

Delegate's Report

Application No: 2019/272

Application Type: 2 Lot Subdivision

Received: 10 September 2019

The Applicant:

Name: B S Koolstra
Address: PO BOX 322
Officer VIC 3809

The Proposal:

Proposal: Two (2) lot subdivision and native vegetation removal

The Land:

Land Address: 4 Gilfedder Terrace Mirboo North VIC 3871
Land Description: L15 PS302507G Parish of Mirboo
Zone/s and Overlay/s: Rural Living Zone
Bushfire Management Overlay
Environmental Significance Overlay - Schedule 5

Assessment:

By: Tim Berger

Description of Proposal:

Planning Scheme and/or Planning and Environment Act Definition

Land Use

Vacant land

Proposal summary

The application seeks approval for the subdivision of land into two (2) lots and removal of native vegetation at 4 Gilfedder Terrace, Mirboo North. The subject site is generally rectangular in shape, with a total area of 3.87ha. The site is vacant, save for an outbuilding centrally located on the site. A combination of mature and regrowth vegetation is found on the site, with the larger eucalypts being approximately 50 years of age.

The proposed subdivision would create 2 lots comprising the following features:

Lot 1

- Total area of 2.102ha, generally rectangular in shape;
- Frontage to Gilfedder Terrace of 57.71 metres;
- Building envelope of 25m x 22m, setback 60 metres from the street.

Lot 2

- Total area of 1.772ha, generally rectangular in shape;
- Frontage to Gilfedder Terrace of 60.29 metres;
- Building envelope of 24m x 20m, setback 40 metres from the street.

A copy of the proposed subdivision plan is attached below:

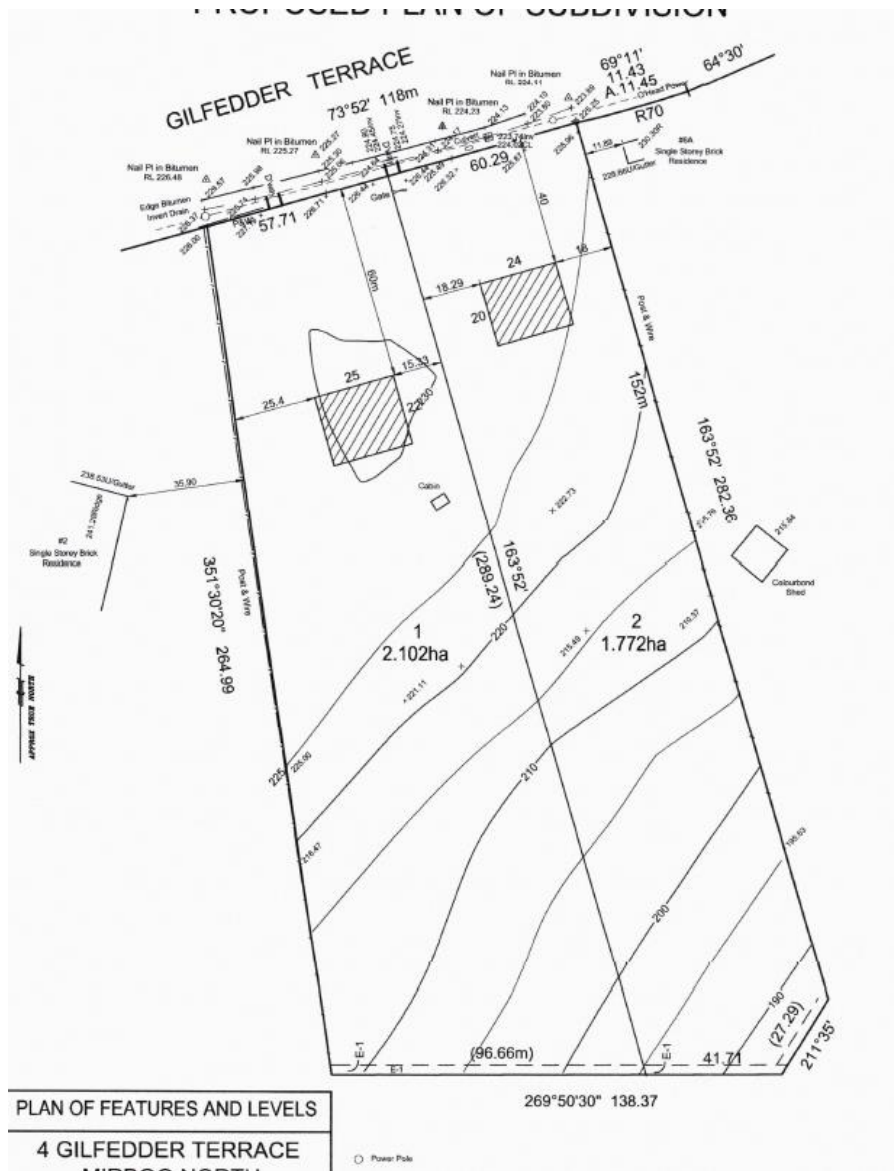


Image 1: Feature plan showing the proposed subdivision. Source: Application Documents.

Each lot is provided with a building envelope (550m² and 480m² respectively) in area, for a future dwelling to be constructed in. As the subject land is located within a Bushfire Management Overlay (BMO), each building envelope would be required to provide defendable space, which would require the removal of vegetation to accommodate. Future development would then be exempt from consideration under the BMO. No development is proposed as part of the application.

Site and surrounding area

The subject site (Lot 15 PS302507G, Parish of Mirboo, County of Buln Buln), known commonly as 4 Gilfedder Terrace, Mirboo North, is a 3.87ha lot located within the 'Darlimurla Rural Living Estate'; being the area generally bounded by Strzelecki Highway, Darlimurla Road, Gilfedder Terrace, Grey Road and Muirhead Drive. This estate, including the subject land was created as a result of a 33 lot subdivision of land approved by the former Shire of Mirboo in 1990. This subdivision largely aligns with the current form of the estate, as seen in images 2-4 of this report.

