

YR-2022/1106 - HEREFORD ROAD, MOUNT EVELYN - PLANNING REPORT

APPLICATION DETAILS

Subject Land Parcels	Road R1 PS008512; and Kookaburra Lane Road reserve
Application No.	YR-2022/1106
Proposal	Removal of four native trees
Existing Use	Vegetated roadside reserve and vacant private land
Applicant	Yarra Ranges Council
Zone	Clause 35.05 - Green Wedge A 2
Overlays	Clause 42.01 – Environmental Significance Overlay Schedule 1 Clause 42.03 - Significant Landscape Overlay Schedule 6 Clause 44.06 - Bushfire Management Overlay
Permit trigger/s	Clause 42.01 – Environmental Significance Overlay Schedule 1 Clause 42.03 - Significant Landscape Overlay Schedule 6 Clause 52.17 – Native Vegetation
Submissions	Four letters of support No objections.
Encumbrances on Title (Covenants/Section 173 Agreements)	Nil
Reason for Council Decision	Councillor Call-in
Ward	Billanook

SUMMARY

This application for tree removal has been lodged following safety concerns raised by an adjoining property owner whose dwelling was impacted by a fallen tree from the subject land during the June 2021 storm event.

In response to those concerns, Council's Arborist inspected 25 trees within proximity of the affected property. Seven trees were deemed to pose an immediate risk and have been removed. The report recommended the retention of a further eight trees.

At its meeting on 22 November 2022, Council passed a motion to give consent for the removal of those eight trees, subject to a planning permit application being lodged and issued. This application has been lodged to follow the decision to remove the additional eight trees.

Of the eight trees, four trees (Trees 3, 4, 8 and 22) require a planning permit under Clause 52.17 - Native Vegetation, Clause 42.01 - Environmental Significance Overlay Schedule 1 and Clause 42.03 - Significant Landscape Overlay Schedule 6. The remaining four trees (Trees 16, 17, 19 and 21) are exempt under Clause 52.12 as they are within 10 metres of the dwelling on an adjacent property.

Two trees (Trees 8 and 22) are on a private land parcel between 134 Hereford Road and 15 Kookaburra Lane, and two trees (Trees 3 and 4) are in the Kookaburra Lane road reserve, east of 134 Hereford Road.

The application was advertised, and four letters of support have been received.

As is required by the Yarra Ranges Planning Scheme, the planning application has been assessed on arboricultural merit, and has balanced the findings based on the risk of failure (partial or total) posed by the trees against the broader environmental, landscape and amenity benefit that the vegetation provides.

Seven of the eight trees have been assessed as having a low risk of failure by two arborists working independently of each other. The first arborist conducted the assessment on behalf of Council as the applicant, and the second undertook a review of the submitted assessment on behalf of the planning department.

Each Arborist has determined that, with the exception of Tree 8, there is no arboricultural reason for the vegetation to be removed. The trees have a high retention value, are at low risk of failure and have a long useful life expectancy.

The removal is deemed to be inconsistent with the relevant provisions of the Yarra Ranges Planning Scheme, in particular both State and Local Planning Policy which seek to protect and retain ecologically significant, high retention value vegetation.

It is therefore recommended that Council resolve to refuse the application, and a Notice of Refusal be issued.

RECOMMENDATION

That Council resolve to refuse Planning Application YR-2022/1106 for removal of four trees at Hereford Road, Mount Evelyn 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 (CHMP). It has been assessed that a CHMP is not required.

EXTRACTIVE INDUSTRY

The site is not located within 500m 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 comprises two separate parcels of land, one being the private parcel of land (known as Road R1 PS008512) and a second parcel, being the road reserve to the east of 134 Hereford Road, Mount Evelyn. The private parcel has a width of 20 metres which extends along the northern boundary of 134 Hereford Road, Mount Evelyn. The area on the eastern side of 134 Hereford Road is roadside reserve adjacent to Kookaburra Lane. Figure 1 shows the aerial imagery of the reserve in context of adjacent land, Kookaburra Lane and Hereford Road.



Figure 1 – Subject sites - Private Land Parcel (outlined in blue), and Kookaburra Lane Road reserve (outlined in yellow) in relation to 134 Hereford Road and 15 Kookaburra Lane (in red), and Kookaburra Lane (green)

During the course of this application, a review of the Certificate of Title identified that the land known as Road R1 PS008512 is in fact a privately owned land parcel, with no street number. It is subsequently referred to in this report as the 'Private land Parcel'. It is separate from the section of Council owned and managed road reserve along Kookaburra Lane, which is subsequently referred to in this report as the 'Kookaburra Lane road reserve'.

Following the identification that the land is privately owned, the applicant gave notice of the application as required by Section 48 of the *Planning and Environment Act 1987*, and formally amended the application under Section 57A to properly declare that the owner of the Private land Parcel land had been notified of the proposal.

Both land parcels are undeveloped and consist of scattered, mature native vegetation and understorey native vegetation. The native vegetation on site principally comprises the ecological landscape type '*Long-leaf Box Herb-rich Foothill Forest (EVC 23)*'.

Figure 2 shows the two parcels of land where the four trees stand outlined in red:



Figure 2 - Road reserve (subject area)

SURROUNDING AREA

The subject sites sit beyond the Urban Growth Boundary of Mount Evelyn, in a Green Wedge A Zone Schedule 2.

