

6 Ordinary Business**6.1 Town Planning Reports****6.1.1 Amendment to Planning Permit T170516 and Plans – Merretts Rd, Avonsleigh (Issued for the Use and Development of the Land For a Dwelling, Construction of an Outbuilding, the Removal of Native Vegetation and Associated Earthworks)**

Responsible GM: Peter Benazic
Author: Evangeline McGauley-Kennedy

Recommendation(s)

That Council support the following position, in VCAT proceeding P1270/2020, namely that the Tribunal should refusal to grant an amended planning permit T170516 - 1 to make changes to the permit and plans at Merretts Road, Avonsleigh VIC 3782 on the following grounds:

- Failure to meet the application requirements of the Green Wedge Zone and Environmental Significance Overlay (Schedule 1)
- Failure to avoid and minimise vegetation removal required by Clause 52.17 (Native Vegetation)
- Failure to protect biodiversity as required by Clause 12.01-1S (Protection of biodiversity) and Clause 13.02-1S (Bushfire Planning)
- Failure to protect metropolitan green wedge land from uses and development that will diminish its environmental value
- Transformation of the proposal from the originally assessed plans associated with Planning Permit T170516

Attachments

1. T 170516-1 APP - Proposed plans [6.1.1.1 - 1 page]
2. T 170516-1 APP - Plans assessed for T 170516 [6.1.1.2 - 1 page]
3. T 170516-1 APP - Existing permit [6.1.1.3 - 4 pages]

Executive Summary

APPLICATION NO.:	T170516 - 1
APPLICANT:	Mr Duane Hines
LAND:	Merretts Road, Avonsleigh VIC 3782

PROPOSAL:	Amendment to Planning Permit T170516 to make changes to the endorsed plans
PLANNING CONTROLS:	Green Wedge Zone - Schedule 1 Bushfire Management Overlay Environmental Significance Overlay - Schedule 1 Clause 52.17 - Native Vegetation
NOTIFICATION & OBJECTIONS:	A “failure to determine” (Section 79, <i>Planning and Environment Act</i>) application has been made to the Victorian Civil and Administrative Tribunal, as Council has not made the decision within the required time frame. Therefore, the applicant has been required to carry out advertising and notice in accordance with Section 55.
TITLE DOCUMENTS:	<p>The land is subject to a section 173 agreement (AK267112P), executed on 3 April 2013 as a condition of the permit that authorised a three lot subdivision in PS407752H. The subject land constitutes Lot 1. The agreement seeks to protect vegetation and exclude livestock within that part of the land shown as EV-1; to prevent any buildings or works within the area shown as DX-1; to preclude the keeping of livestock; and to preclude any further subdivision of the land.</p> <p>The proposed development is clear of the EV-1 and DX-1 zones except for the proposed shed on the eastern boundary which is within the EV-1 area.</p>
KEY PLANNING CONSIDERATIONS:	Impacts on vegetation and biodiversity
RECOMMENDATION:	That Council supports a refusal to grant an amended permit, in VCAT proceeding P1270/2020, listed for next hearing on Feb 5 th 2021.

Background

Planning permit T170516 was granted by Council on 24 April 2019 for the use and development of the land for a dwelling, construction of an outbuilding, the removal of native vegetation and associated earthworks. This application gave permission for the use and development of the land for a dwelling and outbuilding and associated earthworks, along with permission to remove 106 native trees from the subject site (subject to conditions regarding offsetting and replacement planting being met). The majority of the 106 trees given permission to be removed included *Eucalyptus dives* (Broad-leaved peppermint) and *Eucalyptus obliqua* (Messmate).

The majority of the tree removal was required to meet the defensible space requirements of the Bushfire Management Overlay, which requires 5-metre canopy separation between trees for bushfire safety. The defensible space area for this site extends to the property boundary (Merretts Road) to the north, 32 metres to the east of the proposed dwelling, 49 metres to the south of the proposed dwelling and 25 metres to the west of the proposed dwelling.

The remaining trees within the development area require removal for the footprint of the proposed dwelling, driveway and outbuilding.

Twenty-eight (28) trees require removal for the dwelling footprint; twenty-three (23) require removal for the driveway and four (4) for the outbuilding.

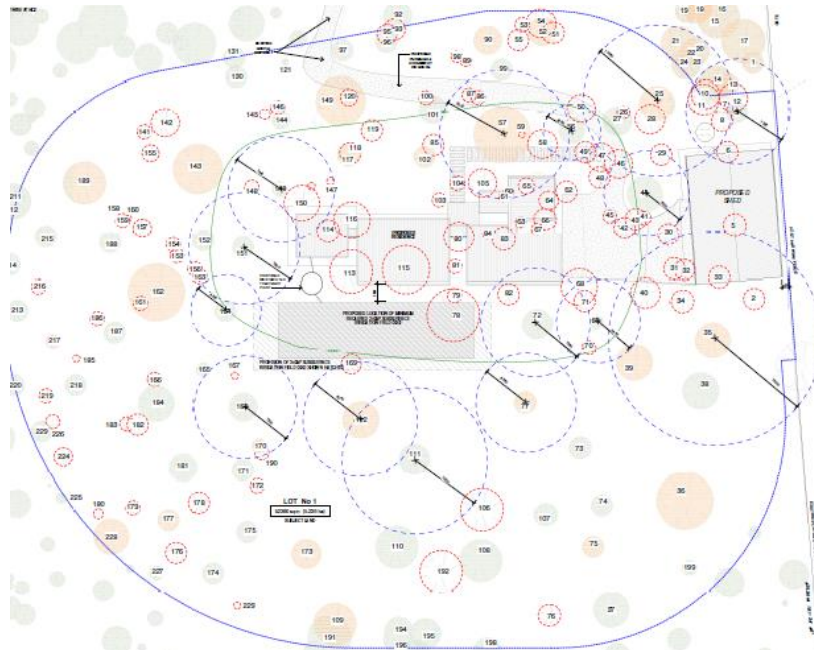


Figure 1: Vegetation removal plan approved by T170516 (subject to conditions being met)

Following the issue of the permit by Council, the applicant sought a review of six (6) conditions (6, 7, 8, 9, 10 and 11) via a Section 80 (Conditions) appeal (P1227/2019), which was heard by the Tribunal on 18 December 2019. The conditions related to tree removal, replacement planting and protection of vegetation, land management and the imposition of a section 173 agreement.

The Tribunal ruled that:

- 1) The decision of the responsible authority was to be varied.
- 2) The Tribunal directed that planning permit T170516 must contain the conditions set out in the planning permit T170516 issued by the responsible authority on 24 April 2019 with the following modifications:
 - a. Conditions 8, 9, 10 and 11 are deleted.
 - b. Conditions in the planning permit are renumbered accordingly.

A modified planning permit in accordance with the changes directed by the Tribunal was issued on 28 January 2020.

Conditions 8, 9, 10 and 11 related to replacement plantings being carried out on the site to compensate for the vegetation removals approved. They also related to certain actions for ensuring these works were protected in perpetuity.

