

MOYNE SHIRE COUNCIL

NOTICE OF AN APPLICATION FOR PLANNING PERMIT

The land affected by the application is located at:	147 Illowa Road DENNINGTON Lot 3 PS 914913G
The application is for a Permit to:	Use and buildings and works to construct a dwelling (section 2)
The applicant for the Permit is:	Annette M Price C/- Mathew Morse Architect Pty Ltd
The application reference number is:	PL26/149
You may look at the application and any documents that support the application at the office of the Responsible Authority:	Moyne Shire Council – Port Fairy Office Planning Department, Princes Street, PORT FAIRY, 3284. OR – View proposed plans here www.moyne.vic.gov.au/planningnotices

This can be done during office hours and is free of charge.

Any person who may be affected by the granting of the Permit may object or make other submissions to the Responsible Authority.

An objection must:

- be sent to the Responsible Authority in writing,
- include the reasons for the objection, and
- state how the objector would be affected.

The responsible authority must make a copy of every objection available at its office for any person to inspect during office hours free of charge until the end of the period during which an application may be made for review of a decision on the application.

The Responsible Authority will not decide on the application before:	Monday 19 October 2026
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If you object, the Responsible Authority will tell you its decision.



Office Use Only

VicSmart? ☐ YES ☐ NO

Specify class of VicSmart application:

Application No.: Date Lodged: / /

Application for a Planning Permit

If you need help to complete this form, read MORE INFORMATION at the back of this form.

- Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any concerns, please contact Council's planning department.
- Questions marked with an asterisk (*) must be completed.
- If the space provided on the form is insufficient, attach a separate sheet.
- Click for further information.

Clear Form

Application Type

Is this a VicSmart application?*

☒ No ☐ Yes

If yes, please specify which VicSmart class or classes:.....

Classes of VicSmart application are listed in zones, overlays , particular provisions and the schedule to Clause 59.15

Pre-application Meeting

Has there been a pre-application meeting with a Council planning officer?

☒ No ☐ Yes

If 'Yes', with whom?:

Date: day / month / year

The Land

Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

Street Address *

Unit No.: St. No.: 147 St. Name: Illowa Road

Suburb/Locality: Dennington Postcode: 3280

Formal Land Description *

Complete either A or B.

- This information can be found on the certificate of title.
- If this application relates to more than one address, attach a separate sheet setting out any additional property details.

A Lot No.: 3 ☐ Lodged Plan ☐ Title Plan ☒ Plan of Subdivision No.: 914913G

OR

B Crown Allotment No.: Section No.:

Parish/Township Name:

The Proposal



You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application.



For what use, development or other matter do you require a permit? *

Construction of new dwelling



Provide additional information about the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.



Estimated cost of any development for which the permit is required *

Cost \$ 1,200,000



You may be required to verify this estimate. Insert '0' if no development is proposed.

If the application is for land within **metropolitan Melbourne** (as defined in section 3 of the *Planning and Environment Act 1987*) and the estimated cost of the development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy **must** be paid to the State Revenue Office and a current levy certificate **must** be submitted with the application. Visit www.sro.vic.gov.au for information.

Existing Conditions

Describe how the land is used and developed now *

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

Vacant



Provide a plan of the existing conditions. Photos are also helpful.

Title Information

Encumbrances on title *

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- ☐ Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.)
- ☐ No
- ☒ Not applicable (no such encumbrance applies).



Provide a full, current copy of the title for each individual parcel of land forming the subject site. The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', for example, restrictive covenants.

Applicant and Owner Details

Provide details of the applicant and the owner of the land.

Applicant *

The person who wants the permit.

Please provide at least one contact phone number *

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

Owner *

The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.

Name:		
Organisation (if applicable):		
Postal Address:		If it is a P.O. Box, enter the details here:
Unit No.:		

Contact information for applicant OR contact person below	
Business phone:	Email:
Mobile phone:	Fax:

Contact person's details*		Same as applicant ☐
Name:		
Organisation (if applicable): Mathew Morse Architect		
Postal Address:		If it is a P.O. Box, enter the details here:
Unit No.:		

Name:		Same as applicant ☒	
Title:	First Name:	Surname:	
Organisation (if applicable):			
Postal Address:		If it is a P.O. Box, enter the details here:	
Unit No.:	St. No.:	St. Name:	
Suburb/Locality:		State:	Postcode:
Owner's Signature (Optional):		Date:	
		day / month / year	

Information requirements

Is the required information provided?

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist.