To the east of the site is Kookaburra Lane, which is a sealed road, while to the west of the site is the sealed portion of Hereford Road, zoned Transport Zone 2 and owned by VicRoads. The centre of Mount Evelyn township is situated approximately 1.7 kilometres to the south.

The Private Land Parcel abuts two properties to the north, consisting of 15 Kookaburra Lane and 19 Kookaburra Lane. Both properties contain single dwellings and scattered vegetation.

The property to the south is 134 Hereford Road which contains a single dwelling that was impacted in 2021 by a tree falling from the Private Land Parcel onto the dwelling, causing substantial damage.

In response, a further seven trees, which posed an immediate risk of failure, were removed by Council. The removal was exempt under the planning scheme from requiring a planning permit as the vegetation posed an immediate risk.

Within the wider context of the site, the land to the east is zoned Low Density Residential Zone and is developed by single dwellings, while the land in all other directions is zoned Green Wedge A Zone and contains single dwellings on a range of larger lot sizes (Attachment 2).

An aerial comparison between Figure 3 and Figure 4 shows there has been a significant loss of vegetation in the area as a result of the June 2021 storm. Many large canopy trees were lost during the storm which has had an impact on the environmental quality and landscape character of the area.



Figure 3 - 4 April 2021 (pre-storm)



Figure 4 - 20 January 2022 (post-storm)

PROPOSAL

This application seeks to remove four large native messmates (*Eucalyptus obliqua*) trees. Two are to be removed from the Private Land Parcel, and two are to be removed on the Kookaburra Lane road reserve.

Figure 5 shows the location of the eight trees proposed to be removed outlined in red, and the tree numbers of recently assessed vegetation. Only four of the eight trees, Trees 3, 4, 8 and 22 (outlined in red) require a planning permit. The remaining four, being Trees 16, 17, 19 and 21 (outlined in green) do not require a planning permit as they are exempt under Clause 52.12, as they are within 10 metres of the dwelling on 134 Hereford Road, confirmed by ground-truthing the distances during the assessment of the application:



Figure 5 - Tree location and numbering (vegetation to be removed requiring a permit circled in red. trees exempt under 52.12 circled in green)

Trees 2, 5, 7, 10, 12, 13, 18 have already been removed.

Details of the eight assessed trees are provided in the table below, with the four trees which require a planning permit identified in orange:

Tree No.	Botanic Name	Common Name	DBH (cm)	Height (m)	Risk	Comments
3	<i>Eucalyptus obliqua</i>	Messmate	80	25	Low	Permit required under Environmental Significance Overlay Schedule 1, Significant Landscape Overlay Schedule 6 and Clause 52.17.

Tree No.	Botanic Name	Common Name	DBH (cm)	Height (m)	Risk	Comments
4	<i>Eucalyptus obliqua</i>	Messmate	70	30	Low	Permit required under Environmental Significance Overlay Schedule 1, Significant Landscape Overlay Schedule 6 and Clause 52.17.
8	<i>Eucalyptus obliqua</i>	Messmate	66	30	Low	Permit required under Environmental Significance Overlay Schedule 1, and Significant Landscape Overlay Schedule 6.
16	<i>Eucalyptus obliqua</i>	Messmate	84	30	Low	<u>Vegetation removal is exempt from requiring a permit</u> under Clause 52.12 as tree is within 10 metres of an existing dwelling constructed before 10 September 2009, and the site is located within a Bushfire Prone Area.
17	<i>Eucalyptus obliqua</i>	Messmate	70	25	Low	<u>Vegetation removal is exempt from requiring a permit</u> under Clause 52.12 as tree is within 10 metres of an existing dwelling constructed before 10 September 2009, and the site is located within a Bushfire Prone Area.
19	<i>Eucalyptus obliqua</i>	Messmate	77	30	Low	<u>Vegetation removal is exempt from requiring a permit</u> under Clause 52.12 as tree is within 10 metres of an existing dwelling constructed before 10 September 2009, and the site is located within a Bushfire Prone Area.
21	<i>Eucalyptus obliqua</i>	Messmate	45	20	Low	<u>Vegetation removal is exempt from requiring a permit</u> under Clause 52.12 as tree is within 10 metres of an existing dwelling constructed before 10 September 2009, and the site is located within a Bushfire Prone Area.
22	<i>Eucalyptus obliqua</i>	Messmate	60	30	Low	Permit is required under Environmental Significance Overlay Schedule 1 and Significant Landscape Overlay Schedule 6.

HISTORY

Application Number and Decision Date	N/A
VCAT History	N/A
Other History & relevant information	<p>Following concerns raised by an adjoining owner regarding the safety risk of trees falling onto the adjoining dwelling from the road reserve, twenty-five trees were assessed by Council's Arborist.</p> <p>At the Council meeting on 22 November 2022, seven trees (Trees 2, 5, 7, 10, 11, 12 and 18) were recommended for removal.</p> <p>Due to safety concerns from the resident, an alternate motion was passed to include a further eight trees (Trees 3, 4, 8, 16, 17, 19, 21, and 22), which forms this application.</p> <p>Only Trees 3, 4, 8 and 22 require a permit.</p> <p>During the course of this application, a review of the Certificate of Title identified that the land known as Road R1 PS008512 is in fact a privately owned land parcel, with no street number. It is separate from the section of Council owned and managed road reserve along Kookaburra Lane.</p> <p>Following the identification that the land to the north of 134 Hereford Road is privately owned, the applicant gave notice of the application to the owners as required by Section 48 of the <i>Planning and Environment Act 1987</i>, and formally amended the application under Section 57A to properly declare that the owner of the land had been notified of the proposal.</p> <p>If a permit were to issue, Council could act on the removal of vegetation from the Kookaburra Lane road reserve, however it would be at the discretion of the owners of the Private Land Parcel to determine if they wished to act on the permit and remove the permitted vegetation from that land parcel. Council could not enter the land and remove the vegetation.</p> <p>Only vegetation with a planning permit, or which is exempt could be removed. No other vegetation could be removed without a planning permit.</p>

