

7.2 Planning Application YR-2017/195 - 650 Skyline Rd, Yarra Glen**APPLICATION DETAILS**

Site Address	650 Skyline Rd, Yarra Glen
Application No.	YR-2017/195
Proposal	Construction of a Dwelling, Fire Refuge Bunker, Outbuildings, associated Vegetation Removal and Earthworks
Existing Use	Rural site with a weekender dwelling
Owner	Ms A M Morris
Applicant	Ms A M Morris
Zone	RCZ1 - Rural Conservation Zone - Schedule 1
Overlays	Bushfire Management Overlay (BMO), Significant Landscape Overlay - Schedule 4 (SLO4), Environmental Significance Overlay - Schedule 1 (ESO - Site B5 & Z15), Erosion Management Overlay (EMO)
Objections	1
Reason for Council Decision	Councilor Call in
Ward	Ryrie

SUMMARY

The subject site is located on the east side of Skyline Road, approximately 7.7 kilometres south-west of the Yarra Glen Township and has an area of approximately 55.79 ha. The site is primarily vacant, with the exception of a 'weekender' dwelling that receives occasional visits. The site is heavily vegetated with access currently via an informal track.

A planning permit is required for the use and construction of a dwelling and associated outbuildings pursuant to the provisions of the Rural Conservation Zone. A planning permit is also required for the proposed buildings and works pursuant to the provisions of the Environmental Significance, Significant Landscape, Erosion Management and Bushfire Management Overlays. A planning permit is required for vegetation removal under the Schedule to Clause 53 and Clause 52.17.

The application was referred to the Country Fire Authority (CFA) which provided a letter of advice, identifying the site as being subject to extreme landscape bushfire behaviour. The application was referred to the Department of Environment, Land, Water and Planning (DELWP) for vegetation removal which provided conditional consent. Pursuant to the provisions of the Significant Landscape Overlay the application was also referred to the National Trust which has objected to the proposal.

The key issues concerning the proposal relate to the environmental impact on biodiversity, the impact on the significant wider rural landscape, and the extreme bushfire risk to life and property.

The proposal would result in the loss of 1.959ha of significant habitat to create defensible space, creating a large open section on the Yarra Valley Western ridge. The proposal would put future occupants of the dwelling at an undue level of risk due to the extreme bushfire behaviour. It is critical to note that under Clause 13.05 of the State Planning Policy Framework and Clause 21.09 (Environmental Hazards) that in considering a decision the Responsible Authority must prioritise the protection of human life over other policy considerations. Further, the decision maker must, where appropriate, apply the precautionary principle to planning and decision-making when assessing the risk to life, property and community infrastructure from bushfire. For these reasons it is recommended that the application be refused.

RECOMMENDATION

That Council resolve to refuse Planning Application YR-2017/195 for Construction of a Dwelling, Fire Refuge Bunker, Outbuildings, Associated Vegetation Removal and Earthworks at 650 Skyline Rd, Yarra Glen and issue a Notice of Refusal subject to the grounds in Attachment 1 to the report.

DISCLOSURE OF CONFLICTS OF INTEREST

The author of this report does not have a conflict of interest.

SITE LOCATION AND DESCRIPTION

The subject site is located to the east side of Skyline Road, Yarra Glen and would have a frontage width of approximately 1.5km (See Attachment 4). The site is irregular in shape and has an area of approximately 55.79 hectares.

The site sits at the top of a major ridgeline that forms part of the defined western edge of the Yarra Valley, as well as the far eastern reaches of the vegetated slopes of Christmas Hills. The slopes to the east are very steep (up to 50% gradient) whereas slopes to the west exceed a gradient of 30%. The ridgeline follows a north-south alignment in parallel with Skyline Road, which sits to the west of the major ridge-line. There are a number of small, steep gullies that run down from the main ridge to the valley below further east to the site.

The site is forested with native vegetation, with a weekender dwelling (for occasional weekend use), driveway and associated outbuilding as well as two other small cleared areas and tracks.

The Practical Ecology report indicated that the site has been subject to historic episodes of bushfire, including the 1927 fires, the 1962 fires, and in more recent years the 2009 Black Saturday bushfires that resulted in examples of extreme bushfire activity to the north, north-west and east of the site.

The site is not affected by any covenants.

SURROUNDING AREA

The surrounding area is a mixture of large bushland properties, public land and mixed farming properties. Most landholdings are generally 50-70Ha in area and are heavily vegetated. The property to the immediate north contains a dwelling and associated farm outbuildings, while the adjoining property to the south appears to be vacant. The south adjoining property is heavily vegetated forming a large continuous area of bushland running south and west combining public land within Sugarloaf Reservoir and bushland properties located within Christmas Hills and the Bend of Islands. The immediate property to the north comprises a mixture of bushland and cleared areas. It shares the same zoning and overlays as the subject site.