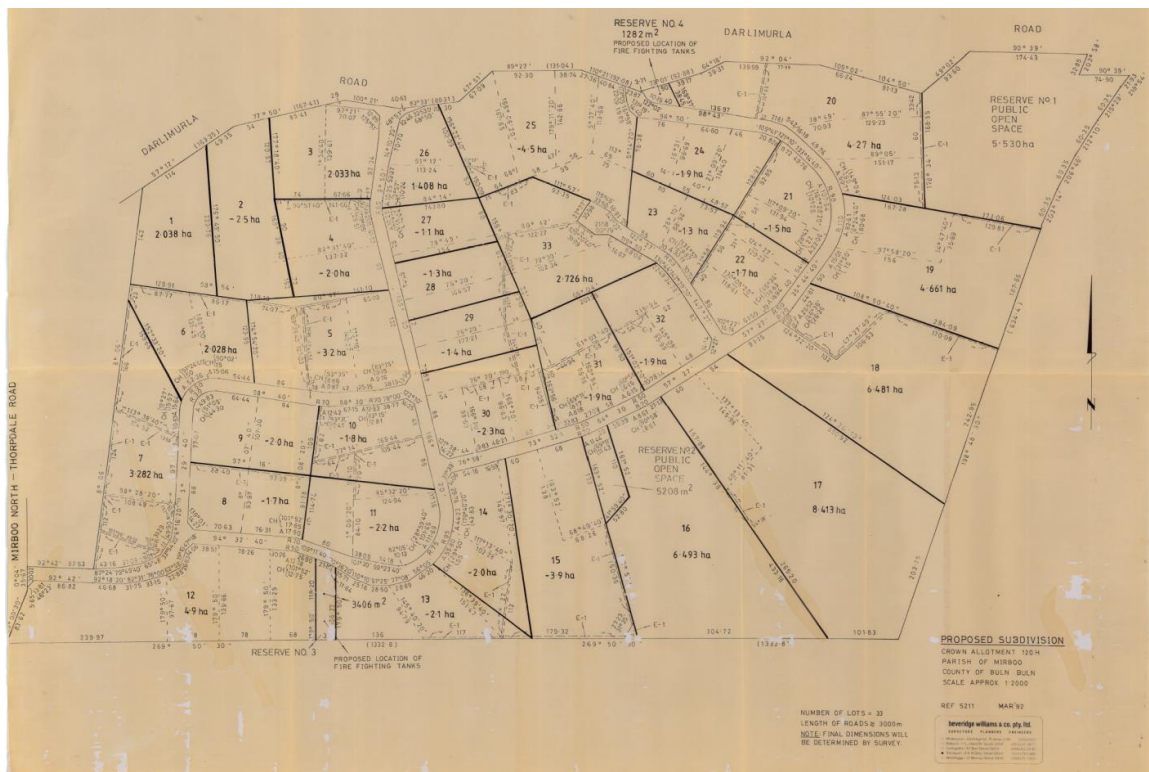


Image 2: Proposed plan of subdivision considered by the former Shire of Mirboo; the subject land being Lot 15 in this plan.

The estate today comprises of 42 rural living lots (including 6 lots abutting the Strzelecki Highway that were not part of the original subdivision), with lot sizes varying between 0.52ha – 8.4ha in area. Across the 42 rural-residential lots in the estate, the average lot size is approximately 2.45ha. Smaller lots are generally found in close proximity to the Strzelecki Highway, with the land between Grey Road, Darlimurla Road and Strzelecki Highway having an average lot size of approximately 1.84ha. Some isolated

subdivisions have occurred on a small number of these lots, leading to their increased density. Larger lots are typically found on the south and east side of Gilfedder Terrace (with an average lot size of 4.6ha).

The broader estate has a large scale bush rural residential character; being known for the large number of trees on residential lots with a backdrop of native and plantation forests. Rolling hills are evident, but not as pronounced as other areas to the south of Mirboo North due to the extent of vegetation cover. Dwellings are typically located close to their street frontages, nestled into hills and vegetation. Larger patches (or even swathes forming a contiguous canopy with the plantation forests in some areas) of vegetation located to the rear of dwellings. Dwellings are typically reflective of 1990's architectural weatherboard or brick design, with the occasional modern (<5 years old) dwelling being visible (an example of which can be found at 6A Gilfedder Terrace, a former Council reserve abutting the subject land immediately to the east).

The subject land is located approximately 4km from Ridgway (Mirboo North) and approximately 25km from Morwell (within the Latrobe City municipality). This estate comprises the northern extremity of the Mirboo North Township as shown in the figure to Clause 21.15-3. The Gippsland Water property to the south of the estate essentially decouples the estate from the balance of the township.

The land is generally flat at its interface with Gilfedder Terrace, however there is significant fall to the south from approximately 1/3rd of the site to the rear boundary. Consequently, only the front third of the land is practicably developable. These encumbrances are reflected in the building envelopes shown on the proposed plan of subdivision.

In the immediate vicinity of the subject land is:

North 6 Grey Road – A generally square shaped lot of 2.27ha, containing a large dwelling and outbuilding. The site is well vegetated at the interfaces of Grey Road and Gilfedder Terrace, with cleared areas prevalent towards the north-eastern corner of the lot (essentially the dwelling curtilage). The dwelling on site is located approximately 75 metres from the frontage of the subject land.

3 Gilfedder Terrace – A trapezoid shaped lot of 2.01ha, containing a large dwellings and outbuildings. The dwelling is well screened by the existing vegetation fronting Gilfedder Terrace. The site has a number of cleared areas, with some large eucalypts visible on the land.

East 6 Gilfedder Terrace – An irregular shaped lot of 6.49ha, containing a dwelling and outbuilding. The site has vegetation cover of approximately 65%, being a large swathe in the southern part of the lot. The dwelling on site is located approximately 53 metres from the eastern boundary of the subject land.

6A Gilfedder Terrace – An irregular shaped lot of 0.52ha, being a former Council Reserve that was sold in 2016. The land has subsequently been developed with a dwelling and is in the process of being sold to a new owner. The dwelling on site is located approximately 11m from the eastern boundary of the subject land.

- South** Part of 2659 Strzelecki Highway – An irregular shaped tenement of 161.83ha. The site is occupied by Gippsland Water and is utilised for the Mirboo North sewerage treatment facility.

- West** 2 Gilfedder Terrace – An irregular shaped property of 2.05ha, improved by a large dwelling. The dwelling and site is well screened from Grey Road and Gilfedder Terrace, however the view to and from this dwelling would be ‘opened up’ by the removal of vegetation on the subject land in creating defensible space for new dwellings. The dwelling on site is located approximately 35m from the western boundary of the subject land.



Image 3: Aerial image of subject site and surrounds. Source: GIS 2018 Aerial Photos.

