

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report

Strathbogie Planning Scheme

**Referral No 11: Call-in of VCAT proceeding P1151/2020 –
50 Elloura Drive and Vickers Road, Nagambie**

14 April 2021

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report pursuant to s151 of the Act

Strathbogie Planning Scheme

Referral No 11: Call-in of VCAT proceeding P1151/2020 – 50 Elloura Drive and Vickers Road,
Nagambie

14 April 2021

Members of the Priority Projects Standing Advisory Committee who considered this referral:



Mandy Elliott, Chair



Debra Butcher, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BVRT	Building Victoria's Recovery Taskforce
CDZ1	Comprehensive Development Zone Schedule 1
CHMP	Cultural Heritage Management Plan
Council	Strathbogie Shire Council
DELWP	Department of Environment, Land, Water and Planning
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EVC	Ecological Vegetation Class
GRZ	General Residential Zone
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
PPF	Planning Policy Framework
PPN45	Planning Practice Note 45: The <i>Aboriginal Heritage Act 2006</i> and the Planning Permit Process
RGZ	Residential Growth Zone
S/CEMP	Site/Construction Environmental Management Plan
the Committee	Priority Projects Standing Advisory Committee
TPZ	Tree Protection Zone
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

1 Overview

(i) Referral summary

Referral summary	
Date of referral	7 February 2021
Members	Mandy Elliott (Chair) and Debra Butcher (Member)
Description of referral	Call-in of planning permit P1151/2020 for the proposed removal of native vegetation (including 51 large trees) to facilitate the development of a 'lifestyle village/tourist park' on part of land at 50 Elloura Drive and Vickers Road, Nagambie
Common name	Referral No 11: Call-in of VCAT proceeding P1151/2020 – 50 Elloura Drive and Vickers Road, Nagambie
Municipality	Strathbogie Shire
Responsible Authority	Strathbogie Shire Council
Subject land	Part of land at 50 Elloura Drive and Vickers Road, Nagambie
Consultation	Round Table session on 11 March 2021
Parties	Parties to the VCAT proceeding including: <ul style="list-style-type: none"> • Strathbogie Shire Council • Applicant (Elloura Nagambie Pty Ltd), • Applicant for Review (Longwood Plains Conservation Management Network Inc and Euroa Environment Group Inc) • DELWP Hume Region.
Information relied upon	VCAT file proceeding no. P1151/2020, background documents and Hearing documents
Date of this report	14 April 2021

(ii) Findings

The Committee finds:

- The status of the 2014 Master Plan and any required approvals pursuant to the *Aboriginal Heritage Act 2006* needs to be confirmed prior to the issue of any planning permit.
- That generally, the proposal to remove native vegetation is broadly consistent with the intent of the CDZ1 and the 2014 Masterplan.
- The removal of native vegetation is generally acceptable with Committee recommendations to reduce the need for removal of large trees in patches where possible.
- In terms of State level housing policies, the proposal is also appropriate. The ability to develop affordable housing options on the subject site clearly responds to the objectives and relevant strategies of Clauses 16.01-1S and 16.01-2S and will result in well-located, accessible housing at a site that is envisaged in policy for that purpose.
- The development of the masterplan will result in economic benefits as required in Clause 17 (Economic Development).

(iii) Recommendations

The Committee recommends:

- 1. The Minister for Planning commission DELWP, including a legal opinion if necessary, to review the planning process for the introduction of the planning controls and associated endorsed/approved plans that relate to the Elloura Estate, including confirmation of the status of the 2014 Master Plan.**
- 2. The Minister for Planning satisfy themselves, including seeking legal advice if necessary, as to whether the requirements of the *Aboriginal Heritage Act 2006* have been met prior to the issue of the planning permit for native vegetation removal.**
- 3. Subject to the satisfactory outcome of recommendations 1 and 2 above, a permit should issue for native vegetation removal subject to additional work being undertaken to enable the retention of additional large trees in patches. The permit should be generally consistent with the Committee's version at Appendix E, except where changes are required to Conditions 12 and 13 to reflect the retention of any additional large trees in patches.**

2 Introduction

(i) Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

This is Referral No. 11 to the Committee.

The Committee was provided with a letter of referral from the Minister for Planning dated 7 February 2021 (Appendix B) that tasked it to provide advice and recommendations on whether a planning permit should issue, and if not, whether a reduction in the number of trees to be removed would result in a more acceptable planning outcome.

The letter highlighted that the primary issues of dispute are consistency with relevant State and Local policy on the removal of native vegetation and the '*Guidelines for the removal, destruction or lopping of native vegetation*' (DELWP, 2017) and whether the proposal achieves an appropriate balance between conflicting State and Local policy.

Further, the letter noted that planning policies encourage the development of appropriately zoned land within an identified growth area of Nagambie, particularly for an affordable housing option that may be suitable for older people, but seek to avoid, minimise or offset the removal of significant native vegetation. The lengthy planning history, and the fact that it has already been substantially developed, was also noted.

The letter of referral makes it clear that the Committee is to only consider the matters referred. This means that the overall merits of the proposal have not been tested by the Committee and the Committee confines its review to particular issues.

(ii) Membership

Due to the issues to be resolved, the members of the Committee for this matter were:

- Mandy Elliott, Chair
- Debra Butcher, Member.

The Committee was assisted by Ms Georgia Thomas, Project Officer, Planning Panels Victoria.

(iii) Background to the proposal

Amendment C36 to the Strathbogie Planning Scheme rezoned the subject land in late 2008 from Farming Zone and Residential Zone Schedule 1 to the Comprehensive Development Zone, Schedule 1 (CDZ1) in order to facilitate a resort style development comprising approximately 276 dwellings, a 100 bed hotel, conference centre, and restaurants. In addition to the rezoning, the 'Lake Nagambie Resort Master Plan' (the Master Plan) Incorporated Document was also approved.

The permit application before the Committee is for the proposed removal of native vegetation (including 51 large trees) to facilitate the development of a 'lifestyle

village/tourist park’ on part of the land at 50 Elloura Drive and Vickers Road, Nagambie. A permit is required under Clause 52.17 ‘Native Vegetation’ of the Strathbogie Planning Scheme to remove native vegetation.

The native vegetation permit is the most recent step in a long history of proposals to subdivide, develop and use the subject land and neighbouring land for the purpose of accommodation in accordance with the Master Plan.

Council gave notice of the permit application under Section 52 of the *Planning and Environment Act 1987* and received 17 objections and three supporting submissions to the permit. The Strathbogie Shire Council issued a notice of decision to grant a permit on 29 June 2020. On 20 July 2020, Longwood Plains Conservation Management Network Inc. and Euroa Environment Group Inc. jointly applied to VCAT for a review of the Council’s decision under Section 82 of the *Planning and Environment Act 1987*.

(iv) Consultation

The Committee conducted a roundtable session on 11 March 2021. Parties provided responses to the proposed permit conditions with the last response received on 17 March 2021. Parties to the roundtable are listed at Appendix C.

3 Site and planning context

3.1 The subject land

The subject site is shown in Figure 1.

Figure 1 Subject land¹



The subject site is approximately 10 hectares of private land south-west of the Nagambie Town Centre, and is part of the broader Elloura development site. The site of the proposed native vegetation removal is in the north eastern section of the broader property, and contains Grey Box, Yellow Box and River Red Gums.

The subject site is bordered by Lake Nagambie to the north, existing residential allotments to the east, a mix of residential and farming properties to the south and farming land with scattered dwellings to the west, on the other side of the existing residential area of Elloura.

3.2 Planning framework

(i) State policy

At a State Planning Policy level, policies of particular relevance to the proposal include:

- Clause 12.01-1S Protection of Biodiversity which includes as its objective '*to assist the protection and conservation of Victoria's biodiversity*'
- Clause 12.01-2S Native Vegetation Management which has as its objective '*to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation*'

¹ Source: *Removal of Native Vegetation, Elloura Estate*, Urban Design and Management (Dec 2019) p4

- Clause 16 Housing which directs that planning for housing should include the provision of land for affordable housing
- Clause 16.01-1S Housing Supply which includes as its objective to facilitate well-located, integrated and diverse housing that meets community needs
- Clause 16.01-2S Housing Affordability which seeks to deliver more affordable housing closer to jobs, transport and services.

There are a range of other State policies that are also of relevance to the proposal, insofar as the proposed native vegetation removal facilitates the development of the site for a residential village. These include the following:

- Clause 11.01-1S Settlement, which seeks to promote the sustainable growth and development of Victoria and deliver choice and opportunity for the population through a network of settlements.
- Clause 11.01-1R Settlement – Hume which seeks to support growth and development in settlements located in the Hume region. Included at this clause is the Hume Regional Growth Plan which shows Nagambie as a town where growth is supported in urban locations along with lifestyle opportunities.
- Clause 11.02-1S Supply of Urban Land which seeks to ensure sufficient land is available for a range of land uses.
- Clause 11.02-2S Structure Planning which seeks to facilitate the orderly development of urban areas.
- 11.03-2S Growth Areas which seeks to locate urban growth close to transport corridors and services and provide efficient and effective infrastructure to create sustainability benefits while protecting primary production, major sources of raw materials and valued environmental areas.
- Clause 12.03-1S River Corridors, Waterways, Lakes and Wetlands which seeks to protect and enhance river corridors, waterways, lakes and wetlands.
- Clause 14.02-1S Catchment Planning and Management which seeks to assist the protection and restoration of catchments, water bodies, groundwater, and the marine environment.
- Clause 15 Built Environment and Heritage which states that:
 - ‘Planning is to recognise the role of urban design, building design, heritage and energy and resource efficiency in delivering liveable and sustainable cities, towns and neighbourhoods.
 - Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context. Planning should protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value’.
- Clause 15.01-1S Urban Design which includes as its objective to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.
- Clause 15.01-2S Building Design which seeks to achieve building design outcomes that contribute positively to the local context and enhance the public realm.
- Clause 15.01-3S Subdivision Design which includes as an objective to ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods.

