

Planning Report - YR-2023/614 – Kingswood Drive Road Reserve (abutting 8 Kingswood Drive), Chirnside Park

APPLICATION DETAILS

Site Address	Kingswood Drive Road Reserve (abutting 8 Kingswood Drive), Chirnside Park
Application No.	YR-2023/614
Proposal	Vegetation removal
Existing Use	Road reserve
Applicant	Yarra Ranges Council
Zone	Clause 32.09 Neighbourhood Residential Zone – Schedule 1
Overlays	<ul style="list-style-type: none"> • Clause 42.03 Significant Landscape Overlay – Schedule 23 • Clause 44.01 Erosion Management Overlay
Permit triggers	<p>Clause 42.03 Significant Landscape Overlay – Schedule 23</p> <ul style="list-style-type: none"> • A planning permit is required to remove a substantial tree. <p>Clause 44.01 Erosion Management Overlay</p> <ul style="list-style-type: none"> • A planning permit is required to remove vegetation.
Objections	N/A
Encumbrances on Title (Covenants/Section 173 Agreements)	No
Reason for Council Decision	Councillor Call-in
Ward	Chirnside

SUMMARY

The proposal seeks to remove a single tree (River She Oak) which is sited on the road reserve of Kingswood Drive (abutting 8 Kingswood Drive), Chirnside Park.

A planning permit to remove the tree is required under the Clause 42.03 – Significant Landscape Overlay, Schedule 23 and under Clause 44.01 Erosion Management Overlay.

The application has been referred internally to Council’s Consulting Arborist, Environment Department and Geotechnical Engineer. Council’s Arborist has found that the removal of the tree is not warranted on the basis that there is no arboricultural reason.

Notice of the application was not required under Clause 52.31 – Local Government Projects, as the application has been submitted by a municipal council (Yarra Ranges Shire Council).

The tree has been assessed as being a mature tree with a high amenity value and of a fair health. The proposed tree removal is not supported when assessed against the relevant planning policy framework including Municipal Planning Strategy and the Planning Policy Framework, Zone, Significant Landscape Overlay and Particular Provisions of the Yarra Ranges Planning Scheme.

Therefore, it is recommended that a Notice of Refusal be issued.

RECOMMENDATION

That Council resolve to refuse Planning Application YR-2016/614 for Tree Removal at Kingswood Drive Road Reserve (abutting 8 Kingswood Drive), Chirnside Park and issue a Notice of Refusal subject to the grounds in Attachment 1 to the report.

DISCLOSURE OF CONFLICT OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

CULTURAL HERITAGE SIGNIFICANCE

The application has been checked against the requirements of the *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2007 (Vic)* as to the need for a Cultural Heritage Management Plan. It has been determined that a Cultural Heritage Management Plan is not required.

EXTRACTIVE INDUSTRY

The site is not located within 500 metres of an extractive industry.

HUMAN RIGHTS CONSIDERATION

The application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Yarra Ranges Planning Scheme), reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

ENCUMBRANCES ON TITLE

There are no encumbrances on the Certificate of Title.

SITE LOCATION AND DESCRIPTION

The subject site is known as Kingswood Drive, road reserve.

The subject tree is located on the road reserve to the east abutting 8 Kingswood Drive. Kingswood Drive is a Council managed sealed residential road, with a number of street trees and no footpaths on either side of the road.

SURROUNDING AREA

The surrounding area can be characterised as follows:

- The east and west side of Kingswood Drive comprises of residential properties, with single dwellings, with scattered vegetation across each lot (Figure 1).



Figure 1 – Aerial Map of Kingswood Drive

PROPOSAL

The proposal seeks to remove one tree, a River She Oak, as shown below in Figures 2 to 4. The accompanying Arborist report and plans are provided in Attachment 2 and Attachment 3.

Details of the tree are outlined in the table below:

Tree number	Tree Number 1
Species	River She Oak (<i>Casuarina Cunninghamiana</i>)
Native	No, tree is not indigenous to Victoria
Height	17 metres
Spread	Seven (7) metres
Diameter at Breast Height (DBH)	0.55 metres
Age	Mature
Health	Fair
Amenity value/ Significance	High

Figure 2 shows the location of the subject tree, while Figure 3 and 4 show images of the subject tree within the Kingwood Drive streetscape.



Figure 2- Subject site and tree proposed for removal.



Figure 3- Subject tree (Tree 1) proposed for removal facing south on Kingswood Drive.



Figure 4 - Subject tree (Tree 1) proposed for removal facing north on Kingswood Drive.

