

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1179/2020
PERMIT APPLICATION NO. 204/2019/07P

CATCHWORDS

Application under Section 77 of the *Planning & Environment Act 1987* to review a refusal to grant a permit; Nillumbik Planning Scheme; Rural Conservation Zone; Environmental Significance Overlay; Bushfire Management Overlay; dwelling; native vegetation removal; small lot residential use in Green Wedge; conservation of land; rural character and bushfire risk

APPLICANT	Magnus Petersson
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
REFERRAL AUTHORITY	Country Fire Authority
RESPONDENT	Gregory Kenneth Johnson on behalf of Friends of Nillumbik Inc.
SUBJECT LAND	50 Watery Gully Road, Kangaroo Ground
HEARING TYPE	Hearing
DATE OF HEARING	20 May 2021
DATE OF ORDER	29 June 2021
CITATION	Petersson v Nillumbik SC [2021] VCAT 696

ORDER

- 1 In application P1179/2020 the decision of the responsible authority is set aside.
- 2 In planning permit application 204/2019/07P a permit is granted and directed to be issued for the land at 50 Watery Gully Road, Kangaroo Ground in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Use and development of the land for the purpose of a dwelling and native vegetation removal

Christopher Harty
Member



APPEARANCES

For Magnus Petersson	Ms Jane Sharp, Barrister by direct brief. She called the following expert witness: <ul style="list-style-type: none">• Mr Lincoln Kern, Ecologist and Bushfire Risk Consultant from Practical Ecology Pty Ltd She also called the following lay witness: <ul style="list-style-type: none">• Mr Magnus Petersson, landowner
For Nillumbik Shire Council	Mr Gavin Crawford, Town Planner
For Country Fire Authority	No appearance
For Gregory Kenneth Johnson on behalf of the Friends of Nillumbik Inc.	In person



INFORMATION

Description of proposal	To use and develop land at 50 Watery Gully Road, Kangaroo Ground (site) for a part two-storey dwelling and swimming pool. The dwelling is proposed to be serviced by an effluent disposal field approximately 300 square metres in area. To accommodate the dwelling and its defensible space area for bushfire risk mitigation, it is proposed to remove nine (9) native trees.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Nillumbik Planning Scheme
Zone and overlays	Rural Conservation Zone Schedule 3 (RCZ3) Part Environmental Significance Overlay Schedule 1 – <i>Sites of Faunal and Habitat Significance</i> (ESO1) Bushfire Management Overlay (BMO)
Permit requirements	Clause 35.06-2 - to use the land for a dwelling Clause 35.06-5 - to construct a building or construct or carry out works Clause 42.01-2 - to construct a building or construct or carry out works Clause 42.01-2 - to remove native vegetation Clause 44.06-2 – to construct a building or construct or carry out works associated with accommodation Clause 52.17-1 – to remove, destroy or lop native vegetation
Relevant scheme policies and provisions	Clauses 11, 12, 13, 14, 16, 21.05, 21.08, 22.04, 22.13, 35.06, 42.01, 51.02, 52.17, 53.02, 65 and 71.02



Land description

The site is located on the north-west corner of Watery Gully Road (which abuts to the south) and Flat Rock Road (which abuts to the east). The site has an area of approximately 1.98 hectares. It has a gentle slope down from Watery Gully Road to a drainage gully that centrally dissects the site and is currently vacant (apart from a small cubbyhouse). The site has historically been used for grazing and there was evidence of recent grazing inspected on the site. The site has an extensive coverage of vegetation comprising native trees to the north and central areas with cleared grassland in the south and south-west portion of the site where the proposed dwelling is to be located. Watery Gully Road is an unsealed road, while Flat Rock Road is a bitumen sealed road.

The area surrounding the site is undulating with a mix of numerous dwellings associated with both rural living and farming (comprising grazing and equestrian activity) on both partially cleared lots and bush blocks, with the larger sized lots generally associated with agriculture on cleared land.