☐ Yes ☐ No

Declaration

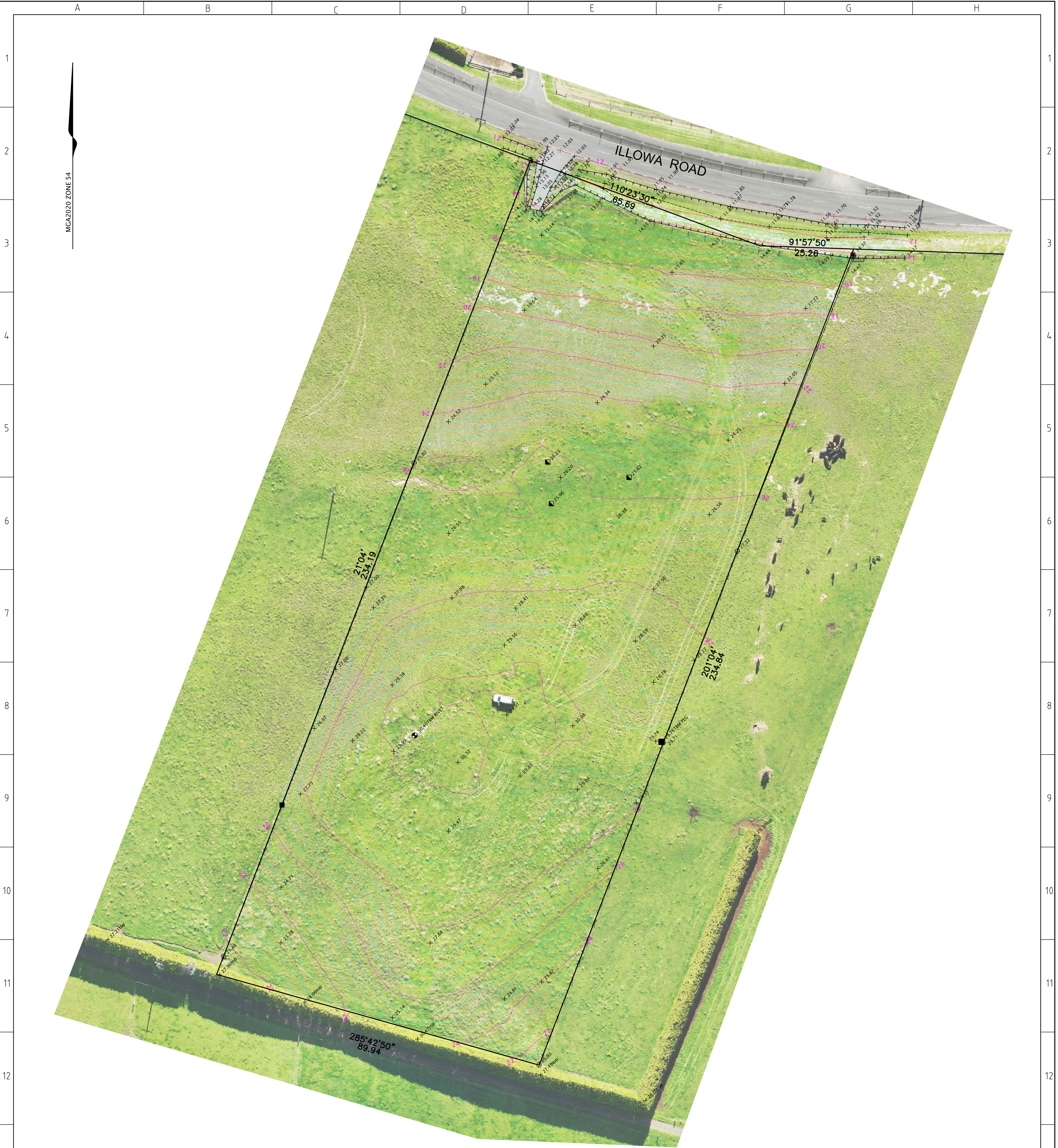
This form must be signed by the applicant *

 Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the permit application.

Date: 27/8/2026

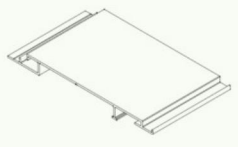
day / month / year



MATERIALS & FINISHES SCHEDULE

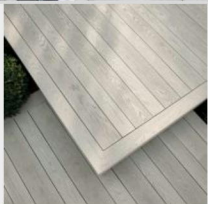
PROJECT **2609**
 NAME New Dwelling
 ADDRESS 147 Illowa Road, Dennington
 CLIENT [REDACTED]
 ISSUE 01 - Town Planning Issue
 DATE 25.08.2026

Mathew Morse Architect
 Mathew Morse Architect
 182b Lava Street
 Warrnambool VIC 3280
 P: 0438 624475
 info@morsearchitect.com.au
 ABN: 42 589 148 378

CODE	DETAILS	LINK	IMAGE
Notes: All images shown are indicative only.			
C1	Colour: Colorbond 'Dune'. o Location: Eaves & slab edge.		
C2	Colour: 'Coreten'. o Location: CLAD1.		
C3	Colour: 'Viroc Grey'. o Location: CLAD2.		
C4	Colour: Colorbond 'Wallaby'. o Location: Roof, cappings & gutters.		
C5	Colour: 'Jet Black' (Aludec). o Location: External windows & doors.		
C6	Colour: 'Golden Oak'. o Location: DK1.		
CLAD1	Aluminium interlocking cladding-vertical, colour C2. o Specification: ALUMATEX interlocking cladding boards, powdercoated finish - 150mm channel board.	link	

MATERIALS & FINISHES SCHEDULE

PROJECT **2609**
 NAME New Dwelling
 ADDRESS 147 Illowa Road, Dennington
 CLIENT [REDACTED]
 ISSUE 01 - Town Planning Issue
 DATE 25.08.2026

CODE	DETAILS	LINK	IMAGE
CLAD2	Cement bonded particle board cladding, colour C3. ○ Specification: Viroc Wall Panelling, 12mm thickness with express joints.	link	
DK1	Composite decking, colour C6. ○ Specification: Millboard composite decking. Enhanced grain collection.	link	
EG1	Metal eaves gutter, colour C4. ○ Specification: Lysaght HALF ROUND 150 gutter unslotted complete with all matching accessories necessary to complete the system, Colorbond ULTRA steel. Fix using external powdercoated brackets to match.	link	
FR1	uPVC door/window frame, colour C5. ○ Specification: Thermosmart door & window system with Siegenia Hardware (Titan Silver coating). Refer to drawings for sizes & details.	link	
PERG1	Steel pergola structure with painted finish, colour C4. ○ Specification: Refer structural engineering and/or details.		
RE1	Rammed earth, natural warm sand tone. ○ Specification: Rammed earth walls by specialist contractor. Composition, reinforcement, footings, control joints and structural requirements to Eng's details. Provide all flashings, DPC's, sealants and weatherproofing for a complete installation.		
REND1	Render, painted finish, colour C1. ○ Specification: Dulux Acratex RenderWall Acrabuild Fine, smooth render system, painted finish.	link	
RF1	Metal roof sheeting-tray deck profile, colour C4. ○ Specification: 0.48mm BMT Lysaght KLIP-LOK clip-fixed steel roofing (or equivalent), Colorbond ULTRA steel. Class 4 fasteners to be used <1km from the coast.	link	



Mathew Morse Architect Pty Ltd
182b Lava Street
Warrnambool VIC 3280

M: 0438 624 475
www.morsearchitect.com.au

ABN: 42 589 148 378

PLANNING REPORT

NEW DWELLING

147 Illowa Road, Dennington

INTRODUCTION

This report has been prepared in support of an application for the construction of a new dwelling at 147 Illowa Road, Dennington.

The subject property is formally identified as Lot 3 on Plan of Subdivision PS914913G.

The proposal comprises a contemporary, single-storey dwelling designed to respond sensitively to the existing landform and surrounding rural landscape. The dwelling has been deliberately sited to minimise its visibility from Illowa Road and to ensure that the development does not overwhelm the site or surrounding landscape.

The principal planning considerations relate to the siting, built form, appearance and landscape response of the proposed dwelling.

SITE AND PLANNING CONTEXT

The site is situated on the southern side of Illowa Road on the western outskirts of Warrnambool, approximately 5 kilometres from the Warrnambool town centre.