PLANNING CONTROLS

Zoning:	Clause 35.05 – Green Wedge A Zone Schedule 2
Overlay:	Clause 42.01 Environmental Significance Overlay Schedule 1 Clause 42.03 – Significant Landscape Overlay Schedule 6 Clause 44.06 – Bushfire Management Overlay
Start Planning Policy:	Clause 12.01-2S – Native vegetation management Clause 12.05-1S – Environmentally sensitive areas Clause 12.05-2S – Landscapes
Local Planning Policy:	Clause 12.01-1L – Biodiversity
Clause 51.03:	Not Applicable
Schedule to Clause 51.03:	Not Applicable
Particular Provisions	<p>Clause 52.12 – Bushfire Protection Measures</p> <p><i>Four of the eight trees are exempt from requiring a planning permit as they are within 10 metres of a dwelling that was constructed prior to 10 September 2009. The subject site is also within a bushfire prone area. This was identified during the assessment of the application and confirmed by Council’s Environment team.</i></p> <p>Clause - 52.17 – Native Vegetation</p> <p><i>A planning permit is required to remove, destroy or lop native vegetation, including dead native vegetation.</i></p>
Other Requirements:	<p>Clause 65 – Decision guidelines</p> <p>Council Tree Policy 2016</p> <p>Council’s Tree Policy relates to the management of trees on land owned by Yarra Ranges Shire.</p> <p>The strategic policy direction is based on three broad policy objectives of:</p> <ul style="list-style-type: none"> • <i>Avoid</i> • <i>Minimise</i> • <i>Offset</i>

The assessment theme relates to the health of the tree, the risk to the local environment from the vegetation removal as well as to the risk impacts on life and property.

The broad principles for the Tree Policy relate directly to the Flora and Fauna Strategy, which provides the rationale for tree management in the context of the total environment.

The policy specifically states that Council will avoid the removal of trees from Council land and roadsides where possible. Vegetation should be retained where possible to avoid unnecessary vegetation removal.

Council, in minimising the need for vegetation removal, will use agreed best arboriculture practices such as tree pruning, root management, tree support systems and the control of weeds, animals and diseases as a means by which the health of trees and their longevity can be enhanced.

The policy also sets out a risk classification system that advises what actions should be taken for each class.

Refer to Attachment 9

Code of Environmental Practice for Works on Council Controlled Land

The document was designed to streamline the environmental processes by clarifying the exemptions available and to ensure industry standards and efficient Council processes and works commensurate environmental best practice or offsets where these would be normally required under state regulations.

The Code of Environmental Practice is based on four principles:

- Principle 1: Ensure that all Council works adhere to the Code of Environmental Practice
- Principle 2: Avoid the removal of native vegetation and fauna habitat
- Principle 3: Vegetation removal or modification will be kept to the minimum extent necessary
- Principle 4: When offsets are required, ensure that they are:
 - In accordance with Victorian native vegetation regulations and guidelines
 - Equivalent to or greater than the losses in biodiversity caused by the removal of native vegetation or fauna habitat

	<ul style="list-style-type: none"> ○ Obtained locally within the Yarra Ranges wherever possible <p><i>Refer to Attachment 10</i></p>
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For further information on the planning controls refer to Attachment 3.

PERMIT TRIGGERS

Zoning

Clause 35.05 - Green Wedge A Zone Schedule 2 -

A planning permit is not required to remove vegetation under the zone.

Overlays

Clause 42.03 - Significant Landscape Overlay Schedule 6

A planning permit is required to remove a substantial tree and native vegetation that occurs naturally in the Shire. A substantial tree is defined as having a trunk circumference greater than 1.1 metres (0.35 metre diameter) at 1.3 metres above the ground.

Clause 42.01 Environmental Significance Overlay Schedule 1

A planning permit is required to remove, destroy or lop the vegetation, as there are no exemptions which apply to the vegetation proposed to be removed under the Schedule.

Clause 44.06 - Bushfire Management Overlay

A planning permit is not required to remove vegetation.

Clause 52.17 – Native Vegetation

A planning permit is required to remove, destroy or lop native vegetation, including dead native vegetation.

CONSULTATION

Internal Referrals

This application was referred to Council’s consulting Arborist and Environment Team for advice on the proposal. The following is a summary of the advice:

Department	Summary of Response	Conditions required
Arborist	To mitigate the risk of tree failure causing damage or injury, the removal of Tree 8 is recommended.	Although the Council Arborist does not support the application, they

