

9.1.5 Lot 120 (132) Whitfield Road, Dumbarton - Development Approval Where Development Has Commenced - Second - Hand Transportable Single Dwelling

Date of Report:	9 August 2022
File Reference:	A5644/120WHIT
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. P2022-67 - Application & Plans

SUMMARY

Applicant: Graham Martin
 Owner: Graham Martin
 Proposal: Development Approval where development has commenced.
 Location: Lot 120 Whitfield Road, Dumbarton

PURPOSE OF THE REPORT

For Council to consider an application for Development Approval for a second-hand transportable dwelling at Lot 120 (132) Whitfield Road, Dumbarton. Council is being requested to determine this application as it does not meet all the requirements of Council's *Transported and Relocated Dwellings* policy.

BACKGROUND

Lot 120 (132) Whitfield Road, Dumbarton is a 6.1ha property in the Walkey Heights subdivision. It is currently zoned 'Rural Living' under the Shire of Toodyay's Local Planning Scheme No.4 (LPS4)

On 3 February 2022, the Shire of Toodyay received an application for a second-hand transportable dwelling at Lot (132) Whitfield Road, Dumbarton. The application was placed on hold awaiting additional information to allow a full assessment.

On 31 May 2022, additional information was received and a site inspection was conducted. Upon inspection it was discovered that the second-hand transportable dwelling had already been placed upon the property without obtaining the necessary approvals.

Under the *Shire of Toodyay Local Planning Scheme No. 4* (the Scheme), the property is zoned 'Rural Living'. According to Table 1 (Zoning Table) in the Scheme, the use class 'Transportable Structure' is depicted with the symbol 'D'. 'D' means that the use is not

permitted unless the local government has exercised its discretion by granting development approval.

The Application

The applicant was advised to apply for retrospective development approval under the provisions of the *Shire of Toodyay Local Planning Scheme No.4* as soon as practicable.

The development consists of a 65.45m² second-hand transportable dwelling, with a 41.85m² verandah equaling a total floor area 107.3m². See **Attachment 1 P2022-61 – Application & Plans** for further details

Timeframe to determine.

On 16 June 2022, the Shire received an application for retrospective development approval for a second-hand transportable dwelling.

Given this application requires advertising, Council must determine the application within 90 days which is 22 September 2022 or sooner.

COMMENTS AND DETAILS

The Shire's *Transported and Relocated Dwellings* policy stipulates that a transported or relocated dwelling can only be considered if it can be demonstrated that a dwelling has a minimum floor area of not less than 120m². Therefore at 65.45m² the applicant's transported dwelling is 45.45% smaller than the minimum standard expected.

The policy does also state that the Council may vary the requirements of this policy, where it is considered that full compliance with the policy is impractical, or such variation is warranted in the circumstances of the case.

Additionally, the application has been made more complicated by the fact that the structure must be assessed retrospectively.

Whilst the dwelling is well under the stipulated minimum floor size stated in the *Transported and Relocated Dwellings Policy* it does not detract from the amenity and character of the Dumbarton area which is made up of a mix of small rural land uses. For example, residential, some stock management, and outbuildings.

The applicant has painted the exterior of the dwelling to complement the landscape and has provided screening to hide the void beneath the structure.

Additionally, the applicant will provide engineered drawings depicting a 20-degree roof pitch.

The future amenity and character of this area will remain relatively unchanged even though it has been identified to be rezoned from Rural Living to Rural Smallholding under the *Draft Local Planning Scheme No. 5*.

Therefore, Officers recommend that, whilst the smaller size of the transported dwelling will have some impact on the amenity of the locality, the impact is not sufficiently averse to refuse the proposal.

Furthermore, it is recommended that should Council choose to approve this development, that conditions are imposed to mitigate impacts as discussed earlier in this section.

The key issue for consideration regarding this application is the appearance of the building and whether or not the building will, in the opinion of the local government, adversely affect the amenity of other properties in the vicinity. Through this, Council can choose to exercise its discretion.

IMPLICATIONS TO CONSIDER**Consultative:**

The application was advertised in accordance with the Shire's recently adopted Local Planning Policy – *Advertising of Planning Proposals*. This consisted of a mail out including covering letter and plans which was sent to adjoining affected landowners who were given 14 days to comment.

