and study is to conserve and enhance heritage places of natural and cultural significance, conserve elements which contribute to the significance of heritage places and ensure that development does not adversely affect the significance of heritage places. Heritage Overlay 127 relates specifically to the *Grange Homestead* located at Walker Street, Koo Wee Rup (L1 PS318270).

The dwelling is the last remaining building from the former homestead, which was built in 1887-88 for the Hudson family who were among some of the first settlers to the Koo Wee Rup area. The remaining house is a Victorian-era, double-gabled weatherboard dwelling, which is now, located within a residential subdivision of the land it once occupied. The dwelling is mostly in its original form and in good condition, with the original frontage of the dwelling facing away from the street and the rear of the dwelling now acting as the entry. There were a number of mature, heritage listed trees on the site including a Silky Oak, English Oak, Elm, Magnolia and Monterey Pine, a few (namely the Silky Oak) of which were recently removed by the current landowner without a Planning Permit or Council permission and the canopy of the English Oak significantly lopped without planning approval.

The applicant seeks to construct two (2) outbuildings, remove one (1) heritage tree, and construct a driveway along with additional works and earthworks.

The decision guidelines of the Heritage Overlay cover a number of matters. These include the significance of a heritage place, the location of buildings and the impact of visual scale and bulk on a place of heritage significance, whether proposed buildings are in keeping with the heritage character of a building or if they will impact on the significance of the place and whether the development of the site will impact significant trees.

The design and siting of the two (2) proposed outbuildings and the required removal of a heritage tree is considered inconsistent and unresponsive to the objectives of the Heritage Overlay and to the conservation of the *Grange Homestead* and its significant trees.

It is considered that the size, scale and visual bulk of the two (2) proposed outbuildings, especially 'Shed 2', would dominate the site and detrimentally affect the heritage significance of the original dwelling. It is evident through the design, the location of the outbuildings and the size of 'Shed 2', that little regard has been given to the decision guidelines of the Heritage Overlay, nor has the heritage significance of the original dwelling been taken into account when preparing this proposal. This disregard for the Planning controls that burden the site is also apparent, given the extensive buildings and works that have already commenced on the site without a Planning Permit.

The design and materials proposed are also not in keeping with, nor are they appropriate given the heritage character of the original dwelling. Shed 2 is especially of concern, as its large size (157sqm), is considered excessive and will completely dominate the streetscape on the south-eastern boundary. The use of Colorbond steel is also not appropriate in a heritage setting. Materials similar to what was available in the era in which the building was built, are encouraged and should be utilised instead. Additionally the resulting site coverage of the proposed outbuildings completely detracts from the main features of the site. These features include the heritage dwelling, heritage trees and sense of openness and spaciousness on which the original homestead would have sat. It also removes the opportunity for landscaping and gardens to be re-established on the site, which records suggest the original dwelling had.

Adding to the concerns raised above, the large size of 'Shed 2' requires the removal of one (1) heritage tree within its footprint and the construction of the driveway proposed (already partially constructed) to service this shed will unnecessarily encroach of the Tree Protection Zone (TPZ) of the last remaining large (mature) tree on the site (English Oak Tree). Given that this site is encumbered by tree controls under the HO127, any buildings and works are required to avoid and minimise any impacts on these listed trees. There are a number of opportunities to avoid unnecessary impacts on the remaining trees on this site, which have not been achieved. As such, the unnecessary removal or impact of the proposal on significant trees is not appropriate and should not be supported. It should also be noted that, as discussed above this tree (English Oak) has already been lopped without the authorisation of a Planning Permit.