Department	Summary of Response	Conditions required
	<p>With consideration of the objectives and decision guidelines contained within the Significant Landscape Overlay Schedule 6, the removal of Trees 3, 4, 16, 17, 19, 21 and 22 is not supported.</p>	<p>recommended conditions to replant within the reserve be required if the removal of Tree 8 is approved. Refer to Attachment 7</p>
Environment	<p>The application was not supported by Council's environment team as:</p> <ul style="list-style-type: none"> • The application has not adequately avoided and minimised the removal of native vegetation as required under Clause 52.17. • The application is contrary to the purpose of the zoning GWAZ2, which seeks <i>'to protect, conserve and enhance the biodiversity, natural resources, scenic landscapes and heritage values of the area'</i>. The ongoing incremental removal of healthy remnant indigenous trees is having a widespread adverse impact on biodiversity values. • The application is contrary to the following GWAZ decision guideline: <i>'The need to protect and enhance the biodiversity of the area, including the retention of vegetation and fauna habitat and the revegetation of land including riparian buffers along waterways, gullies, ridge lines, property boundaries and saline recharge and discharge areas.'</i> The proposed removal would negatively impact fauna habitat and limit movement between the immediate area and surrounding treed areas. • The application does not achieve the objective of the ESO1 - <i>'To protect and manage the larger patches of remnant highest biodiversity bushland from fragmentation and incremental loss so that they continue to provide high quality biolink corridors and sustainable habitat for indigenous flora and fauna.'</i> 	<p>Although Council's Environment team does not support the application, they recommend that, if the permit is approved, that conditions be included that the permit holder must secure and provide evidence of offset credits being secured to offset the removal. The credit must offset 0.086 hectares of native vegetation as shown in the approved Native Vegetation Removal Report (Report ID: GEN_2022_396). These credits must be secured prior to the removal being carried out at Council's cost. The cost of the offset credits is approximately \$1,890 (excluding Goods and Services Tax). The credits must be in accordance with the Guidelines for</p>

Department	Summary of Response	Conditions required
	<p>The Powerful Owl, which is listed as a threatened species, is likely to utilise the trees in question as part of their foraging territory. The proposed removal of trees, in particular large trees, would negatively impact on native arboreal mammals and birds, which in turns reduces food availability for the Powerful Owls. It would degrade a habitat corridor and increase the fragmentation of otherwise connected treed areas.</p> <ul style="list-style-type: none"> The application does not appear to have considered the 'Public Authority Duty' under the recently amended <i>Flora and Fauna Guarantee (FFG) Act 1988</i>. An obligation or duty on public authorities has been introduced to consider potential biodiversity impacts when exercising their functions (set out in new section 4B). This reflects the Victorian Government's commitment to embed biodiversity consideration in government decision making. The application does not align with the objective of the Significant Landscape Overlay Schedule 6, which is <i>'to retain established trees and patches of indigenous vegetation as an important element of the rural landscape and habitat for wildlife'</i>. 	<p>the removal, destruction or lopping of native vegetation (DELWP 2017) as specified below:</p> <p>A general offset of 0.017 general habitat units:</p> <ul style="list-style-type: none"> located within the Port Phillip and Westernport Catchment Management Authority boundary or Yarra Ranges Council municipal district. with a minimum strategic biodiversity value score of at least 0.258 Include 2 Large Trees

External Referrals

This application was referred to the following statutory referral authority for advice on particular matters. The following is a summary of the advice:

Referral Authority	Consent/Objection Summary of Response
<p>Department of Environment, Land, Water and Planning (now Department of Transport and Planning since 1 January 2023)</p> <p>(Recommending referral authority)</p>	<p>No response.</p> <p>Council Environmental Officers have undertaken assessment against the DELWP guidelines. See above and assessment discussion for outcome and recommendation.</p>

Public Notification and Consultation

Notification of the application was undertaken by:

- Placing of three signs on the road frontages of the subject land
- Mailing notices to owners and occupiers of adjoining and/or nearby properties
- Placing the proposal on Council's website for a minimum of 14 days

Two periods of notice were completed:

1. The first advertising period ended on 10 January 2023.

One letter of support was received during this notification period.

2. The application was readvertised following identification of the private land parcel landowners, to include the owners as a notified party under Section 52 of the *Planning and Environment Act 1987*. The second advertising period ended on 26 May 2023.

Three additional letters of support were received during that period.

Number of Submissions:

No objections were received. Four letters of support have been received.

ASSESSMENT/ KEY ISSUES

The four trees proposed to be removed are large native canopy trees and are significant for both environmental and landscape benefit. The tree removal was requested by the neighbouring landowner due to perceived safety risk given the proximity of the trees to the dwelling and a previous total tree failure which impacted the dwelling.

Policy State, Regional and Local

There are key policy objectives in the Planning Policy Framework which seeks to retain and protect vegetation within Yarra Ranges, particularly high value native vegetation. Of particular note are Clause 12 *Environmental & Landscape Values* and Clause 12.01 - *Protection of Biodiversity* of State policy, while Local Policy further provides policy direction in Clause 12.01-1L - *Biodiversity*.

“Ensure unavoidable vegetation removal is adequately offset by revegetation and land management that achieve a net improvement in Yarra Ranges’ biodiversity assets”.

The policy within both the State and Local Planning Policy Framework seeks to consider the value in both the biodiversity and environmental value vegetation has for the community, but also seeks to consider the value vegetation holds in creating valuable and scenic landscapes in Yarra Ranges.

When assessed against the policy, the removal of four significant, high retention value trees is not supported, where the removal can be avoided, and as the trees have been assessed as having a low risk of failure.

Clause 12, Environmental and Landscape Values, seeks to:

“help to protect the health of ecological systems and the biodiversity they support (including ecosystems, habitats, species and genetic diversity) and conserve areas with identified environmental and landscape values”,

which the subject site has. Clause 12.01 – Biodiversity has strategies which direct that decision making on vegetation removal needs to consider the land use and impact on biodiversity for the state. The subject site holds vegetation which contributes to the ecological value due to the large significant *Eucalyptus obliqua* trees, which are 25 to 30 metres in height and are considered irreplaceable. The significant trees also contribute to the wider landscape character of the Mount Evelyn area.