This period expired on 1 August 2022 with no submissions received. Additional consultation about the proposal was held with the Department of Planning, Lands and Heritage on 10 August 2022. The Department advised that as the single dwelling land use is a permitted use for the zone, and that there were no equivalent minimum floor area requirements generally for a new transported dwelling – or a normal transported dwelling, that it would be hard to defend a position to refuse if the application was challenged at the tribunal. The department was supportive of the suggestion to require measures to improve the roof pitch and external appearance of the structure.

Strategic:**Strategic Community Plan – Toodyay 2028**

Objective 3: Improve processes to support the built environment

S 3.1 Adjust regulatory processes to be more enabling and accessible.

Objective 2: Consistently improve our governance practices

S 2.1 Build a positive culture of engagement between the Shire and the community.

S 2.2 Improve internal and external communication to maximise transparency.

Policy related:**Local Planning Policy – Advertising of Planning Proposals.**

This policy was applied during the community consultation phase.

Local Planning Policy – Transported and Relocated Dwellings

The application does not meet all the requirements of the Shire's *Transported and Relocated Dwellings* policy. However, a Local Planning Policy is not part of the Scheme and shall not bind the Council in respect of any application for development approval, but the Council shall have due regard to the provisions of any policy and the objectives which the policy is designed to achieve before making its decision.

The objectives of the policy are:

- To provide guidance on the standards of building construction and appearance required for transportable or relocated dwellings.
- To define guidelines by which the Council will assess proposals for the placement of transportable or relocated buildings (including relocated dwellings) on land within the Shire of Toodyay.
- To ensure that the amenity and appearance of the locality in which the transportable or relocated building will be situated is maintained

It is considered that the objectives of this policy can still be met despite the reduced size not meeting the prescribed standard.

Financial:

Development Application fee per *Planning and Development Regulations 2009*.

Should Council choose to refuse this application, the applicant has the right of appeal through the State Administrative Tribunal. Were this to happen, the Shire would likely have to commit additional funds to undergo this process, and there is a potential financial implication for loss of productivity due to Officer time required in dealing with such matters.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations encompass the “deemed provisions for local planning schemes”);

Shire of Toodyay Local Planning Scheme No. 4;

The Scheme provides the mechanism for protecting and enhancing the environment of the district, controlling land, and building development, setting aside land for future reserves and other matters authorised by the *Planning and Development Act 2005*.

Risk related:

If Council is of a mind to refuse the application, Council is reminded that the applicants might have a right of appeal to the State Administrative Tribunal (SAT). Should the applicants elect to appeal Council's decision (refusal or dissatisfied with conditions of approval), the Shire may be required to assign resources to defend its position at SAT.

Financial Impact	Legal action against Shire	Moderate (9)
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Workforce related:

Should this matter be referred by the applicant to the State Administrative Tribunal, significant officer time will be required