- Clause 15.02-1S Energy and Resource Efficiency which seeks to encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.
- Clause 15.03-2S Aboriginal Cultural Heritage which includes as its objective to ensure the protection and conservation of places of Aboriginal cultural heritage significance.
- Clause 17 Economy which states that:
 - 'Planning is to provide for a strong and innovative economy, where all sectors are critical to economic prosperity.
 - Planning is to contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential'.
- Clause 17.01-1S Diversified Economy has as its objective to strengthen and diversify the economy.
- Clause 17.01-1R Diversified Economy seeks to encourage appropriate new and developing forms of industry, agriculture, tourism and alternative energy production in the Hume region.

(ii) Local Planning Policy Framework

The most relevant policies included in the Municipal Strategic Statement are the following:

- Clause 21.02 Sustainable Settlement which seeks to have consistent planning across the municipality which individually represents and reflects the natural and built environment.
- Clause 21.03-4 Nagambie. This clause includes as its objective *'to grow Nagambie as an agricultural service centre as well as a visitor, lifestyle and retirement centre'*. Included at this clause is the Nagambie Structure Plan (refer Figure 2), which show the subject site as forming part of Area A that is described as *'existing urban area – development to occur in A areas prior to any expansion of the town'*.
- Clause 21.04-4 Native Vegetation and Biodiversity seeks to protect and enhance the natural environment.

To ensure that the development of the land does not detrimentally impact upon the amenity of the surrounding area including adjoining land and the shores/waters of Lake Nagambie.

Pursuant to Table 1.0 Table of Uses in Schedule 1, the use of land for accommodation is a Section 1 use subject to the condition *‘must comply with the Lake Nagambie Resort Master Plan’*. If the condition is not met then the use of land for accommodation is prohibited. This is because included in Section 3 of Schedule 1 is *‘Any use listed in Section 1 or 2 if the condition is not met’*.

Clause 3.0 of the Schedule relates to buildings and works and states that a permit is not required to construct a building or to construct or carry out works that are shown on a Development Plan approved by the Responsible Authority and are in accordance with a Staging Plan approved by the Responsible Authority. The Clause states that a permit is required to remove, destroy or lop a tree that is shown as *‘to be retained’* on an approved Environment Plan. The Committee was advised that there is no such approved Environment Plan for the subject land and therefore this current proposal doesn’t ‘trigger’ a permit application for vegetation removal under the CDZ1 Schedule.

There are a series of plans required to be prepared prior to the development of any stage of the land, and each of these plans must ‘comply’ with the Master Plan. There is also a requirement for a Lake Nagambie Development Plan, which must also ‘comply’ with the Master Plan and which requires the preparation of plans that show the location and details of buildings and works including site, floor and elevations as well as a range of other detailed information, typical of the sort of information that might be provided as part of a normal planning permit application.

The Decision Guidelines of Schedule 1 require consideration of a range of matters including consistency with State and Local policies, that a proposal is generally in accordance with the Master Plan and the comments of any referral authorities.

At the end of Clause 3 on page 9 of the Schedule there is the heading ‘Variation to Plans’ which provides for the Responsible Authority to approve a variation to any plan or guidelines approved under the schedule provided the variation *‘is generally in accordance with the Lake Nagambie Resort Master Plan; does not adversely affect the interests of a government authority or utility service provider; and does not cause an increase in material detriment to any person’*.

The Master Plan is an Incorporated Document in the Planning Scheme. According to the DELWP website the current Incorporated Plan is the Lake Nagambie Resort Master Plan - 25028DD A1-001-Q which was implemented by Amendment C36. The Plan that is included on the DELWP website as the current Incorporated Document is shown in Figure 3 below.

Figure 3 Lake Nagambie Resort Master Plan Incorporated Document (dated 10 September 2008)

The Committee notes that in briefing documents provided by Council and the applicant, the Master Plan shown at Figure 3 was referred to as the 'original' Master Plan and that the Committee was directed to the 'current' Master Plan (dated September 2014) which is shown in Figure 4.

The Committee was provided with a copy of an approval letter for the 'current' Master Plan from the Applicant which did not specify the mechanism by which that Master Plan had been approved but simply stated *'Please find enclosed the endorsed Elloura Master Plan reference MP1_V5. This plan will now be referred to as the Lake Nagambie Resort Master Plan 25028DD A1-001-Q'*. Given the 'original' Master Plan was an Incorporated Document, the Committee is unclear as to how the 'current' Master Plan was approved without a Planning Scheme amendment. This issue is discussed further in this chapter. In any case, the Committee was advised that the 'current' Master Plan (hereafter referred to as the 2014 Master Plan) is the plan which has guided development of the site since its approval in 2015.

Figure 4 'Current' Lake Nagambie Resort Master Plan (dated September 2014)

(iv) Particular provisions

Clause 52.17 is the most relevant of all the particular provisions as it is pursuant to this clause that a planning permit is required for the removal of native vegetation.

The purpose of Clause 52.17 is as follows:

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

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

To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

Under the *Guidelines for the removal, destruction or lopping of native vegetation, DELWP 2017* all offsets must be secured prior to the removal of native vegetation.

Clause 52.17-4 Decision Guidelines requires that decisions on applications pursuant to this clause consider the decision guidelines at Clause 65, as well as the decision guidelines of the *Guidelines for the removal, destruction or lopping of native vegetation*, as appropriate.

Clause 52.17-5 includes an offset requirement and requires that conditions on a permit for the removal, destruction or lopping of vegetation must specify the offset requirement and the timing to secure the offset.

The Guidelines referred to in the purpose describe the three step approach of avoid, minimise and offset, outline in detail the way in which an assessment and calculation of offsets is to be undertaken and include a series of Decision Guidelines at Chapter 7.

(v) General and operational provisions

Clause 65.01 includes Decision Guidelines for approval of an application or a plan. Relevant matters to be considered include:

- The Municipal Planning Strategy and the Planning Policy Framework
- The purpose of the zone, overlay or other provision
- Any matter required to be considered in the zone, overlay or other provision
- The orderly planning of the area
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.

Clause 66 details relevant referral authorities for permit applications. In the case of the current matter DELWP was the relevant referral authority.

Clause 71.02 refers to the operation of the Planning Policy Framework. Clause 71.02-3 relates to Integrated Decision Making and identifies that society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure, and that planning aims to meet these needs and expectations.

The clause highlights the need for responsible authorities to endeavour to integrate the range of planning 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'*.

3.3 Overview of previous approvals

The following provides a brief overview of the Committee's understanding of the previous approvals that have issued either for the subject land or the broader site. These are of relevance to the current permit application because the proposed native vegetation removal facilitates the development of the residential village on the site:

- Planning permit P2005-182 was issued in 2006, before the land was rezoned to the CDZ1. The permit provided for 'Buildings and works for use as accommodation (residential village/retirement village). Council advised that the permit has been extended, and so remains 'live'². The Committee notes that the extension of time letter that was provided for this permit states that works needed to commence prior to 21 May 2021. The Committee also notes that there is an endorsed plan under this permit dated 18/07/2019. It is this endorsed plan (and the development layout shown on it) that the current native vegetation removal application appears to broadly align with.

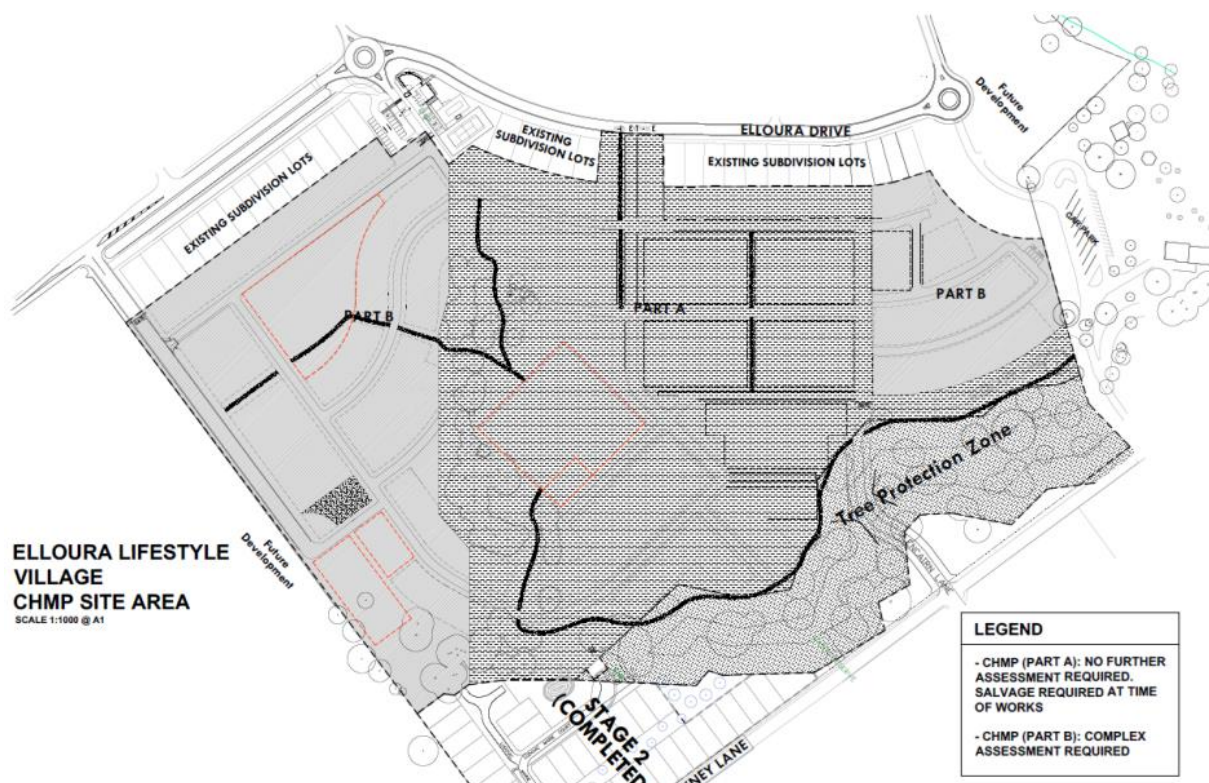
² Paragraph 7, Council Submission, Document 32