Furthermore, the application was referred to Council's Heritage Department who were unsupportive of the proposal for the following reasons:

- The location and size of Shed 1 is more sympathetic to the existing dwelling and surrounding landscape, however the proposed design (garage type structure) is not in keeping with the heritage aesthetic of the site. A carport or similar structure, not constructed of Colorbond steel, would have been more appropriate and may have been supported;

- The concrete driveway (not shown on the plans) which has been put into service Shed 1, extending from the front crossover to the rear of the dwelling is not appropriate. This hard landscaping is not keeping with the character or age of the dwelling and landscape, and would not be supported as part of any application. The driveway should have been constructed with a softer gravel like material that would be far more appropriate and would not dramatically impact the heritage value of the site. The concrete driveway has a direct visual impact on the significance of the site and should be removed;
- The location and size of Shed 2, which includes proposed gravel driveway (partially constructed) and the removal of a significant tree, is too large for the site and would dramatically detract and impact on the heritage place due to its overall size and placement on the site;
- The driveway access will also impact on the tree protection zone of a large significant Oak tree remaining on site; and
- The colours and material proposed for Shed 2 are inappropriate, and are not in keeping with the overall character of a heritage site.

Council's Environment and Heritage Department went on to say:

*"The applicant has given no/little consideration to the overall heritage significance of the site and the proposed plans clearly indicate this. For these reasons the proposed second shed including access is not supported by the Environment & Heritage Unit. Shed 1 may have been supported if a gravel driveway was proposed and changes to the design and materials were made, but unfortunately, the owner has taken steps without Council advice or permits to construct the shed, as well as constructing an inappropriate driveway access to Shed 1 at the rear. Prior application being made, the owner has removed trees of significance and constructed a rear addition with no permit."*

Although the site is contained within an established residential area, with many dwellings being developed with large outbuildings, it is important to remember that given its specific incorporation into the Planning Scheme through H0127, buildings and works at Walker Street, must be assessed in isolation, regardless of its location within the subdivision. What is generally acceptable in a residential setting is not acceptable in the case of the development of buildings on land that a Heritage dwelling sits on. As such, the argument that other surrounding sites have Colorbond outbuildings (especially large outbuildings) cannot be considered in support of this application, and the application made under the H0127 should not be supported.

### **Koo Wee Rup Township Strategy**

This strategy specifically makes reference to *The Grange* and its local and municipal significance. The Township Strategy seeks to ensure that future development is sensitive to the established heritage values of the area and to protect sites and precincts of heritage significance. The *Grange* is also mentioned in the *Cardinia Shire Local Heritage Study Review May 2011*, as it is a site valued by the community and the Shire within the Koo Wee Rup Township.

The objectives of the Township Strategy are to ensure that sites of heritage significance are valued, protected and restored where possible, with the adaptive reuse of buildings also being supportable, where appropriate and ensuring that any future development enhances existing characteristics of heritage places.

It is considered that the application does little in the way to ensure that the above objectives are achieved. This site is clearly significant to the history of Koo Wee Rup and the proposal is not sensitive or responsive to its enhancement or protection, and therefore, is not in keeping with the Township Strategy and future strategic direction of Koo Wee Rup.

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

It is considered that the proposal does not comply with the relevant State and Local Planning Policies, including the Municipal Strategic Statement regarding heritage buildings and sites.

It is inconsistent with the status of the site as a significant heritage place within the Koo Wee Rup Township, and is inconsistent with the objectives of the Heritage Overlay, which affects the site. The key state and local planning policy considerations taken into account for this proposal included the protection of new buildings and life in flood prone areas, however, the main focus with this application has been to protect, enhance and

preserve the heritage of the original dwelling. It is considered that this has not been achieved. The application proposes poor design outcomes, with little-to-no regard for the requirements of the heritage planning controls that apply to the site.

The addition of the two (2) outbuildings, removal of a heritage tree and all other associated works will diminish the heritage value and character of the site.

Opportunities were not taken to respond to the heritage significance of this site, and therefore, it is considered that the application cannot satisfy the relevant Planning controls, nor can it satisfy the State and Local Policy Framework and should not be supported.

## CONCLUSION

Given the above discussion, it is considered that there are adequate grounds to refuse to grant a planning permit based on the inconsistencies and failure of the proposal to adequately meet objectives of the Heritage Overlay. Concerns regarding the appropriateness of the buildings and works on this site were initially raised by Officers, with no response or changes to the proposal being made.