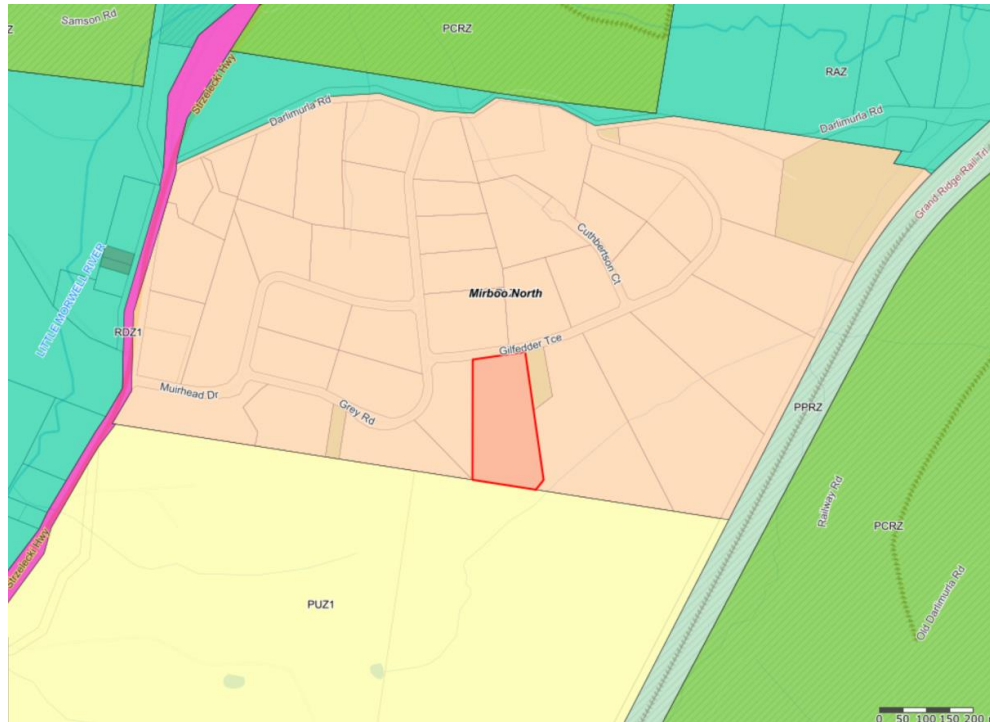


Image 4: Allotment view of subject site and surrounds overlaid with planning zones. Source: GIS 2018.

Why is a Permit Required?

Zone

Use

N/A – No use is proposed.

Development

Clause 35.03-3 – A permit is required to subdivide land. Each lot must be at least the area specified for the land in a schedule to this zone. The schedule to the Rural Living Zone stipulates a minimum lot size of 1ha. There are provisions within the RLZ to create smaller lots, however such provisions are not proposed to be utilised in this application.

Overlays

Clause 42.01-2 (ESO Schedule 5) – A permit is required to subdivide land.

Clause 44.06-2 – A permit is required to subdivide land. A Bushfire Hazard Site Assessment (BHSA), Bushfire Hazard Landscape Assessment (BHLA) and Bushfire Management Statement (BMS) must be provided with the permit application unless, in the opinion of the Responsible Authority these reports are not required to assess the application. The BHSA, BHLA and BMS have been provided with the application.

Particular provisions

Clause 52.17 – A permit is required to remove, lop or destroy native vegetation, including dead vegetation. An application to remove, destroy or lop native vegetation must comply with the application requirements

specified in the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017).

Particular provisions that are relevant but do not trigger a permit

Clause 52.12 – Bushfire Protection - Exemptions

Clause 53.02 – Bushfire Planning

Is there a registered restrictive covenant or a Section 173 Agreement on the title? If so, does the proposal comply with the restriction or Section 173 Agreement?

Under Section 61(4) of the *Planning & Environment Act 1987* the Responsible Authority must not issue a planning permit that would result in a breach of a registered restriction. The subject land, Lot 15 PS302507G Parish of Mirboo is encumbered by registered restriction S566295T.

S566295T is a restrictive covenant placed on the subject land and a number of other lots within the estate. This covenant stipulates that:

- All dwellings, outbuildings and garages erected on the land must be constructed from new materials and cannot be transported from another property; and
- All dwellings must have a minimum floor area of 100 square metres.

The subdivision of the land does not breach the covenant. The burden of the covenant would apply to all 'child' titles created as part of the subdivision.

Is the land within a Special Water Supply Catchment Area listed in Schedule 5 of the Catchment and Land Protection Act 1994?

No.

Is an Aboriginal Cultural Heritage Management Plan required?

No, a CHMP is not required because the proposed development is not in an area of cultural heritage sensitivity and is an exempt activity under Division 2 of the Aboriginal Heritage Regulations 2018.

Was Further Information Requested under Section 54?

No further information was formally requested, however as a response to referral authority comments and objections minor modifications have been made to the Bushfire Management Plan and NVIM Assessments.

Was notice of the application given under Section 52(1), 52(1AA), 52(3) or 57B?

The application was notified to adjoining/adjacent owners and occupiers. The application was also notified by placing a sign on the land for no less than fourteen (14) days.

Were there any objections received?

Six (6) individual objections to the application have been received at the time of preparing this report. HPE was checked on 17 July 2020.

Areas of concern highlighted by the objectors include:

- Neighbourhood character;
- Increased erosion and sedimentation runoff;

- Excessive removal of native vegetation;
- Visual impact of additional dwellings close to the road frontage;
- Pressure on natural systems and potential off-site impacts;
- Covenant preventing the development;
- Loss of property values;
- Increased traffic; and
- Setting a precedent for future subdivisions in the estate.

These issues are addressed in the assessment section of this report.

Was the application referred under Section 55 or 57C?

Authority	Which Clause? Determining or Recommending?	Date received and response
Country Fire Authority	66.03 and 44.06-6 (BMO) - Recommending	Conditional consent. Response dated 20 November 2019 .

Were there any non-statutory or internal referrals?

Authority	Which Clause / Overlay / Why?	Date received and response
Department of Environment, Land, Water and Planning	Native vegetation impacts	Consent, no conditions. Response dated 19 November 2019 .
SGSC Engineering	Access and drainage of lots	Conditional consent. Response dated 28 November 2019 .