- Planning permit P2005-183 was also issued in 2006, before the rezoning to the CDZ1. This permit provided for 'Use and Development of accommodation (camping and caravan park) and Manager's residence'. This permit is also still 'live' as confirmed by an extension of time letter provided to the Committee.
- The land was rezoned in 2006 via Amendment C36 to the CDZ1. The CDZ1 requires the development and use to be in accordance with the Lake Nagambie Resort Master Plan - 25028DD A1-001-Q. This is the 'original' Master Plan discussed above.
- A permit was issued in 2010 for native vegetation removal, allowing the removal of 100 trees. This permit was not acted on and has since expired. The tree removal corresponded with the development/ subdivision layout shown on the 'original' Lake Nagambie Resort Master Plan.
- Council advised in submissions that in 2014 and 2020, two further permits were issued for other parts of the site, allowing a 19 lot subdivision and a 194 lot subdivision. Based on Council's submission it would appear that these permits issued on the basis that they were 'generally in accordance with' the 2014 Master Plan.

3.3.1 Cultural Heritage Management Plan

The planning permit application material accompanying the original application included a copy of a Cultural Heritage Management Plan (CHMP) that has been approved for 'Part A' of the site area. The accompanying Planning Report by Urban Design and Management Pty Ltd included at its Attachment E a map showing the approved CHMP Part A area, as well as Part B for which it is noted that a complex assessment is required (refer to extract below in Figure 5). The Planning Report also discussed the two CHMP areas and noted that in relation to Part B 'an updated CHMP will be supplied later within the staged development'.

Figure 5 Planning Permit Application supporting material, Attachment E



The Planning Officer's Report for the permit application identified that a CHMP is required for the permit application and that the requirement had been satisfied by CHMP 16707 which applies only to Part A, as shown above.

The CHMP 16707 itself refers to the proposal and states that a CHMP is required because:

... the proposed activity is a residential village. This is defined as a high impact activity (Aboriginal Heritage Regulations 2018 r. 46(1)(a) and (b)(xxii))³. Further on, on the same page, the CHMP states that 'the fieldwork for this CHMP was undertaken as part of CHMP 16599, which incorporated the current activity area and the adjacent land to the north and south. After consultation with TLWCAC during the post-standard assessment meeting, the decision was made to split CHMP 16599 into two CHMPs, thereby expediting the completion of the assessment on the central region (the current CHMP) which did not require complex assessment⁴.

Noting that the currently approved CHMP only relates to Part A, it is unclear to the Committee if the Part B complex assessment has since been prepared and approved by the Registered Aboriginal Party, addressing the remainder of the site area to which the native vegetation removal permit application applies. It would appear from the Planning Officer's Report that Council considers a CHMP is required for the site area prior to a planning permit issuing. In this regard the Committee refers to *Planning Practice Note 45: The Aboriginal Heritage Act 2006 and the Planning Permit Process* (PPN45). PPN45 states that the *Aboriginal Heritage Act 2006* requires permit applicants to prepare a CHMP if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and if all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance. PPN45 also states a responsible authority must check whether a CHMP is required prior to determining a planning permit application, referred to as a statutory authorisation, and that if a CHMP is required, the responsible authority cannot issue a planning permit until it receives a copy of the approved CHMP (Section 52(1) of the Act).

The Committee considers that it needs to be confirmed whether the CHMP for the Part B land is required to be approved prior to the issue of any planning permit for native vegetation removal (which will in turn facilitate the use and development of the residential village on the Part B land).

3.4 Statutory Planning and Approvals Framework

The Committee wishes to highlight at the outset of this report that it has some concerns about the way in which the statutory planning and approvals framework that applies to the subject land, and the broader Elloura Estate area, appears to have dealt with the site layout that has 'evolved' over time.

The Committee refers to its comments in Section 3.2 in relation to the 'approval' of the 2014 Master Plan and its questions that were asked at the roundtable about the way in which the approval of that 'current' Master Plan took place. The Committee also refers to the endorsed plan associated with the Planning Permit P2005-182 (discussed in the previous section), which shows a different location for community facilities on the site, as well as a slightly different road and lot layout in the southern portion of the subject land, when compared to the 2014 Master Plan.

³ Section 4, Page 16, Cultural Heritage Management Plan Ref 16707, Document 18

⁴ Section 4, Page 16, Cultural Heritage Management Plan Ref 16707, Document 18

The Committee acknowledges the commentary of both Council and the applicant that the changes that have taken place to the site layout over time offer a range of improved outcomes – including environmental improvements via a significant reduction in the number of trees proposed to be removed from the site.

However, the Committee remains concerned that the revised site layout that has resulted in these improved outcomes may not be addressed appropriately in the statutory planning framework that applies to the broader estate.

The Committee notes the comment in DELWP Hume Region’s referral letter of 23 April 2020 to Council regarding the permit which notes these issues as well. It states:

DELWP would also like to make comment on the processing of this development over the past years. Given that there have been significant changes to legislation over the past 14 years it would have seemed reasonable to have put this development through the rigours of a planning application process again in that time to have enabled comment to the application. DELWP’s reading of the panel’s report from 2008 would also indicate that the changes to the masterplan are not considered ‘generally in accordance with’ the original masterplan and it should have undergone a planning scheme amendment to enable those changes. This would have enabled DELWP to have provided comments to the changes and potentially have resolved many of the impacts to endangered vegetation in the process⁵.

Accordingly, the Committee recommends that prior to the issue of any further approvals for the broader Elloura Estate, including the current permit application for native vegetation removal, a review should be undertaken by DELWP, including if necessary the seeking of legal advice, on the planning controls and associated endorsed/approved plans that relate to the Elloura Estate, to confirm that due process has been followed in terms of the status of the ‘current’ Master Plan.

The Committee, on a without prejudice basis to the issue above, has considered the merits of the application before it on the assumption that the 2014 Master Plan is the appropriate Master Plan to consider in the context of the CDZ1.

⁵ DELWP Referral letter dated 23 April 2020, part of Document 18

4 The issues

The issues to be resolved are:

- Consistency with the Comprehensive Development Zone and Schedule 1 - Lake Nagambie Resort Master Plan Incorporated Document.
- Whether the proposal is consistent with State and Local Planning Policy including the Hume Regional Growth Plan.
- Whether the removal of native vegetation is acceptable.
- Consideration of economic impacts of the development consistent with clause 17 (Economic Development).

4.1 Consistency with the CDZ1 and the Lake Nagambie Resort Master Plan

The issue is:

- Whether the proposal is consistent with the Comprehensive Development Zone Schedule 1 and the Lake Nagambie Resort Master Plan Incorporated Document.

(i) Submission and/or evidence

As noted in the previous chapter, for the purpose of considering the permit application, the Committee will assume that the 'current' Lake Nagambie Resort Master Plan is the plan dated September 2014, and as shown in Figure 4. This acknowledges that both Council and the applicant directed that this is the approved Master Plan which applies to the subject land and is the 'relevant' plan to be considered. As discussed in Chapter 3.4, the Committee is unclear if this is actually the case and so highlights that if it is determined that this is not the approved Master Plan, then this issue of 'consistency' will need to be considered further, due to the significant differences between the two Master Plans, including the location and layout of the residential village.

Mr Munt, on behalf of Council, addressed the issue of consistency with the CDZ1 and Master Plan by firstly addressing the purpose of the CDZ and the structure and operation of the Zone, including the requirement for development in the CDZ1 to be generally in accordance with the Lake Nagambie Resort Master Plan.

Mr Munt advised that in the application to amend the 'original' Master Plan, a net gain assessment was undertaken that indicated that 81 rather than 100 trees would be removed if the new (2014) Master Plan were implemented⁶.

On the basis of the anticipated removal of 81 trees as per the 2014 Master Plan, Mr Munt then highlighted that the current application for native vegetation removal proposes a further reduction in the number of trees to be removed as a result of the micro-siting of the proposed community facility enabling a larger public open space area.

He highlighted that this reduction in trees to be removed remains generally in accordance with the 2014 Master Plan as it delivers an appropriate (and indeed improved environmental outcome) whilst also supporting the realisation of key objectives of the CDZ1 including the provision of additional housing and associated economic benefits.

⁶ Paragraph 15, Council submission, Document 32

Mr Cicero supported this view noting that the outcome of the current permit application (in terms of the reduced number of trees to be removed) represented a much better outcome than that originally contemplated by the ‘original’ Master Plan.

Mr Algie, on behalf of the applicants for review, submitted that the current layout of the residential village (and thus the associated proposed native vegetation removal), is an inappropriate outcome within the CDZ on the basis that environmental responsiveness is ‘*at the forefront of the CDZ Schedule 1*’⁷. He also referred to the submission of Mr Barnes who identified the main elements contained in the purpose statement of the CDZ1 as relating to the following:

- The schedule provides for an integrated residential / tourist development.
- The development should achieve principles of environmental and sustainability.
- The development should include high standards of urban design and community amenity.
- A maximum number of not more than 476 accommodation lots.