The conditions directed to be deleted from the permit by the Tribunal read:

Replacement planting/Protection of vegetation

8. Prior to endorsement of development plans, it must be demonstrated that the vegetation approved for removal will be replaced through both the protection of trees,

and planting replacement plants. The applicant must, to the satisfaction of the Responsible Authority:

- a. Protect 97 existing trees in perpetuity through a Section 173 Agreement required by Condition 11.
 - i. The 97 trees for protection must comprise of:
 - i. 13 trees over 60cm diameter at 1.3 metres above ground level
 - ii. 47 trees over 50cm diameter at 1.3 metres above ground level
 - iii. 37 trees at least 3 metres high (diameter not specified)
 - ii. The trees to protect may include trees shown for retention on the tree removal plan. All remaining trees to protect onsite must be outside the development exclusion area shown in the existing Section 173 Agreement AK267112P.
 - iii. A scaled site plan and corresponding table of tree descriptions must indicate all 97 trees that will be protected, including tree identification numbers, location, species, diameter at 1.3m above ground level, and hollow bearing trees must be provided. This plan and table will be endorsed and be registered on the Section 173 Agreement as required by Condition 11.
- b. The permit holders must prepare and submit a *Replacement Planting Plan* to compensate for the removal of vegetation approved under this permit, to the satisfaction of the Responsible Authority. When approved by the Responsible Authority, the plan will be endorsed and will form part of this permit. The *Replacement Planting Plan* must show:
 - i. 997 indigenous plants are to be planted within three months of completion of development/works to compensate for the loss of 106 native trees to the satisfaction of the responsible authority. All replacement plantings must be in accordance with any Bushfire Management Plan that may apply.
 - ii. Plantings must include a range of indigenous trees, shrubs and grasses with a minimum of one canopy tree planted per every tree removed.
 - iii. A list of indigenous plant species to be used and the name of the indigenous nursery where plants will sourced from.
 - iv. Show area of replacement planting on a site plan, outside the defendable space area and in addition to the development exclusion zone in the existing section 173 Agreement.
 - v. Actions and timing of all planting preparation and follow up maintenance works including tree guards and mulch.
 - vi. Any plants that do not survive must be replaced.
- c. Photographic evidence must be submitted to Council within three months of the completion of development to demonstrate that the works described in the *Replacement Planting Plan* have been completed to the satisfaction of the Responsible Authority.

- d. The replacement planting must be maintained for a minimum of 2 years to the satisfaction of the responsible authority, and protected in perpetuity.

Land Management Plan

9. Prior to the endorsement of development plans, a *Land Management Plan* must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and form part of the permit. The *Land Management Plan* must include:
 - a) Protected vegetation as required by Condition 8a integrated into this plan;
 - b) Replacement planting as required by Condition 8b integrated into this plan;
 - c) The division of the site generally into a defensible space/Domestic Zone and the remainder of the land into a Conservation Zone.
 - d) The delineation or fencing of the Conservation Zone and location and type of any internal fencing or markers to establish the various zones.
 - e) Delineation of existing pathways to be maintained and track to be discontinued to allow re-establishment of vegetation.
 - f) Provide a works program and weed management strategy that details the following as applicable:
 - i. The Conservation Zone clearly defined as a no go area during any construction works on the property
 - ii. No vehicles or machinery is to enter the Conservation Zone
 - iii. Retain all standing trees (dead and alive) within the Conservation Zone and as marked in the Domestic Zone
 - iv. Allow understorey and canopy species to regenerate within the Conservation Zone
 - v. That all soil and/or vegetation disturbance or stockpiling is restricted to the area defined as the Domestic Zone
 - vi. The restriction preventing the keeping any hooved animals on the property
 - vii. Details of the management of domestic pets (cats and dogs) within all zones of the property
 - viii. The protection of hollow bearing trees and limits on collection of firewood (personal use and not from the Conservation Zone)
 - ix. Control and management of noxious weed species (listed under the CaLP Act) identified in the *68 Merretts Road, Avonsleigh, Victoria. High Risk-Based Pathway Biodiversity Assessment for a Proposed Dwelling* (Beacon Ecological, July 2018) report.
 - x. Any imported soil or gravel must be weed seed and pathogen free to prevent importation of weed seed and disease into the site.
10. All necessary works as per the endorsed Land Management Plan must be implemented prior to commencement of development, with ongoing management works carried out in perpetuity.

Section 173 Agreement

11. Prior to the endorsement of development plans, the owner of the land must enter into a Section 173 Agreement which must be registered on title at the full cost of the owner. The Agreement must provide for the following:
 - a. The Tree Protection Plan and Replacement Planting Plan including relevant obligations as required by Condition 8.

- b. The Land Management Plan including relevant obligations as required by Conditions 9 and 10.

The Tribunal in its decision also spoke to the permit applicants concerns about the ability of the plan required to be endorsed by Condition 6 to achieve the appropriate canopy separation of 5 metres under the Bushfire Management Overlay. Condition 6 of the permit related to the Tree Removal Plan (TP-08, Rev K, July 2017) and required that this plan be endorsed as part of any permit.

At the time, the applicant stated that the tree retention plan shows the driveway weave through trees 97 and 149 and again through 56 and 27. If this occurs, the applicant submitted, the minimum inside radius of the driveway for emergency vehicles of 10 metres cannot be met.

The Tribunal also mentioned should the applicant need to remove additional trees to comply with the requirement of the BMO, they will be required to request an amendment to the permit and the plans considered under the permit.

The Tribunal directed that the applicant for review apply for an amended permit with the Responsible Authority to amend this condition to refer to a different plan.

As such, this amended permit application has been submitted. A decision was not made within 60 statutory days and the applicant is now seeking a review of the amended permit application at the Tribunal under Section 79 (Failure appeal).

PERMIT HISTORY:

Lot 1 PS PS407752 (subject site):

- Planning permit T170516 was granted by Council on 24 April 2019 for the use and development of the land for a dwelling, construction of an outbuilding, the removal of native vegetation and associated earthworks.
- Planning permit T170516 was varied at the direction of the Tribunal (to delete conditions 8, 9, 10 & 11) on 28 January 2020.
- Amended permit T170516-1 was subsequently applied for in March 2020 and a failure appeal lodged with the Tribunal in August 2020.

Parent title history:

This lot was created through a Planning Scheme Amendment (L100) in 1996 undertaken by the then Shire of Sherbrooke under the Sherbrooke Planning Scheme. This subdivision was undertaken in accordance with the 'Development Master Plan – Merritts Road South' and allowed the creation of the three (3) lots on Plan of Subdivision 407752. This amendment came into effect on 12 August 1996.

- Planning permit T960719 was subsequently issued to subdivide the land into three (3) lots, generally in accordance with the approved plans on 17 February 2004.
 - This planning permit approval required the land owners/ permit holder to enter into a Section 173 Agreement outlining 'Development Exclusion Zones' and potential dwelling/ building locations for each allotment, to align with the documents prepared for the Planning Scheme Amendment.

Subject Site



An inspection of the site and the surrounding area has been under taken.

The site is located on the southern side of Merretts Road.

A crossover is located towards the middle of the lot and there is are no easements within the title boundaries.

The site is currently vacant and densely vegetated.

The topography of the land slopes from north to south, with approximately 40 metres of fall across the entire site. The proposed location of the dwelling and outbuilding are relatively flat.

The main characteristics of the surrounding area are:

- North: Directly north of the site is Merretts Road. Across Merretts Road are large, cleared properties containing dwellings and outbuildings located in the Yarra Ranges Shire.
- South: Directly south of the site is 8 Kennedy Road which is a large rural-residential property containing a large single dwelling, outbuildings and a large patch of remnant vegetation towards the rear of the site. Further south are other large rural-residential properties and smaller Neighbourhood Residential properties located closer to Emerald Town Centre.
- East: Directly east of the site is Lot 2 PS407752 (114 Merretts Road) which is a similarly sized large vacant parcel of land which is also densely vegetated. Further east are large parcels of rural-residential land containing single dwellings, outbuildings and patches of remnant vegetation.
- West: Directly west of the site is 48a Merretts Road which is a similarly sized parcel containing a large single dwelling, outbuildings and outdoor horse arena. This lot is relatively clear of vegetation. Further west is 60 Kennedy Road, which is a large cleared parcel of land containing a large dwelling and outbuilding.

Relevance to Council Plan

Nil.

