

ENVIRONMENT REFERRAL

TO	Environment Team enviroreferral@yarraranges.vic.gov.au	FROM	Statutory Planning Nathan O'Shaughnessy
REFERRED DATE	23 May 2023	APPLICATION	YR-2022/1106
APPLICANT	Mr P Murton		
SITE ADDRESS	Road Reserve/Applications Hereford Road, Mount Evelyn		
PROPOSAL	Removal of four trees in a road reserve		
ZONE	GWAZ2 - Green Wedge A Zone - Schedule 2		
OVERLAY(S)	BMO - Bushfire Management OverlaySLO6 - Significant Landscape Overlay - Schedule 6		
RESPONSE DUE	13 June 2023		

PLANNER'S COMMENTS:

Is this a re-referral? <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, Initial Officer Name: <name>
<details>	
*****PLANNERS, DO NOT FINAL PRINT THIS DOCUMENT*****	

ENVIRONMENT TEAM COMMENTS:

Environment Officers:	Errin, Nicole, Gaby	Completed Date:	29/5/2023
Referral response required: Clause 52.17 Assessment			
Referral to DELWP required: Yes, if tree removal is proposed on Crown land			

Addendum 29/5/2023

The Environment Assessment Officers (EAO) have been informed by the responsible planning officer that legal investigations have been undertaken in regards to ownership of the area as outlined in blue in *Figure 1* below. These investigations by Jackson Legal concluded that the current owner of this land is the successors of the group that did the subdivision in the 1930s. Hence this area is private land and not part of council land.



Figure 1 outlines the area in question, outlined in blue, and the adjacent subject property.

Previously the referral response concluded that trees 3, 4, 8 and 22 require a permit for their removal under Clause 52.17, the ESO1 and the SLO6. Planning has now informed the EAO that only trees 3 and 4 are in fact located on council land, hence permit conditions can only be concerned about those two trees proposed for removal.

The recommendations of the environmental referral response have not changed, and the application is still considered unacceptable, as outlined in the report. However, **the offset requirements supplied in permit condition 3 have been adjusted to reflect the updated amount of the proposed native vegetation loss** under Clause 52.17 (trees 3 and 4 only).

The previous offset requirements of 0.028 GHUs with a minimum SBV score of at least 0.205 and 2 Large trees have been changed, and the new permit condition 3 now reads as follows:

To offset the removal of 0.086 hectares of native vegetation as shown in the approved Native Vegetation Removal Report (Report ID: GEN_2023_396), the permit holder must secure a native vegetation offset, in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017) as specified below:

A general offset of 0.017 general habitat units:

- 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
- 2 Large trees

The associated Native Vegetation Removal (NVR) report ID is: GEN_2023_396. (ECM ID: 7648865).

Environment Assessment Officers: Errin, Nicole, Gaby

Date: 29/5/2023

Background

This application has come about as a result of the landowner at 134 Hereford Road, Mount Evelyn requesting that several council trees within the adjoining road reserve be removed for perceived safety reasons. Since the initial request, council's arborist assessed 25 trees and recommended that seven (Trees 2, 5, 7, 11, 13 and 18) are removed for safety reasons, plus branch removal recommended for Tree 10. These trees have since been removed. The remaining trees were recommended for retention.

The matter was escalated to a council meeting where Councillors unanimously agreed that an *additional* eight trees (Trees 3, 4, 8, 16, 17, 19, 21 and 22) should be removed, as requested by the neighbouring landowner.

As the trees are remnant, indigenous council road reserve trees, a planning permit is required for their removal under Clause 52.17.

Environmental officers undertook a review of the information submitted for the Hereford Road, Mount Evelyn road reserve trees (YR-2022/1106) in order to clarify the existing information and assess the current proposal and its impacts to ensure it satisfies appropriate environmental policy and legislation.

The following documentation was reviewed:

- Native Vegetation Assessment (Errin Smitka, 2 February 2023, ECM doc 7488756)
- Native Vegetation Removal Report ID: GEN_2022_296 (ECM doc 7453638)
- Arborist Referral Response (Tree Dimensions, 15 December 2022, ECM doc 7421526)
- Tree Risk Assessment (Nick Magree (YRC), 28 September 2022, ECM doc 7425427)
- Tree Risk Assessment – Amended Report (Paul Mechelen (YRC), 14 December 2022, ECM doc 7428481)

The review of the above listed reports forms the basis of this referral response.

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 proposal will incur tree and/or native vegetation impacts. 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
- Clause 52.17 Native Vegetation *Guidelines for the removal, destruction or lopping of native vegetation* (the Guidelines; DELWP, 2017b))
- Clause 51.03

Site description

The trees in question are located on council road reserve land which is zoned Green Wedge (GWAZ2) with Bushfire Management (BMO), Environmental Significance (ESO1) and Significant Landscape (SLO6) overlays.

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 100m 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

Trees 3, 4, 8, 16, 17, 19, 21 and 22 are proposed for removal. An additional Tree Risk Assessment (TRA) was conducted on those eight 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*) and Trees 3, 4, 16, 17 and 19 are considered Large Trees (LTs) with a DBH of 70cm or over.

Trees 16, 17, 19 and 21 are within 10m 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, 4, 8 and 22 require a permit for their removal under Clause 52.17, the ESO1, the SLO6 and the GWAZ2. This application has not considered the three-step approach in accordance with Clause 52.17.

The ESO1 has not been addressed as part of the application. The environmental objective of the ESO 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.”

