

5 REMOVAL OF NATIVE TREES AT 20 PINNOCKS ROAD, EMERALD

FILE REFERENCE INT175226

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Hugh Pierce

RECOMMENDATION

That a Refusal to Grant Planning Permit T130633 be issued for the Removal of forty-nine (49) Native Trees at 20 Pinnocks Road, Emerald Victoria 3782 on the following grounds:

1. Failure to provide the required information does not allow the Responsible Authority and Recommending Referral Authority to assess the application in full
2. The proposed removal could detrimentally impact the biodiversity of the applicable section of the Menzies Creek corridor inconsistent with the strategies and objectives of
 - a) Clause 14.02-1 Catchment planning and management
 - b) Clause 12.01 – Biodiversity
 - c) Clause 21.02-3 – Biodiversity
 - d) Clause 42.01 – Environmental Significance Overlay - Schedule 1
 - e) Clause 52.17 – Native Vegetation.

Attachments

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EXECUTIVE SUMMARY:

APPLICATION NO.:	T130633
APPLICANT:	Joyce Hazard
LAND:	20 Pinnocks Road, Emerald Victoria 3782
PROPOSAL:	Removal of forty-nine (49) native trees
PLANNING CONTROLS:	Rural Conservation Zone Schedule 2 Bushfire Management Overlay, Environmental Significance Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> , by sending notices to adjoining land owners and occupiers. No objections have been received.
KEY PLANNING CONSIDERATIONS:	Impact of vegetation removal on Menzies Creek
RECOMMENDATION:	Refusal

BACKGROUND:

There is no relevant planning permit history affecting the land.

SUBJECT SITE:

The subject site is a battle-axe shaped measuring approximately 7 hectares. The land contains a pitched roof dwelling and an empty swimming pool to its rear in the south-west corner of the subject site. In the north half of the subject site Menzies Creek runs from the east to the north-west.

Vegetation coverage across the site varies between dense coverage along either side of Menzies Creek and the dwelling. However, elsewhere the land is predominantly vacant aside from the occasional sporadically located cluster of 3-4 trees.

Topographically, the land exhibits a sharp slope downwards from the south boundary in a north direction of approximately 60 to 70 metres to Menzies Creek before proceeding to rise approximately 30 metres in a north-east direction.

The main characteristics of the surrounding area are:

- North: 65 Ferres Road: L-shaped rural allotment measuring approximately 7.98 hectares. The land contains a large outbuilding and associated buildings in the north half of the site. The remainder of the property is vacant of built form and contains limited vegetation coverage.
- East: 35-53 Ferres Road: Irregular shaped allotment measuring approximately 7.15 hectares. The land contains a dwelling and outbuilding located in the north-east corner of the subject site. The north-east half of the property is predominantly cleared of vegetation whilst the south-west half exhibits dense vegetation coverage.
- South: Lot 2 Laurel Lane: Irregular shaped allotment measuring approximately 4074 square metres. The land contains a dwelling and swimming pool located centrally. The site exhibits limited vegetation coverage.

Lot 3 Laurel Lane: Irregular shaped allotment measuring approximately 5713 square metres. The land contains a dwelling and outbuilding in the west half of the land. Vegetation coverage is evident around the dwelling and along the north and south common boundaries.

3 Pinnocks Road: Irregular shaped allotment measuring approximately 16 hectares. The land contains a dwelling and associated outbuildings in the south-east corner of the land. Vegetation coverage is limited to the land around the dwelling and associated outbuildings with the remainder of the land cleared.

- West: 22 Pinnocks Road: Irregular shaped allotment measuring approximately 4318 square metres. The land contains a dwelling and sporadic vegetation coverage.

24-38 Pinnocks Road: Irregular shaped allotment measuring approximately 2.88 hectares. The land contains a dwelling and associated outbuilding south of the site's centre. There is a mixture of cleared and vegetated areas.

PROPOSAL:

The applicant is seeking planning approval for the removal of forty-nine (49) Black Wattle trees. The trees proposed for removal are located in and around 30 metres of Menzies Creek and are required to be removed, according to the applicant, in order to accommodate a fence.

The applicant has advised that eight of the trees proposed for removal are dead.

SECTION 173 AGREEMENT

The subject site is encumbered with an agreement pursuant to Section 173 of the Planning and Environment Act 1987. The agreement requires the owners of the land to provide a pedestrian walking track along the tributary of Menzies Creek. The proposal will not contravene this restriction.