Furthermore, the willingness demonstrated by the landowner to undertake buildings, works and tree removal without a Planning Permit, and then the commencement of 'Shed 1' and its driveway without this permit first being approved, shows a total disregard to the abovementioned planning controls and requirements, as well as the local and heritage significance of the *Grange*. Even if a Planning Permit were issued for the buildings and works proposed by this application it would have required the applicant to construct a building vastly different to what has already been constructed.

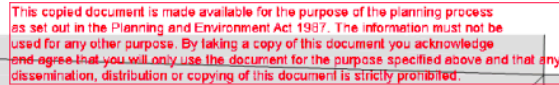
As the concerns outlined in this recommendation were raised at the time that further information was requested, the applicant was given the opportunity to amend the plans to better respond to the decision guidelines and the aims and objectives of the Heritage Overlay, as well as the opportunity to address the significance of this heritage place. However, the applicant chose to proceed with the originally submitted plans, making no changes (changes that may have resulted in support for parts of this proposal), a decision, which ultimately, has led to this recommendation for refusal.

As the proposal has had little-to-no regard to planning considerations, Officers submit the following two recommendations:

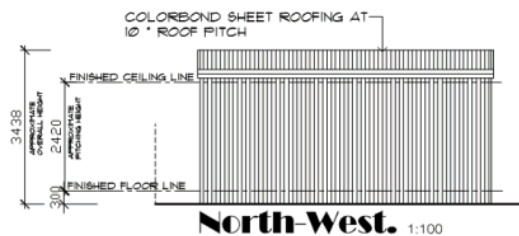
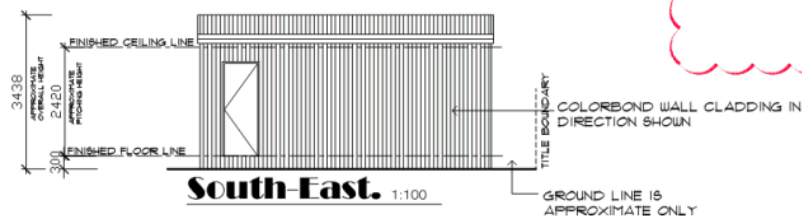
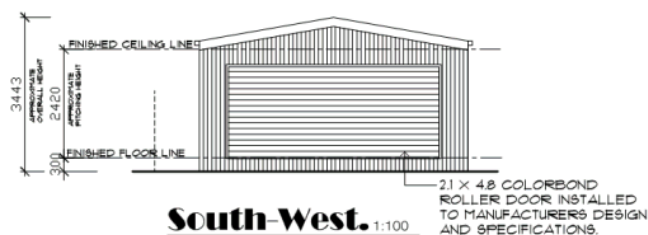
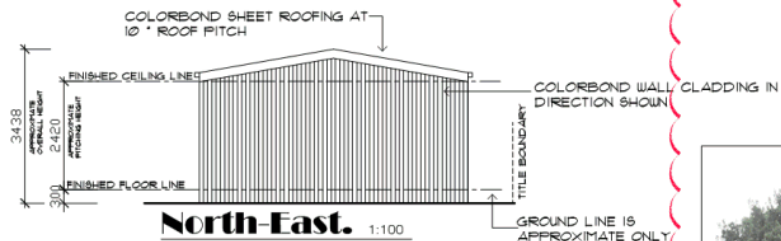
1. It is recommended that **the application for a planning permit for the development of the land for two (2) outbuildings (works commenced) and the removal of one (1) Heritage Tree, construction of a driveway and associated works at Walker Street, Koo Wee Rup (L1 PS318270)** be refused on the following grounds:
  - The application is inconsistent with State and Local Planning Policy relating to the development of heritage sites and post-contact heritage sites;
  - The application is inconsistent and unresponsive to the objectives of the Heritage Overlay (H0127); and
  - The proposed development, including the visual scale and bulk of the buildings, is inappropriate given the heritage significance of the *Grange Homestead*.
2. Once appeal timeframes at VCAT have been exhausted and proceedings at Magistrate Court have finalised, Council to seek enforcement order at VCAT to reinstate the land of any illegal works.