Proposal

The applicant is seeking permission to amend planning permit T170516 and the plans associated with the permit to increase the number of trees required to be removed to achieve

defendable space compliance, make slight changes to the position of the dwelling and substitute a number of plans including:

- Existing plans TP-02 Rev K and TP-08 Rev K are to be replaced with plans MRA-01-A, MRA-02-A, MRA-03-A, MRA-04-A, MRA-05-A, MRA-06-A and MRA-07-A.
- Existing Plan TP-03 Rev K Floor Plan is to remain with the exception that all references to the wastewater system are to be ignored.
- Existing plan TP-04 Rev L, TP-05 Rev L, TP-06 Rev L and TP-07 Rev L to remain.

MRA-01-A Plan:

- The new plan MRA-01-A is to be added to show the existing tree positions on the property and the siting of the dwelling, outbuilding and driveway.

MRA-02-A Plan:

- The new plan MRA-02-A is to replace the existing (dwelling and outbuilding siting plan) known as TP-02 Rev K and shows the dwelling and outbuilding now setback 32 and 1 metres from the eastern boundary respectively, whereas the TP-02 Rev K plan showed setbacks of 30.71 and 1 from this boundary. It also shows the dwelling and outbuilding now setback 28.3 and 20.48 metres from the northern boundary (Merretts Road)s respectively, whereas the TP-02 Rev K plan showed setbacks of 24.08 and 20.41 metres from this boundary respectively.

MRA-03-A Plan:

- The new MRA-03-A Plan is to be added to show how the driveway is to be developed and demonstrate that it meets the relevant bushfire and emergency vehicle access requirements.

MRA-04-A Plan:

- The new MRA-04-A Plan is to be added to show how the defendable space is calculated in relation to the new siting of the dwelling and outbuilding. It also intends to show how the defendable space (5-metre canopy separation) will be achieved.

MRA-05-A Plan:

- The new plan MRA-05-A is to replace the existing (Tree retention and removal plan) known as TP-08 Rev K and shows the removal of 183 trees from the defendable space area, 77 trees more than the existing plan (TP-08 Rev K) which showed the removal of 106 trees.

MRA-06-A Plan:

- The new MRA-06-A Plan is included to show the tree protection zones of the retained trees and demonstrates that the dwelling, outbuilding, driveway and effluent areas will not encroach on these zones.

MRA-07-A Plan:

- The new MRA-07-A Plan is included to show the location of the effluent area and how the area will not impact on surrounding vegetation. This effluent area has also been moved to the show of the outbuilding.

Through this amendment, the permit holder is also seeking Condition 6 be updated to reflect the new plan to be referenced 'MRA-05-A' and other subsequent amendments to conditions, including DELWP's offsetting Condition 1.

Planning Scheme Provisions

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11.01-1S Settlement
 - Clause 11.01-1R2 Green Wedges – Metropolitan Melbourne
- Clause 12.01-1S Protection of biodiversity
- Clause 13.02 Bushfire
 - Clause 13.02-1S Bushfire planning

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Issues
- Clause 21.02-2 Landscapes
- Clause 21.02-3 Biodiversity
- Clause 21.02-4 Wildfire Management

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.17 Native vegetation
- Clause 53.02 Bushfire Planning
- Clause 57 Metropolitan Green Wedge Land
- Clause 65 Decision Guidelines
- Clause 66 Referral and Notice Provisions
- Clause 71.02 Operation of the Planning Policy Framework
 - Clause 71.02-3 Integrated Decision Making

Zone

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

Overlays

The land is subject to the following overlays:

- Environmental Significance Overlay – Schedule 1
- Bushfire Management Overlay

Planning Permit Triggers

There are no new permit triggers as a result of the proposal. The proposal relates to the amendment of Planning Permit T170516 originally issued for the use and development of the land for a dwelling, construction of an outbuilding, the removal of native vegetation and associated earthworks, as well as changes to the submitted plans as discussed above.

The original application required a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.04-1 of the Green Wedge Zone 1 a planning permit is required to use the site for a dwelling.
- Pursuant to Clause 35.04-5 of the Green Wedge Zone 1 a planning permit is required to construct or carry out works (associated with a section 2 use, earthworks and reduced setbacks).
- Pursuant to Clause 42.01-2 of the Environmental Significance Overlay 1 a planning permit is required to construct a building or construct or carry out works (dwelling, outbuilding exceeding 4m in height, outbuilding exceeding 120sqm and vegetation removal).
- Pursuant to Clause 44.06-2 of the Bushfire Management Overlay a planning permit is required to construct a building associated with accommodation.
- Pursuant to Clause 52.17 a planning permit is required to remove a native vegetation.

Public Notification

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

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

The notification has been carried out correctly, and Council has not received any objections to date.

Referrals

Due to the “failure to determine” application being lodged, Council was unable to conduct any external referrals. As per the process for Section 79 applications, the applicant for review is responsible for carrying out referrals.

Pursuant to Clauses 66.02-2 and 66.03 (Referral and Notice clauses) the application was required to be referred to the following authorities by the permit applicant:

Department of Environment, Land, Water and Planning (DELWP):

The application was referred to DELWP as a statutory referral. At the date of writing this report, Council has not received any formal correspondence or referral response from DELWP.

Country Fire Authority (CFA):

The application was referred to the CFA as a statutory referral. At the date of writing this report, Council has received the CFA's Statement of Grounds and they will be attending the VCAT hearing set down for February 2021.

Council's Environment Department:

Council has also sought the comments of our Environmental Officers who object to the granting of the amended permit on the grounds of excessive loss of biodiversity as a result of the additional vegetation removals proposed.

Discussion

The application to amend the permit has been assessed against the decision guidelines of all relevant clauses of the Cardinia Planning Scheme and the proposed changes are considered to be inconsistent with these requirements.

Planning Policy Framework (PPF) and Municipal Planning Strategy (MPS)

A number of state and local policies are relevant to this application that aim to ensure that the use and development of land for dwellings in environmentally sensitive and bushfire prone areas appropriately balances the environmental and biodiversity values of a site, whilst considering the bushfire mitigation and safety measures required to prioritise the protection of human life. The application to amend the permit has considered these Planning Policy Framework and Local Planning Policy Framework, and it is considered that the proposal does not align with the objectives to achieve bushfire safety without adverse impacts on biodiversity and the environmental values of an area.

Clause 12.01-1S Protection of biodiversity

The primary objective of this Clause is:

- “To assist the protection and conservation of Victoria’s biodiversity”

The relevant strategies to achieve this objective are:

- Use biodiversity information to identify important areas of biodiversity, including key habitat for rare or threatened species and communities, and strategically valuable biodiversity sites.
- Strategically plan for the protection and conservation of Victoria’s important areas of biodiversity.
- Ensure that decision making takes into account the impacts of land use and development on Victoria’s biodiversity, including consideration of:
 - Cumulative impacts.
 - Fragmentation of habitat.
 - The spread of pest plants, animals and pathogens into natural ecosystems.
 - Avoid impacts of land use and development on important areas of biodiversity.

Clause 13.02 Bushfire Planning

The primary objective of this Clause is to:

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

The relevant strategies are:

- Protection of human life
- Give priority to the protection of human life by:
 - Prioritising the protection of human life over all other policy considerations.
 - Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.
 - Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process
 - Areas of biodiversity conservation value
 - Ensure settlement growth and development approvals can implement bushfire protection measures without unacceptable biodiversity impacts by discouraging settlement growth and development in bushfire affected areas that are important areas of biodiversity.

Use and development in a Bushfire Prone Area

When assessing a planning permit application for the above uses and development (accommodation):

- Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.

In assessing this application, the focus is on the two (2) policies above and the emphasis they put on the protection of biodiversity. The planning scheme prioritises both the protection biodiversity and human life. Where a new dwelling is to be constructed within a Bushfire Management Overlay, the dwelling must have an area known as defensible space, which is an area modified by the removal of vegetation (both trees and understorey). As outlined in the strategy above, where the development of a site requires unacceptable impacts to biodiversity to create the required area for defensible space, the development of that site is not appropriate.