Planning Scheme Requirements and policies:

Planning Policy Framework

The following PPF clauses are considered relevant to the assessment of this application:

11 SETTLEMENT

- 11.01 Victoria
 - 11.01-1S Settlement
 - 11.01-1R Settlement - Gippsland
- 11.03 Planning for Places
 - 11.03-3S Peri-urban areas
 - 11.03-6S Regional and local places

12 ENVIRONMENTAL AND LANDSCAPE VALUES

- 12.01 Biodiversity
 - 12.01-1S Protection of biodiversity
 - 12.01-2S Native vegetation management

13 ENVIRONMENTAL RISKS

- 13.02 Bushfire
 - 13.02-1S Bushfire planning

- 13.04 Soil Degradation
 - 13.04-2S Erosion and landslip

15 BUILT ENVIRONMENT AND HERITAGE

- 15.01 Built environment
 - 15.01-1S Urban design
 - 15.01-3S Subdivision design
 - 15.01-5S Neighbourhood character
 - 15.01-6S Design for rural areas

16 HOUSING

- 16.01 Residential development
 - 16.01-2S Location of residential development
 - 16.01-5S Rural residential development

Municipal Planning Strategy (formerly Local Planning Policy Framework)

The following MPS clauses are considered relevant to the assessment of this application:

21.06 ENVIRONMENTAL AND LANDSCAPE VALUES

- 21.06-1 Biodiversity
- 21.06-2 Coastal and hinterland landscapes

21.09 BUILT ENVIRONMENT AND HERITAGE

- 21.09-2 Urban environment

21.10 HOUSING

- 21.10-3 Rural residential development

21.15 LOCAL AREAS

- 21.15-3 Mirboo North

General Assessment:

Council must make a determination with regards to the key issues of this application, and whether on balance the proposal represents sustainable development and achieves a net community benefit. Clause 71.02-3 on integrated decision making relevantly states:

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However in bushfire affected areas, planning authorities and responsible authorities must prioritise the protection of human life over all other policy considerations.

In assessing this application, officers consider that the key issues relating to the proposed subdivision are:

- What is the zoning and planning context of the site and surrounding area?
- Does the proposal respect the neighbourhood character of the Darlimurla Estate?
- Is the extent of proposed vegetation removal acceptable?
- Are the relevant objectives and decision guidelines of the Rural Living Zone met?

- Are the relevant objectives and decision guidelines of the Bushfire Management Overlay met?

These issues are discussed in turn below.

Zoning and planning context

As noted earlier in this assessment, the site and surrounding estate is zoned Rural Living. The purpose of the zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for residential use in a rural environment.
- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.
- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Planning Practice Note 42 – Applying the rural zones states (inter alia):

This zone provides for residential use in a rural environment. It is designed to cater for lots in a rural setting that are large enough to accommodate a dwelling and a farming use. The farming use is likely to be carried on for reasons other than the need to provide a significant source of household income.

In this zone:

- *it is not essential that a dwelling be genuinely associated with a farming use of the land*
- *some farming may take place on the land, however this will not always be the case*
- *residents have a reasonable expectation that their amenity will be protected*
- *a wider range of tourism, commercial and retail uses may be considered in the zone.*

The South Gippsland Planning Scheme does not contain a specific local policy for Rural Living development. In the VCAT decision of *Cosmic Kennels v Greater Geelong CC* [2016] VCAT 7 (11 January 2016), Member Rundell of the Victorian Civil and Administrative Tribunal relevantly stated in relation to RLZ land:

[27] ...the RLZ contemplates residential uses and a range of agricultural, commercial, tourism and some retail uses. It is an active, working zone and not only a residential zone. While the amenity expectations of residents can be high, they should appreciate that from time to time they are likely to experience noise and other impacts from non-residential uses.

The Schedule to the Rural Living Zone specifies a minimum lot size of 1ha for this area. The Darlimurla Road estate is a treed estate, with minimal prospect for agricultural activities to occur. Contextually, for the purpose of this application the rural living zone is more analogous to the suite of residential zones in the Scheme as opposed to the rural zones. Consideration of the impacts of this proposal on the broader estate are therefore considered in this light.

Does the proposal respect the neighbourhood character of the Darlimurla Road Estate?

It is important to have regard to the strategic context of an area when considering neighbourhood character. In some cases the planning scheme envisages little change, in other cases considerable change can be expected. The subject land and broader Darlimurla estate is not earmarked for any significant change within the Scheme (Clause 21.15-3). The adopted document *'Mirboo North Structure Plan Refresh'* (April, 2017) states in relation to the Darlimurla RLZ area *'change in this area will be limited and subject to the restrictions of the Rural Living Zone'*. Consequently, while incremental change may occur, this is to be the exception rather than the rule.

As there is no preferred neighbourhood character specified for the area, the threshold question is whether the development respects the existing character and responds to the features of the area. A key strategy within Local Policy at Clause 21.15-3 is to *'Protect and enhance the distinctive village atmosphere and picturesque location within the Strzelecki Ranges'*. This application is to be considered in this context.

The area is characterised by a diversity of lot sizes, with the predominant development style being large scale dwellings constructed in the 1990's to early 2000's nestled within large patches of native vegetation. In neighbourhood character terms, the area is best described as being 'bush rural residential, with larger lot sizes than a standard bush residential area.

Areas with this typology areas are defined by large vegetation stands, with development occurring such that dwellings and outbuildings are typically hidden from the street by trees and understorey. The major characteristic of these areas is that dwellings are additional and supplementary to the natural characteristics of the area, with landscaping being generally a continuation of the contiguous vegetation patches and canopies found in these locations.

Such descriptions are analogous to the presentation of the Darlimurla estate. Many of the objections to this application have highlighted the particular character of the estate as an area with single family homes on large lots surrounded by significant vegetation stands. Officers consider this to be an apt summation of the presentation and general development style of this area.

Consequently, subdivision and development of these areas must therefore be cognisant and responsive to these neighbourhood characteristics.

The proposed subdivision seeks in effect to intensify the end development of the subject land from one dwelling (as of right) to two, by creation of an additional lot. Due to the topography of the land, future development is only practicable towards the front of the site, with the proposed plan of subdivision providing nominated building envelopes for future residences (which would be included as title restrictions). While vegetation removal is required to facilitate the ultimate development of 2 lots, it must be considered that a dwelling could be developed on the existing lot, with consequential vegetation loss comparable to that from the subdivision and nominated building envelopes. By being subdivided and considered at this stage, an offset for such vegetation removal is secured rather than wholly lost on the existing parcel.