Tribunal inspection

28 June 2021 unaccompanied



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Magnus Petersson (**applicant**) seeks to use and develop an approximately 1.98 hectares parcel of land at 50 Watery Gully Road, Kangaroo Ground (**site**) for a part two storey dwelling and swimming pool. The dwelling comprises three bedrooms with a proposed overall height of 7.47 metres with a flat roof design. The proposal also includes the removal of nine (9) native trees to accommodate defendable space for bushfire risk mitigation.
- 2 Nillumbik Shire Council (**Council**) determined to refuse the application and the applicant seeks a review of that decision by the Tribunal.
- 3 Council's grounds for refusing the application generally relate to the proposal being contrary to the policy framework associated with the Nillumbik Green Wedge and the purposes and decision guidelines of the Rural Conservation Zone and the conservation values of Schedule 3 to the zone (**RCZ3**). Council considers the proposal would be inconsistent with policies seeking to limit new dwellings on small lots in rural areas (i.e. lots that are below the minimum lot size in the RCZ3 which in this case is 8 hectares), and would impact upon nearby agricultural activity. Council was also concerned with detrimental impacts on both the landscape character of the area and the natural values present on the site.
- 4 Mr Gregory Johnson, on behalf of The Friends of Nillumbik Inc. (**objectors**)² supported Council's grounds of refusal adding the proposal represents an inappropriate use and development in a Green Wedge area which has a focus on conservation and where the presence of small lots are a historical legacy. He considered the proposal should be located within a settlement.
- 5 The Country Fire Authority (**CFA**), as a recommending referral authority offered no objection to the permit application subject to conditions including endorsement as part of any permit of the Bushfire Management Plan (**BMP**) prepared by Practical Ecology.
- 6 In contrast, the applicant considers the proposal is an acceptable outcome because:
 - The site is a small lot where no agricultural activity occurs and will not result in unacceptable impacts to surrounding rural and agricultural land uses.

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

² Another statement of grounds was received from Dr Peta Heywood, who was a non-party. Dr Heywood expressed concerns similar to the Friends of Nillumbik Inc and to which I have had regard.



- The site is located in an area where there are many small lots where almost all have been developed with dwellings, some of which are used for agricultural purposes, some which are used for rural living purposes and some of which are used for rural living purposes in conjunction with conservation, which is what is proposed in this case.
- The siting and design of the proposal, in conjunction with the retention of the bulk of native vegetation and removal of grazing pressure will support conservation of habitat and landscape values on the site and assists in minimising significant visual impacts on the landscape of this part of Kangaroo Ground.

WHAT ARE THE KEY ISSUES?

- 7 The issues raised within the context of this review relate generally to the proposal's response to the zone, policy and physical contexts of the site and impacts on landscape character and habitat values of the site.
- 8 I also note that, the site is affected by the Bushfire Management Overlay (**BMO**) and although bushfire risk is not an issue raised by Council, it is a matter that I have considered.
- 9 Having heard the submissions, the key issues arising from this proposal are:
- Is the proposal consistent with the zone, policy and physical contexts?
 - Are impacts on landscape and habitat values unreasonable?
 - Is bushfire risk acceptable?
- 10 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the Nillumbik Planning Scheme. Net community benefit is central in reaching a conclusion. Clause 71.02-3 - *Integrated Decision Making* of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations and to prioritise the protection of human life over all other policy considerations.
- 11 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regards to the applicable policies and provisions of the Nillumbik Planning Scheme, I find the proposal represents an acceptable outcome.
- 12 I have decided to set aside the decision of Council and direct that a permit be granted subject to conditions contained in Appendix A. My reasons follow.



IS THE PROPOSAL CONSISTENT WITH THE ZONE, POLICY AND PHYSICAL CONTEXTS?

- 13 The site is in the Nillumbik Green Wedge and rural area outside of Melbourne's Urban Growth Boundary. It provides a non-urban break between the Whittlesea urban growth area and the Lilydale urban area.
- 14 Green Wedge areas have been a part of Metropolitan Melbourne's planning for around 50 years.³
- 15 Within the Nillumbik Green Wedge, the site is in the RCZ3, which seeks to protect and enhance natural environmental values, fauna habitat and biodiversity and landscape values. Unlike other zones such as the Farming Zone or Green Wedge Zone where the use of land for agriculture (including grazing animal production) is 'as of right' and does not require a permit, it is a land use that requires a permit under the RCZ3 and is a land use that is encouraged within the context of being consistent with the conservation of environmental and landscape values of the area. Under the RCZ3, land use and development is encouraged based on sustainable land management that takes into account the conservation values and sensitivity of the locality.
- 16 The planning emphasis throughout the Nillumbik Planning Scheme is the protection of agricultural production, Green Wedge areas, environmental and habitat values, and rural landscapes with a focus on conservation of the natural environment. Clause 11.01-1R – *Green Wedges – Metropolitan Melbourne* reflects this by seeking to protect Green Wedge areas from inappropriate development. The policy also promotes and encourages the key features and related values of each Green Wedge and supports development within them that provides for, amongst other matters, environmental benefits.
- 17 Local policy⁴ discourages the use and development of land for a dwelling on isolated small rural lots. It seeks to limit fragmentation of land in rural areas, for isolated small rural lots to be consolidated and seeks to consolidate new residential development in existing settlements and in locations where planned services are available and Green Wedge values are protected. However, the use and development of land in the Green Wedge for a dwelling is also not prohibited and there is an emphasis on how such a use interacts and supports the environmental purposes of the planning scheme.
- 18 Agricultural land is sought to be protected⁵ by avoiding the permanent removal of productive agricultural land, protecting productive farmland that is strategically significant in a regional or local context, and protecting agricultural land from unplanned loss due to permanent changes in land use.