As this property is a dense bush block, the defensible space cannot be provided without significant impact on the vegetation. The assessment of the original permit (T170516) sought the removal of 106 native trees within the defensible space area, which although still quite significant, was considered acceptable subject to permit conditions requiring replanting and offsetting to compensate for the biodiversity that was lost.

The amended permit application seeks permission to remove an additional 77 native trees along with understorey vegetation, resulting in the retention of only 14 native trees within the defensible space to comply with CFA's defensible space requirements. This is an unacceptable level of biodiversity loss, especially where the Tribunal ruled that no further replanting can occur on the site (via the deletion of Conditions 8, 9, 10 and 11) in a fragmented landscape that has important landscape connectivity values for biodiversity.

It is considered that the proposal does not adequately respond to the above and therefore, it is considered that the proposal is inconsistent with the Planning Policy Framework (PPF) and Municipal Planning Strategy (MPS) as it fails to balance the objectives of the policy and is considered to result in a detrimental impact on the biodiversity of the surrounding area.

Green Wedge Zone:

Some of the key purposes of the Green Wedge Zone is to implement the MPS and PPF, along with providing for and protecting the use of the land for agriculture. It is also in place to recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources. The

decision guidelines of the Zone require the Responsible Authority to consider the following when assessing an application, in particular:

General issues:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The capability of the land to accommodate the proposed use or development.
- How the use or development relates to rural land use, rural diversification, natural resource management, natural or cultural heritage management, recreation, or tourism.
- Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.
- Whether the use or development is essential to the health, safety or well-being of the State or area but is not appropriate to locate in an urban area because of the effect it may have on existing or proposed urban areas or the effect that existing or proposed urban areas may have on the proposed use or development.

Rural issues:

- The maintenance of agricultural production and the impact on the rural economy.
- The environmental capacity of the site to sustain the rural enterprise.
- The need to prepare an integrated land management plan.
- The impact on the existing and proposed rural infrastructure.
- The potential for the future expansion of the use or development and the impact of this on
adjoining and nearby agriculture and other land uses.
- The protection and retention of land for future sustainable agricultural activities.

Environmental issues:

- The impact of the use or development on the flora and fauna on the site and its surrounds.
- The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.
- How the use or development relates to sustainable land management and the need to prepare an integrated land management plan.

Design and siting issues:

- The need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas.
- The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape.
- The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance.

The current permit allows use and development of the land for a dwelling which is defined under the Planning Scheme as an secondary land use, and triggers a permit for both the use and development of the land for the purposes of a dwelling.

Given that one of the main purposes of the Green Wedge Zone is to protect and enhance the biodiversity of the area, the approved land use is not an 'as of right' use and therefore in order to approve a permit, the application must appropriately respond to the constraints of the site and the planning policy. The current permit (T170516) was considered to appropriately respond to the relevant policy, including the environmental values of the site (by proposing a level of vegetation removal that Council accepted) and therefore, a permit was issued.

The amendments to the permit to include additional vegetation removals has changed the position on this, as the proposed vegetation removals are no longer considered to the minimum extent necessary to maintain adequate canopy separation for bushfire protection. The additional vegetation removals now proposed are considered to transform the proposal from what was originally assessed and approved, due to their excessive nature and drastic departure from the information originally provided which assured the 106 trees to be retained for defensible space could achieve the required canopy separation for bushfire protection.

The proposed removal of 77 more native trees does not align with the objectives of the Green Wedge Zone to ensure that development appropriately responds to the following:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The capability of the land to accommodate the proposed use or development.
- The impact of the use or development on the flora and fauna on the site and its surrounds.
- The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.
- How the use or development relates to sustainable land management and the need to prepare an integrated land management plan.
- The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance.

Therefore, based on the above, it is considered that the proposed amendments no longer respond to the above objectives and the application to amend the permit should be refused.

Environmental Significance Overlay – Schedule 1 and Clause 52.17 – Native Vegetation

The Environmental Significance Overlay – Schedule 1 (ESO1) relates to the northern hills area of the municipality and the need to protect and enhance the significant environmental and landscape values of the area. This includes the retention and enhancement of indigenous vegetation, and to ensure that the siting and design of buildings and works do not adversely affect environmental and landscape values through ensuring that environmental hazards and risks are addressed.

Pursuant to Clause 42.01-2 of the ESO1 a planning permit is required to construct a building or construct or carry out works (dwelling, outbuilding exceeding 4m in height, outbuilding exceeding 120sqm and vegetation removal).

The decision guidelines of the Overlay require the Responsible Authority to consider the following when assessing an application, in particular:

- To protect and enhance the significant environmental and landscape values in the northern hills area including the retention and enhancement of indigenous vegetation.
- To ensure that the siting and design of buildings and works does not adversely impact on environmental values including the diverse and interesting landscape, areas of remnant vegetation, hollow bearing trees, habitat of botanical and zoological significance and water quality and quantity.
- To ensure that the siting and design of buildings and works addresses environmental hazards including slope, erosion and fire risk, the protection of view lines and maintenance of vegetation as the predominant feature of the landscape.
- To protect and enhance biolinks across the landscape and ensure that vegetation is suitable for maintaining the health of species, communities and ecological processes, including the prevention of the incremental loss of vegetation.

As discussed above, the current permit was considered to adequately respond to the above decision guidelines, as the vegetation removal was considered to be represent the minimum extent necessary, and therefore a permit was issued. The changes requested by this amended permit application are considered to transform the proposal, from what was originally determined to be acceptable vegetation loss, to excessive vegetation loss. As such, it is submitted that the amendment should not be supported as it does not align with the decision guidelines of the ESO1 as listed above.

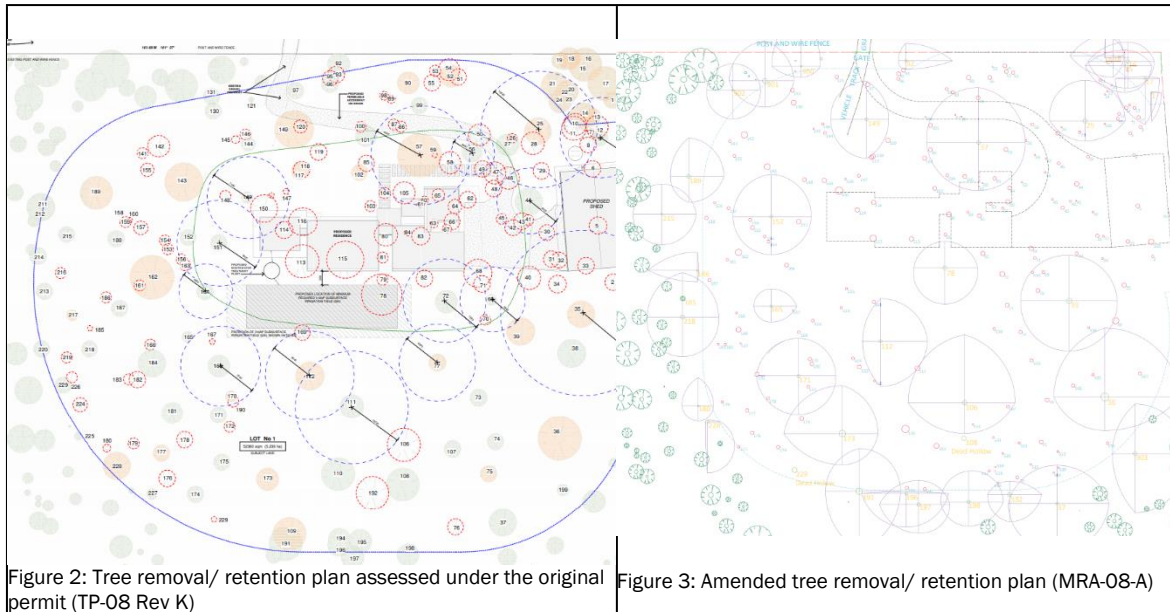


Figure 2: Tree removal/ retention plan assessed under the original permit (TP-08 Rev K)

Figure 3: Amended tree removal/ retention plan (MRA-08-A)

The purpose of Clause 52.17 (Native Vegetation) is to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of Native Vegetation. The original application proposed the removal of 106 native Eucalyptus trees which are required to be offset pursuant to Clause 52.17 in accordance with Condition 1 of the existing permit (T170516).