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Shed 1.

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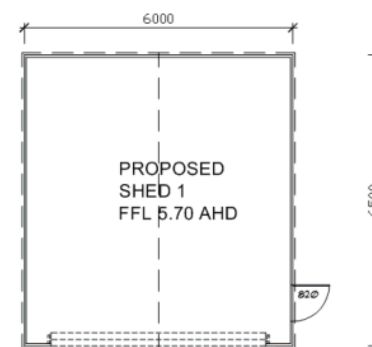
T-1 OAK TREE  
TRUNK DIA 1.4m  
FOLAGE RADII 7.5m  
HEIGHT 15m  
TPZ (APPROX) 17m (956m<sup>2</sup>)



T-2 CYPRESS TREE  
TRUNK DIA 200mm  
FOLAGE RADII 3.8m  
HEIGHT 7m  
TPZ (APPROX) 2.4m (21m<sup>2</sup>)



T-3 EVERGREEN  
TRUNK DIA 100mm  
FOLAGE RADII 2.1m  
HEIGHT 3m  
TPZ (APPROX) 12m (93m<sup>2</sup>)



Floor Plan.

2.1 x 4.8 COLORBOND  
ROLLER DOOR INSTALLED  
TO MANUFACTURERS  
DESIGN AND SPECIFICATIONS.

## Color Schedule.

COLORBOND ROOF	RED.
COLORBOND WALLS	CREAM/OFF WHITE
ROLLER DOOR	RED.
GUTTERS/FASCIA	RED.

## Notes:

OWNER and/or BUILDER to check and verify all dimensions, site levels, grades, roof pitches, etc prior to commencing any works.

Report any discrepancies to 3D Design Group for directions prior to ordering materials and start of building works.

Do not scale drawings, written dimensions are to take precedence over scaled drawings.

## Areas Schedule

Shed 1. 39.00 Sqm or 4.19 Sq

Revision		
05/07/2018	TP1a	AMENDED AS PER COUNCIL RFI

**3D DESIGN GROUP**

Shop B, 42 Main Street Pakenham, Vic. 3810  
Ph (03) 5941 4717 Fax (03) 5941 4501  
pakenham@3dds.com.au