The future development of the lots is relevant to the extent of impacts on neighbourhood character resulting from the subdivision; a key concern raised by objectors to this application.

High level considerations of neighbourhood character are guided through the Scheme by operation of Clause 15.01-5S – Neighbourhood Character.

This clause states (*inter alia*):

Objective

To recognise, support and protect neighbourhood character, cultural identity, and sense of place.

Strategies

- *Ensure development responds to cultural identity and contributes to existing or preferred neighbourhood character.*
- *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by emphasising the:*
 - *Pattern of local urban structure and subdivision.*
 - *Underlying natural landscape character and significant vegetation.*
 - *Heritage values and built form that reflect community identity.*

Observations of the subject site and surrounding estate show that the key influence on the neighbourhood character of the entire estate is the large vegetation screening dwellings and private open space. This is consistent with Strategy 1.1 of Clause 21.09-2, which emphasises the need to retain and enhance areas of remnant vegetation within urban areas. Further strategies announced in the South Gippsland Planning Scheme for rural development (such as Clause 15.01-6S) highlight the need to *ensure that the siting, scale and appearance of development protects and enhances rural character.*

The subdivision as proposed is considered to be consistent with the context and strong sense of place found within the estate. The proposed setback and staggering of building envelopes will ensure that the treed presentation to Gilfedder Terrace is reasonably maintained, nestling future dwellings within the site and maintaining the underlying character and presentation. The separation and staggering of the building envelopes will provide variation in streetscape appearance, helping to minimise any impact of having a consistent line of built form in the estate.

The proposed lot sizes and configuration are similar to other parts of the Darlimurla Estate; and while they will be smaller than average lot sizes on Gilfedder Terrace, this will not be readily discernible from the public realm. While future development outcomes will not require assessment in terms of character integration (this will be undertaken by a building surveyor under the *Building Act 1993*), the proposed configuration and limited size/area for development to occur provides a level of certainty that the underlying character of the area can be maintained as a result of the subdivision proposed.

Is the extent of proposed vegetation removal acceptable?

The entirety of the subject land and its surrounds are encumbered by the Bushfire Management Overlay (BMO). The BMO provides that vegetation may be removed to provide defensible space for a new dwelling (in accordance with the requirements of Clause 53.02) without requiring a permit under the relevant vegetation clauses (i.e. the vegetation removal becomes exempt to provide defensible space for the dwelling).

Such exemptions are 'prospective'. By this, Council retains the power to consider the extent of vegetation removal required, however should Council determine to grant a permit no offsets or other conditions would be required. The creation of two lots where one currently exists would lead to a situation where each dwelling would be able to remove native vegetation for the purpose defensible space without being required to offset such vegetation.

Consequently, it is incumbent on Council to consider the future loss of vegetation at the subdivision stage and ensure suitable offsets are secured.

The permit applicant has provided an assessment of the native vegetation to be removed, in accordance with the requirements of Clause 52.17 of the Scheme. This is provided through the provision of an 'NVIM Assessment' (Native Vegetation Information Management), utilising the NVIM tool provided by the State Government.

This assessment demonstrates that the creation of defensible space for the two building envelopes shown on the plan of subdivision would directly result in the removal of 3 large trees; a total area of 0.342 hectares of native vegetation. This falls within the 'intermediate' pathway of assessment pursuant to the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017) [*the guidelines*].

The Guidelines require Council to consider the following matters:

- *Efforts to avoid the removal of, and minimise the impacts on, native vegetation should be commensurate with the biodiversity and other values of the native vegetation, and should focus on areas of native vegetation that have the most value. Taking this into account consider whether:*
 - *the site has been subject to a regional or landscape scale strategic planning process that appropriately avoided and minimised impacts on native vegetation*
 - *the proposed use or development has been appropriately sited or designed to avoid and minimise impacts on native vegetation*
 - *feasible opportunities exist to further avoid and minimise impacts on native vegetation without undermining the key objectives of the proposal.*
- *The role of native vegetation to be removed in:*
 - *Protecting water quality and waterway and riparian ecosystems, particularly within 30 metres of a wetland or waterway in a special water supply catchment area listed in the Catchment and Land Protection Act 1994.*
 - *Preventing land degradation, including soil erosion, salination, acidity, instability and water logging particularly:*
 - *where ground slopes are more than 20 per cent*
 - *on land which is subject to soil erosion or slippage*
 - *in harsh environments, such as coastal or alpine areas.*

- *Preventing adverse effects on groundwater quality, particularly on land: where groundwater recharge to saline water tables occurs*
 - *that is in proximity to a discharge area*
 - *that is a known recharge area.*
- *The need to manage native vegetation to preserve identified landscape values.*
- *Whether any part of the native vegetation to be removed, destroyed or lopped is protected under the Aboriginal Heritage Act 2006.*
- *The need to remove, destroy or lop native vegetation to create defensible space to reduce the risk of bushfire to life and property, having regard to other available bushfire risk mitigation measures*
- *Whether an offset that meets the offset requirements for the native vegetation to be removed has been identified and can be secured in accordance with the Guidelines.*
- *For applications in both the **Intermediate and Detailed Assessment Pathway only** – consider the impacts on biodiversity based on the following values of the native vegetation to be removed:*
 - *The extent.*
 - *The condition score.*
 - *The strategic biodiversity value score.*
 - *The number and circumference of any large trees.*
 - *Whether it includes an endangered Ecological Vegetation Class.*
 - *Whether it includes sensitive wetlands or coastal areas.*

The applicant has demonstrated that an offset for the vegetation can be achieved, and has appropriately provided the required avoid and minimise statement as required by the *Guidelines*. It is noted that in meeting the requirements of the Bushfire Management Overlay, the permit applicant has increased the BAL construction standards for future dwellings from the minimum (BAL 12.5) to a BAL29 level; ensuring lesser impacts on the extent of vegetation removal proposed. This is supported by the *Guidelines*.

The extent of vegetation removal, while in an area subject to erosion (as applicable through the application of ESO5 to the site and surrounding area) is not such that it should cause unreasonable effects on erosion. Importantly, many larger trees will be retained on the subject land, particularly in those areas most prone to erosion (i.e. to the rear of the site).

The setbacks of the nominated building envelopes allows for stands of vegetation along the street frontage to be retained as part of the subdivision (and future development), such that the landscape characteristics that the vegetation on the site contributes to will be largely unaffected.