The proposed amendments to the permit are seeking permission to remove an additional 77 trees from the defendable space area, leaving only 14 native trees to be retained.

Clause 52.17 requires applicants to apply the three (3) step approach to vegetation removal outlined in the Guidelines for the removal, destruction or lopping of native vegetation, 2017. The guidelines outline the three (3) step process as follows:

- **Avoid** – Avoid the removal, destruction or lopping of native vegetation to maintain native vegetation that currently exists is an effective way to ensure native vegetation continues to deliver its important values into the future.
- **Minimise** - Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided. Minimising ensures that impacts from native vegetation removal on biodiversity or other values are kept to the minimum necessary.
- **Offset** - Provide an offset to compensate for the biodiversity impact from the removal, destruction or lopping of native vegetation. An offset is required to compensate for the loss to biodiversity from the removal of native vegetation.

The proposed amendments are not considered to achieve this principle. The drastic departure from the retention of 91 out of 197 trees within the defendable space area (approved in the original application) to the retention of 14 out of 197 trees now proposed, is not considered to avoid and minimise vegetation loss to the minimum extent necessary.

If the original proposal assured that the canopy separation within the defendable space could be achieved by the removal of 106 trees, then Council is of the opinion that the removal of an additional 77 trees is not warranted and the applicant has not chosen vegetation to be removed to the minimum extent necessary to achieve compliance with bushfire standards.

Therefore, the amendment should not be supported.

Before deciding on an application to amend a plan or permit, the Responsible Authority must also consider:

- The relevant planning scheme or any changes to the scheme;
- All objections and other submissions which it has received and which have not been withdrawn;
- Any decision and comments of a referral authority which it has received;
- Any significant effects which the Responsible Authority considers the changes may have on the locality / environment / etc; and
- Will not cause an increase in detriment to any person.

Changes in policy

There have been some minor changes to the Cardinia Planning Scheme since the permit was issued in 2019, namely the following Planning Scheme Amendments.

- Planning Scheme Amendment VC159, which was introduced in August 2019.
- Planning Scheme Amendment VC160, which was introduced in January 2020.

Planning Scheme Amendment VC159 saw the introduction of changes to the Victoria Planning Provisions (VPP) arising from the Victorian Government's Smart Planning program. Amendment VC159 amends the VPP and all planning schemes to introduce new land use terms, revise the definition of land use terms and change where land use terms are nested.

There were also some minor 'fix-up' amendments between 2019 and 2020, the most recent being VC160 which amends the Victoria Planning Provisions (VPP) and all planning schemes to correct errors and omissions and clarify the operation of certain provisions.

The above amendments to the Planning Scheme in the time since the permit was issued are inconsequential to the application as their main purpose was to consolidate and simplify the Planning Scheme and update land uses to ensure they continue to be relevant.

Despite the changes to the Planning Scheme described above, the Planning Scheme continues to require these types of applications to appropriately balance the impact that bushfire safety measures have on 'bush block' properties when considering an application for a dwelling. Therefore, the changes to the Planning Scheme do not mitigate against the approval of this amendment or render it unsupportable.

Advertising and response to objections

The original application was advertised by Council pursuant to Section 52 of the *Planning and Environment Act, 1987* by:

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

As part of VCAT's orders, the applicant for review was required to carry out advertising for the amended permit.

Neither Council, nor the permit applicant have received any objections to the original permit or the amended application.

Advice from referral authorities

As discussed above, the applicant for review was required to carry out the required referrals in accordance with VCAT's orders.

Council has received the CFA's response to date. They have not objected to the amendments, however will be a party to the appeal.

DELWP was also required to be referred the application, however at the time of writing this report, the applicant for review has not received a response from DELWP.

Early correspondence between Council and DELWP regarding the amendment suggests that DELWP would not be supportive of the proposed amendments to remove additional vegetation, however no formal response has been received to date.

Increase in detriment to any persons

Based on the supporting documents and above assessment and discussion, it is not considered that the application will have any immediate effect on any person's amenity. However the cumulative effect of the gradual removal and destruction of remnant vegetation does have the potential to affect the broader community via the increase effects vegetation removal has on our climate. The Planning Scheme recognises these issues in Clause 13.01 (Climate Change Impacts).

Land use, land use change and forestry are listed in the Victorian Greenhouse Gas Emissions Report 2019 as one of the main contributing factors in Victoria's total net (carbon) emissions in 2017. The additional removals and the precedent this potentially sets for other properties to remove vegetation, can incrementally result in the removal of more and more large trees from the environment, reducing the amount of carbon able to be sequestered from the atmosphere.

Whilst there may not be any immediate effect of these vegetation removals, over time the more and more vegetation required to be removed for bushfire safety, has the potential to increase the frequency and severity of bushfire as a direct result of climate change.

Vegetation removal also contributes to the loss of biodiversity from areas and species extinction, which again may not have any effect on any persons at the present time, but it could have a long lasting effect on the community as a whole.

Therefore, it is considered that although the amendments to the permit will not have any detrimental impact to the properties directly adjoining the site in the short term, there are long lasting effects of excessive and cumulative vegetation removals for the broader community over time.

Before deciding on an application to amend a plan or permit, the Responsible Authority, if the circumstances appear to so require, may consider:

- Any significant social and economic effects of the amendment;
- Any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council;

- Any amendment to the planning scheme which has been adopted by a planning authority but not, as at the date on which the application is considered, approved by the Minister or a planning authority;
- Any agreement made pursuant to section 173 affecting the land the subject of the application; and
- Any other relevant matter.

Social and economic impacts

As discussed above, it is considered that there will not be any immediate significant detrimental social or economic effects of the proposed amendment to the planning permit. However, there are scientific links between the gradual loss of remnant native vegetation and climate change, which does have the potential to contribute to detrimental social and economic impacts on the broader community over time.

Other strategic plans or works

There are no strategic plans, policy statements, codes or guidelines which have been adopted by a Minister, Government Department, Public Authority or Municipal Council which would impact on the approval of the proposed amendment, other than those discussed above.

There has also been no amendment to the Planning Scheme, which has been adopted by a Planning Authority but not approved by the Minister or a Planning Authority, which would affect the approval of the proposed amendment, other than those already discussed above.

Section 173 Agreements

This restriction relates to an agreement between the previous landowner (Norton Ingleigh Welch) and Cardinia Shire Council. This agreement outlines the ongoing obligations of the registered proprietor/s in relation to livestock fencing, development exclusion areas for the protection of the existing vegetation. This agreement relates to a number of parcels making up the original allotment. The subject site (Lot 1) has a development exclusion zone located to the rear of the site, which prohibits the development of this area for any buildings and also the removal of vegetation from within this area.

As the proposed dwelling and outbuilding and subsequent vegetation removal (including the additional removals proposed by the amendment) are located outside of this development exclusion area, it is considered that the application complies with the obligations set out by this agreement.

Other relevant matters

It is considered that the following should be considered in the application to amend the permit.

Council's Environment Officer's conducted a site inspection on 16 July 2020.