Mr Barnes also highlighted the importance of environmental responsiveness in the Schedule and outlined the approach that the CDZ1 takes to the consideration of vegetation removal, including the need for an Environment Plan which in turn requires an assessment of how any development will manage and enhance vegetation on the site.

(ii) Discussion and findings

The Committee has given consideration to the intent and purpose of the CDZ1, as well as the previous approvals that have issued for development on the site, including the existing ‘live’ permit for the residential village, and the 2014 Master Plan.

The Committee agrees with Mr Munt’s submission that, whilst a reduced number of trees is now proposed to be removed than that anticipated in the 2014 Master Plan, the result is an improved environmental outcome and is therefore consistent with the intent of the CDZ1 in terms of addressing environmental issues and matters of sustainability.

Accordingly, on balance, the Committee considers that the proposed native vegetation removal, with some further reduction in the extent of removal as outlined in Section 4.3, is generally appropriate in the context of the intent of the CDZ1. The Committee considers the proposed extent of native vegetation to be retained also appears to be broadly consistent with that envisaged by 2014 Lake Nagambie Resort Master Plan, albeit with an improved tree retention outcome.

In relation to the key elements of the CDZ1 as identified by Mr Barnes the Committee considers the proposal does generally represent an acceptable outcome insofar as they are relevant to an application for the removal of native vegetation.

The Committee notes that it would have been preferable for an Environment Plan to be prepared ‘upfront’ to guide environmental management across the site. Nonetheless, provided the Site/Construction Environmental Management Plan (S/CEMP) is prepared and approved prior to the removal of any vegetation on the site (refer the proposed conditions discussion at Section 4.4) the Committee is satisfied that appropriate consideration will be

⁷ Page 2, Mr Algie submission Document 29

given to the protection of that native vegetation to be retained noting that a number of elements of the S/CEMP have already been considered as part of the permit application.

The Committee finds:

- That generally, the proposal to remove native vegetation is broadly consistent with the intent of the CDZ1 and the 2014 Master Plan.

4.2 Consistency with State and Local Policy

The issues are:

- Whether the proposal is consistent with State and Local Planning Policy including the Hume Regional Growth Plan.
- How does the proposal particularly address 16.01-1S (Housing supply), clause 16.01-2S (Housing affordability).

(i) Submission and evidence

In submissions, Mr Munt identified the objectives and strategies of Clauses 16.01-1S and 16.01-2S, along with those of Clauses 12.01-1S (Protection of Biodiversity) and 12.01-2S (Native Vegetation Management). He submitted that the proposal clearly promotes the achievement of the objectives of the two housing related policies by facilitating the provision of new housing, representing increased housing choice and type in Nagambie.

Mr Cicero supported this view and highlighted at the outset of his submission on this issue, that at Clause 21.03 Local Area Plans the structure plan for Nagambie which clearly identifies the site as being part of the urban area and one which is to be developed first. He highlighted the connectivity of the site to the town centre, and observed that the site represents a significant opportunity to achieve the growth anticipated for Nagambie.

Mr Cicero also described the form of accommodation that is envisaged for the village referring to a similar development called Avington in Point Cook. He highlighted the affordable nature of the accommodation at the village explaining that residents need to purchase a moveable dwelling, and that once it is located in the village, they pay an annual site fee to live there. The investment that the applicant will make 'upfront' to establish the community facilities was also highlighted, with Mr Cicero concluding that the proposal is entirely consistent with the relevant policies.

In response to the consideration of policy, Mr Algie noted that his clients weren't opposed to the use and development that would be facilitated by the permit application but considered that the avoidance and minimisation policies in relation to native vegetation removal hadn't been addressed appropriately.

Mr Barnes submission (for the Applicant for Review) also raised concerns about policy not being properly considered. He highlighted that in the Regional Growth Plan Nagambie isn't identified as a major settlement or growth location but rather is identified as an '*other key urban settlement*' where growth in urban location and lifestyle opportunities are supported in urban locations.

Mr Barnes went on to highlight the various policies, objectives and strategies of the Planning Scheme that focus on site design considerations and concluded that '*there is strong policy*

*support for a more responsive design and for greater regard to be given to the retention of existing native vegetation on the site, than is proposed to date*⁸.

(ii) Discussion and findings

The Committee considers there is clear policy support at a State and Local level for the development of the subject land for a residential village (even regardless of the CDZ1 zoning). Nagambie is identified as a town where development can occur in the Hume Regional Growth Plan, and at a local policy level the subject land is located within a priority development area for Nagambie.

In terms of State level housing policies, the proposal is also appropriate. The ability to develop affordable housing options on the subject site clearly responds to the objectives and relevant strategies of Clauses 16.01-1S and 16.01-2S and will result in well-located, accessible housing at a site that is envisaged in policy for that purpose.

The issue then becomes how the policy support noted above is balanced against the relevant environment policies of the Planning Scheme – including but not limited to Clauses 12.01-1S and 12.01-2S, which is discussed in greater detail in the following section.

In relation to this issue the Committee refers to Clause 71.02-3 and the need to integrate the range of planning policies relevant to a matter to be determined and to balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

The Committee is very aware of the competing policy directions in relation to this proposal, and acknowledges the views of Mr Algie and Mr Barnes that not enough has been done in relation to the environment and siting and design policies of the Planning Scheme. The Committee agrees in part with this view and has discussed some changes that it considers could be made to the permit application to further reduce the tree removal that is required to facilitate the residential village.

Taking into account those recommended changes to further reduce the extent of vegetation (particularly large trees) to be removed, the Committee considers that, on balance, the permit application will represent a net community benefit that will also form a sustainable development for present and future generations consistent with Clause 71.02-3.

Accordingly, the Committee finds:

- The proposal is consistent with State and Local policy and will result in an appropriately ‘balanced’ outcome, subject to a further reduction in the extent of native vegetation to be removed as outlined in Section 4.3.

4.3 Removal of native vegetation

The application is for the removal of native vegetation to allow for development of land for a residential village, which the Committee understands is approved under planning permit P2005-182. The use for a residential village is also ‘as of right’ in the CDZ1, and no permit is required for buildings and works subject to compliance with the Master Plan and the approval of a range of documents required by the Schedule.

⁸ Page 6, Mr Barnes Submission Document 32

The native vegetation to be removed is within an area mapped as an Endangered Ecological Vegetation Class (EVC).

The issue is:

- Is the removal of native vegetation (including 51 large trees) consistent with clause 12.01-1S (Protection of Biodiversity) and clause 12.01-2S (Native Vegetation Management), and the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP, 2017).

(i) Submissions and evidence

Native vegetation removal

The permit applicant submitted that there has been a history of approvals across the site for the use and development of the residential village in line with endorsed Master Plans. They stated that the wider consideration of native vegetation values across the site and retention of these were largely considered by the Panel for Amendment C36, which rezoned the land to a CDZ1. Mr Cicero, on behalf of the applicant took the Committee to various sections of the C36 Panel report to demonstrate the lengthy consideration of biodiversity values. The applicant submitted that:

clearly the recommendation [of the C36 Panel] to support the rezoning of the land for urban development was made on the basis that there would be a loss of native vegetation to accommodate the anticipated urban development.

The Council officers report⁹ provided a short history of the evolution of proposed native vegetation across the subject site.

Table 1 Native vegetation permit amendments

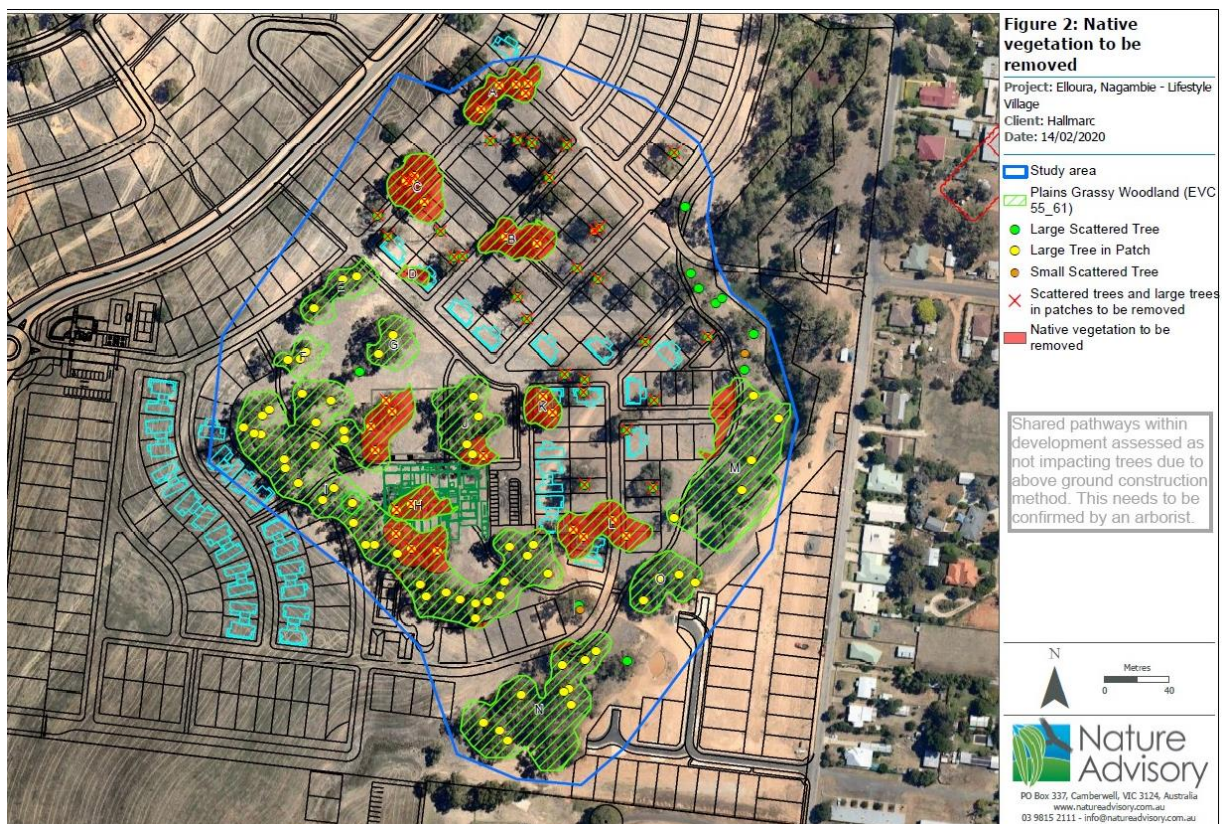
Date	Total Vegetation to be removed	No. of large trees to be removed (as part of total)	Total area of vegetation removal
23 June 2010 (permit P2010-024)	100 trees (includes 8 very large, 48 large, 27 medium and 17 small)	56 trees	Not assessed at that time
19 December 2019	14 patches totalling 1.328 hectares (including 43 large trees in patches) 32 scattered trees (30 large and 2 small)	73 trees	3.026 hectares
18 February 2020	11 patches, 26 scattered trees	53 trees	2.197 hectares
22 April 2020	11 patches, totalling 0.767 hectares (including 27 large trees in patches) 25 scattered trees (24 large and 1 small)	51 trees	2.103 hectares