³ Clause 21.02 – *Municipal Overview & Regional Context*.

⁴ Clause 21.05-2 – *Rural Land Use*.

⁵ Clause 14.01-1S - *Protection of agricultural land*.

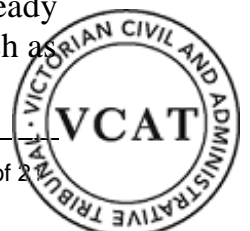


- 19 Clause 21.05-3 – Environment, Conservation & Landscape also reiterates the protection and enhancement of sites of environmental significance. This is supported by part of the site being affected by the Environmental Significance Overlay Schedule 1 – *Sites of Faunal Habitat Significance (ESO1)*, which seeks to protect sites identified in a 1997 report on *Sites of Faunal and Habitat Significance in North East Melbourne (Beardsell report)*.
- 20 Although I have not recited all the relevant State and local policies in full, I consider that the following key themes or directions emerge from a review of these planning policies and the zone and overlay controls:
- Green Wedge land is to be protected from use and development that would diminish its environmental, conservation and landscape values.
 - Residential development is to be contained within existing urban zones on land within the Urban Growth Boundary.
 - Low density residential development is to occur within areas designated for that purpose.
 - Residential use within non-urban areas is discouraged.
 - Development on small rural lots below the zone minimum is to be limited, unless exceptional circumstances exist.
 - Continued development of dwellings in Green Wedge areas undermines the values and characteristics of the Green Wedge/non-urban areas.
 - Development of isolated small lots in rural zones for rural living or other incompatible uses is discouraged.
 - Land use changes must not have an adverse effect on landscape or strategic environmental values of the land.
 - Development must prioritise the protection of human life and strengthen community resilience to bushfires.
- 21 Council and the objectors say allowing a dwelling on a lot that is approximately 1.98 hectares in size and below the minimum lot size under the RCZ3 (8 hectares) represents an example of poor orderly planning. They say the proposal is ‘death by a thousand cuts’ and inconsistent with longer term aspirations of the planning scheme for the Nillumbik Green Wedge.
- 22 In both the Council’s and applicant’s submissions reference was made to a number of past Tribunal decisions where permits were either not granted or were granted for similar use and development in the RCZ in the Nillumbik Green Wedge. Although I do not list these cases (they are referenced in the submissions on the Tribunal’s file), an observation I do note is that they were all considered on their individual merits, the contexts of which are variable and somewhat different to that which is before me in this matter.



Those contexts associated with refusals were generally about small lots that were isolated, involved more substantial amounts of vegetation removal, or were located in a manner that would create visual breaks or disturbance in the broader landscape.