HISTORY

Application Number and Decision Date	N/A
VCAT History	N/A
Other History	<p>At the Council meeting, on 25 July 2023, Council considered a report for 'Tree Matter outside 8 Kingswood Drive, Chirnside Park'. A request was made by a nearby resident for the removal of a tree they considered dangerous due to it dropping leaves and debris.</p> <p>Council's Trees Co-ordinator recommended the retention of the tree on the basis that there was no arboricultural reason to remove the tree, having regard to Council's 2016 Tree Policy.</p> <p>Council resolved to give consent to the removal of the tree subject to a planning permit being issued and the planting of two new appropriately selected trees.</p>

PLANNING CONTROLS

Zoning:	Clause 32.09 Neighbourhood Residential Zone – Schedule 1
Overlay:	<p>Clause 42.03 Significant Landscape Overlay – Schedule 23</p> <p>Clause 44.01 Erosion Management Overlay</p>
State Planning Policy:	<p>Clause 12.01-1S Protection of biodiversity</p> <p>Clause 12.05-1S Environmentally sensitive areas</p> <p>Clause 12.05-2S Landscapes</p> <p>Clause 13.04-2S Erosion and landslip</p>
Local Planning Policy:	Clause 12.01-1L Biodiversity
Particular Provisions	Clause 52.31 Local Government Projects
Other Requirements:	Clause 65 – Decision guidelines

For further information on the planning controls refer to Attachment 4.

CONSULTATION

Internal Referrals

This application was referred to various business units or individuals within Council for advice on particular matters. The following is a summary of the relevant advice:

Department	Summary of Response	Conditions required
Arborist	<p>Objects to removal of the tree.</p> <p>Comments</p> <ul style="list-style-type: none">• Tree is an Australian native tree of fair health, with fair structure and high significance.• No structural defects of concern were identified during the site visit or in the provided arborist report.• As such there is no arboricultural reason for the tree to be removed	No conditions provided.
Environment	<p>No objection</p> <p>Comments</p> <ul style="list-style-type: none">• The tree is not native to Victoria.• The species is native to New South Wales and as such the requirements of Clause 52.17 are not applicable.	No conditions provided.
Geotechnical Engineer	No objection, subject to conditions	If the application were supported, permit conditions would be required to remove the stump, the hole formed backfilled with compacted material with the level mounded slightly above the level of the surrounding ground level.

External Referrals

There were no external referrals required by the planning scheme.

Public Notification and Consultation

Clause 52.31 applies to Local Government Projects.

Under Clause 52.31-2, there is an exemption from the requirement to give notice of any application which meets the relevant criteria, where the application is to develop land by or on behalf of Council, including the removal of vegetation, unless it is:

An application to remove, destroy or lop more than:

- *0.5 hectares of native vegetation other than a tree; or*
- *15 native trees with a trunk diameter of less than 40 centimetres measured at 1.3 metres above ground level; or*
- *5 native trees with a trunk diameter greater than 40 centimetres measured at 1.3 metres above ground level.*

The current application seeks the removal of one non-native tree. This meets the notice exemption criteria outlined above. This exemption also removes any third-party appeal rights, to appeal the decision with Victoria Civil Administrative Tribunal.

As such, no notice to any adjoining or nearby property has been given, and no submissions (either in support or objection) have been received.

ASSESSMENT/ KEY ISSUES

Policy State, Regional and Local

Both State and Local policy within the Planning Policy Framework seeks for the protection and enhancement of Victoria's biodiversity whilst also recognising the importance that vegetation provides in a scenic landscape setting.

Clause 12.05-1S – Environmentally sensitive areas and Clause 12.05-2S seek to protect and conserve environmentally sensitive areas and significant landscapes that contribute to character. Through the application of Clause 42.03 – Significant Landscape Overlay – Schedule 23, the site is recognised as a significant landscape where strategies seek to ensure development does not detract from the natural qualities of significant landscape areas and aesthetic values. Further, strategies seek to ensure important natural features are protected and enhanced.

The proposal is contrary to the above policies as it seeks to remove a tree, that has a high amenity value, due to its maturity, size and canopy spread and is of fair health. The removal of this tree is inconsistent with state and local policy which will result in a loss in landscape values to the surrounding area.

Clause 42.03 Significant Landscape Overlay – Schedule 23

The purpose of this Clause seeks to conserve and enhance the character of significant landscapes. The subject site and surrounds are identified as an area of

significant landscape through the application of this overlay. The statement of nature also recognises the following:

The landscape significance of the following areas is attributed to the quality of environment, its setting and relationship to the broader landscapes some of which have National Trust classification. Classified landscapes in these areas include: The Silvan Agricultural Area and the Upper Yarra and Environs.