The property has an area of approximately 2.074 hectares and has been substantially cleared of trees and significant vegetation, having been used for grazing for many years. The site is enclosed by farm-style post and wire fencing and has an existing constructed crossover and access point from Illowa Road.

The adjoining properties to the west and east are currently vacant. The subject site forms part of a cluster of existing and recently approved dwellings along Illowa Road.

The land is located within the Moyne Planning Scheme and is included within the Farming Zone – Schedule 2 (FZ2) and Significant Landscape Overlay – Schedule 5 (SLO5).

PROPOSED DEVELOPMENT

The proposal comprises a new contemporary, single-storey dwelling.

The dwelling is designed as a low-set structure of modest scale and height. It will be positioned approximately 156 metres from the front title boundary, with side setbacks of approximately 34 metres to the east and 22 metres to the west.

The dwelling will be oriented generally towards the south & west, providing outlook towards the ocean and distant sand dunes.

Importantly, the dwelling will not be visible from Illowa Road. The building is positioned behind the natural brow of the hill, ensuring that the dwelling is concealed from the principal public viewing location.

The proposed siting is therefore considered to provide an appropriate balance between residential amenity and the protection of the rural landscape character.

PLANNING PERMIT REQUIREMENTS

FARMING ZONE – SCHEDULE 2

A planning permit is required for the use of the land for a dwelling pursuant to Clause 35.07-2, as the subject land is less than 10 hectares. A planning permit is also required for buildings and works associated with the dwelling pursuant to Clause 35.07-4.

The use of the land for a dwelling has previously been considered as part of a previous development and/or subdivision permit assessment. Accordingly, the current assessment is principally concerned with the differences between the previously approved dwelling footprint and the dwelling now proposed.

The proposed dwelling satisfies the relevant use considerations through the provision of appropriate services, access and wastewater management.

The proposal does not result in any further adverse impact upon agricultural activities beyond the impacts associated with existing or approved dwellings within the locality.

The dwelling is part of a cluster of recently approved dwellings along Illowa Road. This assists in minimising the potential impacts of residential development upon agricultural activity and avoids the creation of an isolated residential development within the broader agricultural landscape.

The siting of the dwelling allows the majority of the allotment to remain open and available for agricultural use.

The proposed dwelling will be appropriately serviced.

The dwelling will be connected to the mains electricity supply and will incorporate rainwater tanks for potable water supply.

Wastewater will be managed through new septic tanks and an onsite wastewater management system designed and installed in accordance with the requirements of council and the EPA.

An all-weather accessway will be provided to the dwelling.

Significant Landscape Overlay – Schedule 5

A planning permit is not required for buildings and works under Clause 42.03-2 where the relevant building is less than 8 metres in height.

The proposed dwelling is a single-storey, low-set building and is well below this height. The dwelling is also located away behind the natural brow of the land, substantially reducing its visual prominence.

Notwithstanding the permit exemption, the proposal has been designed having regard to the landscape character objectives relevant to the SLO5. The low building form, substantial setbacks and muted natural material palette are intended to ensure that the dwelling integrates with the surrounding landscape.

DESIGN RESPONSE

The proposed dwelling is contemporary in architectural style but deliberately restrained in its presentation.

The design incorporates a low-set building form and natural-toned materials that respond to the surrounding rural and coastal landscape.

The external materials and colours are detailed on the architectural elevations and materials schedule submitted with the application.

The proposed palette is comprised of muted, neutral and natural tones to ensure that the dwelling recedes into the landscape rather than becoming a visually dominant element.

The architectural approach is considered appropriate to the locality and provides a contemporary interpretation of a rural dwelling without compromising the landscape character of the area.

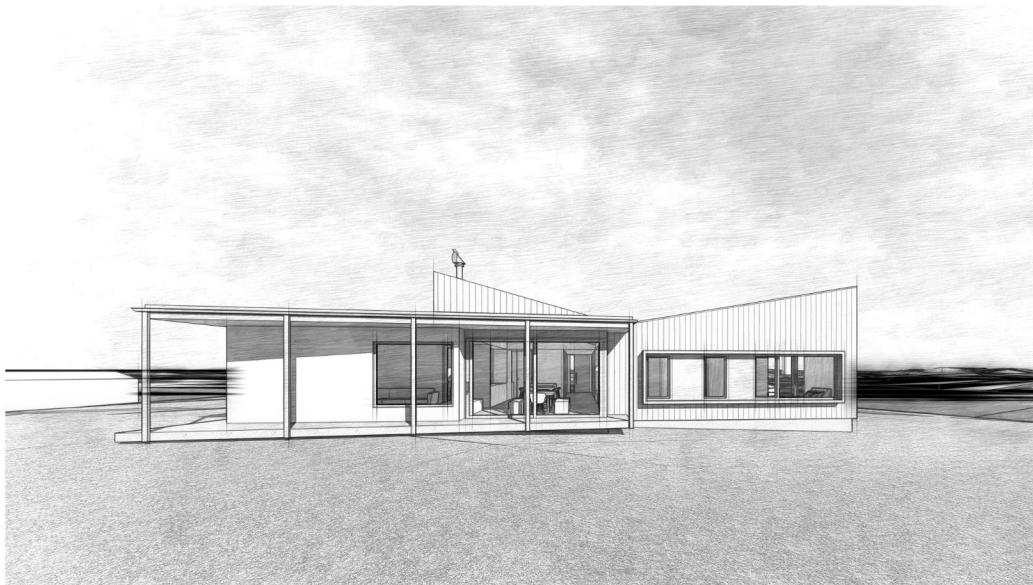
CONCLUSION

The proposal is considered to appropriately respond to the relevant planning considerations applying to the site.

In summary:

- The site is within the Farming Zone – Schedule 2 and the proposed dwelling is consistent with the established and previously approved residential use of the land.
- The required planning permit considerations under Clause 35.07 are addressed through the siting, scale, services and agricultural response of the proposal.
- The site is affected by SLO5; however, the proposed dwelling is less than 8 metres in height and therefore does not require a permit for buildings and works under Clause 42.03-2.
- The dwelling is single-storey and low-set.
- The dwelling is positioned approximately 156 metres from Illowa Road and will not be visible from the road due to the natural brow of the land.
- The dwelling is modest in scale and does not overwhelm the site.
- The natural and muted material palette will assist the dwelling to integrate with the landscape.
- The proposal does not create additional fragmentation of agricultural land.
- Appropriate water, wastewater, electricity and all-weather access arrangements are proposed.
- A Cultural Heritage Management Plan is not required for the proposed single dwelling.
- Bushfire construction requirements will be addressed as applicable at building permit stage.