The subject land and surrounding area comprises elements of 'Damp Forest' (EVC29), which has a bioregional status of 'endangered'. Areas of Damp Forest vegetation are minimal, with the proposed

removal being of virtually no consequence to this EVC type (the extent of which is shown in the image below):

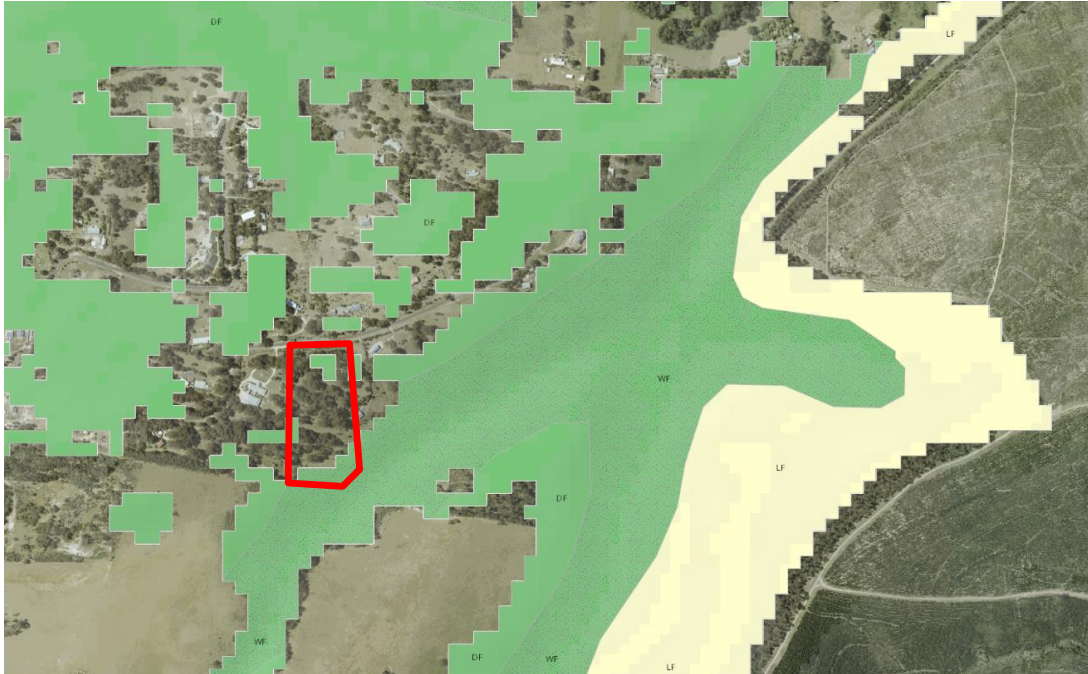


Image 5: 2005 EVC Mapping with site outlined. Source: NatureKit (DELWP).

Despite this EVC presence, the NVIM assessment does not characterise the site as being within a 'Location 3' area, with the location map score and native vegetation condition score through NVIM showing no particular significance to the vegetation on this site. This is supported through the unconditional consent given to the application by DELWP.

As a result of the above, it is considered that the extent of vegetation removal is acceptable, and appropriate conditions placed on the permit to ensure a suitable offset is achieved.

Are the relevant objectives and decision guidelines of the Rural Living Zone met?

The Rural Living Zone is designed to facilitate residential use and development in rural areas. The purpose of which is to prevent the unplanned expansion of residential uses into productive agricultural areas where land use conflicts may occur. Such rural residential areas may be characterised by a number of different typologies; of which many can be seen in various rural living estates in the Shire.

The Darlimurla Rural Living Estate is unique in the emphasis placed on character, particularly through the dominance of native vegetation on the estate. While Rural Living Zones can provide opportunities for hobby farming, this is not prevalent within this estate. During a site inspection around the estate, officers observed one property appearing to be undertaking activities synonymous with a plant nursery. Beyond this, all other properties appear to be residential.

The subject land is suitable for rural living, being able to provide reticulated electricity and telecommunications, and lots having sufficient land area to treat and retain wastewater and collect potable water. The mandatory requirements of Clause 35.03-2 can be met for each proposed lot. Officers cannot make judgement on dwelling design features on these lots, as no development is currently proposed. As observed earlier, should the subdivision be approved, there will likely be no opportunity for Council to regulate the type of development to eventuate. This is not necessarily a negative element (if Council intended to control specific development outcomes in this area, it could do so by applying a Design and Development Overlay or a Neighbourhood Character Overlay, for example).

A key purpose of the Rural Living Zone is *'To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area'*. As has been discussed in this report, officers consider that the proposed subdivision will be consistent with the landscape values of the area. While the proposed does not enhance such values, the subdivision and subsequent development of the land will allow for ongoing maintenance of the site into the future, with appropriate steps having been taken to minimise the impacts resulting from this proposal.

Officers consider that the application is supported by the relevant objectives and decision guidelines of the zone.

Are the relevant objectives and decision guidelines of the Bushfire Management Overlay met?

The emphasis of relevant policy at the State and Local level is on the preservation of significant landscapes and character of hinterland towns like Mirboo North and as the highest priority the preservation of human life in bushfire affected areas.

The objective of Clause 13.02-1S Bushfire planning is:

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

Relevant strategies to achieve this require priority to be given to the protection of human life by:

- *Prioritising the protection of human life over all other policy considerations.*
- *Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.*
- *Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision-making at all stages of the planning process.*

This is reinforced through local policy at Clause 21.04-2 *Vision*, which states that:

- *Development in Bushfire Prone Areas is compatible with the bushfire risk.*

The development triggers a permit under the BMO and the requirements of Clause 53.02 Bushfire Planning apply. The application has been referred to the CFA, which have provided conditional consent to the grant of a permit.

Contextually, the surrounding area (including part of the subject site) have experienced bushfire attack, most recently during the Black Saturday bushfires of 2009. Burnt trees can still be seen at the rear of the lot. Image 5 shows the extent of bushfire on the Darlimurla estate and surrounding plantations.