⁹ Document 18

The Council officer report explained that in calculating the native vegetation to be lost, the patches of native vegetation (0.767 hectares) as well as the area calculated for the scattered trees (1.336 hectares) is included in the total native vegetation removal calculation. The applicant called ecological expert evidence from Mr Brennan of Nature Advisory and his evidence provided detail on this calculation as well.

The native vegetation proposed to be removed is within the area proposed for the residential village. An area central to the proposed residential village is proposed to include facilities associated with the residential village and is an area that has a number of native vegetation patches with large trees to be removed, as well as some to be retained. The plan at Appendix 2 (page 18) of Mr Brennan's expert witness report presents the proposed trees to be removed and retained.

Figure 6 Native vegetation to be removed



In relation to the relevant Clause 12 objectives, Mr Munt for Council was of the view that the proposal achieves the biodiversity objectives, given compliance of the proposal with the three step approach to vegetation removal as required by the DELWP Guidelines and subsequently the retention of 76 of the 127 large trees on the subject land.

Mr Munt submitted that the 2014 Master Plan, and subsequently the native vegetation removal that is now proposed to facilitate the development of the site, provides an appropriate 'balance' between competing policies of the Planning Scheme.

Mr Cicero advocated that the applicant's decision to relocate elements of the development, along with meetings the applicant has had during the process with Council and DELWP has resulted in '*a substantial reduction in the number of significant trees to be removed. In pure numbers, it has resulted in a reduction from approximately one hundred to the now 51 trees proposed for removal*'. It was submitted that there has been significant effort to retain as

much native vegetation on the site as commercially possible and that the application has been amended twice following requests from DELWP on 11 February 2020 and 24 March 2020.

Mr Brennan in evidence stated:

... the vegetation in the study area consisted of a high density of large Grey Box trees with some Yellow Box and River Red Gums. The understory had been highly altered and cleared with very little native understorey present across the whole study area ...

Efforts to avoid and minimise impacts to native vegetation in the current application are presented as follows:

- The current development plan avoids impacts to most of the native vegetation along the waterway on the eastern boundary and impacts to many of the large trees on the southern boundary.
- Walking paths will be gravel and will not involve excavation, and are therefore not anticipated to impact trees (to be confirmed by an arborist).
- Furthermore, the proponent advises that no feasible opportunities exist to further avoid and minimise impacts on native vegetation without undermining the key objectives of the proposal¹⁰.

Mr Brennan also stated that his assessment was undertaken in accordance with the relevant DELWP guidelines including the *Assessor's Handbook (2018)* and the *Guidelines for the removal, destruction or lopping of native vegetation (DELWP, 2017)*.

When asked by the Committee whether there were further potential to reduce impacts on native vegetation, Mr Brennan responded that the focus should be on the vegetation of most value, which are, he said, patches that have large trees, and then large trees. He stated that his client also advised him that any further protection of native vegetation on the site would compromise the economic values of the proposal.

Mr Looby, whom provided ecological advice as part of the submissions¹¹ for the Applicants for Review (Longwood Plains Conservation Management Network Inc and Euroa Environment Group Inc), stated when asked by the Committee that his views on the ecological conditions assessment of the site are mostly consistent with Mr Brennan's except for the mapping around the drainage line where there is a key difference. The drainage line vegetation is not in contention here, as it will not be removed and the Master Plan provides for a buffer between the drainage line and development, although Mr Looby did suggest greater planning is required regarding a buffer for this area.

Mr Looby stated in submissions:

In my opinion the current proposal is not consistent with Clause 12.01-1S, Clause 12.01-2S or the Guidelines and supporting policy documents for the following reasons:

- Site-based information and several of DELWP's landscape scale information tools indicate the site has important biodiversity values. Important biodiversity values are given priority for protection in state-wide biodiversity policies when considering applications to remove native vegetation.
- Regional Catchment Strategies (RCS) are applicable policy documents in Clause 12.01-1S. The Goulburn Broken RCS identifies the incremental loss of scattered trees and small woodland patches as key threats to biodiversity, and espouses the importance of connecting 'nature and people'.

¹⁰ Document 23, p4

¹¹ Document 29

- There is an opportunity through site responsive design to respond to the ‘nature and people’ theme of the RCS by creating opportunities for appreciation of open space, amenity and wildlife that is supported by native vegetation on the site.
- The large trees on the site can be clearly demonstrated to support many of the high value attributes identified by state-wide planning policies and supporting policy documents and should therefore be given a high priority for retention and protection as part of any avoid and minimise strategy.
- There are further opportunities on the site to locate or design the development to avoid and minimise native vegetation and protect high value areas of biodiversity and the adjacent waterway consistent with the Guidelines for the removal, destruction or lopping of native vegetation.
- A reduction in tree removal could achieve an acceptable planning outcome on the site through use of open space, larger lot sizes and conservation reserves linked to the adjacent waterway¹².

Mr Looby submitted that the Applicant has not undertaken a detailed threatened species habitat assessment for species such as the critically endangered Swift Parrot for which, he stated, the Grey Box is a priority tree. He submitted that the subject site is already within a fragmented landscape and any further fragmentation by removal of large trees in patches is ‘*not good*’. Mr Looby also submitted that large trees within patches are of high value and should be retained where possible. He stated:

Large tree removal is considered to have high impacts on biodiversity values and large trees are considered of high value where:

- They facilitate landscape connectivity (e.g. green corridor or ‘stepping stone’)
- Removal could result in further habitat fragmentation
- The local area has experienced a decline in the number of large trees and they are infrequent in the landscape
- Large trees have long term viability and large trees support special features such as shelter hollows or important food sources (e.g nectar)

The large trees on the site can be clearly demonstrated to support many of the above values and should therefore be given a high priority for retention and protection through design response and development layout¹³.

Mr Algie, representing the Applicants for Review submitted that his clients:

... never opposed development of this area or site subject of the VCAT proceedings. Our clients concern has always been the loss of native vegetation and, flowing from that, the unresponsive layout design and lack of consideration of how that design could protect native vegetation whilst ensuring an equal economic return to the developer¹⁴.

Mr Algie submitted that the application is not consistent with 12.01-1S (Protection of Biodiversity) and clause 12.01-2S (Native Vegetation Management), and the Guidelines for the removal, destruction or lopping of native vegetation (DELWP, 2017) and that the applicant has not demonstrated:

... any realistic attempts to avoid or minimize the loss of or impact upon native vegetation. The proposal appears to have overemphasised the existing master planning approval, rather than a careful response to the requirements of CI12.01-1S and CI12.01-2S. This misunderstanding has created an overreliance on the master plan and making the removal of native vegetation fit with it, rather than

¹² Document 29, p1 Biosis appendix to Applicants for Review submissions

¹³ Document 13, Biosis report (4 Sept 2020) p14

¹⁴ Document 29, p1

considering how the layout of this part of the site could avoid or minimize native vegetation removal, particularly where we say some relatively minor layout changes could improve the design.

In terms of proposed offsets, Mr Looby agreed with Mr Brennan that the proposed offsets are available. The required offset for this proposal is a General Offset of 0.621 general habitat units, with a minimum strategic biodiversity score of 0.630, which would need to include 51 large trees.

Mr Looby suggested that DELWP's proposed condition on offsets also needed to include 51 trees. DELWP agreed and the proposed permit conditions should be amended to add this in.

DELWP Hume Region submitted that they assessed the application against the three step approach as described in the Guidelines for the removal, destruction or lopping of native vegetation (DELWP, 2017). DELWP's submission states:

DELWP officers concluded, at this stage of negotiations, that the applicant had attempted to avoid and minimise the loss of native vegetation including the retention of higher value vegetation. The applicant claimed that further native vegetation retention would undermine the objectives of the proposal. It was felt that there were, however, further opportunities to retain several other high value trees and it was recommended in the DELWP response (24/04/2020) to Council that Council continue to work with the developer to explore this. This is in accordance with the Assessor's handbook (pp 30), *5.3 Decisions in the Detailed Assessment Pathway*.