The proposal is considered to provide a well-considered planning and architectural response to the site. It is respectfully requested that council support the application and issue a planning permit.



DRAWING SCHEDULE

SHEET	NAME	REV.
TP00	COVER PAGE	01
TP01	SITE PLAN	01
TP02	FLOOR PLAN	01
TP03	NORTH & SOUTH ELEVATIONS	01
TP04	EAST & WEST ELEVATIONS	01

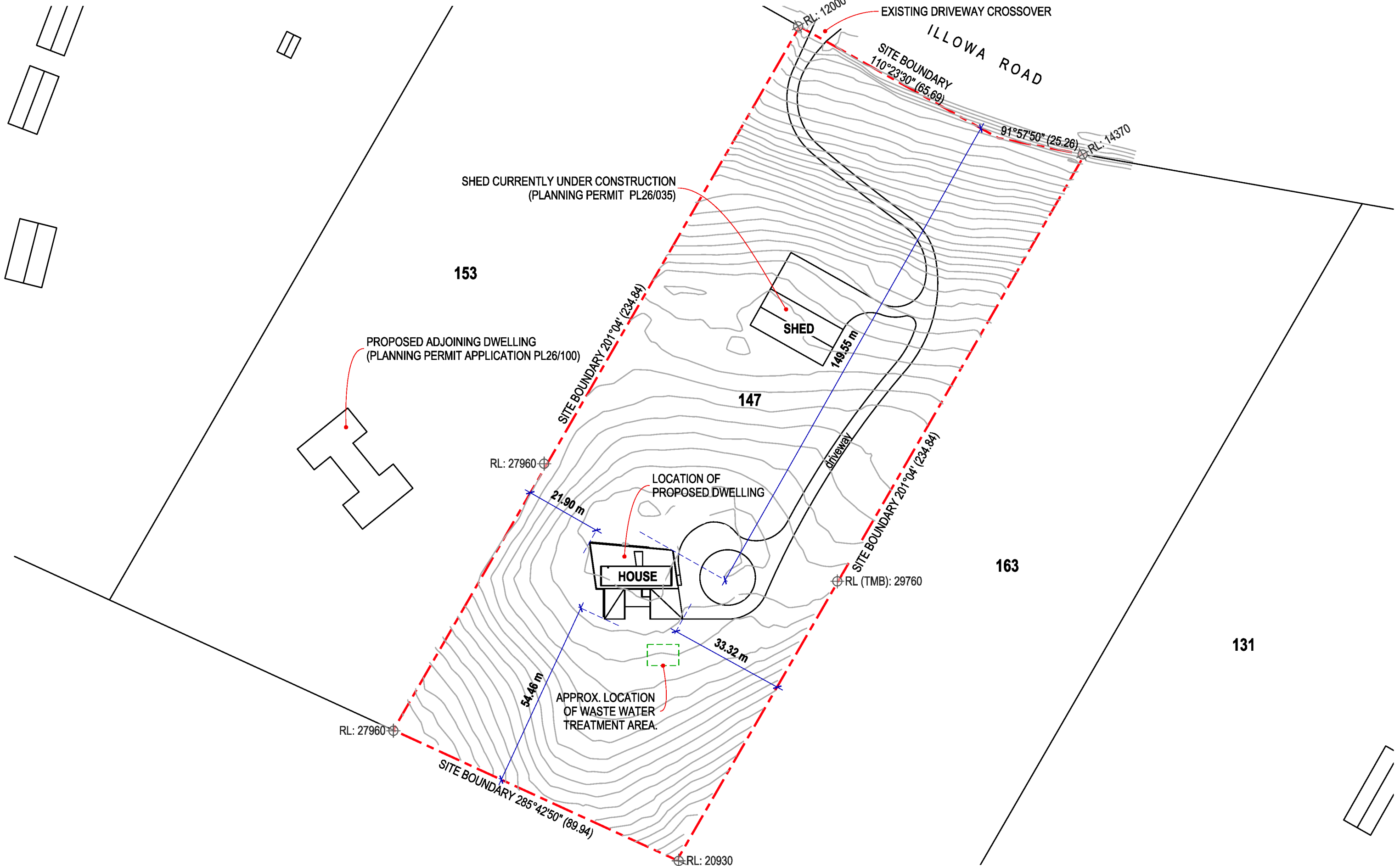
TOWN PLANNING DRAWINGS

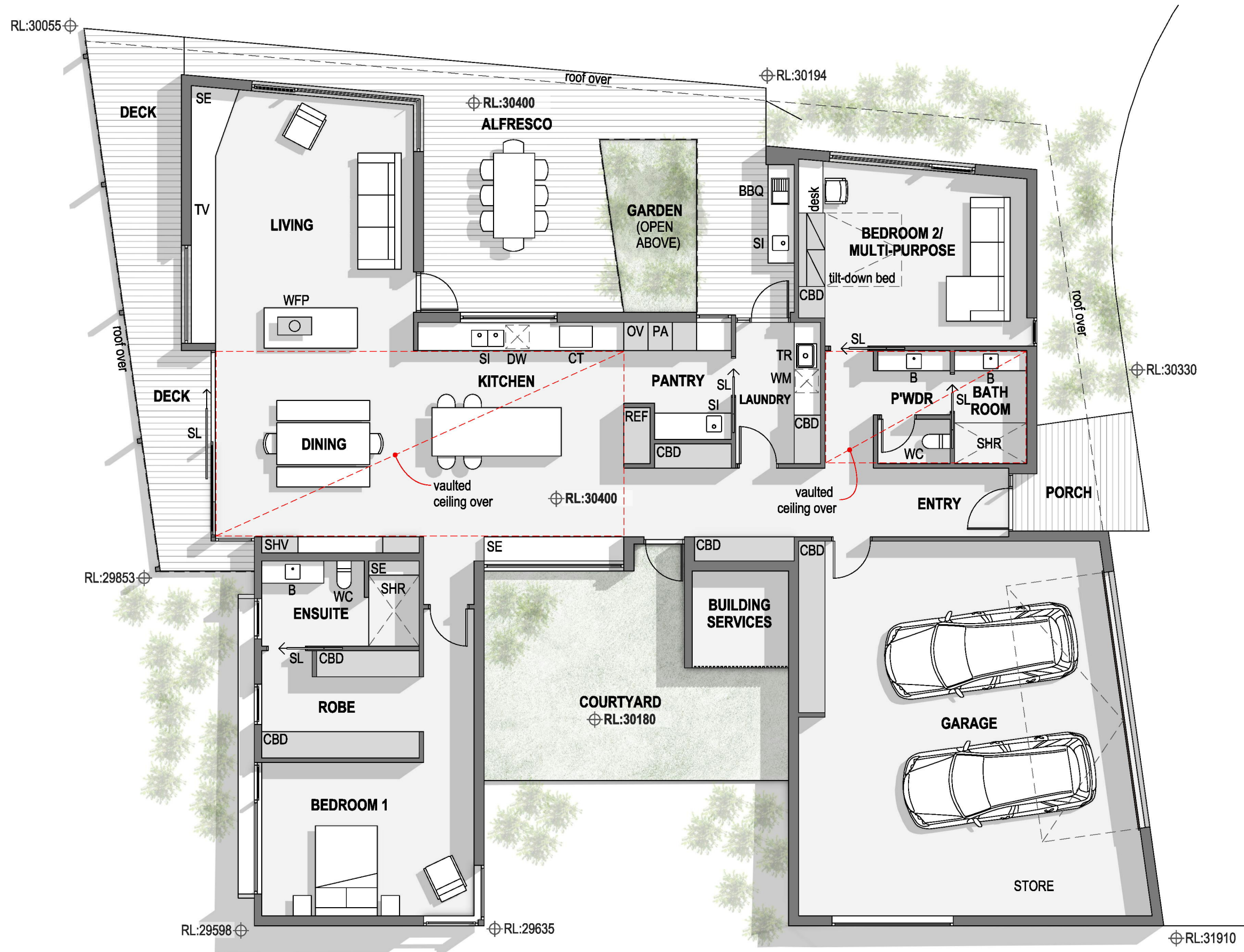
PROJECT
New Dwelling

ADDRESS
147 Illowa Road, Dennington

CLIENT