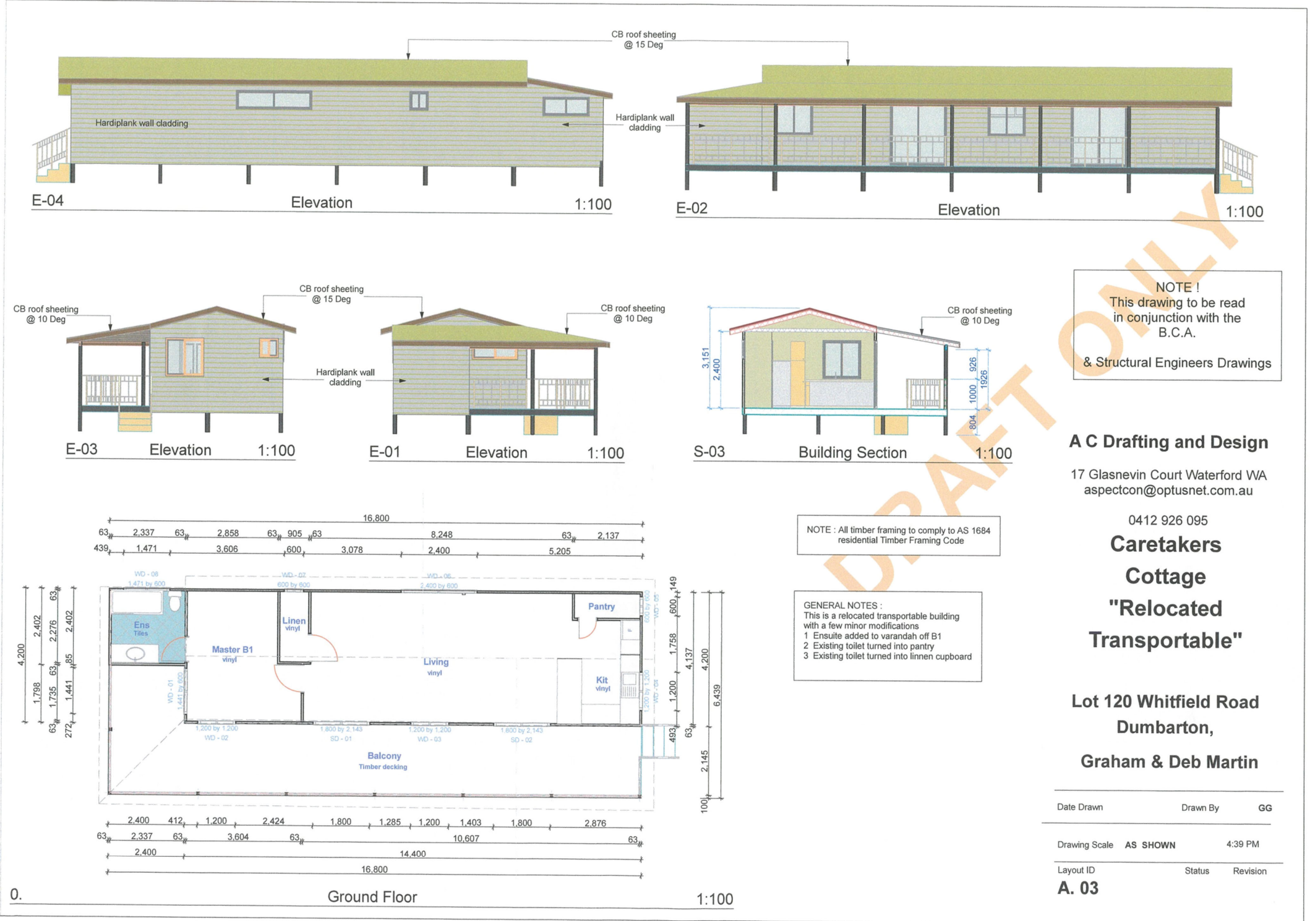
VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