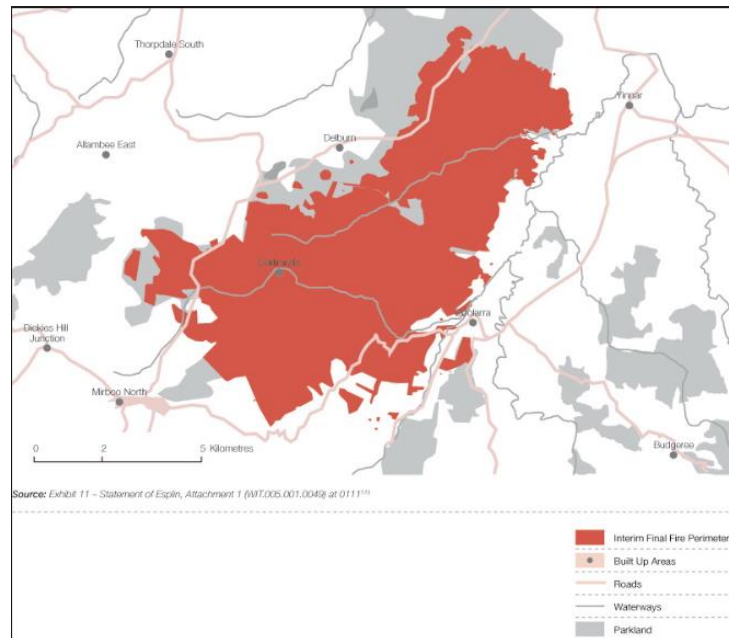


Image 6: Black Saturday Fires - Delburn Fire Complex Map. Source: 2009 Victorian Bushfires Royal Commission Interim Report

The permit applicant has provided the BHLA, BHTA and BMS as required by Clause 44.06. The bushfire assessment has characterised the vegetation as 'woodland', which appears to be supported by the CFA in their response.

Council officers have undertaken assessment of the BHLA, BHTA and BMS and considered its findings against the standards of AS3959. Table 2.3 to AS3959 provides guidance as to how to classify vegetation, which informs the assessment against the standards of Clause 53.02. These vegetation classes are to be used as a guide (i.e. these are not always determinative). Where vegetation does not appropriately fit into one of the described categories, the 'modified' category of assessment is often the best alternative¹. Officers consider that modified vegetation would also be an apt characterisation, given the prevalent understorey clearance throughout the area as part of other urban developments; however the assessment of vegetation as 'woodland' is adopted in this assessment, consistent with CFA's assessment.

¹ Modified vegetation is vegetation that doesn't fit into the vegetation classifications in AS3959:2009 Construction of buildings in bushfire prone areas (the standard) because it:

- has been modified, altered or is managed due to urban development, or gardening,
- has different fuel loads from those assumed in the standard,
- has limited or no understorey vegetation, or
- is not low-threat or low-risk vegetation as defined in the standard.

The BMO Technical Guide and Planning Practice Note 65 identify four landscape types in which to assess landscape risk (with 1 being the lowest and 4 being the highest risk). The BHLA has characterised the landscape risk to the subject land as being within a Type 2 landscape.

Type 2 landscapes are defined as:

- *The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site.*
- *Bushfire can only approach from one aspect and the site is located in a suburban, township or urban area managed in a minimum fuel condition.*
- *Access is readily available to a place that provides shelter from bushfire. This will often be the surrounding developed area.*

Type 3 landscapes, being next on the scale of risk are defined as:

- *The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site.*
- *Bushfire can approach from more than one aspect.*
- *The site is located in an area that is not managed in a minimum fuel condition.*
- *Access to an appropriate place that provides shelter from bushfire is not certain.*

Officers consider that the subject site and surrounding estate fall within a Type 3 landscape. This is based on consideration of the bushfire risk to the north-east, east and south-east, the management of the estate and plantations could not be fairly described as being in a 'minimum fuel condition' and access to an appropriate place that provides shelter (such as the Mirboo North Recreation Reserve) is not certain from the site.

However, it is important to note that these differences in landscape typology do not alter the performance standards applicable to the development – rather, they inform the overall risk to the site and whether the development can mitigate risk to an acceptable level.

Based on the land area of the site, it is evident that defensible space and BAL construction standards can be met in accordance with Clause 53.02-5. The permit applicant has increased the BAL construction standards from the potential minimum (BAL 12.5) to a BAL29 level; which has the benefit of providing greater construction standards as well as a lesser impact on native vegetation on the site. This allows for the subject land to be developed in accordance with BMO standards, while maintaining the treed character of the area, particularly at the frontage of the site.

It is noted that the site has sufficient capacity to provide a 10,000L static water supply and appropriate vehicle access. The building envelopes are in close proximity to a public road, and the Section 173 agreement required by the BMO will ensure compliance with other technical matters.

For these reasons, it is considered that objectives relating to bushfire management and the protection of human life are appropriately addressed, and suitable conditions will be placed on the permit to ensure that the bushfire protection measures are implemented and maintained into the future.

Response to Objections

Submission: Effect on neighbourhood character.

Response: While the proposal will allow for the development of an additional dwelling in the area, for the reasons discussed in this report it is considered that one additional dwelling and associated development impacts remain consistent with the overall character of the estate.

Submission: Increased erosion and sedimentation runoff.

Response: Erosion and sedimentation can be addressed through appropriate construction techniques. A permit trigger remains under Schedule 5 to the Environmental Significance Overlay for development that may lead to erosion.

Submission: Excessive removal of native vegetation.

Response: In the context of the subject land and the development (and exempt removal) that can occur on the existing lot configuration, the extent of vegetation removal is considered acceptable. It is noted that the application was referred to DELWP to consider the extent of removal, who did not object subject to conditions.

Submission: Visual impact of additional dwellings close to the road frontage.

Response: The estate is characterised by a particular character, of which dwelling setbacks and vegetative screening form a large part. However it is reasonable to expect this land to be developed for residential purposes (the continued vacancy of the land is not a reasonable expectation). The building envelopes have been set back such that vegetative screening will be retained at the frontage of the site. It is considered that the ultimate visual impact of an additional dwelling is acceptable in this context.

Submission: Pressure on natural systems and potential off-site impacts.

Response: For the reasons discussed in this assessment, it is considered that the impacts on natural systems (such as extent of vegetation removal) are acceptable. Off-site impacts emanating from a subdivision are likely to be minimal, and development controls such as the ESO5 remain to capture future buildings and works that have potential to lead to such impacts.

Submission: Covenant preventing the development.

Response: The covenant applying to the land does not prohibit the subdivision of the land or limit the number of dwellings that may be developed. This is not an impediment to the grant of a permit.

Submission: Loss of property values;

Response: The Victorian Civil and Administrative Tribunal has regularly held that claims regarding potential loss of property values are not a relevant planning consideration.