[REDACTED]







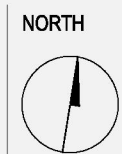
LEGEND	
CODE	DESCRIPTION
BKH	Bulkhead over.
CBD	Cupboard.
DK1	Composite decking, colour C6.
PA	Pantry cupboard.
SE	Seat.
SHR	Shower.
SHV	Shelving unit.
SL	Sliding door/window.

AREA ANALYSIS	
BUILDING	m2
GROUND FLOOR	217
UPPER FLOOR	78
TOTAL	295
EXTERIORS	
m2	
ALFRESCO (ROOFED)	35
ALFRESCO (UNROOFED)	9
DECK	30
TOTAL	74

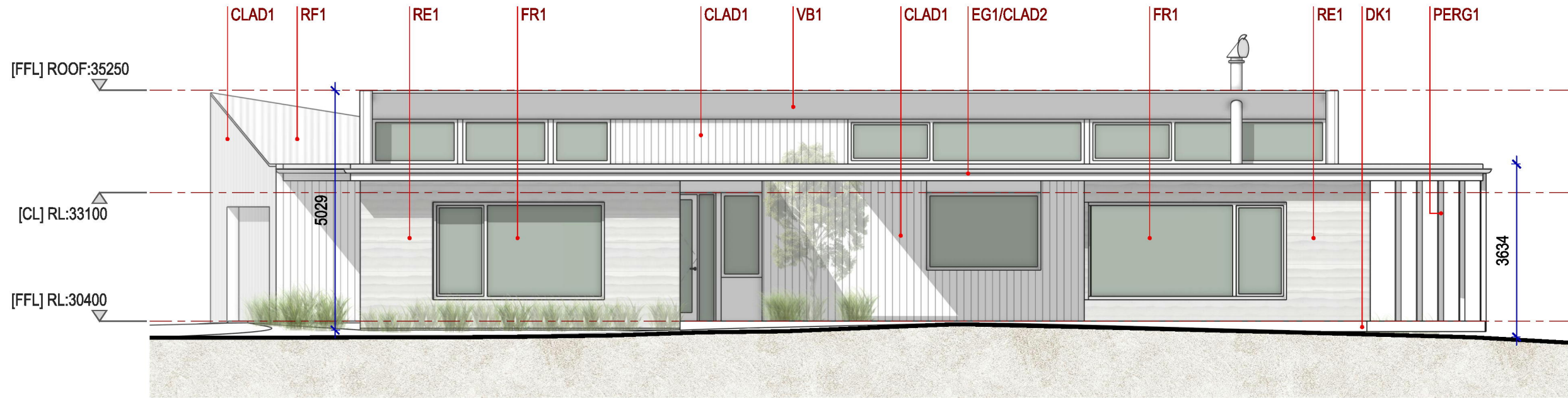
Rev	Date	Description
01	25.08.2026	Town Planning Issue

PROJECT
New Dwelling
147 Illowa Road, Dennington
CLIENT
[REDACTED]