DELWP responded to Strathbogie Shire Council on 24 April 2020 indicating that the efforts to date to avoid and minimise native vegetation losses by the applicant were pleasing. DELWP recommended that Council continue to explore opportunities to retain additional high value vegetation with the applicant and it was suggested that some of the residential lots could be relocated to the identified "open park space" to provide for the retention of trees within these lots. It was emphasised to Council that most of the site was mapped as an endangered EVC and that tree hollows were identified in some of the trees proposed to be removed¹⁵.

In its submission to the Committee, DELWP also recommended a number of further conditions be provided in the permit as follows:

Condition 4

Before any works start, including removal of native vegetation, a Site/Construction Environmental Management Plan (S/CEMP) to the satisfaction of the responsible authority in consultation with DELWP Hume Region, must be submitted to and approved by the responsible authority. When approved, the S/CEMP will be endorsed and will form part of this permit.

The S/CEMP must include (but not necessarily be limited to) details regarding the following:

- measures to be implemented to protect native vegetation and other biodiversity values on site and on land directly adjoining the site, during and post construction works.
- identification of all stockpile, storage, parking and machinery storage locations and management requirements for these. These need to be located within the identified facility development area.
- appropriate sediment control, erosion, and drainage management to be implemented on site, to ensure no sediment or sediment laden runoff enters waterways, wetlands or moves off site.

¹⁵ Document 28, p3

- weed control and management on site, including appropriate vehicle hygiene measures, during construction phase and post construction.
- appropriate monitoring/compliance and reporting requirements for all aspects of the construction phase, and all components of and actions set out in the S/CEMP.
- the person/s responsible for implementation and compliance of each aspect of the S/CEMP.
- all persons undertaking works on site must be fully briefed on all aspects and requirements of the endorsed S/CEMP. All works constructed or carried out must be in accordance with the endorsed S/CEMP, to the satisfaction of the responsible authority.

Condition 7

A suitably qualified arborist must be on site to supervise all works within or close to identified Tree Protection Zones (TPZ).

EPBC Act matters

The Applicants for Review (Longwood Plains Conservation Management Network Inc and Euroa Environment Group Inc), represented by Mr Algie submitted that the permit should not issue until matters under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) had been resolved.

Mr Brennan's evidence is that the assessment of native vegetation in the study area against published descriptions and condition thresholds for the EPBC Act listed communities (particularly the Critically Endangered White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland) indicates that there are none of the listed EPBC Act communities present. Mr Looby's submissions were contrary to this and he submitted that the Grey Box community is partly on the site.

Mr Algie submitted that the Committee needed to address the EPBC Act matters and that a condition should be included in the permit regarding the Commonwealth EPBC Act.

Mr Cicero provided correspondence from the Commonwealth Department of Agriculture, Water and the Environment (DAWE) in response to the EPBC Act requirements¹⁶.

(ii) Discussion and findings

Native vegetation removal

The Committee is mindful that it has before it an application for the removal of native vegetation and it is not for the Committee to consider the merits of the urban development itself as that time has passed. The Minister has asked the Committee to provide its advice and recommendations on whether a permit should issue, and if not, whether a reduction in the number of trees to be removed would result in a more acceptable planning outcome.

The Committee notes that both ecologists submitted (Mr Brennan through evidence) that where possible retention of large trees within patches is more important for this site than retaining individual trees.

It is acknowledged that there has been a long history with the site and the Master planning process for urban development and that removal of native vegetation has been contemplated in the amendment to rezone the site to CDZ1. It is also acknowledged that the applicant has had meetings with Council and DELWP Hume Region during the course of

¹⁶ Document 68

preparation of the application to resolve native vegetation issues and reduce the amount of native vegetation to be removed. DELWP did not object to the issuing of the permit and provided a number of permit conditions. DELWP have provided further permit conditions to the Committee as part of the roundtable process. The Committee accepts these conditions with minor changes (see Appendix E).

DELWP, in both documents, suggested that there were further opportunities to retain several high value trees and that Council continue to work with the developer to explore this.

The Committee notes that the applicant has submitted that no feasible opportunities exist to further avoid and minimise impacts on native vegetation without undermining the key objectives of the proposal.

Through questions of the applicant, Mr Brennan, Mr Looby and Ms Richardson (DELWP), the Committee was convinced that there is further ‘room to move’ within the site to retain some of the larger trees within patches where the residential village facilities are proposed. This may lead to only a few more large trees and patches, however the Committee feels it is a worthwhile exercise given the endangered EVC status of the vegetation across the site and the potential for these large trees to be hollow bearing as stated by DELWP.

The Committee does acknowledge that the Applicant has worked with Council and DELWP over time to reduce the amount of native vegetation removal on site and notes the important strategic planning that supports the urban development of this site.

Therefore, the Committee finds that a permit should issue, subject to further exploring where additional native vegetation patches with large trees could be retained (possible trees marked as 47, 48, 62, 63, 65, 86, 87, 88 and 89 within Appendix 2 Mr Brennan’s expert evidence report¹⁷ and subject to the Committee’s proposed changes to the permit at Appendix E. In making this recommendation the Committee notes DELWP’s reference to the ‘open space park’ in the south west portion of the site where it highlighted that it might be possible to relocate lots.

The Committee notes that offsets can be achieved which is a consideration within the Guidelines.

EPBC Act matters

The Commonwealth EPBC Act is a separate statutory regime that is not before this Committee¹⁸, noting that DELWP also suggested the applicant resolve the matters with the Commonwealth. The Committee notes that the Applicant has been in contact with the Commonwealth DAWE who has advised (Document 68) that it is up to a proponent to refer its proposal before they can make an assessment of whether the EPBC Act applies or not.

This is not a matter before the Committee and the Committee finds it would not be appropriate to recommend conditions in respect to Commonwealth law.

¹⁷ Document 23

¹⁸ One exception would be if this was an Environment Effects Act assessment where the Committee was considering Commonwealth Matters of National Environmental Significance but that is not relevant in this case.

4.4 Economic impacts

The Committee considered whether the economic impacts of the development are consistent with clause 17 (Economic Development).

(i) Submissions

Mr Cicero, on behalf of the applicant, submitted that the development of the masterplanned community requires approximately \$100 million of capital input and employment during construction over the next five to ten year period for the construction of dwellings, the community building, civil infrastructure and recreational facilities.

The Applicants submitted that the delivery of the masterplan will support approximately 200 jobs directly at the peak of the construction period with 150 indirect jobs through local suppliers, delivery drivers, support administration, local cafes and restaurants and accommodation. They also stated that once the masterplan is implemented, it will increase the population of Nagambie by approximately 20%, which *'will directly represent a similar 20% increase in economic growth on the township and surrounding areas'*.

Mr Munt, for Council, submitted that the proposal will promote economic development by facilitating the construction of the proposed development of the site, through the influx of new residents and visitors to the subject land, thereby stimulating the broader economy of Nagambie¹⁹. He said it was self-evident that the proposal will accomplish the goal of clause 17, which provides for a strong and innovative economy, where all sectors are critical to economic prosperity. Mr Munt's submission is that the outcome of the development will provide a net community benefit.

Mr Algie, for the Applicants for Review, emphasised that it is his clients' position to facilitate economic development, including progressing the development of the site, albeit with a better response to retaining native vegetation on the site.

(ii) Discussion and findings

The Committee agrees with all parties that the implementation of the Master Plan will contribute to the economic development of Nagambie and therefore is consistent with Clause 17 (Economic Development).

4.5 Permit conditions

The application before the Committee is for removal of native vegetation as triggered under the provisions of Clause 52.17 of the Scheme. As discussed at Section 4.3, the Committee finds that a permit for the removal of native vegetation should issue subject to the recommendations in this report.

For the reasons expressed in this report, the Committee generally accepts conditions proposed by Council and the Applicant, DELWP and some changes proposed by the Applicant for Review.

The Committee acknowledges Mr Algie's suggested changes relating to the inclusion of a condition requiring an update to the Lake Nagambie Resort Master Plan, as well as

¹⁹ Document 32, page 13.

conditions relating to the EPBC Act. In both instances the Committee notes that the inclusion of the suggested conditions is not appropriate in this case and in all likelihood could not be legally applied. Nonetheless, the Committee also notes that matters associated with the Master Plan have been addressed separately to the permit, as have matters raised in relation to the EPBC Act.

The Committee's version of the permit is included at Appendix E and includes details of the following changes:

- Inclusion of new condition 1 that calls for amended plans
- New DELWP condition 5 with minor edits to include Site/Construction Environmental Management Plan
- New DELWP condition 7 regarding Tree Protection Zones (TPZ)
- Additional words to ensure further protection of TPZs, stating *if walking paths are proposed within any Tree Protection Zone, the paths must be constructed in gravel with no excavation of soil, and subject to confirmation by a qualified arborist that the construction of the paths will not detrimentally impact the tree.*

5 Reasons and recommendations

5.1 Reasons

(i) Clause 52.17 Native Vegetation Removal Application

The Committee acknowledges that the subject site has a long history and has been progressively developed since Amendment C36 was gazetted in 2008. The Committee also notes that there have been changes along the way to the layout of development on the site, a number of which have resulted in an improved environmental outcome in terms of a reduction in trees required to be removed to facilitate development.

On the assumption that the Committee's concerns about procedural issues (refer to previous discussion), are satisfactorily addressed, the Committee finds that the proposed removal of native vegetation, subject to a further reduction in the extent of native vegetation removal as discussed in this report, represents an acceptable planning outcome.

This is based on a balanced assessment of key policy directions sought to be achieved for the subject site (acknowledging the purpose and intent of the CDZ1) as well as the policy directives for Nagambie, and the broader State policy directives including, in particular, those relating to native vegetation, housing and economic development.