Submission: Increased traffic

Response: The addition of two additional dwelling lots in the estate would be unlikely to lead to significant traffic increases.

Submission: Setting a precedent for future subdivisions in the estate

Response: Applications for a planning permit must each be considered on their own merits. The perception of precedent is not a reason to refuse an application.

Conclusion and Recommendation:

Council officers have considered the matters under Section 60 of the Planning & Environment Act 1987, and consider that the proposal is appropriate having regard to the relevant matters and can be managed through appropriate conditions.

It is recommended that Council therefore issue a Notice of Decision to Grant a Permit for the subdivision of the land into two (2) lots and removal of native vegetation, subject to the following conditions:

Prepared by:

Senior Statutory Planner – Tim Berger

Date: **17 July 2020**

Checked by:

Statutory Planning Coordinator – Peter Bergman

Date:

Proposed Conditions

- (1) The plan of subdivision as shown on the endorsed plans must not be altered or modified except with the written consent of the Responsible Authority.
- (2) The driveway provided to Lot 1 and Lot 2 as shown on the endorsed bushfire management plan must be completed and constructed in an all weather surface, prior to the issue of a Statement of Compliance.
- (3) The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
- (4) All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
- (5) The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.
- (6) The owner of the land must enter into an agreement with:
 - A telecommunications network or service provider for the provision of telecommunication services to each lots shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - A suitably qualified person for the provision of fibre ready telecommunications facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:

- a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in area where the National Broadband Network will not be provided by optical fibre.
- (7) Prior to the issue of a Statement of Compliance, all native vegetation shown to be removed in the endorsed NVIM assessment must be removed to the satisfaction of the Responsible Authority.

- (8) Before the statement of compliance is issued under the Subdivision Act 1988, the owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. The agreement must:
- (a) State that it has been prepared for the purpose of an exemption from a planning permit under Clause 44.06-2 of the South Gippsland Planning Scheme;
 - (b) Incorporate the plan prepared in accordance with Clause 53.02-4.4 of this planning scheme and approved under this permit; and
 - (c) State that if a dwelling is constructed on the land without a planning permit that the bushfire protection measures set out in the plan incorporated into the agreement must be implemented and maintained to the satisfaction of the Responsible Authority on a continuing basis.

The land owner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.

Native Vegetation

- (9) Before works start, the permit holder must advise all persons undertaking the vegetation removal works on site of all permit conditions pertaining to native vegetation protection.
- (10) Before works start, a native vegetation protection fence must be erected around all native vegetation to be retained within 15 metres of the removal area. The fence must be constructed of star pickets and paraweb or similar, to the satisfaction of the Responsible Authority. The protection fence must remain in place until all permitted vegetation removal is completed to the satisfaction of the Responsible Authority.
- (11) Except with the written consent of the Responsible Authority, within the area/s of native vegetation to be retained, the following is prohibited:
- (a) Vehicular or pedestrian access;
 - (b) Trenching or soil excavation;
 - (c) Storage or dumping of any soils, materials, equipment, vehicles, machinery or waste products;
 - (d) Construction of entry and exit pits for underground services; or
 - (e) Any other actions or activities that may result in adverse impacts to retained native vegetation.
- (12) To offset the removal of 0.342 hectares of native vegetation, the permit holder must secure a native vegetation offset/s that meets all of the following:
- (a) A general offset of 0.123 general habitat units:
 - i. Located within the West Gippsland Catchment Management Authority boundary or the South Gippsland Shire Council municipal district;

- ii. With a minimum strategic biodiversity score of at least 0.112;
 - iii. Provide protection for at least three (3) large trees; and
 - iv. Must be in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP, 2017).
- (13) Before any native vegetation is removed, evidence that the required offset for the project has been secured must be provided to the satisfaction of the Responsible Authority. This evidence must be:
- (a) An established first party offset site. This must include:
 - i. A security agreement signed by both parties and recorded on the land title; and
 - ii. A management plan detailing the ten (10) year management actions and ongoing management of the site;

To the satisfaction of the Responsible Authority and the Department of Environment, Land, Water and Planning.

Every year, for ten (10) years after the Responsible Authority has approved the offset management plan, the applicant must provide notification of the management actions undertaken towards implementing the offset management plan to the Responsible Authority and the Department. An offset site condition statement, including photographs must be included in the notification;

and/or
 - (b) Credit extract/s allocated to meet the requirements of the permit from the Native Vegetation Credit Register.
- A copy of the offset evidence must be endorsed by the Responsible Authority and form part of the permit.

Country Fire Authority

- (14) Before Certification of the plan of subdivision is issued under the *Subdivision Act 1988*, a bushfire management plan which is generally in accordance with the proposal provided with the Bushfire Management Statement #2125 by Keystone Alliance, and BMP dated 27 August 2019 ref: 2457, must be amended as follows:
- (a) To label the land within the proposed lots as WOODLAND vegetation North and South of the defensible space;
 - (b) To extend the defensible space to the areas required to be co-operative on the proposed lots – being the area:

- i. On Lot 2 in the SE direction from the building envelope and 26m from the building envelope of Lot 1 onto Lot 2; and
 - ii. On Lot 1 in the NE direction from the building envelope and 26m from the building envelope of Lot 2 onto Lot 1;
- (15) Once submitted the Bushfire Management Plan is to be endorsed by the Responsible Authority and be part of the permit. When endorsed the plan must be included as an annexure to the Section 173 agreement prepared to give effect to Clause 44.06-5 of the South Gippsland Planning Scheme and the conditions of this permit.
- (16) In addition to the requirements of Clause 44.06-5 of the South Gippsland Planning Scheme the Section 173 Agreement prepared in accordance with that clause must also specify the following:
 - (a) State that the Section 173 agreement has been prepared for the purpose to give effect to the conditions of this permit that require bushfire mitigation measures to be implemented on all Lots.
- (17) Before the Statement of Compliance is issued under the *Subdivision Act 1988*, defensible space on every lot in the subdivision must be implemented and maintained as specified on the endorsed Bushfire Management Plan, unless otherwise agreed in writing by the CFA and the Responsible Authority.

Permit Expiry

- (18) This permit will expire if one of the following circumstances applies:
 - (a) The subdivision is not certified within two (2) years of the date of this permit; or
 - (b) The subdivision is not completed within five (5) years of the date of certification.

The Responsible Authority may extend the periods referred to where a request is made in writing in accordance with Section 69 of the *Planning and Environment Act 1987*.