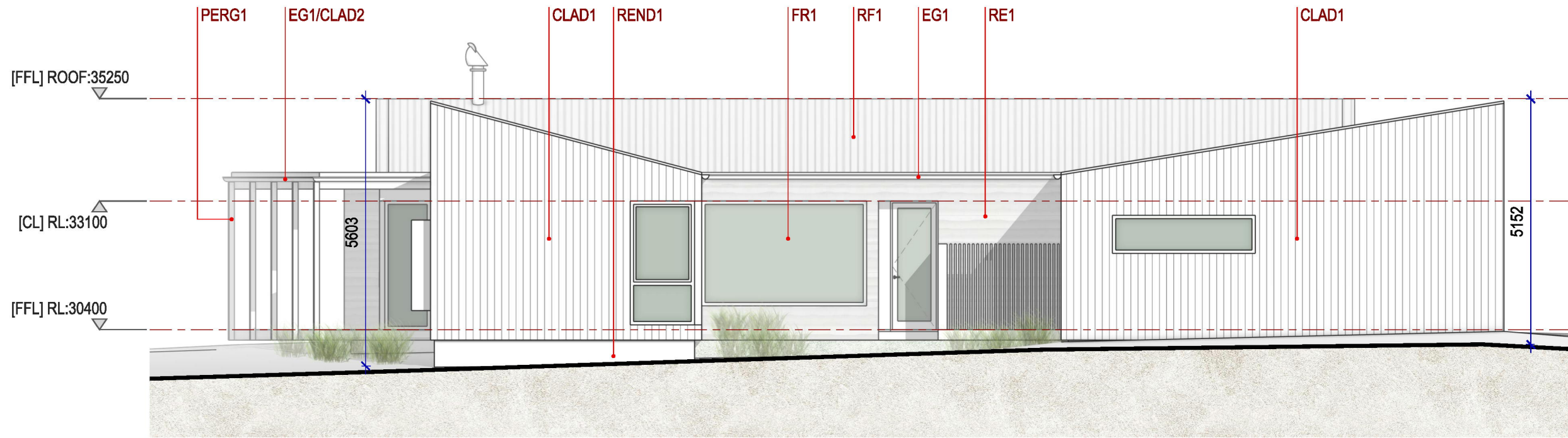
DRAWING TITLE
FLOOR PLAN



SHEET	SCALE	REVISION
A3	1:100	01
PROJECT	DATE	DRAWING
2609	25.08.2026	TP02



NORTH ELEVATION
SCALE 1:100



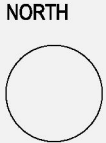
SOUTH ELEVATION
SCALE 1:100

LEGEND	
CODE	DESCRIPTION
C1	Colour: Colorbond 'Dune'.
C2	Colour: 'Coreten'.
C3	Colour: 'Viroc Grey'.
C4	Colour: Colorbond 'Wallaby'.
C5	Colour: 'Jet Black' (Aludec).
C6	Colour: 'Golden Oak'.
CLAD1	Aluminium interlocking cladding-vertical, colour C2.
CLAD2	Cement bonded particle board cladding, colour C3.
DK1	Composite decking, colour C6.
EG1	Metal eaves gutter, colour C4.
FR1	uPVC door/window frame, colour C5.
PERG1	Steel pergola structure with painted finish, colour C4.
RE1	Rammed earth, natural warm sand tone.
REND1	Render, painted finish, colour C1.
RF1	Metal roof sheeting-tray deck profile, colour C4.
VB1	Villaboard, colour C1.

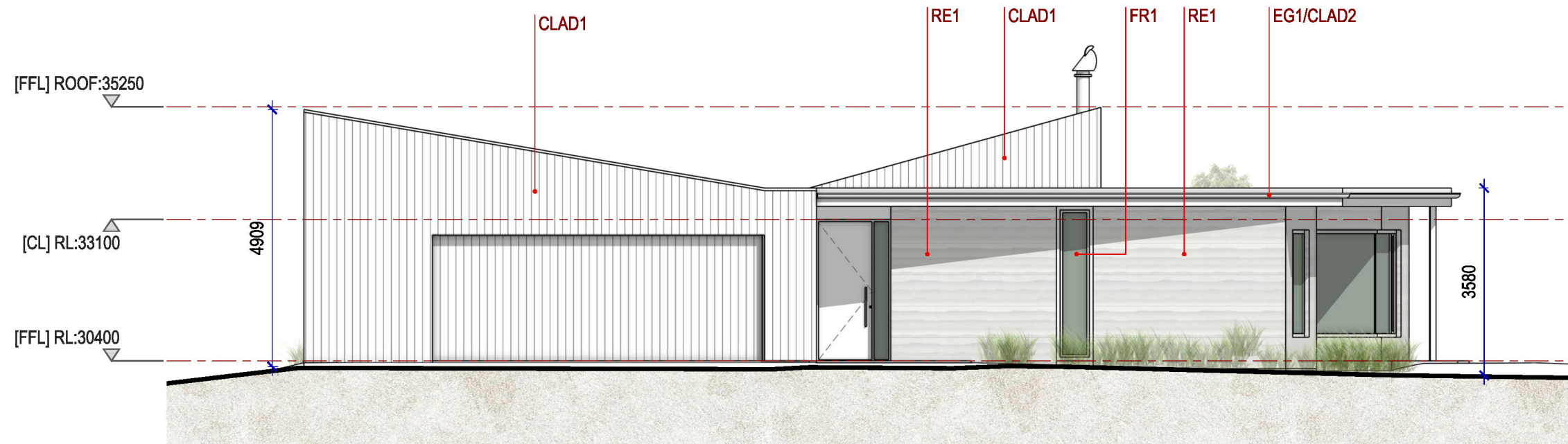
Rev	Date	Description
01	25.08.2026	Town Planning Issue

PROJECT
New Dwelling
147 Illowa Road, Dennington
CLIENT
[REDACTED]