In terms of the recommended further reduction in vegetation to be removed, the Committee considers that more work could be done to limit the number of large trees in patches that are proposed to be removed from the site as it is these trees that are the most valuable from an ecological perspective. Accordingly, while the Committee considers a permit should issue, the permit should require the retention of additional large trees in patches.

(ii) Statutory Planning and Approvals Framework and CHMP

As outlined in Section 3.4, the Committee has some concerns about the way in which the statutory planning and approvals framework that applies to the site has evolved over the years, including, importantly, the status of the 2014 Master Plan.

Whilst the Committee acknowledges that this current application is for native vegetation removal pursuant to Clause 52.17, the native vegetation removal is to facilitate the development of a residential village on the land, the layout of which must either:

- 'comply' with the Lake Nagambie Resort Master Plan pursuant to the CDZ1; or
- 'comply with the amended plan endorsed pursuant to Planning Permit P2005-182, which also appears to be broadly consistent with the 2014 Master Plan (but not the 'original' Master Plan).

Accordingly, the Committee considers that the status of the 2014 Master Plan needs to be confirmed prior to the issue of this planning permit, or any further permits for the broader Elloura Estate, to ensure that due process has been followed in its approval.

In addition to the above, the Committee considers that confirmation should be provided that the requirements of the *Aboriginal Heritage Act 2006* have been appropriately addressed, prior to the issue of the planning permit for the native vegetation removal, noting the discussion about Parts A and B in Chapter 3 of this report and the fact that the Part A CHMP (16707) only covers part of the application area.

5.2 Recommendations

The Committee recommends:

- 1. The Minister for Planning commission DELWP, including a legal opinion if necessary, to review the planning process for the introduction of the planning controls and associated endorsed/approved plans that relate to the Elloura Estate, including confirmation of the status of the 2014 Master Plan.**
- 2. The Minister for Planning satisfy themselves, including seeking legal advice if necessary, as to whether the requirements of the *Aboriginal Heritage Act 2006* have been met prior to the issue of the planning permit for native vegetation removal.**
- 3. Subject to the satisfactory outcome of recommendations 1 and 2, a permit should issue for native vegetation removal subject to additional work being undertaken to enable the retention of additional large trees in patches. The permit should be generally consistent with the Committee's version at Appendix E, except where changes are required to Conditions 12 and 13 to reflect the retention of any additional large trees in patches.**

Appendix A Priority Projects SAC Terms of Reference

Terms of Reference

Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
6. The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
7. The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

Method

8. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
9. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.

Terms of Reference | Priority Projects Standing Advisory Committee

10. The letter of referral will be a public document.
11. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
12. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning,
 - b. referred submissions,
 - c. the comments of any referral authority,
 - d. the views of the project proponent,
 - e. the views of the relevant Council,
 - f. The relevant planning scheme.
13. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
14. The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
15. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
16. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
17. The Committee may:
 - a. assess any matter 'on the papers'.
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
18. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

19. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
20. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

21. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. A short description of the project.
 - b. A short summary and assessment of issues raised in submissions.
 - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
 - d. Any other relevant matters raised in the course of the Committee process.
 - e. Its recommendations and reasons for its recommendations.
 - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
 - g. A list of persons consulted or heard, including via video conference.

22. Following the completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

23. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

24. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 2020

Appendix B Letter of referral



Hon Richard Wynne MP

Minister for Planning
Minister for Housing

8 Nicholson Street
East Melbourne, Victoria 3002

Ms Kathy Mitchell
Chair (Lead), Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Ref: MBR043743



Dear Ms Mitchell

**BUILDING VICTORIA'S RECOVERY TASKFORCE INTERVENTION RECOMMENDATION –
50 ELLOURA DRIVE AND VICKERS ROAD, NAGAMBIE**

I refer to Victorian Civil and Administrative Tribunal (VCAT) proceeding no. P1151/2020 relating to the proposed removal of native vegetation (51 large trees) to facilitate the development of a 'lifestyle village/tourist park' on part of land at 50 Elloura Drive and Vickers Road, Nagambie. A permit is required under Clause 52.17 'Native Vegetation' of the Strathbogie Planning Scheme. The project was referred to me by the Building Victoria's Recovery Taskforce.

I advise that I have decided to call in the proceeding from VCAT under Clause 58(2)(a) of Schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998* and refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether a planning permit should issue, and if not, whether a reduction in the number of trees to be removed would result in a more acceptable planning outcome. The primary issues of dispute are consistency with relevant state and local policy on the removal of native vegetation and the 'Guidelines for the removal, destruction or lopping of native vegetation' (DELWP, 2017) and whether the proposal achieves an appropriate balance between conflicting state and local policy directions.

I note that planning policies encourage the development of appropriately zoned land within an identified growth area of Nagambie, particularly for an affordable housing option that may be suitable for older people, but seek to avoid, minimise or offset the removal of significant native vegetation such as the 51 large trees that are proposed to be removed. I further note that the site has a lengthy planning history and has already been substantially developed.

The council gave notice of the application under section 52 of the *Planning and Environment Act 1987* and received 64 objections, one of which was later withdrawn. Three letters of support were also received. The Strathbogie Shire Council issued a notice of decision to grant a permit on 29 June 2020.

On 20 July 2020, Longwood Plains Conservation Management Network Inc. and Euroa Environment Group Inc. jointly applied to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the council's decision under section 82 of the *Planning and Environment Act 1987*. Parties to the proceeding include the joint applicants for review, Strathbogie Shire Council, the proponent and the Secretary to DELWP. A VCAT hearing date is currently set for two days commencing on 5 May 2021. A compulsory conference took place on 18 November 2020 and an administrative mention is scheduled for 22 December 2020 to enable VCAT to be updated on any resolution of the issues.

The cost of the advisory committee will be met by the applicant, Hallmarc.

If you have any questions about this matter, please email Dr Jane Homewood, Executive Director, Statutory Planning Services, Department of Environment, Land, Water and Planning, at jane.homewood@delwp.vic.gov.au.

Yours sincerely



HON RICHARD WYNNE MP
Minister for Planning

7 / 2 / 21

Appendix C Parties to the Roundtable Discussion

Submitter	Represented by
Applicant - Elloura Nagambie Pty Ltd	Mr Cicero of Best Hooper Lawyers, who called expert evidence on: - Ecology from Mr Alan Brennan of Nature Advisory Pty Ltd
Strathbogie Shire Council	Mr Munt SC of Castan Chambers, instructed by Planology
Applicant for review - Longwood Plains Conservation Management Network Inc and Euroa Environment Group Inc	Mr Algie of Kelleher's Australia, with submissions from: - Mr Matthew Looby (Biosis Pty Ltd) - Mr David Barnes (Hansen) - Mr Andrew Partos (Hansen)
DELWP	Ms Richardson, Program Manager, Natural Environment Program, Hume Region

Appendix D Document list

Version 2 – 26/03/2021

No.	Date	Description	Presented by
1	07 02 21	Letter of Referral	Minister for Planning
2	11 02 21	Letter to the Minister for Planning	Mr Algie, Kellehers on behalf of the Applicants for review
3	12 02 21	VCAT file for proceeding P1151/2020 including: <ul style="list-style-type: none"> - Orders - Statement of Grounds - Practice notes - Various correspondence - Draft conditions for compulsory conference - Amended applicant plans 	Victorian Civil and Administrative Tribunal
4	16 02 21	Letter to Kathy Mitchell, Chief Panel Member	Mr Algie, Kellehers on behalf of the Applicants for review
5	25 02 21	Confirmation of attendance at roundtable discussion	Mr Algie, Kellehers on behalf of the Applicants for review
6	“	Confirmation of attendance at roundtable discussion	Mr Wong, Planology on behalf of Council
7	26 02 21	Confirmation of attendance at roundtable discussion	Mr Mahony, Best Hooper on behalf of the Applicant
8	“	Letter to the Committee in response to directions	Mr Algie, Kellehers on behalf of the Applicants for review
9	“	Schematic sketch (Hand drawn transparency)	“
10	“	Schematic sketch (Overlaid)	“
11	“	Priority Areas Plan	“
12	“	Offer to workshop	“
13	“	Biosis preliminary native vegetation review dated 4 September 2020	“
14	“	Biosis findings from site inspection dated 5 November 2020	“

No.	Date	Description	Presented by
15	“	Response to Committee directions	Mr Wong, Planology on behalf of Council
16	01 03 21	Overall subdivision layout	Mr Mahony, Best Hooper on behalf of the Applicant
17	“	Residential village 182 – 2020 EoT	“
18	“	Package of Council documentation including: <ul style="list-style-type: none"> - Planning Controls - Planning Policies - Permit Application - Council’s Decision - Application for Review - Master Plan - Draft conditions - Amendment C36 documents - Other permits 	“
19	01 03 21	Direction to all parties to circulate material on the version 3 distribution list	Ms Elliott, Committee Chair
20	02 03 21	Email to parties regarding additional issues for Committee’s consideration	“
21	04 03 21	Email to Mr Algie directing circulation of documents	“
22	“	Email chain between parties regarding the circulation of documents	Mr Algie, on behalf of the Applicants for Review and Mr Mahony, on behalf of the Applicant
23	“	Expert evidence statement of Mr Brennan, Nature Advisory	Mr Mahony, Best Hooper on behalf of the Applicant
24	“	Objection to the late filing of evidence	Mr Algie, Kellehers on behalf of the Applicants for review
25	“	Response to the objection of late filing of evidence	Mr Mahony, Best Hooper on behalf of the Applicant
26	“	Email to all parties addressing matters relating to the circulation of documents	Ms Elliott, Committee Chair
27	05 03 21	Response to objection to the late filing of evidence	“