Building on the State provision, Clause 12.05-2S – Landscapes, has an objective to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environment, which high value mature *Eucalyptus obliqua* trees greatly contribute towards in Mount Evelyn. The policy seeks ensure that important natural features are protected and enhanced. The policy also seeks to recognise the natural landscape for its aesthetic value and as a fully functioning system.

The proposal demonstrates that it is not consistent with state and local policy as there is no justification for the removal of three of the four trees, as they were deemed low risk. The application has not sufficiently demonstrated any need for the vegetation removal and the loss of mature *Eucalyptus obliqua* trees would have an unacceptable impact on the significant landscape.

Assessment of Vegetation Impacts

Of the four native trees to be removed, two are located on Council’s road reserve and the remaining two are located to the north. The removal of the trees in the Kookaburra Lane road reserve will result in the existing portion of road reserve becoming devoid of vegetation, following the recent removal of the other seven trees combined with vegetation loss in the June 2021 storm.

Arboricultural assessment

The arborist report prepared for this application identifies seven *Eucalyptus obliqua* trees as having a low risk and based on their good health were recommended for retention. Trees 3, 4 and 21 did not require any action, while the remaining trees required their crowns to be cleaned of dead wood and an aerial inspection to be undertaken.

Of the four trees that require a planning permit (Trees 3, 4, 8 and 22), Council’s arborist has confirmed that only Tree 8 should be removed, as it has been exposed since the recent removal of three nearby trees (Trees 5, 7 and 12) in December 2022. The four trees acted as a cluster to support each other from wind loads. The removal

of the surrounding three trees resulted in the crown of Tree 8 being exposed to greater wind loads and has increased the risk of failure. In addition, there are signs of ground disturbance around the tree, including compaction from vehicles. These factors will therefore result in a higher possibility of root plate failure, which in turn increases the likelihood of damage to the adjacent dwelling as well as injury to its occupants, which will present a 'moderate' risk rather than 'low'. The removal of Tree 8 is therefore deemed appropriate.

Council's Arborist does not consider the remaining three trees (Trees 3, 4 and 22) need to be removed. Their individual risk has been assessed as being low and their removal would not aid in risk mitigation. There is no arboricultural justification for their removal. Based on the arboricultural findings, the three trees do not require removal for risk mitigation as there is a low risk of failure, will have a reasonable useful life expectancy, provide a high contribution to the landscape and environmental quality of the area, and add to the visual amenity of the broader landscape.

Tree Policy 2016 (Attachment 9)

The proposed tree removal does not conform to Council's *Tree Policy 2016* as it does not meet the objectives relating to avoid and minimise vegetation loss.

The Scope of the Tree Policy states:

"The Yarra Ranges Council Tree Policy has two main components: the strategic policy directions, and assessment framework. These are designed to retain, maintain and enhance the tree resource within Yarra Ranges.

The Tree Policy takes into consideration the affordability, available resources and management of risks and has determined the "levels of service" that meet the community's "reasonable" expectations of "day to day" maintenance and ongoing asset performance"

Section 3 of the policy is of particular relevance as it relates to the Tree Assessment Framework.

As outlined in the Arborist Report, the trees have a low risk, particularly in regard to property and life. Management of the trees, which involves cleaning the crown of deadwood should be sufficient action to ensure that the trees remain safe to surrounding property and life.

The proposal is therefore deemed to be inconsistent with Council's policy and removal of the trees is not an appropriate response against the low risk classification contained within the policy.

The application has also been assessed against Council's Code of Environmental Practice which demonstrates that the proposal does not accord with the Standard Operating Procedures (Best Practice Methodologies) as it will not abide by the principle of avoid and minimise vegetation loss.

Consideration to the visual appearance of the area or the ecological function has also not been given when proposing the complete removal of the trees, rather than

monitoring and active management of the trees. Where vegetation removal is necessary, only the minimum amount of vegetation necessary should be carried out.

As identified in the Arborist Report, three trees are deemed low risk, have a low probability of failure and require little to no management. Only the removal of Tree 8 would be the appropriate amount of vegetation removal to be carried out in this circumstance, with the remaining trees being in direct conflict with policy.

Clause 42.01 Environmental Significance Overlay Schedule 1

The subject sites are affected by the Environmental Significance Overlay Schedule 1.

The overlay identifies the contribution that the shire's bushland remnants have on flora and fauna habitats. Below is a description of the environmental significance for this location:

“Yarra Ranges contains an extensive network of bushland remnants that are an integral part of the municipality's unique landscape and environmental character. These bushland areas comprise a wide range of different ecosystems that provide habitats for a rich diversity of flora and fauna.

The value of habitat areas in Yarra Ranges' network of flora and fauna habitats is enhanced where there are opportunities for birds and other wildlife to shelter while moving between them. The connectivity between habitat areas increases their long term sustainability and value in biodiversity protection by reducing the risk of creating isolated and vulnerable habitat areas. This connectivity enables native species to respond to adverse climatic changes, providing greater opportunities for breeding and foraging, and allowing native species to recolonise areas following major disturbances such as bushfires.