PLANNING SCHEME PROVISIONS:

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 12.01 – Biodiversity
- Clause 13.03-2 – Erosion and landslip
- Clause 14.02-1 Catchment planning and management

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.02-2 – Landscape
- Clause 21.02-3 – Biodiversity

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.17 – Native Vegetation
- Clause 65 - Decision Guidelines
- Emerald District Strategy

Zone

The land is subject to the Rural Conservation Zone - Schedule 2

Overlays

The land is subject to the following overlays:

- Clause 42.01 – Environmental Significance Overlay - Schedule 1
- Clause 44.06 – Bushfire Management Overlay

PLANNING PERMIT TRIGGERS

The proposal for the removal of forty-nine (49) trees requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to ‘Clause 42.01 – Environmental Significance Overlay – Schedule 1’ a planning permit is required to remove, destroy or lop any vegetation.
- Pursuant to ‘Clause 52.17 Native Vegetation’ a planning permit is required to remove destroy or lop native vegetation.

PUBLIC NOTIFICATION

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

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

No objections have been received.

REFERRALS

Melbourne Water

The application was referred to Melbourne Water for comment. Melbourne Water objected to the proposal for the following reasons on 26 February 2014:

- The proposal would result in the loss of both existing and potential habitat connectivity along the waterway.
- Melbourne Water's vision for this reach of waterway is to maintain the existing structure, connectivity and condition of the riparian vegetation. There are also two noted vulnerable bird species in the immediate area that would value the mid and over storey vegetation for habitat.

Some additional information was provided and forward to Melbourne Water on 7 October 2014. Melbourne Water advised that the information was not adequate and that they required additional information to be provided before they were able to provide a response. The information required to be submitted comprised of a survey showing the proposed fence alignment, an arborist assessment, a revegetation plan and stream frontage management program.

Council has requested this information on several occasions, this application has been in limbo and as the applicant has not responded to the further information request, a decision is required to be made irrespectively.

Department of Environment, Land, Water and Planning, formerly Department of Sustainability and Environment at the time of referral

The application was referred to the Department of Environment, Land, Water and Planning for comment. Department of Environment, Land, Water and Planning did not object to the removal.

DISCUSSION

Clause 14.02-1 'Catchment planning and management' empathises that natural drainage corridors should be retained with at least 30 metres wide vegetation to maintain natural drainage function, stream habitat and wildlife corridors and landscape values. Furthermore, Clause 12.01-1 'Protection of biodiversity' highlights the need to both protect and conserve Victoria's biodiversity, including important habitat for Victoria's flora and fauna while Clause 42.01 - Environmental Significance Overlay - Schedule 1 encourages the protection and enhancement of bio links across the landscape.

Melbourne Water acknowledges in their initial referral response that the corridor provides habitat for two vulnerable bird species and removal of vegetation could detrimentally impact the habitat connectivity. As a consequence, it is considered that suitable information must be provided before it can be appropriately concluded that the quality of the waterway or the environment will not be adversely impacted as a consequence of the vegetation removal. Despite repeated attempts by Council officers to attain the further information originally requested by Melbourne Water on 7 October 2014 the applicant has failed to provide a suitable response. Therefore it is not considered that a complete assessment of the application can be undertaken and that the quality of both the waterway and vulnerable species that make use of it as a habitat may be unnecessarily jeopardised.

Council's Biodiversity Officer has reviewed the submitted information and supports Melbourne Water's further information request.

CONCLUSION

The proposed removal of forty-nine (49) trees cannot be assessed against the requirements of the Scheme or with the views of the Recommending Referral Authority as further information, as requested, has not been submitted despite many attempts by Council. It is considered that without this information Council cannot consider the potentially adverse impacts upon the biodiversity of the applicable section of the Menzies Creek corridor. As this is inconsistent with the relevant State Planning Policy Framework, Local Planning Policy Framework, Overlay and Particular Provisions refusal of the application is recommended.

GROUND OF REFUSAL

It is recommended that a Refusal to Grant Planning Permit T130633 be issued for the Removal of forty-nine (49) Native Trees at 20 Pinnocks Road, Emerald Victoria 3782 on the following grounds:

3. Failure to provide the required information does not allow the Responsible Authority and Recommending Referral Authority to assess the application in full
4. The proposed removal could detrimentally impact the biodiversity of the applicable section of the Menzies Creek corridor inconsistent with the strategies and objectives of
 - f) Clause 14.02-1 Catchment planning and management
 - g) Clause 12.01 – Biodiversity
 - h) Clause 21.02-3 – Biodiversity
 - i) Clause 42.01 – Environmental Significance Overlay - Schedule 1
 - j) Clause 52.17 – Native Vegetation.

T130633 PA - Locality Map