The trees have been proposed for removal against the expert advice of council’s arborists and referral arborist, with the exception of Tree 8 which has been deemed acceptable to remove. Nevertheless, the removal of a further eight trees in addition to the seven already removed for safety reasons will result in the loss of 15 indigenous trees and the degradation of a habitat corridor.

As is detailed in the Arborist Referral Response (ARR), the proposal is contrary to the ESO1 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. As there are PO records within 100m 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 FFG 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 SLO6 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.

A purpose of Clause 35.05 GWAZ is

“to protect, conserve and enhance the biodiversity, natural resources, scenic landscapes and heritage values of the area...”

This application is contrary to the following GWAZ decision guideline:

“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.”

The Native Vegetation Removal (NVR) report shows the offset obligations as 0.028 general habitat units (GHUs) and two LTs. The cost of purchasing the offsets via council’s Biodiversity Offset Program will cost approximately \$4,000.

The proposed removal of eight indigenous trees including five LTs, is not supported by the Environment Assessment Officers. There is no arboricultural reason to remove the 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 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 DELWP online vegetation mapping tool NVIM (DELWP, 2015) 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 0.028 GHUs has been identified. The vegetation removal and offset requirements are summarised in Table 1.

The NVR Report by NVIM (DELWP, 2015) indicates the following loss of vegetation from the site, based on the requirements to clear approximately 0.148 hectares of native vegetation, including two LTs:

Table 1: Vegetation Loss and offset requirements

	Calculation Method	Result
Total extent of mapped vegetation impact (ha)	Area (in hectares)	0.148
Habitat hectare loss	Extent of impact (ha) x modelled condition score	N/A
Condition Score of all mapped native vegetation	Modelled Native Vegetation Condition Score	0.200 (condition score x area = HH)
Strategic Biodiversity Value Score	Modelled SBS score (Strategic biodiversity map)	0.150 – 0.468
General Landscape Factor	Adjusted weighted Strategic Biodiversity Value Score	N/A
General Habitat Score	Habitat Hectares x general landscape factor	N/A
Offset Amount (General Habitat Units)	General habitat score x 1.5	0.028
Minimum Strategic biodiversity value score	At least 80% of the score of the SBV score of vegetation being removed	0.205
Large tree offset required	Amount of large trees to be offset	2

In applying the ‘Guidelines’ (DELWP 2017b) the proposed vegetation removal requires an appropriate offset to be achieved, to compensate for the loss of native vegetation. The general offset must achieve the following:

- The offset must be located in the same Catchment Management Authority boundary or municipal district as the native vegetation to be removed.
- The offset site must have a strategic biodiversity score of at least 80 per cent the strategic biodiversity score of the clearing site.

A risk factor is applied to the general habitat score of the clearing site to address the risk of offsets failing. Basic assessment pathway applications require a general offset and the risk factor for general offsets is 1.5 (see Table 1).

Offsets can be achieved via a third party offset (off-site credit extract) or via an on-site offset. On-site (first party) offsets can be achieved through the protection of remnant vegetation on the same property via an Offset Management Plan and security of a Conservation Area on title, via a Section 173 or a Trust for Nature covenant agreement.

Recommendations

The application at Hereford Road, Mount Evelyn Road reserve (YR-2022/1106) is currently unacceptable to the Environment Assessment Officer due to:

- 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 *'to protect, conserve and enhance the biodiversity, natural resources, scenic landscapes and heritage values of the area'*. 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: *'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*. 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, *'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.
- The application does not align with the objective of the SLO6, which is *'to retain established trees and patches of indigenous vegetation as an important element of the rural landscape and habitat for wildlife'*.

However, if a permit is granted, the following conditions apply **(condition 3 amended as per Addendum 29/5/23)**:

1. Condition 1 permit*:

Prior to any works occurring onsite and prior to any vegetation removal, the following must be submitted to and approved by the Responsible Authority:

- a) Evidence of vegetation offset requirements
2. 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.
3. To offset the removal of 0.086 hectares of native vegetation as shown in the approved Native Vegetation Removal Report (Report ID: GEN_2023_396), the permit holder must secure a native vegetation offset, in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017) as specified below:

A general offset of 0.017 general habitat units:

- 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
 - 2 Large trees
4. Before any native vegetation is removed, evidence that the required offset has been secured must be provided to the satisfaction of the responsible authority. This evidence is one or both of the following:
 1. Credit extract(s) allocated to the permit from the Native Vegetation Credit Register, AND/OR;
 2. An established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site.

A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit.

Planning Note:

*Please ensure that the vegetation offsets are made a condition 1 requirement. Once the vegetation offset requirements have been met, the allocated credit extract / first party offset plan can be endorsed and filed on ECM.

Nicole Baboucek, Environment Assessment Officer

Gaby Hilty, Environment Assessment Officer

Date: 9 February 2023

References:

- DELWP (2017b) Guidelines for the removal, destruction or lopping of native vegetation. Published December 2017 by The Department of Environment, Land, Water and Planning, Melbourne.
- DELWP (2015) Native Vegetation Information Tool, accessed online at URL: <https://nvim.delwp.vic.gov.au/Biodiversity>. Version 3.3.5512.177, October 2018. Maintained by the Victorian Government Department of Environment, Land, Water, and Planning, Melbourne.
- DELWP (2022) Flora and Fauna Guarantee Act 1988 Threatened List September 2022. Victorian Government, Department of Environment, Land, Water, and Planning, Melbourne.
- DSE (2004) Ecological Vegetation Class Benchmarks for the Highland Southern Fall bioregion. https://www.environment.vic.gov.au/_data/assets/pdf_file/0026/48707/HSF_EVCs_combined.pdf