- 23 I find these circumstances not as prevalent in this matter.
- 24 I do accept that the site is a small lot at approximately 1.98 hectares. It is a lot that is a historical relict and once formed part of a larger agricultural holding. However, the site is not what one would describe as being isolated. There are numerous other lots, of varying size, that are used and have been developed for dwellings and associated with rural living activity in the locality.
- 25 The applicant described how the Council officer report provided an analysis of lot sizes of the area surrounding the site. It identified 46 properties with an average lot size of 5.9 hectares. There are 16% of lots greater than 8 hectares and 84% were less than 8 hectares. There were 16% of lots less than 2 hectares in size. The report found that of the lots less than 4 hectares in area, three of these are vacant including that of the site.
- 26 The above information, together with my inspection of the site and area confirmed that the locality has numerous small lots that have been developed with dwellings and associated outbuildings and which are visible from the public realm. There are larger lots that are used for agricultural including equestrian purposes.
- 27 I acknowledge that the planning scheme outlines in both the RCZ3 and planning policy framework a strong and consistent theme of discouraging residential development on small lots in the Green Wedge and non-urban areas of Nillumbik Shire. However, I also find the planning scheme does not prohibit the use and development of small lots in these same areas for a dwelling where such use can demonstrate that it is not isolated, can achieve an environmental benefit and will not visually stand out as a 'look at me' built form design or dominate the visual landscape or rural character of the area.
- 28 I find the proposal is an acceptable response and consistent with the zone, policy, and physical contexts relevant to the proposal and site for the following reasons:
- The site is located amongst existing rural living allotments and in an area where there is an established character of dwellings and structures set amongst agricultural land.
 - Fragmentation of rural land will not occur because of the proposal given there is no subdivision, the lot already exists.
 - Impacts on agriculture will not be significant, given the adjoining land is continuing to be used for that purpose and that dwellings are already present within the locality. The site and area are zoned RCZ, which as



identified and referred to by parties has a stronger emphasis on conservation and where protection of agricultural production would have a more tempered consideration given the discretionary nature of the use. If the site was zoned Green Wedge or Farming a stronger emphasis on protection of agricultural production would be expected, however this is not the case in this matter.

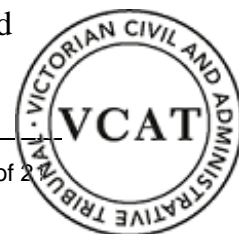
- The positioning of the dwelling and accessway have been carefully considered to avoid and minimise the loss of vegetation.
- Although the proposal requires the removal of 9 trees for defendable space purposes (which will be offset), the majority of native vegetation on the site is proposed to be protected and managed in a Bushland Conversation Zone representing approximately 77% of the site or around 1.5 hectares. Supported by a proposed Land Management Plan, this will assist with improvement of biodiversity qualities on the site, which is sought by the RCZ3 and policy framework.
- The dwelling and structures have been carefully sited and designed so that the visual impact will be minimised. The proposal seeks to locate a dwelling that is partly two-storey in form with an overall height of less than 7.5 metres on a cleared portion of the site which will not dominate the landscape or rural character of the area given the juxtaposition between the existing backdrop native vegetation to the north, the fall away from Watery Gully Road and the foreground roadside vegetation to the south and east.
- The bushfire risk is acceptable noting the approval of the CFA.

- 29 The policy discouraging residential development of small lots in the Nillumbik Green Wedge is meritorious, however, it is policy, not a control. Hence it provides guidance amongst a range of other policies in the planning scheme. I am required to integrate the range of policies, zone purposes, requirements, decision guidelines, overlay purposes and other decision guidelines of the planning scheme in forming a view with respect to achieving a net community benefit.
- 30 The physical context within which the site is found comprising numerous dwellings, many of which are on small lots and visible from the public realm, results in the proposal achieving a net community benefit. The proposal supports the zone purposes of protecting environmental values whilst minimising adverse effects.
- 31 Overall, I find the proposal an acceptable outcome with respect to the character of the Green Wedge area given the abutting use and development and the siting of the dwelling such that it will have a low-scale, non-intrusive impact on the area.



ARE IMPACTS ON LANDSCAPE AND HABITAT VALUES UNREASONABLE?