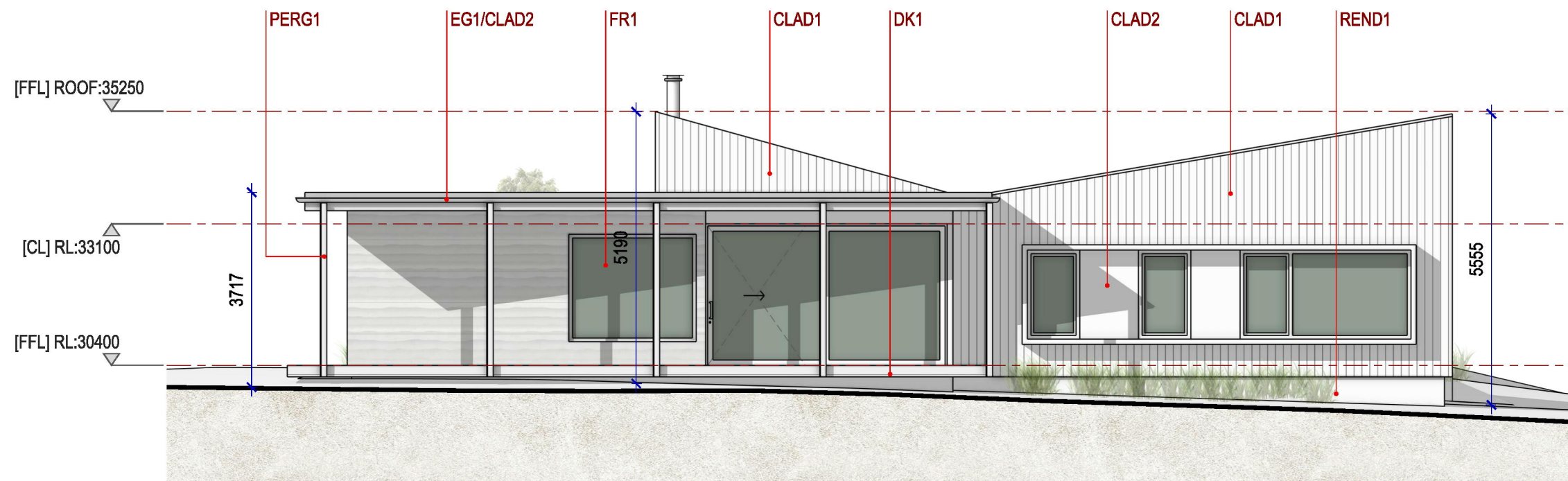
DRAWING TITLE
NORTH & SOUTH ELEVATIONS



NORTH	SHEET A3	SCALE 1:100	REVISION 01
	PROJECT 2609	DATE 25.08.2026	DRAWING TP03



EAST ELEVATION
SCALE 1:100



WEST ELEVATION
SCALE 1:100

LEGEND

CODE	DESCRIPTION
C1	Colour: Colorbond 'Dune'.
C2	Colour: 'Coreten'.
C3	Colour: 'Viroc Grey'.
C4	Colour: Colorbond 'Wallaby'.
C5	Colour: 'Jet Black' (Aludec).
C6	Colour: 'Golden Oak'.
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Number of Pages (excluding this cover sheet)	9
Document Assembled	27/08/2026 16:22

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AX254242K

**Application by a responsible authority for the
making of a recording of an agreement**

Section 181 Planning and Environment Act 1987

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maintaining publicly searchable
registers and indexes.

Lodged by

Name:

Phone: 03-5562 1044

Address: 67 KEPLER STREET, WARRNAMBOOL, VIC 3280

Reference: JMR:SAW:230293

Customer code: 19457U

The responsible authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the Register.

Land:(volume and folio)

CERTIFICATES OF TITLE VOLUME 10711 FOLIO 661, VOLUME 10711 FOLIO 662, VOLUME 10711 FOLIO 663, VOLUME 10711 FOLIO 664, VOLUME 10711 FOLIO 665, VOLUME 10711 FOLIO 666, VOLUME 10711 FOLIO 667 AND VOLUME 10711 FOLIO 668

Responsible authority:(full name and address, including postcode)

MOYNE SHIRE COUNCIL OF PRINCES STREET, PORT FAIRY, VIC 3284

Section and act under which agreement is made:

SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT

A copy of the agreement is attached to this application:

YES

Signing:

35271702A

181PEA

Page 1 of 2

THE BACK OF THIS FORM MUST NOT BE USED

Land Use Victoria contact details: see www.delwp.vic.gov.au/property>Contact us

AX254242K

**Application by a responsible authority for the
making of a recording of an agreement
Section 181 Planning and Environment Act 1987**

Privacy Collection Statement

The information in this form is
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and used for the purpose of
maintaining publicly searchable
registers and indexes.

Executed on behalf of MOYNE SHIRE COUNCIL

Signer Name

Signature

Execution Date 14/7/2023

Full Name of Witness

Witness Signature

35271702A

181PEA

Page 2 of 2

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Land Use Victoria contact details: see www.delwp.vic.gov.au/property>Contact us

AX254242K

MOYNE SHIRE COUNCIL

AND



**PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT**

Dwyer Legal Warrnambool Pty Ltd

67 Kepler Street, Warrnambool VIC 3280
PO Box 409, Warrnambool 3280
Phone: (03) 5562 1044
Fax: (03) 5562 9480
Email: james@dwyerlegal.com.au
Ref: JMR:SAW:230293

AX254242K

THIS AGREEMENT dated

11 day of July

2023

BETWEEN Moynes Shire Council of Princes Street, Port Fairy, Victoria ("the Council")

AND

[REDACTED] both of 163
Illowa Road, Dennington, Victoria ("the owners")

AFFECTED LAND:

163 Illowa Road, Dennington

described in Certificates of Title Volume Certificates of Title Volume 10711 Folio 661, Volume 10711 Folio 662, Volume 10711 Folio 663, Volume 10711 Folio 664, Volume 10711 Folio 665, Volume 10711 Folio 666, Volume 10711 Folio 667 and Volume 10711 Folio 668

WHEREAS:

1. The owners are the registered proprietors of all that piece of land described in Certificates of Title Volume 10711 Folio 661, Volume 10711 Folio 662, Volume 10711 Folio 663, Volume 10711 Folio 664, Volume 10711 Folio 665, Volume 10711 Folio 666, Volume 10711 Folio 667 and Volume 10711 Folio 668.
2. The land is affected by the provisions of the Moynes Planning Scheme ("the scheme").
3. The Council is the responsible authority under the Planning & Environment Act 1987 ("the Act") for the purposes of the Scheme.
4. Pursuant to Planning Permit No. PL22/106 the Council has allowed a Re-subdivision of the land into five (5) lots and creation of access to a Transport Zone 2.
5. A condition of the Planning Permit is as follows:

Before the issue of Statement of Compliance for the subdivision under the Subdivision Act 1988, the owner of the land must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expenses (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- (a) The land must not be further subdivided so as to increase the number of lots unless all lots can meet the scheduled minimum lot size under the applicable zone.
- (b) The owners of the land acknowledge and accept that the possibility of nuisance from adjoining agricultural operations including animal husbandry, spray drift, agricultural machinery use, pumps, trucks and associated hours of operation necessary for agricultural production.

A registered copy of the agreement must be provided to the Responsible Authority prior to the development commencing.

6. Condition 2 of the Planning Permit requires the Owner of the land shall enter into an agreement with Council pursuant to Section 173 of the Act and for this agreement to be registered at the Titles Office pursuant to Section 181 of the Act.

BY THIS AGREEMENT IT IS AGREED AND COVENANTED:

1. OPERATION

1.1 This agreement is made pursuant to Section 173 of the Act.

1.2 This agreement shall come into force on execution by both parties

1.3 The covenants of this agreement shall run with the land.

2. INTERPRETATION

2.1 LOT

In this agreement "lot" means any and each lot shown on the subdivision plan.

2.2 OWNER

In this agreement the word "Owner" unless the contrary intention appears, shall be deemed to include its successors assigns and transferees and the obligations imposed on and assumed by [REDACTED]

[REDACTED] shall be binding on the successors transferees purchasers mortgagees assigns of [REDACTED] and [REDACTED] and any other person obtaining possession of the whole or part of the land as if each of those successors separately executed this agreement; and

If the Owner holds the land in a trust capacity, "Owner" shall include the beneficiaries of the trust in relation to which it holds such as land. Where such trust relationship exists the Owner in executing this agreement does so intending to assume not only personal liability, but also to bind the trust for which it acts as trustee.