The biolink corridors that have been identified in Yarra Ranges generally follow waterways although they also include some roadsides and other areas containing indigenous vegetation remnants. In some areas the extent and condition of indigenous vegetation within these habitat corridors has been fragmented and degraded by past land management practices. There are many opportunities to improve the habitat value of Yarra Ranges' network of flora and fauna habitats through the rehabilitation of these degraded areas especially along watercourses.”

The policy outlines how the vegetation, which includes Trees 3, 4, 8 and 22 (*Eucalyptus obliqua*) contributes to the environment. Council's environment team identified the linear strip of vegetation within the road reserve as likely creating a biolink for Powerful Owls, which are a threatened species, that utilise the trees as part of their foraging territory. The removal of the trees is also likely to have a negative impact on native arboreal mammals and birds, which in turn reduces food availability for the Powerful Owls. The vegetation loss will result in the habitat corridor being degraded and resulting in the fragmentation of otherwise connected treed areas.

The proposed vegetation removal therefore conflicts with the environmental objectives of the overlay as the existing biolink corridor, which has already been impacted by the recent storm and the removal of seven dangerous trees, will lead to further degradation to the habitat that supports native flora and fauna.

Clause 42.03 Significant Landscape Overlay Schedule 6

The subject site is affected by the Significant Landscape Overlay Schedule 6. The overlay considers the value vegetation plays in contributing to the landscape character of the area. The site is within the area called ‘*Rolling Hills and Bushy Agriculture*’, below is a description of the landscape significance for this location:

“The Rolling Hills and Bushy Agricultural Landscape covers broad areas of pleasantly undulating land with a mountain backdrop. It includes the lower foothills of the Great Dividing Range north of the Yarra River and the elevated areas south of the river extending from the Warramate Hills through Seville and Wandin towards Macclesfield and Yellingbo in the south. Two significant State Parks contribute to the landscape:

Yellingbo Nature Conservation Reserve – a series of linear riparian vegetation areas along the Woori Yallock, Cockatoo and Sheep Station Creek - (habitat for the endangered Helmeted Honeyeater).

Yarra Yarraloch Conservation Reserve (Warramate Hills) – a prominent isolated range of forested hills flanked by the flood plain of the Yarra River.

This landscape comprises mostly farmland although it includes many patches of remnant vegetation. It generally has a coarse grain of subdivision with lot sizes mostly between 10 and 20 hectares. Lots are divided into an irregular grid network with lot boundaries often being based on natural features. Properties are generally clearly defined by rural post and wire fencing or windrows. The road pattern is irregular.

Much of the landscape is managed as grazing pasture although there are substantial areas of vineyards, pockets of orchards, and some other more intensively cultivated areas. Crop protection structures such as hail netting and igloos are prevalent in some of these areas.

Most houses are well set back from major roads. Building architecture within this landscape is from a range of styles and eras. Farm houses are often large sprawling structures with rural design elements such as verandahs. Houses are often clustered with farm sheds and partly screened by trees. Winery complexes, often adopting contemporary design styles are a feature of the winegrowing areas.

Views are commonly to a mid-range of rolling hills with the Great Dividing Range frequently silhouetted across the horizon as a backdrop to longer distance views.”

The policy outlines how the significant vegetation, which includes Trees 3, 4, 8 and 22 (*Eucalyptus obliqua*) contribute to the landscape character. All trees are visible from Kookaburra Lane and Hereford Road, as well as surrounding properties within the immediate vicinity due to each tree’s height and canopy coverage.

Kookaburra Lane is a minor rural-residential route within the hills, further adding to the importance of protecting the scenic landscape of the area, so to preserve the amenity for surrounding residents.

Following the removal of seven trees which posed an immediate risk, combined with extensive vegetation loss during the 2021 storms, the further removal of another three trees (with the exception of Tree 8) will leave a gap in canopy cover when viewing the site, resulting in an almost bare, linear strip of land.

Given the lack of sufficient arboricultural and bushfire justification for the vegetation removal, the proposal is not considered to be consistent with the objectives or decision guidelines of the overlay which strongly support the retention of established trees and patches of indigenous vegetation as they are an important element of the rural landscape and habitat for wildlife.

Clause 52.17 – Native Vegetation

This particular provision seeks to avoid the removal, destruction or lopping of native vegetation, and where it can't be avoided, impacts should at least be minimised. This is to ensure that there is no net loss to biodiversity. The proposal does not conform to *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017) as the application has failed to provide sufficient evidence to show that the vegetation removal is necessary.

The proposal will undermine the purpose of Clause 52.17 and the Guidelines as the proposed vegetation removal can be avoided due to the low risk of failure and damage to property and life.

Environmental Assessment

Environmental officers reviewed the application in order to clarify the existing information and assess the current proposal and its impacts to ensure it satisfies appropriate environmental policy and legislation.

As Trees 3 and 4 are remnant, indigenous Council road reserve trees which require a permit to be removed under Clause 52.17, offsets are required if a permit is issued.

Biodiversity Legislation and Government Policy

The implications for the proposal are assessed in relation to relevant biodiversity legislation and policy and the Yarra Ranges Planning Scheme (*Planning and Environment Act 1987*) that Council should consider.

The vegetation proposed to be removed is considered a scattered tree and/or remnant patch and will need to address the policies and guidelines of:

- *The requirements of the zone which applies to the land;*
- *Clause 42. Environmental and Significant Landscape Overlays; and*
- *Clause 52.17 Native Vegetation Guidelines for the removal, destruction or lopping of native vegetation (the Guidelines; DELWP, 2017b)).*

The native vegetation on site is mapped as most closely representing characteristics of the Ecological Vegetation Class Lowland Forest (EVC 16). This EVC has a Large Tree benchmark of 70cm DBH and is considered to be of Least Concern Bioregional Conservation Significance in the Southern Highlands Fall Bioregion (DSE, 2005). The native vegetation condition on site is mapped as moderate (0.41-0.60) to high (0.61-0.80) (DELWP, 2015). The native understorey vegetation has been managed and is dominated by exotic grasses and garden beds.

There are records of Powerful Owl (*Ninox strenua*) within 100 metres of the site. The species is listed as 'Vulnerable' under the *Flora and Fauna Guarantee Act 1998* (FFG Act).

Assessment under the Permitted Clearing Guidelines

The Guidelines for the removal, destruction or lopping of native vegetation (the 'Guidelines'; DELWP 2017b) support the provision in the planning scheme, Clause 52.17 which describes the following objective for permitted clearing of native vegetation in Victoria:

"to ensure that there is 'no net loss' to biodiversity as a result of the removal, destruction or lopping of native vegetation"

This objective is to be achieved through applying the following principles in accordance with the Guidelines (2017b):

- Avoid the removal, destruction or lopping of native vegetation.
- Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.
- Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy, or lop native vegetation."

All planning permit applications to remove native vegetation are assigned to an assessment pathway determined by the extent and location of proposed clearing. The assessment pathway dictates the information required for a planning permit application and the decision guidelines the responsible authority (e.g., Council) and/or DELWP as a referral authority will use to assess the permit application.

The following section assesses the native vegetation impacted by the proposal against the requirements of the Guidelines (DELWP 2017b).

Site based information & vegetation impacts:

A Tree Risk Assessment (TRA) was conducted on the four trees, with recommendations made to retain all trees with some dead wood removal and an aerial crown inspection of some.

All trees are indigenous Messmates (*Eucalyptus obliqua*). Trees 3 and 4 are considered Large Trees (LTs) with a DBH of 70cm or over.

Trees 16, 17, 19 and 21 are within 10 metres of a dwelling. Although the trees are not on private land and are not proposed for removal for the creation of defensible space,

they are still considered to be exempt from requiring a permit for their removal under the 10/50 rules, as specified in Clause 52.12 Bushfire Protection Exemptions.

Trees 3 and 4, require a permit for their removal under Clause 52.17, while Trees 3, 4, 8 and 22 also require a permit under the Environmental Significance Overlay Schedule 1, and Significant Landscape Overlay Schedule 6.

This application has not adequately demonstrated how it respond to the three-step approach in accordance with Clause 52.17, being avoid first, then minimise, and only offsetting of the removal cannot be avoided or minimised.

The Environmental Significance Overlay Schedule 1 has not been addressed as part of the application. The environmental objective of the Environmental Significance Overlay is

“To protect and manage the larger patches of remnant highest biodiversity bushland from fragmentation and incremental loss so that they continue to provide high quality biolink corridors and sustainable habitat for indigenous flora and fauna.”

As is detailed in the Arborist Referral Response (ARR), the proposal is contrary to the Environmental Significance Overlay Schedule 1 objectives and would impact fauna habitat and limit movement between the immediate area and surrounding treed areas.

The ongoing incremental removal of native vegetation is having widespread adverse impacts on biodiversity. The Powerful Owl (PO) currently persists in the Mount Evelyn area as habitat and prey items are sufficient. There are PO recorded within 100 metres of the site, it is likely that the birds would utilise the trees in question as part of their foraging territory. The owls rely on an extensive treed landscape to support foraging and roosting activities, as well as large, hollow-bearing trees for breeding. Removal of indigenous trees, especially hollow-bearing trees, limits the owl's ability to nest and breed successfully. Additionally, removal of any indigenous trees impacts native arboreal mammals such as Ringtail Possums (*Pseudocheirus peregrinus*) and Brushtail Possums (*Trichosurus vulpecula*), as well as other bird species which make up the PO's diet.

As the native vegetation in question is on public land, and the PO is listed as a threatened species under the *Flora and Fauna Guarantee Act* (DELWP, 2022), there is a requirement for public authorities (Council) to give proper consideration to biodiversity matters when exercising their functions (also known as 'the Biodiversity Duty' on public authorities) under Section 4B of the Act.

An objective under the Significant Landscape Overlay Schedule 6 is:

“to retain established trees and patches of indigenous vegetation as an important element of the rural landscape and habitat for wildlife” which this application does not align with.

The proposed removal of the trees is not supported by the Environment Assessment Department. There is no arboricultural reason to remove three of the four trees and their removal is not unavoidable. Therefore, the trees should be retained as per the

objectives of the planning scheme. Apart from the negative impacts that the indigenous tree removals would have on biodiversity, the approval of this application may also risk setting a precedent for these kinds of tree removal requests.

Assessment Pathway, losses & offsets

A desktop assessment by Council's Environment Department using the Department of Environment, Land, Water and Planning (DELWP) online vegetation mapping tool Native Vegetation Information Management (NVIM) identifies the site is within Location 1 on the vegetation location risk map. This application triggers the Intermediate Assessment Pathway due to impacts to remnant vegetation from the proposed package of works.