- 32 The western portion of the site is affected by the ESO1, which seeks to protect and enhance sites of fauna habitat significance and regional and strategic habitat links identified in the Beardsell report. The Beardsell report identifies the site is located within *Site 72 – Hurstbridge to Kangaroo Ground Red Ironbarks*. This site is recognised in the Beardsell report as a site of regional faunal significance and surrounding land that forms habitat links. The Beardsell report identifies the value of conserving Red Ironbark vegetation, risks from fragmentation of habitat due to increased human activity and presence, but also suggests the desirability of negotiated covenants or similar conservation agreements for the management of remnant bushland.
- 33 I note policies under Clause 12.01-1S – *Protection of Biodiversity* seek to ensure impacts on biodiversity values are considered and Clause 21.05-3 – *Environment, Conservation & Landscape* that recognises conservation and landscape values to be protected and enhanced.
- 34 The planning scheme generally recognises that a significant element of the unique character of Nillumbik Shire and Kangaroo Ground broadly, and the locality of the site more specifically, is its highly attractive landscapes and picturesque views from, and of, the many valleys and elevated ridge lines. These landscape vistas are highly valued by the community and visitors to the area and inappropriate design and siting of buildings, including dwellings, can compromise the integrity of these features.
- 35 The need to protect habitat links and minimise fire risk are also important considerations.
- 36 Council says the proposal will impact approximately 23% of a small site associated with the dwelling, driveway, defendable space, and effluent disposal field, which is too much of an impact on both the environment and the landscape value of the site and area. Mr Johnson also supports this view.
- 37 I have had the benefit of evidence from Mr Kern who says the site contains Ecological Vegetation Class (EVC) 61 – *Box Ironbark Forest* with a vulnerable Bioregional Conservation Significance meaning that between 10-30% of the original extent of this EVC remains in the Highland Southern Fall Bioregion. Mr Kern says the site has been historically grazed and the native vegetation on the site has been progressively cleared or altered over time resulting in substantial modification to shrub and groundstorey vegetation layers and leaving native trees as the remnant native vegetation now found on the site. He says continued grazing pressure will eventually lead to the existing trees dying out as they are unable to reproduce. This will result in a slow but steady decline in environmental condition. He says, the proposal, accompanied by a Land Management Plan that includes avoidance of grazing, appropriate weed



management and appropriate vegetation management including protection and re-vegetation works, will provide an improved environmental outcome for the site.

38 Mr Kern also considers the degraded nature of the vegetation on the site limits the potential for the presence of threatened species, although the presence of large trees on the site does represent an important habitat value.

39 The proposal includes the removal of 9 native trees which includes one large tree for:

- A Cootamundra Wattle (*Acacia baileyana*) for the driveway crossover to provide access to the site. This will require permission from Council as the road management authority. An arborist report identified the tree as having low retention value with poor health and potential weediness in the landscape.
- A Long-leaved Box (*Eucalyptus goniocalyx*) for the dwelling footprint.
- Five (5) Long-leaved Box trees and, one (1) Yellow Box (*Eucalyptus melliodora*) and one (1) Red Box (*Eucalyptus polyanthemus*) for defensible space.

40 Relevantly, Mr Kern identifies that the proposal does not involve the removal of any Red Ironbark trees (*Eucalyptus sideroxylon*), which are the trees identified in the Beardsell report as having particular significance in the area because they are very important as a nectar resource for a large number of fauna species.

41 The extent of impact may also be reduced by avoiding one of the trees where the CFA may accept a reduction in the 5 metres canopy spread for bushfire risk mitigation in the defensible space area.

42 Mr Kern identified that the proposal falls within the intermediate assessment pathway for removal of native vegetation under Clause 52.17 – *Native Vegetation* and the *Guidelines for the removal, destruction or lopping of native vegetation, 2017*. Mr Kern's evidence was that the proposal was acceptable because it demonstrated avoidance, minimisation, and offsetting of vegetation removal, whilst protecting the balance of native vegetation on the site.

43 I also note the arborist assessment identified that impacts on native vegetation associated with the effluent disposal field can also be avoided through careful layout and design.

44 Regarding impacts on native vegetation, I am satisfied they are minimal and not significant, despite the small size of the site. The removal of 9 native trees requires an offset provision for one (1) large tree and 0.454 hectares of native vegetation. The offset can be provided, and the proposal seeks to protect the remaining 77% of the native vegetation on the site. This is an acceptable outcome. I note that a large tree located on the western

boundary of the site will also be retained despite being located close to the dwelling. I consider this to also be a good and respectful outcome.

45 Regarding landscape impacts, I consider they will not be significant. The proposed location of the dwelling is on the south-western portion of the site, and although this is a cleared area that will make the dwelling visible from the west and from the road, it is a location on the fall from the road and not on a ridgeline or hillcrest that would afford it a dominant aspect or appearance. My views are supported by the following design elements of the dwelling:

- A setback 21 metres from Watery Gully Road and between 11 and 14 metres from the western side boundary.
- The long and relatively narrow built form with an east-west length of 33.24 metres and north-south width of 9 metres and overall height of 7.47 metres.
- Construction using natural finish concrete masonry and charred blackbutt timber walls, flat roof, and solar panels.
- Construction excavation limited to 0.878 to 1.3 metres to the southern elevation and between 0.78 to 0.175 metres fill on the northern elevation.

46 Visibility is not the test and I do not consider the proposal will dominate viewlines from the public realm or from adjoining properties.