No.	Date	Description	Presented by
28	09 03 21	Statement	Ms Richardson, DELWP Hume Region
29	“	Submissions	Mr Algie, on behalf of the Applicants for Review and Mr Mahony, on behalf of the Applicant
30	“	Submissions	Mr Mahony, Best Hooper on behalf of the Applicant
31	“	Hearing Timetable Version 2	Ms Elliott, Committee Chair
32	“	Submissions	Mr Wong, Planology on behalf of Council
33	10 03 21	Email in regard to timetabling matters	Mr Algie, Kellehers on behalf of the Applicants for review
34	“	Response to timetabling matters	Ms Elliott, Committee Chair
35	“	Letter to Committee in regard to document 30	Mr Algie, Kellehers on behalf of the Applicants for review
36	“	Minister for Planning - letter to Principal Registrar call-in of VCAT proceeding P1151/2020	“
37	11 03 21	Email to the Committee – proposed ‘amended plan’ permit condition	Mr Wong, Planology on behalf of Council
38	“	Hallmarc Overall Master Plan – A00_T18	“
39	“	Email to all parties regarding provision of documentation post roundtable discussion	Ms Elliott, Committee Chair
40	12 03 21	Amended proposed draft permit conditions	Mr Wong, Planology on behalf of Council
41	“	DELWP Hume - Response to document 40 (proposed permit conditions)	Ms Richardson, DELWP Hume Region

No.	Date	Description	Presented by
42	“	Applicant for Review – response to proposed draft permit conditions (Doc #40)	Mr Algie, Kellehers on behalf of the Applicants for review
43	17 03 21	DELWP Hume – response to proposed draft permit conditions (Doc #40)	Ms Richardson, DELWP Hume Region
44	16 03 21	2015 layout with trees comparison – masterplan	Mr Mahony, Best Hooper on behalf of the Applicant
45	“	2015 layout with trees – masterplan	“
46	“	Tree retention and removal plan	“
47	“	Development plan	“
48	“	Approved master plan 2015	“
49	“	Artist impression of front building	“
50	“	Artist impression of back building	“
51	“	Landscape masterplan	“
52	“	Nagambie lifestyles – Image 509	“
53	“	Nagambie lifestyles – Image 642	“
54	“	Nagambie lifestyles – Image 644	“
55	“	Nagambie lifestyles – Image 1016	“
56	“	Nagambie lifestyles – Image 1023	“
57	“	Nagambie lifestyles – Image 1059	“
58	“	Nagambie lifestyles – Image 1065	“
59	“	Masterplan – sold lots	“
60	“	Native vegetation permit	“
61	“	Sales summary letter	“
62	“	2019 masterplan at application with notes	“
63	“	2019 masterplan	“
64	“	2020 current masterplan with notes	“
65	“	2020 current masterplan	“
66	“	Summary notes - Masterplan	“
67	“	Nagambie Healthcare supporting submission	“
68	“	Letter outlining obligations under EPBC Act from Commonwealth Department of Agriculture, Water and Environment	“
69	“	Link to online aerial mapping	“

Appendix E Committee preferred version of Planning Permit P2019-157

Tracked Added

~~Tracked Deleted~~

1. Before the vegetation removal hereby permitted starts, amended plans detailing the vegetation to be removed and any further native vegetation to be retained must be submitted and approved by the Responsible Authority. The amended plans must be generally in accordance with the plans submitted with the application, but amended to reflect the vegetation removal shown on the plan prepared by Malcolm Elliot Architects, Drawing A001, Reference T18, with a revision date of 26 March 2020. When approved, the plans will be endorsed and will then form part of this permit.
2. The layout of the site and the size and type of the proposed vegetation removal, as shown on the endorsed plan shall not be altered or modified without the consent in writing of the Responsible Authority.
3. Prior to the removal of any native vegetation on site, the Environmental Plan required under Schedule 1 of the Comprehensive Development Zone must be submitted to and approved by the responsible authority. This plan must be consistent with the vegetation removal hereby permitted.
4. The amenity of the area must not be detrimentally affected by the vegetation removal, through the:
 - (a) Appearance of any building, works or materials;
 - (b) Transport of materials, goods or commodities to or from the land;
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil;
 - (d) Presence of vermin, and;
 - (e) Others as appropriate.

Department of Environment, Land, Water and Planning

Site/Construction Environmental Management Plan

5. Before the removal of native vegetation starts, a Site/Construction Environmental Management Plan (S/CEMP) to the satisfaction of the responsible authority in consultation with DELWP Hume Region, must be submitted to and approved by the responsible authority. When approved, the S/CEMP will be endorsed and will form part of this permit.

The S/CEMP must include (but not necessarily be limited to) details regarding the following:

- a) measures to be implemented to protect native vegetation and other biodiversity values on site and on land directly adjoining the site, during the approved native vegetation removal.
- b) identification of all stockpile, storage, parking and machinery storage locations and management requirements during the approved native vegetation removal.

- c) [appropriate sediment control, erosion, and drainage management to be implemented on site, to ensure no sediment or sediment laden runoff enters waterways, wetlands or moves off site during the approved native vegetation removal.](#)
- d) [weed control and management on site, including appropriate vehicle hygiene measures, during the approved native vegetation removal.](#)
- e) [appropriate monitoring/compliance and reporting requirements for the approved native vegetation removal, and the components of and actions set out in the S/CEMP.](#)
- f) [the person/s responsible for implementation and compliance of each aspect of the S/CEMP.](#)
- g) [all persons undertaking works on site must be fully briefed on all aspects and requirements of the endorsed S/CEMP. All works constructed or carried out must be in accordance with the endorsed S/CEMP, to the satisfaction of the responsible authority.](#)

Notification of permit conditions

- 6. Before any native vegetation is removed, the permit holder must advise all persons undertaking works on site, including native vegetation removal, of all relevant permit conditions and associated statutory requirements or approvals.

[Tree Protection Zones](#)

- 7. [A suitably qualified arborist must be on site to supervise all works within or close to identified Tree Protection Zones \(TPZ\) as detailed in condition 9.](#)

Fauna identification, salvage and relocation

- 8. Before any native vegetation is removed, all hollows must be inspected by a suitably qualified [and licenced](#) wildlife handler or zoologist. The wildlife handler or zoologist is to be present when felling trees to ensure all affected wildlife is not harmed and is removed from the subject land to an appropriate relocation site or relocated on site to an appropriate location in accordance with all relevant legislation. A report on the findings and mitigation methods adopted must be submitted to the responsible authority and the Department of Environment, Land, Water and Planning within 3 months of the completion of the native vegetation removal.

Protection of retained vegetation

- 9. Before any native vegetation is removed, tree protection fences must be erected around all the native vegetation to be retained to define Tree Protection Zones [in accordance with the Australian Standard, Protection of Trees on Development Sites \(AS4970 2009\).](#) Tree Protection Zone fences must be erected at a radius of 12 times the diameter at breast height (DBH) to a maximum of 15 metres but no less than 2 metres from the base of the trunk. The fence must be of sturdy construction to the satisfaction of the responsible authority. The tree protection fences must remain in place until the completion of the development works unless otherwise agreed in writing by the responsible authority.

10. No vehicular or pedestrian access, trenching, storage of materials or equipment or soil excavation is to occur within ~~the~~ any Tree Protection Zone unless otherwise agreed in writing by the responsible authority. If walking paths are proposed within any Tree Protection Zone, the paths must be constructed in gravel with no excavation of soil, and subject to confirmation by a qualified arborist that the construction of the paths will not detrimentally impact the tree.

Native vegetation permitted to be removed, destroyed or lopped

11. Before native vegetation removal starts all trees should be clearly marked under the supervision of a suitably qualified ecologist in accordance with the endorsed plan.
Only the marked trees are to be removed.
12. The native vegetation permitted to be removed, destroyed or lopped under this permit is: 2.103 hectares of native vegetation with a strategic biodiversity value of 0.788, including 51 large trees.

Native vegetation offsets

13. To offset the removal of 2.103 hectares of native vegetation the permit holder must secure the following native vegetation offset in accordance with Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017):
 - A general offset of 0.621 general habitat units located within the Goulburn Broken Catchment Management boundary or Strathbogie municipal area.
 - The offset must have a minimum strategic biodiversity value of at least 0.630.
 - Offsets must include 51 large trees.
14. Before any native vegetation is removed, evidence that the offset required by this permit has been secured, must be provided to the satisfaction of Strathbogie Shire Council. This evidence must be one or both of the following:
 - 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; and/or
 - Credit extract(s) allocated to the permit from the Native Vegetation Credit Register.
15. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence, a copy of the endorsed offset evidence must be provided to Planning and Approvals at the Department of Environment, Land, Water and Planning Benalla regional office via humeregion.planning@delwp.vic.gov.au.
16. Where the offset includes a first party offset(s), the permit holder must provide an annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.

Audit of Native Vegetation Removal Report

17. Within six (6) months of the completion of the native vegetation removal approved by this permit, a follow up assessment of the impacts on native vegetation, including

retained trees and associated tree protection zones, must be conducted by a suitably qualified and experienced environmental assessor and/or arborist, to identify any discrepancies from the current native vegetation removal associated with this permit. This assessment report must be submitted to and be to the satisfaction of the responsible authority and the Department of Environment, Land, Water and Planning – Hume Region.

Expiry

18. This permit will expire if one of the following circumstances applies

- (a) The vegetation removal is not started within two (2) years of the date of this Permit,
- (b) The vegetation removal is not completed within four (4) years of the date of this Permit.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- before the permit expires; or
- within six months afterwards if the use or development has not yet started; or within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.