In applying the 'No Net Loss' approach to vegetation clearance decisions at the on-ground level, the Guidelines (DELWP, 2017b) require an appropriate offset to compensate for the loss of native vegetation to be achieved. This is calculated in a manner whereby the offset provides a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation being removed. An offset of 0.017 General Habitat Units has been identified. The cost of the offset credit is approximately \$1,890 excluding Goods and Services Tax.

The vegetation removal and offset requirements are summarised in Attachment 6.

The NVIM report (DELWP, 2015) indicates the loss of vegetation from the site, based on the requirements to clear approximately 0.086 hectares of native vegetation, including two Large Trees.

Following this assessment, the Environment team has concluded this is currently unacceptable to the Environment Assessment Officer as:

- The application has not adequately avoided and minimised the removal of native vegetation as required under Clause 52.17;
- The application does not achieve the objective of the ESO1, *'To protect and manage the larger patches of remnant highest biodiversity bushland from fragmentation and incremental loss so that they continue to provide high quality biolink corridors and sustainable habitat for indigenous flora and fauna'*. Powerful Owls, which is listed as a threatened species, is likely to utilise the trees in question as part of their foraging territory. The proposed removal of trees, in particular large trees, would negatively impact on native arboreal mammals and birds, which in turns reduces food availability for the Powerful Owls. It would degrade a habitat corridor and increase the fragmentation of otherwise connected treed areas;
- The application does not appear to have considered the 'Public Authority Duty' under the recently amended *Flora and Fauna Guarantee (FFG) Act 1988*. An obligation or duty on public authorities has been introduced to consider potential biodiversity impacts when exercising their functions (set out in new section 4B). This reflects the Victorian Government's commitment to embed biodiversity consideration in government decision making; and

- The application does not align with the objective of the Significant Landscape Overlay Schedule 6, which is '*to retain established trees and patches of indigenous vegetation as an important element of the rural landscape and habitat for wildlife*'.

Decision Guidelines

The proposed tree removal does not meet the decision guidelines under Clause 65.01, as the vegetation loss conflicts with the purpose of the overlays and particular provisions which seek to protect and preserve the landscape and prevent unnecessary vegetation loss from occurring.

Furthermore, the proposal will detrimentally affect the environment and amenity of the area, as the permanent loss of mature, native trees will further detrimentally alter the landscape in an area that has recently been impacted by severe storms, where an extensive number of trees were lost. Further removal of significant canopy trees will be visible to surrounding residents, which will contribute to the loss of rural character.

Due to the lack of appropriate arboricultural justification, the proposal conflicts with the decision guidelines as the vegetation loss will adversely affect the character of the area and the proposal will not conform to the objectives of planning in Victoria as outlined under the *Planning and Environment Act 1987*.

RESPONSE TO SUBMITTERS COMMENTS

No objections were received

Four letters of support for the proposal have been received. The grounds for support are based on the proximity of the trees to an adjoining dwelling.

Planning acknowledges the trees are in proximity to the dwelling. However as demonstrated in the Arborist Report, produced by a suitably qualified Arborist and was subsequently independently reviewed by Council's Arboricultural Planning Consultant who confirmed the findings as being correct, the trees, with the exception of Tree 8, are shown to have a low risk to the abutting dwelling. With maintenance to the crown, Trees 3, 4 and 22 will have a long useful life expectancy and will continue to contribute the amenity of the surrounding landscape.

In line with the assessment section, the removal of Tree 8 is not opposed and would likely be supported if a VicSmart application for a planning permit was lodged to remove Tree 8.

CONCLUSION

Both State and Local policy provide clear direction that vegetation which contributes to both the ecological value and landscape value of the area should be retained and protected, and removal should be avoided first, any necessary removal be minimised, and only if necessary and unavoidable, should it then be offset.

This is supported by the Significant Landscape Overlay Schedule 6, which recognises the importance of native canopy trees to the natural environs from an amenity and landscape perspective as well as the Environmental Significance Overlay Schedule 1 seeks to protect vegetation that contributes to the habitat of native flora and fauna.

The trees are at low risk of partial or total failure, are deemed to have a high retention value and a long useful life expectancy. It is considered that the application has not clearly demonstrated that there is sufficient arboricultural evidence of the need to remove three of the four high value mature Messmate trees, or that sufficient efforts to avoid the removal of the trees has been taken.

It is considered that the removal of the trees will result in a poor environmental, landscape and visual outcome, with minimal benefit to the site, its surrounds and the broader landscape.

The proximity of the trees to the dwelling is a consideration for both arboricultural risk and bushfire risk, however the risk of both are deemed to be low.

Given the high value of the trees, and their proximity to the dwelling, it is more appropriate that a regular regime of monitoring and assessment reviews at regular intervals should be implemented to regularly reassess whether there has been any change in the condition or risk posed by the trees, and that, at a future time, if action is required, then action be taken.

Whilst the removal of Tree 8 would be generally supported, it is not considered to be consistent with the permission the application is seeking to only approve the removal of this one tree. If a future application was lodged for the removal of only Tree 8, a planning permit would likely be supported as strong evidence for its removal has been provided.

Without a clear demonstration for the need to remove Trees 3, 4 and 22 from the site, the application is recommended to be refused and a Notice of Refusal should be issued on the grounds outlined in Attachment 1 to this report.

ATTACHMENTS

1. Grounds for Refusal
2. Site Inspection Photos and Aerial Images
3. Planning Controls
4. Arborist Report
5. Native Vegetation Removal Report
6. Native Vegetation Assessment
7. Arborist Referral Response
8. Environment Referral Response
9. Tree Policy
10. Code of Environmental Practice