47 In this regard, I do not find that impacts associated with the proposal on landscape and habitat values to be unreasonable.

IS BUSHFIRE RISK ACCEPTABLE?

48 The site is affected by the BMO. The proposal has been the subject of a bushfire assessment and I have had the benefit of bushfire evidence from Mr Kern. I note that the CFA does not object to the proposal subject to conditions for the approval of the submitted BMP.

49 Council acknowledged that bushfire risk can be managed with minimal impact on biodiversity.

50 Although the location of the dwelling is on a north-west slope, the evidence of Mr Kern is that it is a gentle slope and not on a ridge. The site is located within a high bushfire risk area with a Type 3 landscape typology where the presence of connected vegetation may result in neighbourhood scale destruction from bushfire. The region has been subjected to past bushfire events. The direction of major bushfire threat is from the north-west, however Mr Kern's evidence was that there is separation from the bushfire threat due to open farmland to the north and west which suggests that any fire front from this direction would be moderated. Grassland areas may still provide enough fuel for a fire to reach the site, however the provision of



defendable space and management of vegetation within it should be sufficient to manage the impact of ember attack on the dwelling.

- 51 The applicant submitted a Bushfire Management Statement (**BMS**) and nominated that the proposed dwelling would be built to BAL-29 construction standard. The BAL rating, vegetation management and access has been accepted by the CFA.
- 52 I note that there has been some variation to standard canopy separation measures from 5 to 2 metres, but this does not unduly increase bushfire risk and has the support of the CFA on the basis that the reduced shrub layer from grazing makes the standard five metre canopy separation unnecessary as a canopy fire could not be supported without it.
- 53 Although the Bushland Conservation Zone may result in an increase in understorey vegetation over time, I understand, this is not considered an issue for parties or the CFA.
- 54 I note that the site has good access from more than one direction where future occupants of the dwelling can seek refuge on days of extreme or severe fire danger days.
- 55 Generally, I am satisfied bushfire risk and risk to human life can be satisfactorily mitigated.

WHAT CONDITIONS ARE APPROPRIATE?

- 56 I have had the benefit of a 'without prejudice' discussion of draft permit conditions circulated by Council.
- 57 I have included conditions as I consider appropriate for the proposal and the issues.
- 58 The applicant suggested that the effluent disposal field could be moved to within the defendable space area between the dwelling and Watery Gully Road. I have considered this, but do not accept it is necessary as impacts on trees in its proposed location east of the dwelling can be appropriately avoided. The final layout and design of the effluent disposal field will be subject to a land capability report as approved by Council.

CONCLUSION

- 59 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Christopher Harty
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	204/2019/07P
LAND	50 Watery Gully Road, Kangaroo Ground

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use and development of the land for the purpose of a dwelling and native vegetation removal

CONDITIONS

- 1 Before the development and/or use commences, three copies of amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with TP06 Rev A Dated 9./10/2019 and TP02, TP03, TP04, TP05 Rev B date 19/12/2019 project 310.18 prepared by Steve Laux Building Designs, the Land Management Plan (Being part 7 of the Practical Ecology Flora and Fauna Assessment and native vegetation impact assessment dated December 2019) and the Planning Central Bushfire Management Plan (BMP) prepared by Practical Ecology, Version 1, dated 17th December 2019 but modified to show:
 - (a) Tree protection zones shown and dimensioned.
 - (b) The effluent zone / envelope located outside of Tree Protection Zones.
 - (c) Connection to the effluent zone / envelope hand dug within tree protection zones and no roots greater than 20mm diameter severed.
 - (d) The Land Management Plan to be a separate document.
 - (e) Part 7.9 of the Land Management Plan amended to specify that:
 - i if cats are kept they must be kept indoors at all times or provided with an outdoor 'cat enclosure' or 'cat run' attached to the house
 - ii if dogs are to be kept on-site a suitable enclosure such as fencing of the CDZ or DSZ must be undertaken.
- 2 The development and/or use as shown on the endorsed plans must not be altered unless with the prior written consent of the responsible authority.
- 3 Only trees marked "tree to be removed" on the endorsed plans are permitted to be removed, to the satisfaction of the responsible authority.
- 4 No vegetation on-site (unless specified on the endorsed plans) shall be removed, destroyed, felled, lopped, ringbarked, uprooted or otherwise



damaged except in accordance with the Land Management Plan or with the prior written consent of the responsible authority.