Sugarloaf Reservoir to the west forms a large waterbody completely surrounded with dense intact remnant vegetation, within an undulating vegetated landscape. To the east at the foot of the slope, the Yarra Valley comprises flat to undulating open farmland and various recreational areas (golf courses, gun club etc). The Spadonis Nature Conservation Reserve and Yering Bushland Reserve are also located a little over 1 km to the east. The Yering Gorge Bushland Reserve is located approximately 1 km to south-west.

As part of the Yarra Valley flats below to the east, lot areas vary between 23ha and 250ha in area.

HISTORY

Application Number and Decision Date	Planning Application YR-2015/1195 lapsed on 28/4/15 for the use and development of a dwelling, swimming pool, outbuilding and associated earthworks. Following feedback from Council officers and the CFA on issues of vegetation impacts and bushfire risk, the subject application was submitted. The subject application is generally the same as previously proposed, other than the inclusion of an outbuilding and bushfire shelter.
VCAT History	Not applicable.
Other History	A pre-application meeting was held on site with the current owner/applicant, the CFA and Council officers on 15 th August 2016. The purpose of this meeting was to determine whether a dwelling and associated vegetation removal could be entertained. Advice provided by the CFA was that, no matter where the dwelling would be located, the extreme bushfire risk to life and property would not alter.

PROPOSAL

The application proposes construction of a detached single storey dwelling located along the southern third of the site, adjacent to the major western ridge line of the Yarra Valley (refer to Attachments 6 to 11). The dwelling would be setback 41 metres from the western frontage and 200 metres to the south-west of the onsite weekender dwelling.

The dwelling would comprise 4 bedrooms (including walk in robes and ensuites), open plan kitchen/dining/living area, study/library, a rumpus, bathrooms/toilets, two external court areas, integrated double garage, deck, swimming pool and tank. The building footprint would be 45.3 metres in length and 13.7 metres in width.

External building materials appears to be face brick concrete for external walls, with no clarity provided for the roof materials and overall finishes.

The proposed dwelling would require earthworks (cut and fill) up to 2-3 metres high from natural ground level. The earthworks depths are only partly dimensioned on plans.

The dwelling is proposed to be accessed via a proposed minimum 3 metre wide, 276 metre long driveway from Skyline Road to the west. There would be a passing area (measuring 6 metres by 20 metres) generally half way along the driveway to minimise internal vehicular conflict as part of the Bushfire Management Overlay (BMO) requirements. The existing internal driveway is proposed to be retained as unsealed gravel construction. While the Practical Ecology site plans indicate that the driveway would take a slightly different alignment to the existing driveway, the applicant has confirmed that this would not be the case.

A 10,000 litre CFA water tank is also proposed on the south-west side of the dwelling, while 2 tanks (unknown capacity) and 150m² effluent area would be located directly adjacent to the dwelling's south-west side elevation.

While the building would be built to BAL-40, the defendable space would be to BAL-29 to provide the highest degree of protection for the dwelling and occupants given that the forest fire danger index is at the maximum rating of 100. This would result in the defendable space area being 49 metres to the south-west, and 65 metres for all other aspects, totalling an area of 1.7Ha. When including the 0.58ha domestic zone (includes dwelling, associated outbuildings, and driveway), the 0.035ha effluent zone and a 1.7Ha defendable Space, the Practical Ecology report confirms that 1,279 trees would require to be removed, (refer to Attachments 6 & 12). This would equate to 1.959Ha of remnant intact native vegetation proposed for removal in a high risk, Category C pathway. The strategic biodiversity score would be 0.765.

An arborist report prepared by 'Stemarboriculture' dated 18/11/16, was also submitted detailing trees affected along the driveway and trees preferred for retention in meeting the canopy clearance requirements of the BMO. The Practical Ecology report has taken into account these trees and incorporated them into its assessment and so this report will be relied upon.

PLANNING CONTROLS

Zoning:	Clause 35.06 Rural Conservation Zone
Overlay:	Clause 42.01 Environmental Significance Overlay (ESO1 B5 & Z15) Clause 42.03 Significant Landscape Overlay (SLO4) Clause 44.01 Erosion Management Overlay (EMO) Clause 44.06 Bushfire Management Overlay (BMO)
State Planning Policy:	Clause 11 Settlement Clause 12 Environmental and Landscape Values Clause 13 Environmental Risks Clause 14 Natural Resource Management Clause 15 Built Environment and Heritage

	Clause 15 Housing Clause 19 Infrastructure
Local Planning Policy:	Clause 21.04 Land Use Clause 21.06 Built form Clause 21.07 Landscape
Schedule to Clause 53:	Applicable.
Other Requirements:	Clause 52.17 Native Vegetation Clause 52.47 Preparing for Bushfire

For further information on the planning controls refer to Attachments 2 and 3.

CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)

The application has been checked against the requirements of the Aboriginal Heritage Act 2006 as to the need for the requirement of a Cultural Heritage Management Plan (CHMP). It has been assessed that a CHMP is not required as the site is not subject to cultural sensitivity.

STAKEHOLDER VIEWS

External Referrals

Authority	Consent/Objection – Summary of Conditions
CFA	<p>A Letter of Advice has been provided which comments on the extreme bushfire risk of the site while at the same time provides a list of conditions should Council decide to approve the application.</p> <p>Given the extreme bushfire risk and ambiguous nature of the advice, Council officers sought further clarification from the CFA on whether they supported or opposed the application. CFA's response remains equivocal stating the following:</p> <p><i>As the CFA is not a determining referral authority and does not possess the power of veto for applications referred to the CFA in high bushfire areas, the CFA considers that its role is to provide advice only. Accordingly, for such applications CFA practice is provide a letter of advice pursuant to section 56(3) of the Act for the purpose of assisting the Responsible Authority to make its decision regarding the application.</i></p> <p><i>The letter of advice is then able to be considered by the Responsible Authority alongside all other relevant considerations.</i></p> <p><i>Accordingly, the CFA neither consent to nor opposes the proposed development. It views its role as to provide advice only, which is then to be evaluated alongside other considerations.</i></p>
DELWP	<p>Consent has been provided for the vegetation removal subject to conditions and commented as below:</p> <p><u><i>Also, the proposed siting of the driveway will require removal of trees to meet BMO requirements. Consideration should be given to alternative access options directly from the proposed house site to Skyline Road to the west, should this meet CFA requirements, and minimise removal of vegetation. If this option was suitable then the existing driveway could be rehabilitated.</i></u></p>

	<p>The applicant has provided information that the proposed offset will be secured via first party. An option to consolidate the two proposed onsite offset sites into one larger area would be preferred to maximise the environmental outcomes of the offset site.</p> <p>The Department has only considered the biodiversity considerations under Clause 52.17 (Native Vegetation) of this application, in accordance with Permitted Clearing of Native Vegetation – Biodiversity Assessment Guidelines (DEPI 2013). The Department has not considered the decision guidelines for other matters.</p>
National Trust	<p>Objection has been raised and relevant comment is:</p> <p><i>...In conclusion we submit that significant tree removal, along with the proposed scale of the dwelling would impact on the environmental, scenic, visual and cultural values of the Upper Yarra Valley & Environs landscape.</i></p>

Internal Referrals

Department	Summary of Response
Geotechnical Engineer	<p>Conditional consent has been provided and the relevant comments are:</p> <p><i>The plans show earthworks which exceed the recommendations of the geotechnical report and EMO guidelines. The applicant should be asked to amend plans to be consistent with the recommendations of the geotechnical report. This includes batter slopes less than 2H:1V and if higher than 1 m support provided by an engineer designed retaining wall.</i></p>
Health	<p>Consent has been provided subject to standard condition relating to disposal of waste water.</p>
Environment	<p>Objection has been raised and has commented as below:</p> <p><i>The proposal does not satisfy the objectives Rural Conservation Zone Schedule 1, Environmental Significance Overlay (ESO_Z15 / ESO_B5), and Local Planning Policies on Environment (Clause 21.09) and Vegetation Protection (Clause 22.05), due to excessive native vegetation impacts (1.96 hectares/1279 trees) which will result in significant detrimental impacts on the habitat values of the site, and in particular for threatened flora and fauna species which are considered moderately or highly likely to occur on site.</i></p> <p><i>It is not possible to reduce the environmental impacts of the proposal to an acceptable level due to the requirements to manage vegetation within the defendable space in accordance with Clause 52.47 Planning for Bushfire.</i></p>

Objections and Consultation

✓ Mail ✓ Sign ✗ Local Newspaper

Number of Objections: 1 (National Trust)

ASSESSMENT/ KEY ISSUES

The proposal has been assessed to not comply with the applicable Zone and Overlay provisions, the State and Local Planning Policy requirements, Particular provisions and Decision Guidelines of the planning scheme.