The purpose of this site inspection was to:

- Ensure that trees in the defendable space were marked on site in accordance with the requirements of Condition 7 of Planning Permit T170516; and

- To confirm whether or not the additional vegetation marked for removal/retention on the new plan (MRA-04-A) were proposed to the minimum extent necessary to create the required 5-metre canopy separation between trees to be retained in the defensible space.

This assessment is considered necessary due to the new plan (MRA-04-A) being vastly different to the vegetation removal/retention plan (TP-08 Rev. K) prepared and provided with the original application by Graham Jones Design which Council made its original decision on.

However, due to the sheer volume of trees to be considered, Council's Environment Officer's did not have enough time to review the new plan (MRA-04-A) on-site during the inspection undertaken on 16 July 2020.

Council's Environment Officer's communicated their intention to arrange another time with the applicant for review to re-attend the site (with a CFA and DELWP representative if possible) to check the plan against the trees marked for retention/removal on-site. The restrictions imposed by the State Govt. during the COVID-19 pandemic at the time created challenges and delays in arranging face-to-face and site inspections.

Subsequently, the s .79 application was lodged prior to this second visit occurring.

Council's Environment Officer and Planning Departments final position on the application depends on the accuracy of this new plan (MRA-04-A).

Without being able to confirm on site, and given the fact that the amendment seeks to remove approximately 42 percent more vegetation than originally anticipated, the Planning and Environment Department are not in a position to verify (to its satisfaction) the accuracy of this new plan (MRA-04-A) in demonstrating that vegetation removal to create defensible space has been shown to the minimum extent necessary or if more vegetation can be retained where practical. Therefore, based on the information submitted, it is considered that there is no other position except to recommend refusal based on the additional tree removals.

Are the changes to the Planning Permit considered appropriate?

The application to amend the permit has been considered based on the relevant planning controls, policy and the documentation provided and it is not considered appropriate to amend the permit as requested.

The above planning controls require Council to assess the loss of vegetation and the resultant impact on the biodiversity of the site, and whether or not the impact is acceptable.

The application requirements of Clause 52.17-Native vegetation, in particular the requirements of the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning (DELWP) 2017) encompass all of the information required by the GWZ and the ESO1 and will be discussed in detail under this particular provision.

The proposal has also been assessed against the relevant purposes of Clause 51.02 (Metropolitan Green Wedge Land). The proposal does not satisfy one of the primary purposes of the Clause:

“To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values”

The additional vegetation removal proposed by this amendment will have a significant impact on the environmental qualities of the site and biodiversity of the locality. As the site is one of a handful of relatively undisturbed sites in the area it plays an important role in the preservation of flora and fauna. The information available to date indicates that the amendments to the permit will have a significant and ongoing impact on biodiversity which is unacceptable, when compared to the vegetation removal that was originally approved.

Whilst the full impact of this proposal on the environment and biodiversity of the site cannot be fully assessed without undertaking another site visit to confirm the accuracy of the MRA-04-A plan and compare it to the approved TP-08 Rev K plan, it is reasonable to state that the right of a land owner to use land with a Green Wedge zoning for the purpose of a dwelling, is of lesser importance than the conservation of the environmental qualities of the land. Due to the inconsistencies between these two (2) plans it is also paramount to Council's position that the correct vegetation assessment be considered.

In a recent VCAT decision, *Department of Environment, Land, Water and Planning v Yarra Ranges SC (Red Dot) [2019] VCAT 323*, VCAT overturned the Shire's decision to grant a permit for a dwelling and vegetation removal and noted that:

"We consider the RCZ [Rural Conservation Zone] is a zone that does not support the use of land for a dwelling unless the impacts from an environmental perspective are minimal and the use is subservient to the zone's purpose, which is to protect and enhance environmental values"

Although this site is not in the Rural Conservation Zone, the Green Wedge Zone still includes objectives to ensure that the environmental values of sites are protected. The amendment proposal to remove 0.759ha (just under 1/5) of the vegetation from the property is in no way minimal. Over time incremental degradation of surrounding vegetation will occur, further impacting the habitat values.

Furthermore, Council's Environment and Planning Departments are of the opinion that based on the information and plans provided by the permit holder's consultant during the assessment of the initial permit application, further vegetation removal (other than the 106 trees already approved) should not be required. Based on the excessive nature of the additional removals proposed, Planning and Environment are led to believe (without being able to confirm on site) that the applicant has not employed the "avoid and minimise" principles for vegetation removal, and more could be done to retain more vegetation which has not been considered.

Should the permit applicant allow Council's Environment and Planning teams to attend the site again to confirm the accuracy of the most recent plan MRA-04-A, and the additional 77 trees are required to be removed within the defensible space area to achieve canopy separation, seeking a cancellation of the existing permit (T170516) will be contemplated as this would mean that this permit was issued on the basis of false or misleading information being provided to Council in order to gain approval.

Given the failure of the amended proposal to avoid vegetation removal in accordance with the requirements of the Guidelines, the current impact that the proposed amendment to the permit will have on vegetation and the biodiversity is unreasonable. In addition, the offsetting proposed by the amended permit of this vegetation at both a state and local level would also not accurately reflect the loss incurred.

There is a clear need for a site visit to be consented to by the applicant, to enable a full and proper assessment of the immediate and ongoing impacts of the additional vegetation removal on the flora and fauna and overall biodiversity of the area.