- 5 Any tree that is shown on the endorsed plan as being pruned, must be pruned under the supervision of a qualified arborist, to the satisfaction of the responsible authority.
- 6 Prior to development commencing (including any excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the trees (or nominate tree numbers or species of individual trees) marked on the endorsed plans as being retained must have a Tree Protection Zone to the satisfaction of the responsible authority. The fencing associated with this Tree Protection Zone must meet the following requirements:

(a) Extent

The Tree Protection Fencing is to be provided to the extent of the Tree Protection Zone, calculated as being a radius of 12 x Diameter at Breast Height (measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970-2009)

(b) Fencing

All tree protection fencing required by this permit must be erected in accordance with the approved Tree Protection Zone.

The Tree Protection Fencing must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.

(c) Signage

Fixed signs are to be provided on all visible sides of the Tree Protection Fencing clearly stating "Tree Protection Zone - No Entry", to the satisfaction of the responsible authority.

(d) Irrigation

The area within the Tree Protection Zone and Tree Protection Fencing must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.

(e) Provision of Services

All services (including water, electricity, gas and telephone) should be installed underground, and located outside of any Tree Protection Zone, wherever practically possible. If underground services are to be routed within an established Tree Protection Zone, they must be installed by directional boring with the top of the bore to be a



minimum depth of 600mm below the existing grade, to the satisfaction of the responsible authority.

Bore pits must be located outside of the Tree Protection Zone or manually excavated without damage to roots, to the satisfaction of the responsible authority.

(f) Access to Tree Protection Zone

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the responsible authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

- 7 Prior to the commencement of the approved works (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the erected tree protection fences must be inspected and approved by the responsible authority.

Once erected to the required standard, the tree protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the responsible authority.

- 8 The following actions must not be undertaken in any tree protection zone as identified in this permit, to the satisfaction of the responsible authority:

- (a) Materials or equipment stored within the zone;
- (b) Servicing and refuelling of equipment and vehicles;
- (c) Storage of fuel, oil dumps or chemicals;
- (d) Attachment of any device to any tree (including temporary service wires, nails, screws or any other fixing device);
- (e) Open cut trenching or excavation works (whether or not for laying of services);
- (f) Changes to the soil grade level;
- (g) Temporary buildings and works; and
- (h) Unauthorised entry by any person, vehicle or machinery.

- 9 Trees 58 and 63 and Trees 55 and 56 shown on the endorsed plan are to be retained as clumps at 5 metres separation spacing between them to the satisfaction of the responsible authority.

- 10 To offset the removal of 0.454 hectares of native vegetation and 1 large tree the permit holder must secure a native vegetation offset, in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017) as specified below:

General Offset

A general offset of 0.113 general habitat units:



- located within the Port Phillip & Westernport Catchment Management Authority boundary or Shire of Nillumbik municipal district
- with a minimum strategic biodiversity value of at least 0.590.

Large trees

- The offset(s) secured must provide protection of at least 1 large tree.

The offset provided must be to the satisfaction of the responsible authority.

- 11 Before any native vegetation is removed, evidence that the required offset has been secured must be provided to the satisfaction of Council. This evidence is one or both of the following:
- (a) 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
 - (b) Credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

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 by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

- 12 In the event that a security agreement is entered into as per Condition 11(a) the applicant must provide the 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 the responsible authority.
- 13 A progress report must be provided to the responsible authority one year after commencement of the Land Management Plan hereby approved, detailing the on-going implementation of the plan. A further report detailing the actions implemented and outcomes achieved must be presented upon the completion of the Land Management Plan or 10 years from the date of this permit whichever occurs first. Both reports shall be to the satisfaction of the responsible authority.
- 14 The nature and colour of building materials employed in the construction of the buildings and works hereby permitted shall be harmonious with the environment, to the satisfaction of the responsible authority.
- 15 The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type, to the satisfaction of the responsible authority.
- 16 No foreign soil (or other fill material) may be introduced on the site, to the satisfaction of the responsible authority.



- 17 Vehicular access and egress each dwelling from the roadway must be by way of a vehicle crossing constructed / upgraded to the requirements of the responsible authority, to suit the proposed driveway and the vehicles that will use the crossing. The responsible authority must approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the responsible authority. All vehicle crossing works are to be carried out with Council supervision under an Infrastructure Works permit.

The width of the driveway at the property boundary must match the width of the vehicle crossing.