The visual effect of large trees both native and exotic makes a significant contribution to the neighbourhood character of these areas. All the following areas share varying sized blocks allowing development to integrate within its surrounding landscape and providing views between dwellings.

Vegetation and buildings in streamside areas play a significant role in the broader catchment and should address the principles of ecologically sustainable development for the Upper Yarra River Catchment.

The overlay also identifies the significance of the Chirside Park area as follows:

Chirside Park was originally a grazing area and is set against a rural backdrop of surrounding hills and paddocks. Housing was developed primarily in the 1970's and as a result, many mature trees of both native and exotic species exist within its established gardens and contribute significantly to the character of the area.

To conserve and enhance these landscape characteristics, Schedule 23 to Clause 42.03 sets out a number of landscape character objectives to be achieved:

- *To recognise and conserve the environmental and visual sensitivity of residential areas of the Dandenong Ranges foothills and the Yarra Valley.*
- *To ensure all development is sensitively designed and sited having regard to the natural physical features of the land, including slope, the presence of existing vegetation and view lines.*
- *To retain mature trees which make a significant contribution to the landscape character of the neighbourhood areas.*
- *To protect vegetation of significance, natural beauty, interest and importance.*
- *To protect and preserve the riparian areas along waterways.*

The removal of a mature tree is contrary to the character statement which references the importance of mature trees in the area being retained and how these trees contribute significantly to the neighbourhood character of the area. The tree is prominent in the context of the immediate surrounds given its maturity, height and canopy spread that presents its significant and natural beauty when traversing Kingswood Drive.

The tree is of high amenity value in the landscape where its dominance is clearly visible in the streetscape highlighting its natural beauty, interest and importance. The submitted arborist report and the review by Council's independent arborist have both found this tree to have a high amenity value and to be of fair to good health. The

report finds that there are no structural defects of concern for the tree and that there is no arboricultural reason to remove this tree.

The tree is a dominant element within the streetscape particularly when viewed southbound along Kingswood Drive and in the broader landscape. The overall tree height and canopy spread of the tree highlight the prominence large trees have in the area which vastly outweigh any other elements in the area. As seen in Figure 2 and Figure 3 above, the subject tree is one of the largest specimens in the streetscape resulting in the tree being a dominant feature in the street.

The road reserve in the immediate surrounds highlights this tree as being only one of three mature trees of a comparative height and canopy spread along Kingswood Drive. All other trees along the road reserve of properties are juvenile trees and/or significantly lower in height and of less canopy spread, noting that the north-west side of Kingswood Drive has power lines which inhibits maximum canopy size. The conservation and retention of this tree is important in maintaining Kingswood Drive's treed streetscape character, consistent with the landscape objectives of the Significant Landscape Overlay, which seek to retain trees that make a significant contribution to the landscape character of the neighbourhood areas.

The proposed removal of this tree is not supported by the Yarra Ranges Planning Scheme as there is no arboricultural reason to remove the tree. In addition, the removal of this tree will degrade the landscape significance of the area and the prominence of mature trees in the neighbourhood which contribute to the landscape setting of Chirnside Park. Mature trees are an important element in the area of significant landscape and the proposed removal of this tree will adversely diminish the landscape character of the area and is also contrary to the landscape character objectives under Schedule 23 to Clause 42.03.

It is noted that in the event that tree removal is allowed in the Significant Landscape Overlay, two for one replacement replanting is required by the planning policy. While replacement planting can recover the long-term landscape impacts of loss of a significant tree. Replacement planting does not make up for the loss of a mature tree in the short and medium term. The subject tree's size and scale is one of three main trees in the streetscape. The tree's foliage softens the landscape through screening and provides filtered views of the built form within the landscape. New planting will take years to reach a mature height and offer the same foliage and height to match what is being removed.

The need to ensure replacement planting should a permit be issued also is in accordance with the decision made by Council, at the 25 July 2023 Council Meeting, to consent to the removal of a street tree subject to obtaining a planning permit and the planting of two new, appropriately selected trees.

The land is not in a bushfire prone area therefore there would be no planning scheme restriction limiting replanting back within the area.

Clause 44.01 Erosion Management Overlay

The subject tree proposed for removal is sited within an area of land affected by the Erosion Management Overlay as depicted below in Figure 5.