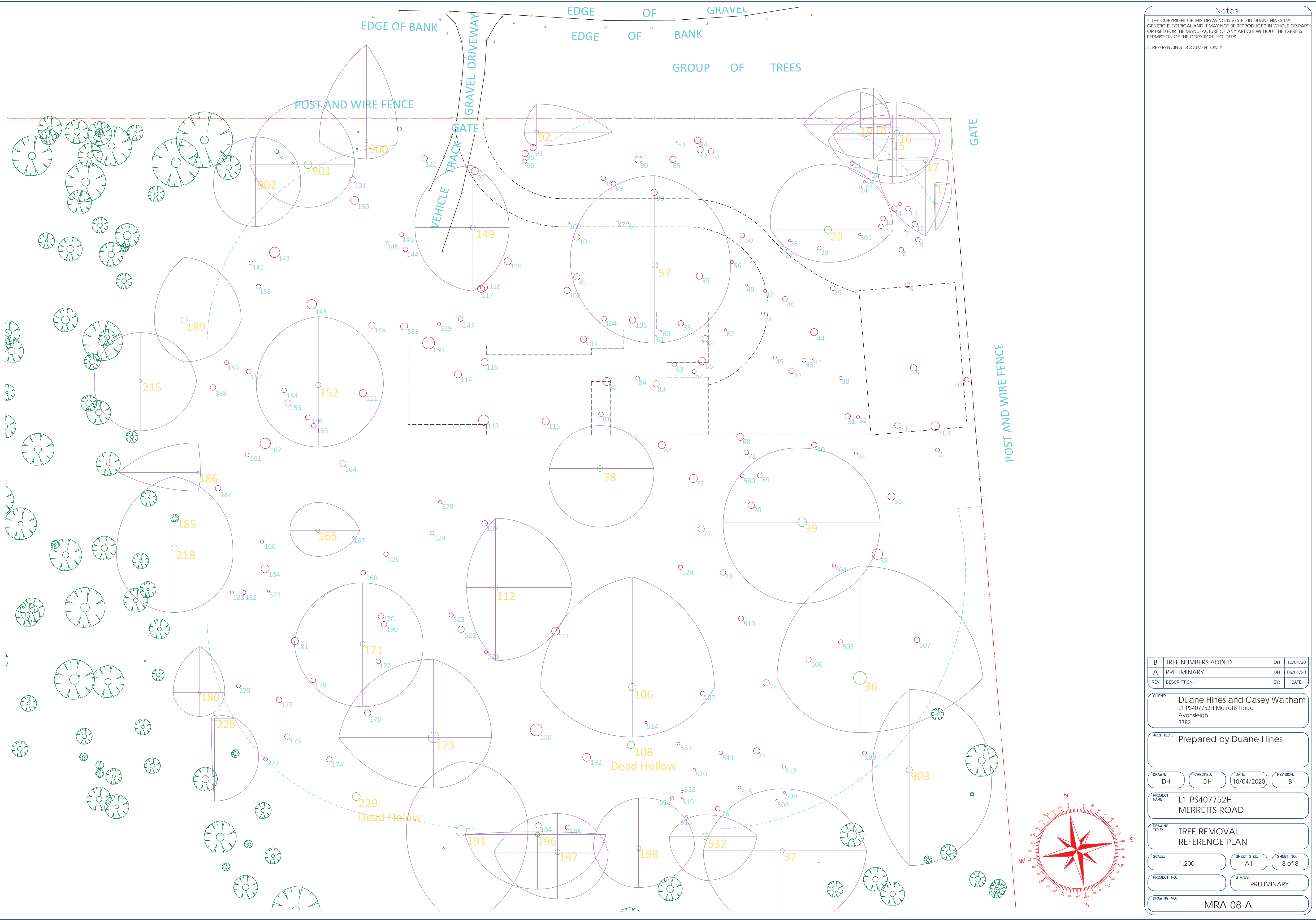
Clause 65 Decision Guidelines

The application has been assessed against the Clause 65 – Decision Guidelines. It is considered that the application, as discussed above, does not provide appropriate application documents to enable Council to fully assess compliance with the relevant state and local policies and the purpose of the zone overlays and particular provisions that apply to the site. The information submitted thus far has allowed Council to determine that the proposal does not avoid vegetation removal and has avoidable and therefore unacceptable biodiversity impacts.

Conclusion

That a Refusal to Grant Amended Planning Permit T170516 - 1 be issued for Amendment to Planning Permit T170516 to make changes to the permit and plans at Merretts Road, Avonsleigh VIC 3782 on the following grounds:

- Failure to meet the application requirements of the Green Wedge Zone and Environmental Significance Overlay (Schedule 1)
- Failure to avoid and minimise vegetation removal required by Clause 52.17 (Native Vegetation)
- Failure to protect biodiversity as required by Clause 12.01-1S (Protection of biodiversity) and Clause 13.02-1S (Bushfire Planning)
- Failure to protect metropolitan green wedge land from uses and development that will diminish its environmental value
- Transformation of the proposal from the originally assessed plans associated with Planning Permit T170516



Notes:

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2. REFERENCING DOCUMENT ONLY

B	TREE NUMBERS ADDED	DH	10/04/20
A	PRELIMINARY	DH	05/04/20
REV:	DESCRIPTION:	BY:	DATE:

CLIENT:

Duane Hines and Casey Waltham
L1 PS407752H Merretts Road
Avonsleigh
3782

ARCHITECT:

Prepared by Duane Hines

DRAWN:

DH

CHECKED:

DH

DATE:

10/04/2020

REVISION:

B

PROJECT NAME:

L1 PS407752H
MERRETTS ROAD

DRAWING TITLE:

TREE REMOVAL
REFERENCE PLAN

SCALE:

1:200

SHEET SIZE:

A1

SHEET NO:

8 of 8

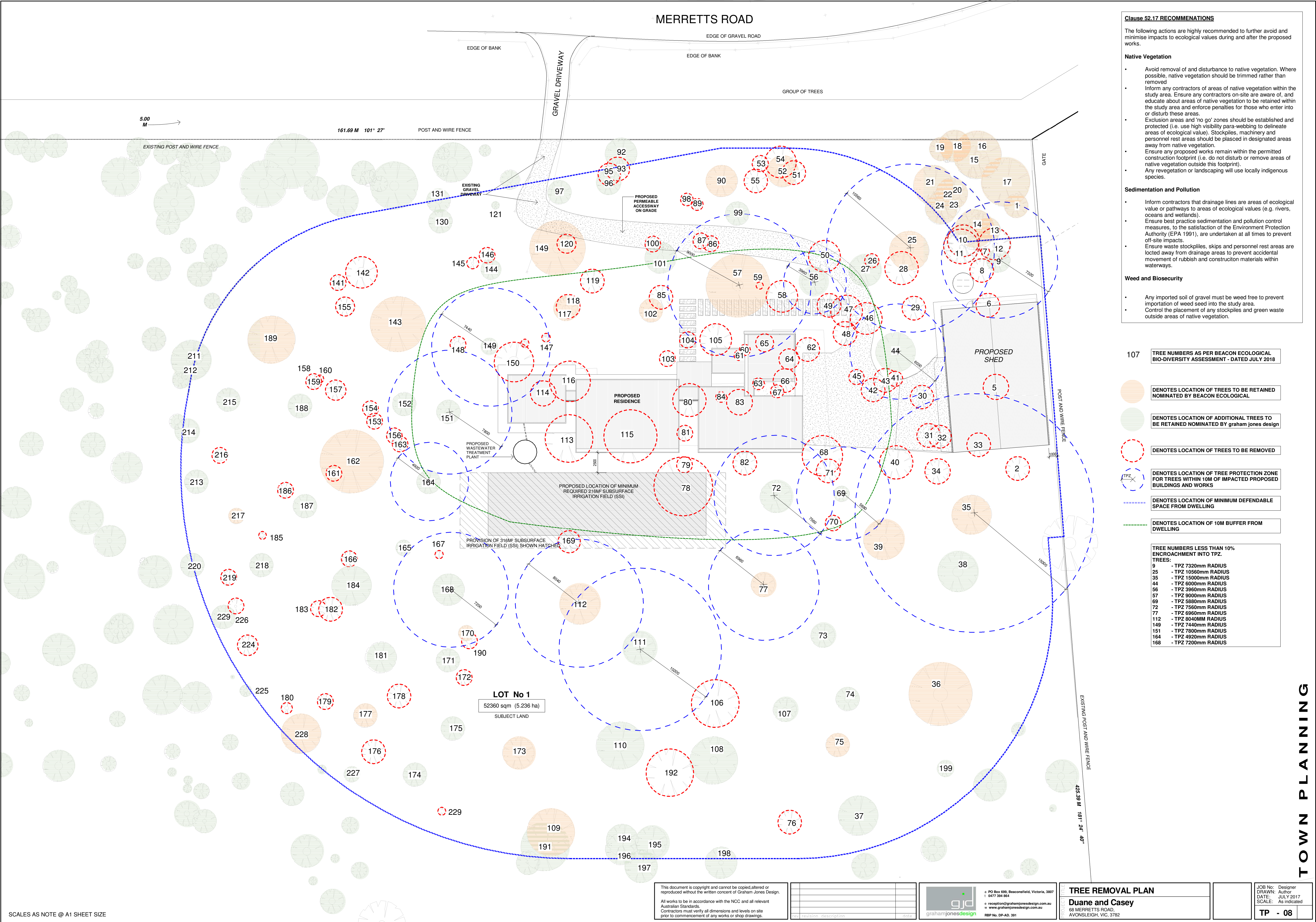
PROJECT NO:

STATUS:

PRELIMINARY

DRAWING NO:

MRA-08-A



PLANNING PERMIT

Form 4

Planning Scheme: Cardinia Planning Scheme
Responsible Authority: Cardinia Shire Council

PLANNING PERMIT NUMBER: T170516

ADDRESS OF THE LAND: L1 PS407752 V11399 F965, Merretts Road, Avonsleigh VIC 3782

THIS PERMIT ALLOWS: Use and development of the land for a dwelling, construction of an outbuilding, the removal of native vegetation and associated earthworks, generally in accordance with the approved plans