Title Shed 1 Elevation & Floor Plan

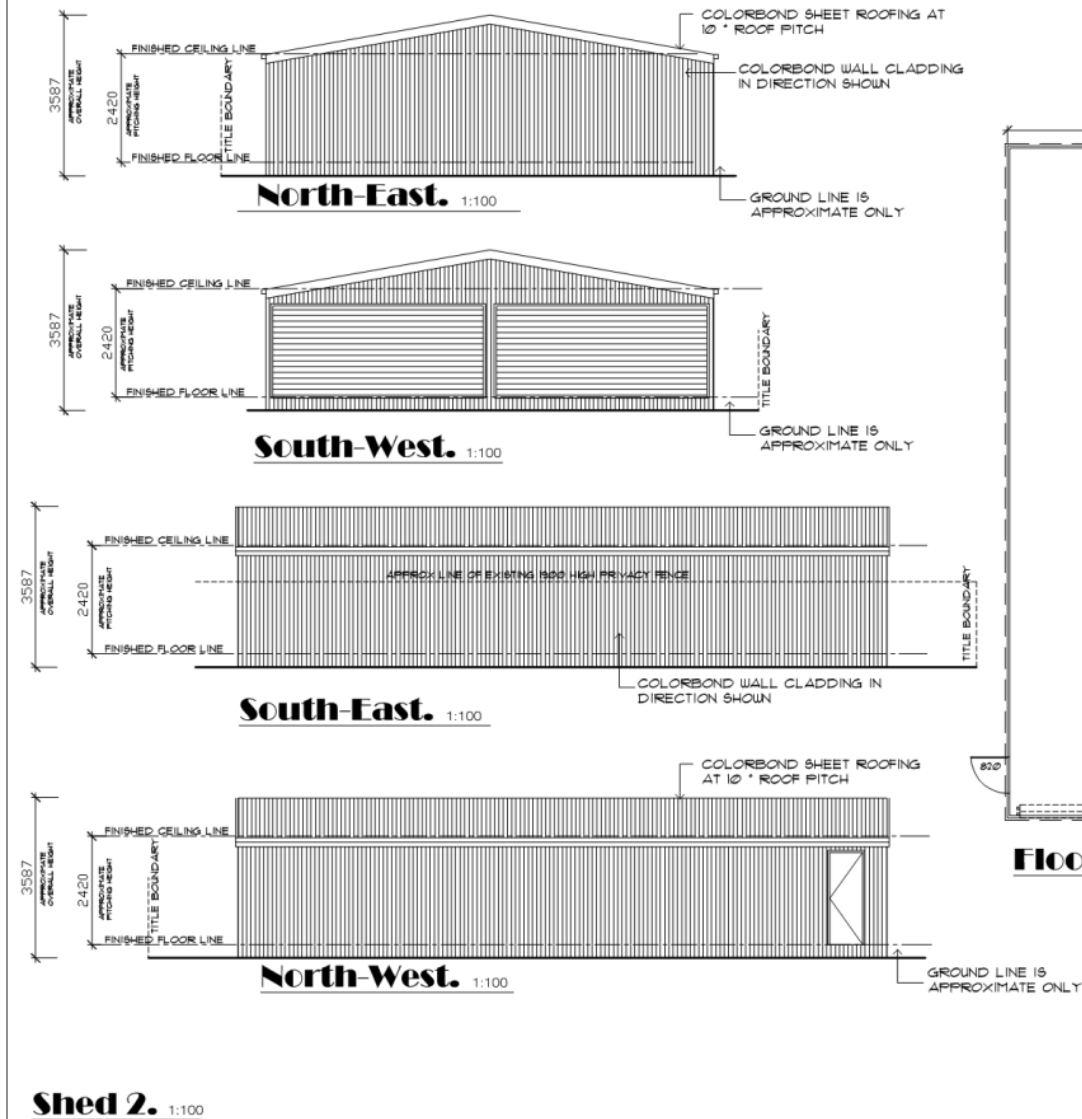
Job. Proposed Sheds

Name. Steve Douglas

Address Lot 1 Walker Street,  
Koo Wee Rup

Design Client	Issue.	TP1a
Date.	05.07.18	Sheet Size. A3
Drawn.	KF/DM	Checked. Brendon
Dwg No.	18.006	Sheet No. 2 of 3

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Building Practitioner B. Egan BP-AD 2274

**Color Schedule.**

COLORBOND ROOF	RED.
COLORBOND WALLS	CREAM/OFF WHITE.
ROLLER DOOR	RED.
GUTTERS/FASCIA	RED.

**Notes:**

OWNER and/or BUILDER to check and verify all dimensions, site levels, grades, roof pitches, etc prior to commencing any works.

Report any discrepancies to 3D Design Group for directions prior to ordering materials and start of building works.

Do not scale drawings, written dimensions are to take precedence over scaled drawings.

**Areas Schedule**

Shed 2. 157 Sqm or 16.95 Sq



Revision		
05/07/2018	TP1a	AMENDED AS PER COUNCIL RFI

**3D DESIGN GROUP**

Shop B, 42 Main Street Pakenham, Vic. 3810  
Ph (03) 5941 4717 Fax (03) 5941 4501  
pakenham@3dds.com.au

Title Shed 2 Elevation & Floor Plan

Job. Proposed Sheds

Name. Steve Douglas

Address Lot 1 Walker Street,  
Koo Wee Rup

Design Client	Issue.	TP1a
Date. 05.07.18	Sheet Size.	A3
Drawn. KF/DM	Checked.	Brendon
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## TOWN PLANNING