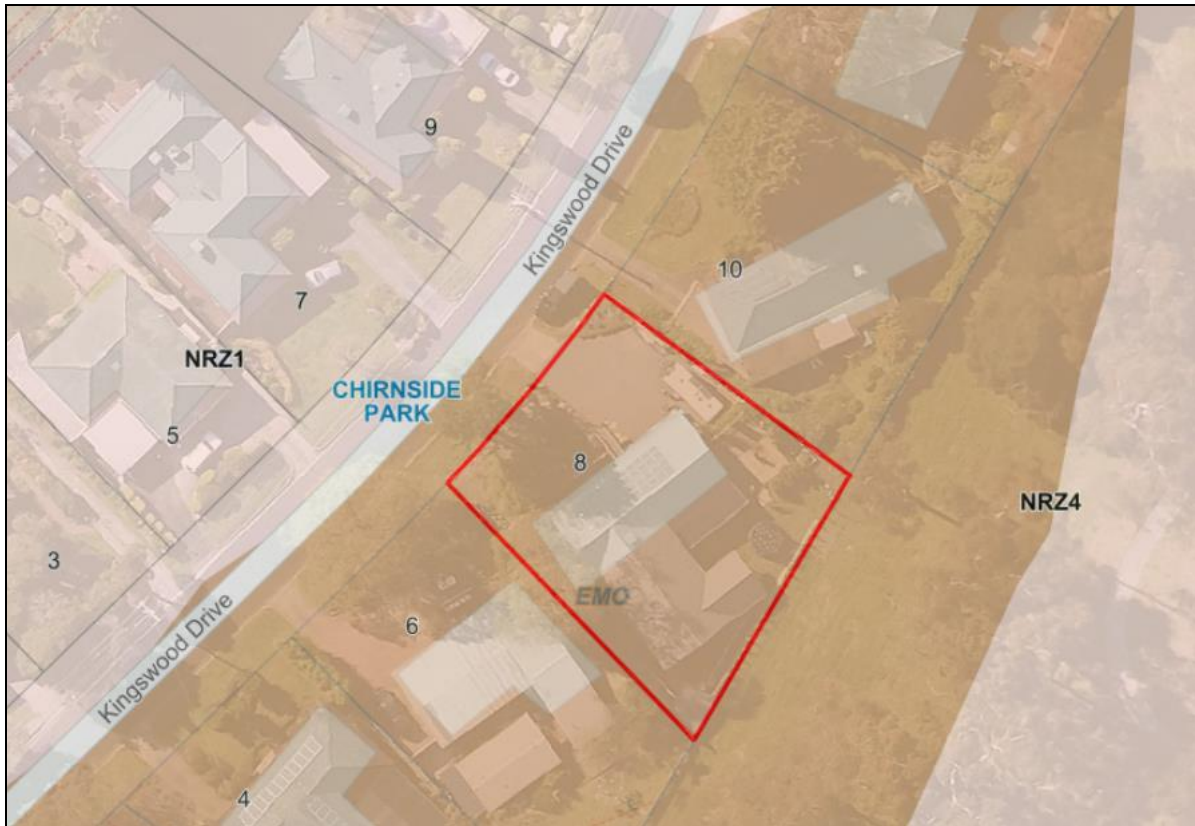


Figure 5 Area of land affected by Erosion Management Overlay (EMO)

An assessment of the landslip hazard code rating identifies the area as generally have a low slope angle and natural slope hazards on these sites are unlikely. The purpose of this overlay is to protect areas prone to erosion, landslip, other land degradation by minimising land disturbance and inappropriate development the application has been referred to Council's consulting geotechnical practitioner.

Having regard to landslip risk, Council's Geotechnical Engineer has not objected to the proposal subject to conditions to require the stump to remain in place; or if the stump is removed for the hole to be backfilled with compacted material and surface mounded above the natural ground level.

If a permit were to be issued conditions requiring the removal of the tree stump and subsequent earthworks would ensure that no additional water ponding or infiltration into the ground would occur, that could potentially increase the susceptibility of landslip risk.

Clause 65 – Decision Guidelines

The proposal is inconsistent with the decision guidelines under Clause 65.01, as the vegetation removal directly conflicts with the purpose of the Clause 42.03 Significant Landscape Overlay – Schedule 23 and relevant state and local planning policy which

seek to retain biodiversity in the area that contributes to the ecosystem and landscape value of the area.

CONCLUSION

The application to remove a tree has been assessed in accordance with Section 60(1) of the *Planning and Environment Act 1987* and all relevant instruments and policies.

The proposal is contrary to the objectives of state planning policies, local planning policies and the relevant zone, overlay and particular provisions of the Planning Scheme.

There is no arboricultural basis to remove the tree and it is recognised that the tree contributes to the character of the Chirnside Park area, being in an area of landscape significance.

As such, it is recommended a Notice of Refusal be issued on the grounds outlined in Attachment 1 to this report.

ATTACHMENTS

1. Grounds for Refusal
2. Set of Plans
3. Arborist Report
4. Planning Scheme Policies