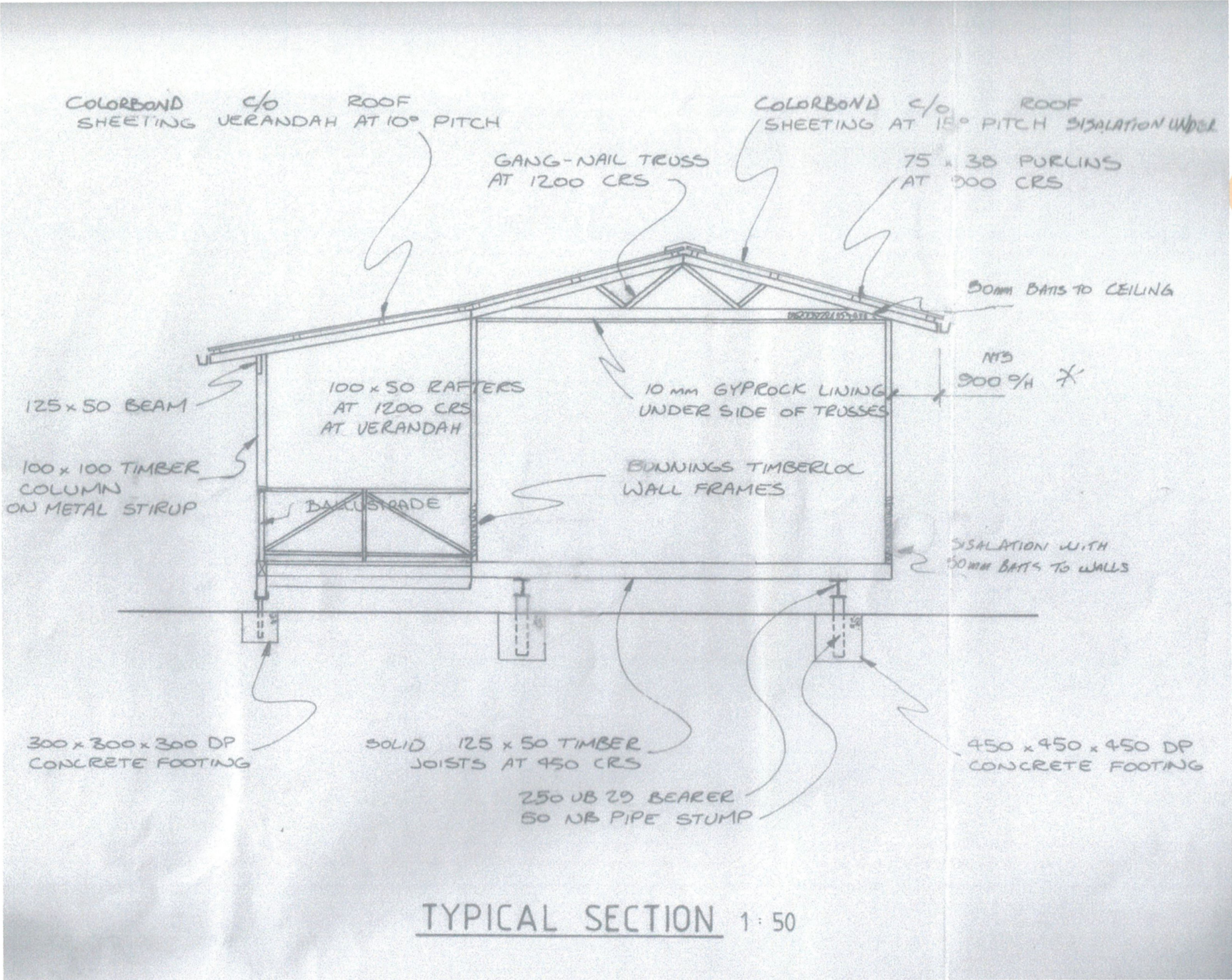
That Council, pursuant to Clause 68(2)(b) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, approves the retrospective development of a second-hand transportable dwelling at Lot 120 (132) Whitfield Road, Dumbarton, subject to the following conditions:

1. The development hereby permitted taking place in accordance with the approved plans.
2. Vehicle crossover(s) shall be constructed to the specification and satisfaction of the local government.
3. The stormwater shall be discharged in a manner so that there is no discharge onto the adjoining properties to the satisfaction of the local government.
4. Engineering drawings to the satisfaction of the Shire of Toodyay demonstrating a modified roof pitch of 20 degrees, to be approved prior to the issuing of a Building Permit and within 21 days of the date of this approval.
5. Lattice screening or similar to be installed around all sides of the structure to screen stumps and void.



section caretakers 001

1:0.76



NOTE : All timber framing to comply to AS 1684 residential Timber Framing Code

NOTE !
This drawing to be read
in conjunction with the
B.C.A.

& Structural Engineers Drawings

A C Drafting and Design

17 Glasnevin Court Waterford WA
aspectcon@optusnet.com.au

0412 926 095

Caretakers

Cottage

"Relocated

Transportable"

Lot 120 Whitfield Road

Dumbarton,

Graham & Deb Martin

Drawn By		GG
Drawing Scale	AS SHOWN	4:40 PM
Layout ID	Status	Revision
A. 03a		

R4T

Civil & Structural
Engineering Consulting

Structural site inspection: Timber cabin relocation

20 April 2022

SITE

Lot 120 Whitefield Rd
Dumberton
6566
WA

Inspections were carried out on the timber frame structure before and after its transportation to the above site.

FINDINGS

The cabin was constructed over 15 years ago. A visual inspection did not show any structural damages. After the translocation to the new site another inspection was conducted to check for possible damage during the transportation process, no damage was found. The detailing of the sub-structure to support the cabin was structurally sound.

CONCLUSION

It is my opinion that the cabin currently is suitable for its intended use. Please find herewith photographs and drawings documenting the construction details.

Remi Tembo BEng. Civil.



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