If the Owner is constituted by more than one person any obligation imposed by this agreement on the Owner shall be imposed on those persons jointly and severally.

2.3 COUNCIL

In this agreement the word "Council" shall include the Shire's successors and its successors as responsible authority for town planning control in the area in which the land is situate.

2.4 In this agreement, unless the context otherwise requires:

- 2.4.1 Words denoting the singular number shall include the plural and vice versa.

- 2.4.2 Words denoting any gender shall include all genders
- 2.4.3 Where a word or phrase is defined, other parts of speech and grammatical forms of that words or phrase shall have corresponding meanings.
- 2.4.4 Words denoting natural persons shall include corporations and vice versa.
- 2.4.5 References to clauses and schedules are to clauses of and schedules to this agreement.
- 2.4.6 Headings are for convenience only and do not effect interpretation.
- 2.4.7 References to any party to this agreement or instrument shall include the party's successors and permitted assigns.
- 2.4.8 Reference to any agreement or instrument shall be also to such agreement or instrument as amended, novated, supplemented, varied or replaced from time to time.
- 2.4.9 References to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation and any legislation provision substituted for, and all regulations and statutory instruments issued under such legislation or provision.
- 2.4.10 As the case may be, a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, jointly and severally.

3. AGREEMENT

Before the issue of Statement of Compliance for the subdivision under the Subdivision Act 1988, the owner of the land must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expenses (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- (a) The land must not be further subdivided so as to increase the number of lots unless all lots can meet the scheduled minimum lot size under the applicable zone.
- (b) The owners of the land acknowledge and accept the possibility of nuisance from adjoining agricultural operations including animal husbandry, spray drift, agricultural machinery use, pumps, trucks and associated hours of operation necessary for agricultural production.

A registered copy of the agreement must be provided to the Responsible Authority prior to the development commencing.

4. REGISTRATION

The parties shall do all things necessary to enable the Council to register this agreement pursuant to Section 181 of the Act.

5. DISCLOSURE

The Owner shall not sell mortgage or part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.

6. COSTS OF AGREEMENT

The Owner forthwith on demand shall pay to the Council the Council's costs and expenses (as between the solicitor and own client) of and incidental to this agreement and of anything consequent on it or in furtherance of it.

7. DEFAULT

If the Owner fails to comply with this agreement the Council may serve on the Owner or on the owner of that part of the land in respect of which there has been a failure of compliance a notice in writing specifying the works, matters and things ("the Remedial Works") in respect of which the relevant owner is in default. If such default continues for thirty days after the service of such notice the Council by its employees or contractors may enter upon the land and cause the Remedial Works to be done.

A notice served on the Owner pursuant to this clause may set out the costs (as estimated by the Council) of carrying out the Remedial Works. If the Owner does not comply with the notice within thirty days the Council may serve on the Owner a demand in writing for the amount of the estimated costs. The amount then shall become a debt due and payable by the relevant owner to the Council.

As soon as practicable after the completion of the Remedial Works the Council shall certify the actual costs of the Remedial Works. The difference between a sum paid to the Council as the estimated costs, and the actual costs, shall be paid by the relevant owner to the Council or if there is excess, repaid by the Council to the relevant owner.

8. COUNCIL AS ATTORNEY FOR OWNER

The Owner hereby appoints the Council as its attorney to do all things the Owner is capable of doing for the purposes of giving effect to this agreement or necessary to give effect to any of the duties or obligations imposed on the Owner pursuant to this agreement and hereby authorises the Council to do and will ratify whatever the Council lawfully shall do or cause to be done under this power of attorney.

9. NOTICES

Any notice required under this agreement may be served by delivering it to the Owner at its last known address within the rating records of the Council. Any notice posted shall be deemed to have been served at the expiration of twenty-four hours from the time of posting.

10. SUCCESSORS BOUND

Without limiting the operation or effect which this agreement has apart from this sub-clause, the Owner shall ensure that its successors:

- 10.1 Give effect to and do all acts and sign all documents which are required of them to give effect to this agreement; and
- 10.2 Execute under the seal a deed agreeing to be bound by the terms of this agreement.

The obligation imposed on the Owner by sub-clause 1 of this shall cease for such time as there appears in the register book at the officer of the Registrar of Titles a memorandum of this agreement.

11. RELEASE

On a person ceasing to own any part of the land that person shall be released from the obligations of that person as an owner under this agreement, save to the extent that any right has arisen against such owner prior to such cessation.

12. FURTHER DOCUMENTATION AND ACTION

Each of the parties shall sign and execute all such further documents and deeds and do all acts and things as the other party reasonably shall require for giving effect to this agreement.

13. DISPUTE

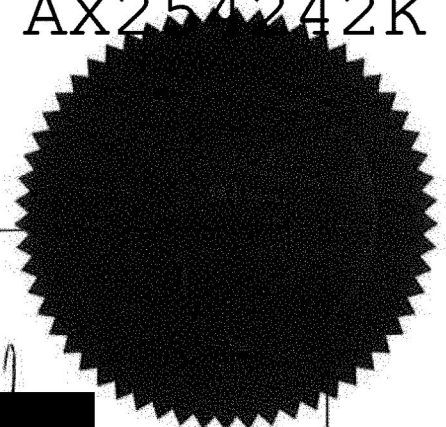
Should any dispute or difference arise between the parties with respect to the interpretation of this agreement, its application, such dispute or difference shall be determined by a person appointed by the parties by agreement, or failing agreement, by a person qualified in the area of the dispute or difference and appointed by the Secretary as defined in the Act.

AX254242K

EXECUTED AS A DEED

The COMMON SEAL of the MOYNE
SHIRE COUNCIL was hereunto affixed
in the presence of:

)
)
)



[Redacted signature]

Chief Executive Officer

[Redacted signature]

Councillor

SIGNED BY [Redacted]
and [Redacted] in the
presence of: [Redacted]

)

[Redacted signature]

Signature of witness

Signature

[Redacted signature]

[Redacted signature]

Print name of witness

Signature

JAMES MICHAEL RYAN

LL.B, BCom, GDLP

Dwyer Legal Warrnambool,

67 Kepler Street, Warrnambool 3280

An Australian legal practitioner within the meaning
of the Legal Profession Uniform Law (Victoria).