Properties such as 650 Skyline Road are amongst one of the most complicated sites and most challenging to build on under the Yarra Ranges Planning Scheme. This is due in part to the site's access, steep topography and dense vegetation, along with the complexity of the Scheme controls with zone, overlay and various other controls. At the core of the assessment however, is consideration of the zoning of the land and the expectations that the planning scheme provides for the site.

The Rural Conservation Zone clearly articulates the outcomes to be sought, with the overlays and other controls guiding various components of the assessment. The following key issues have been identified when assessing the suitability of allowing a dwelling to be constructed on this site.

The proposed development will result in an unacceptable risk to life and property from bushfire and does not meet the requirements of the Bushfire Management Overlay.

The proposed development will result in significant environmental impacts (to both the Yarra Valley from a zoological perspective, and the Watsons Creek Catchment and Yarra Ridge (east of Skyline Road) from a biological perspective), and are inconsistent with planning policy, the purpose and objectives of the Rural Conservation Zone and outcomes sought under the Environmental Significance Overlays applying to the site.

The proposed development would result in significant landscape impacts to the Yarra Valley (east interface) due to excessive vegetation loss that is at odds with planning policy, the purpose and objectives of the Significant Landscape Overlay, and a position supported by the National Trust.

There are significant concerns that the application does not adequately respond to the requirements of the Erosion Management Overlay and can appropriately manage waste water.

Bushfire

The Acceptability of Bushfire Risk

The overarching strategy contained in the State Planning Policy (SPPF) which at Clause 13.05-1 (See Attachment 2) has an objective to assist to strengthen community resilience to bushfire and which includes the following overarching strategies:

- *Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.*
- *Where appropriate, apply the precautionary principle to planning and decision-making when assessing the risk to life, property and community infrastructure from bushfire.*

The prioritisation of human life is replicated in the purpose of the BMO and in Clause 52.47 Planning for Bushfire. This is a powerfully expressed policy. It is a policy that creates a significant challenge for any permit applicant seeking to use and develop land that exhibits the extreme fire risks of the type associated with this land.

Importantly, strategic and settlement planning is also identified in the SPPF as a means of assisting with strengthening community resilience to bushfire. In this case, the inclusion of

the site in an Rural Conservation Zone and the associated policy framework that seeks to contain residential development within urban settlement boundaries, and minimise residential development in areas of environmental sensitivity, reflects the implementation of SPPF strategies for managing bushfire risk. The site is an isolated site located within a landscape exhibiting environmental sensitivities and an extreme fire risk associated with the densely forested vegetative cover and steep topography. Because of the zoning of the land and the surrounding area, the overlay controls and the planning policy framework the extreme fire risk categorisation for the surrounding area is unlikely to change under any foreseeable circumstances. Irrespective of the implementation of the measures recommended by the BMS, a dwelling on the review site will exist as an isolated site within a broader landscape exhibiting extreme fire risk characteristics.

Council must be satisfied that the decision to grant a permit for a dwelling on this site not only represents a good outcome now under the planning controls but into the future and for future owners that may not be as well informed. It will be important for the Council to decide what an acceptable level of risk is, whether this application meets that expectation and further, under what circumstances and what criteria under the bushfire planning controls is refusal of a dwelling application warranted.

The Bushfire Management Statement (BMS) provided by the applicant in response to the BMO requirements indicates that under extreme fire conditions a large and intense bushfire could approach the site from any direction and that the broader landscape represents an extreme risk and further evacuation options are limited or not available. The following 4 statements from the CFA and Practical Ecology Report, consistently confirm and reinforces the extreme fire risk that applies to the site:

CFA (See Attachment 5)

- *The combination of the steep slopes, potential for long fire runs and massive spotting, substantially increases the likelihood of a junction fire directly impacting the proposed dwelling site. A junction fire is when two (or more) fire fronts begin to approach each other; the effects of preheating and in-draught are increased (referred to as the Junction Zone). This in turn increases fire intensity and flame length. Fire intensity may increase by two fold and occurs where the convective forces begin to influence each other, then the two fires fronts combine into a single fire, drawing the flames together.*

Practical Ecology

- *There is a known history of extreme fire behaviour in the region, particularly evidenced during the 2009 Black Saturday bushfires. In this case, fire travelled from the north-west towards the ridgeline above the Yarra Valley and then moved over the ridge, but eddied back up the hill, resulting in almost two simultaneous fire fronts near the top of the ridge...(pp 112)*
- *...Fire approaching from a south-west direction would likely be of the highest intensity due to the possibility of a run of up to 15 kilometres through largely forest vegetation (pp 113).*
- *The measures in this Bushfire Management Statement cannot guarantee safety during an extreme fire event; buildings are only designed to withstand fire up to a Fire Danger Index (FDI) of 100 (i.e. not designed for Code Red Fire Danger), and even*

below this threshold building survival cannot be guaranteed. Residents need to develop a Personal Bushfire Plan to clearly understand and plan for how they are going to act in response to a potential and actual fire event. Residents should refer to CFA's Fire Ready Kit (CFA 2011) to help plan for such events (pp 125).