Vehicle crossing must comply to "Vehicle Crossing Policy" Version 1.0 January 2013 and to Standard Drawing (NS3000, NS3010, NS3020, NS3021 or NS3030).

- 18 The vehicular driveway must be properly formed and constructed meeting the ramp grades specified in the Nillumbik Planning Scheme (Clause 52.06-9, Design standard 3: Gradients), and to such levels to ensure it can be utilised at all times. The driveways must be drained, constructed in concrete, asphalt or similar surface and maintained in a continuously useable condition. All works are to be carried out to the satisfaction of the responsible authority.
- 19 The development, including any new paved areas, must be drained so as to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land.

Stormwater from the roof of the proposed dwelling must be directed to the 10,000 litres holding tank as shown on the submitted plans. The overflow from the tank must be absorbed on site in accordance with Council's "Drainage of Unserviced Allotments" document.

Water in the holding tank may be used for any of the following purposes: toilet flushing; property irrigation; vehicle washing and any other purpose approved by the responsible authority.

- 20 The development hereby permitted must not cause any nuisance or loss of amenity in any adjacent or nearby land by reason of the discharge of pool water. Swimming pool filter backwash must be discharged to the sewer where available, otherwise the filter backwash must be:
- (a) Run through a grease trap and be absorbed on-site in accordance with the Shire of Nillumbik's "Drainage of Unserviced Allotments" document; or
 - (b) Removed from the site and disposed of by an authorised contractor in a proper waste removal vehicle.
 - (c) Wastewater generated from the operation and cleaning of the pool must not enter the septic tank system associated with the dwelling.



The discharge of wastes from the swimming pool must conform to the Environment Protection Authority requirements.

- 21 No polluted, effluent and/or sediment laden runoff from the development site is to be discharged directly or indirectly into Council's drains, Melbourne Water's drains or watercourses or adjoining private property during the construction of the development.

In this regard, sediment fencing and/or pollution/litter traps must be installed on site and serviced accordingly. All to the satisfaction of the responsible authority.

- 22 All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Act 1970 (or equivalent legislation) and in accordance with a Land Capability Report. All wastewater shall be disposed of within the curtilage of the land and sufficient area shall be kept available for the purpose of wastewater disposal to the satisfaction of the responsible authority. No wastewater shall drain directly or indirectly onto an adjoining property, street or any watercourse or drain to the satisfaction of the responsible authority.
- 23 Approval of wastewater disposal must be obtained from Council (Environmental Health) prior to a Building Permit being issued.
- 24 Secondary treatment of wastewater followed by sub-surface irrigation must be in accordance with a Land Capability Report and must be installed to the satisfaction of the responsible authority.
- 25 The permit holder must ensure that a current maintenance agreement is in place for the septic tanks system. Servicing must be completed by a competently trained person or servicing agent at least once every three (3) months, with a copy of the report sent to the Council (Environmental Health).
- 26 Boundary fencing must be of a post and wire design to allow free fauna movement to the satisfaction of the responsible authority.
- 27 Before the development commences, the owner must enter into an agreement with the Responsible Authority in accordance with Section 173 of the *Planning and Environment Act 1987*. The agreement must provide for:
- (a) Except with the written consent of Council the land must be used, maintained and managed in accordance with the Land Management Plan endorsed under planning permit 204/2019/07P.

Application must be made to the Registrar of Titles to register the Section 173 Agreements on the title to the land under Section 181 of the same Act prior to the commencement of the development.

The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.



- 28 The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the responsible authority and the relevant fire authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

CFA

- 29 The Bushfire Management Plan (BMP) prepared by Practical Ecology, Version 1, dated 17th December 2019 must be endorsed to form part of the permit and must not be altered unless otherwise agreed in writing by the CFA and the responsible authority.
- 30 Before the development commences, the owner must enter into an agreement with the responsible authority in accordance with Section 173 of the *Planning and Environment Act 1987*. The agreement must provide for:
- (a) Except with the written consent of Council the land must be used, maintained and managed in accordance with the Land Management Plan endorsed under planning permit 204/2019/07P.

Application must be made to the Registrar of Titles to register the Section 173 Agreements on the title to the land under Section 181 of the same Act prior to the commencement of the development.

The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.

- 31 This permit as it relates to use will expire if the use does not commence within two (2) years after the issue date of this permit.
- In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the period referred to in this condition.
- 32 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within two years of the issue date of this permit.
- (b) The development is not completed within four years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –