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

DELWP Conditions/Native Vegetation Offsets

1. Prior to endorsement of development plans, in order to offset the removal of 0.839 hectares of native vegetation approved as part of this permit, the permit holder must provide a native vegetation offset that meets the following requirements and is in accordance with the Permitted clearing of native vegetation – *Biodiversity assessment guidelines and the Native vegetation gain scoring manual*:
 - a) The general offset must:
 - i. contribute gain of 0.069 general biodiversity equivalence units;
 - ii. be located within the Port Phillip and Westernport Catchment Management Authority boundary or Cardinia Municipal district;
 - iii. have a strategic biodiversity score of at least 0.095.
2. Before any native vegetation is removed, evidence that an offset has been secured must be provided to the satisfaction of the Responsible Authority. This offset must meet the offset requirements set out in this permit and be in accordance with the requirements of Permitted clearing of native vegetation – *Biodiversity assessment guidelines and the Native vegetation gain scoring manual*. Offset evidence can be either:
 - a) A security agreement, to the required standard, for the offset site or sites, including a 10 year offset management plan, which is to include the ongoing management regime in perpetuity. Every year, for ten years, after the Responsible Authority has approved the offset management plan, the applicant must provide notification to the Responsible Authority of the management actions undertaken towards the implementation of the offset management plan. An offset site condition statement, including photographs must be included in this notification.
 - b) A credit register extract from the Native Vegetation Credit Register.
3. Before works start, the permit holder must advise all persons undertaking the vegetation removal and works on site of all relevant conditions of this permit.
4. Before works start, native vegetation protection fencing must be erected around all patches of native vegetation and scattered trees to be retained on site. This fencing must be erected around the patches at a minimum distance of 2 metres from retained native vegetation and at a radius of 12x the diameter at breast height (DBH) to a maximum of 15 metres but no less than 2 metres from the base of the trunk of the scattered trees.
 - a) no vehicular or pedestrian access, trenching or soil excavation is to occur
 - b) no storage or dumping of tools, equipment or waste is to occur
 - c) no entry and exit pits for underground services are to be constructed
5. A suitably qualified wildlife handler is to be present when felling trees, to ensure all affected wildlife is not harmed, and is removed from the subject land to an appropriate relocation site or relocated onsite to an appropriate location away from the construction footprint.

Date Issued: 28 January 2020

Signature for the Responsible Authority:



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PLANNING PERMIT

Form 4

Planning Scheme: Cardinia Planning Scheme
Responsible Authority: Cardinia Shire Council

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THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

6. The Tree Removal Plan, TP-08, Revision K, dated July 2017, prepared by Graham Jones Design, when approved by the Responsible Authority, should be endorsed and form part of any permit issued.

Environment Conditions:

7. Prior to the endorsement of plans, all trees within the defendable space area on the site plan must be clearly marked on site with their identification numbers. Trees approved for removal must be clearly demarcated onsite from trees that are to be retained. The identification labels and demarcation of trees marked for removal must be inspected and approved by the Responsible Authority prior to the endorsement of plans.

Use and Development Conditions:

8. The use and layout of the buildings and works, as shown on the approved plans, must not be altered or modified without the consent in writing of the Responsible Authority
9. Once the development has commenced, it must be continued and completed to the satisfaction of the Responsible Authority.
10. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the development must be of a non-reflective nature in accordance with the endorsed plans.
11. Before the dwelling is occupied:
- a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles as shown on the endorsed plans.
 - b) The vehicle crossing as shown on the approved plans must be constructed in accordance with the approved plans and to the satisfaction of the Responsible Authority. If the construction of the proposed rural vehicle crossing requires the installation of a drainage culvert to the satisfaction of the Responsible Authority
 - c) The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply, with appropriate storage capacity, to the satisfaction of the Responsible Authority.
 - d) The dwelling must be connected to a reticulated electricity supply or have an alternative energy supply to the satisfaction of the Responsible Authority.
 - e) All wastewater from proposed dwelling must be treated and contained on site in accordance with the EPA Septic Tank Code of Practice and Council requirements and any existing septic tank system must be replaced with an EPA approved secondary treatment system to the satisfaction of Council.
12. All stormwater must be conveyed by means of drains to satisfactory points or areas of discharge approved by the Responsible Authority, so that it will have no detrimental effect on the environment or adjoining property owners.
13. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.

Date Issued: 28 January 2020

Signature for the Responsible Authority:



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PLANNING PERMIT

Form 4

Planning Scheme: Cardinia Planning Scheme
Responsible Authority: Cardinia Shire Council

PLANNING PERMIT NUMBER: T170516

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THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

14. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.
15. Sediment control measures must be undertaken during construction to the satisfaction of the Responsible Authority to ensure that the development subject land is adequately managed in such a way that no mud, dirt, sand, soil, clay or stones are washed into or allowed to enter the stormwater drainage system.
16. The slope of batters, both cut and fill, must not exceed 2:1 (horizontal: vertical) or, where this is not practicable, batters must be stabilised by other means to the satisfaction of the Responsible Authority.
17. Erosion must be controlled during construction in accordance with the Environment Protection Authority Guideline TG208/90 (as amended) or in accordance with such guideline, policy or role that replaces TG 208/90.
18. All wastewater from the proposed dwelling must be treated and contained on site in accordance with EPA Septic Code of Practice and to the satisfaction of the Responsible Authority. No part of the septic tank system may be located within a fill pad.
19. All wastewater from the dwelling must be discharged into the reticulated sewerage system, to the satisfaction of the Responsible Authority, within three (3) months of the sewerage system becoming available to the property.
20. The outbuilding may only be used for the storage of vehicles and goods for domestic purposes, or purposes related to rural activities being carried out on the property. The building may not be used for human habitation or for any business except in accordance with the home based business provisions of the planning scheme.
21. The Bushfire Management Plan, prepared by Yarra Valley BAL Assessments, Version B, dated 4 April 2019, must be endorsed to form part of the permit.
22. The bushfire protection measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the Responsible Authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

Expiry:

A permit for the development and use of land expires if—

- a) the development does not start within **two (2) years** after the issue of the permit; or
- b) the development is not completed within **four (4) years** after the issue of the permit; or
- c) the use does not start within **two (2) years** after the completion of the development; or
- d) the use is discontinued for a period of **two (2) years**.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Date Issued: 28 January 2020

Signature for the Responsible Authority:



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PLANNING PERMIT

Form 4

Planning Scheme: Cardinia Planning Scheme
Responsible Authority: Cardinia Shire Council

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THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Notes:

- A Building Permit may be required for this development. To obtain a building permit you must contact a Registered Building Surveyor.
- A 'Vehicle Crossing Permit' must be obtained from Council prior to the commencement of any works associated with the proposed vehicle crossing.
- Prior to commencement of the proposed use a Building Permit must be obtained for any retaining wall exceeding 1.0 metres in height.
- Prior to installation works commencing on the septic tank system, a Permit to Install must be obtained from Council.
- Applicant would be well advised to contact the relevant sewerage authority regarding possibility of sewer availability within the next few years.

DELWP Notes:

- The application proposes to remove native vegetation for the construction of a dwelling and associated defendable space.
- The native vegetation proposed to be removed consists of 0.839 ha of Lowland Forest (EVC 16) within Location C triggering the high risk-based pathway.
- The offsets required to mitigate the permitted clearing of native vegetation in accordance with Permitted clearing of native vegetation – Biodiversity assessment Guidelines (DEPI 2013) are General Offsets with a biodiversity equivalence unit of 0.069. The offset strategy identifies that the offset will be secured via third party through a broker.

The responsible authority has issued this permit at the direction of the Victorian Civil and Administrative Tribunal.

Date Issued: 28 January 2020

Signature for the Responsible Authority:



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