- *...There is a known history of extreme fire behaviour in the region, particularly evidenced during the 2009 Black Saturday bushfires. This combined with the fact that evacuation options are limited, particularly if a fire was to occur unexpectedly, provides enough cues to signal that the landscape presents hazards that are greater than a Type 3 Landscape (pp113).*

The BMS proposes alternative measures to mitigate the bushfire risk by creating defensible space to BAL 29. However, unlike the defensible space provisions, the controls do not allow for specified alternative measures when it relates to landscape risk. Instead the provisions refer to the landscape risk being reduced to an acceptable level. The measures proposed by the applicant include construction of a bunker, building construction to a Bushfire Attack Level BAL- 40 with BAL-29 defensible space, development of a bushfire survival plan and a commitment that the dwelling will not be occupied during 'Code Red' days.

It is considered these measures are all specific to the site. The provisions under Clause 52.47-2 (Bushfire Protection Objectives) relate to ensuring risk from the landscape beyond the site can be mitigated. The applicant's measures cannot change the landscape risk, rather they solely relate to improving the likelihood of surviving a fire. It is further noted that one of the CFA condition requires the applicant to enter into a section 173 Agreement with the Responsible Authority to provide for a bushfire bunker.

When assessing an application with similar bushfire risks, VCAT has raised serious concerns with the statutory regime necessary to give effect to the recommendations of the BMS needed to mitigate the extreme fire risk and has commented as below:

61 *.....CFA's position on this application is couched in terms that emphasise its non-objection on the basis of the mitigation measures being implemented provided that the commitments given are achievable in practice given the constraints of the site. The CFA's caution is understandable. I address in more detail subsequently concerns about the adequacy of the information presented by and on behalf of the permit applicant with respect to the detailed aspects of the site's development, but I also express some reservation about the enforceability of the requirement for the site to be evacuated on Code Red days.*

62 *While I am obliged to proceed in my assessment of the proposal on the basis that permit conditions when imposed will be complied with, planning permit conditions are required to be practically enforceable. I do have concern about the enforceability of permit conditions that require a dwelling, situated in an isolated landscape exhibiting an extreme fire risk, to be evacuated on Code Red or any other day coinciding with a specified event. The implementation of that condition is a fundamental component of the fire risk mitigation measures recommended for the site, and is a prerequisite for the CFA's somewhat cautious non-objection to the application. The condition therefore is directly applicable to the consideration of the protection of human life.*

- 63 *The imposition of the condition imposes an obligation on the occupants of the dwelling to comply with the condition, but it also imposes an obligation on the responsible authority to ensure compliance with the condition.*
- 64 *My concerns about the enforceability of this permit condition in particular is therefore a factor that contributes to my overall assessment of the acceptability of the bush fire risk associated with this proposal. My thoughts about the practicality of the enforcement of that permit condition is focussed on the consequences for those people charged with enforcing the condition. The risk to emergency services officers or Council officers charged with that responsibility is not a risk to which they ought to be exposed.*

The Possibility of Mitigating Wider Landscape Risk

Measures that have the potential to address landscape risk beyond the site could include Melbourne Water or DELWP having an active fire break management regime for adjoining land, or Sugarloaf Reservoir as a topographical feature that could interrupt the extreme bushfire behaviour that is expected. It is noted that while this large body of water (Sugarloaf Reservoir) would provide some mitigating effects, the landscape also contains other characteristics that are conducive to extreme bushfire behaviour in the form of convection driven fires.

The decision guidelines for Bushfire Planning specifically require consideration of whether the risk arising from the broader landscape can be mitigated to an acceptable level or warrant the development not proceeding. It is considered that the applicant can do very little to mitigate the landscape risk beyond the site, which the CFA has stated is extreme.

The Acceptability of the Access Arrangements

The proposal does not meet the Approved Measures to address landscape, siting and design objectives which require the building to be in close proximity to a public road, with access able to be provided to the building for emergency services vehicles. In this instance, as the driveway is more than 200 metres (276 metres) from the frontage, with land slope exceeding 20 degrees (or 30-50%) from all aspects, a passing bay and turning area has been provided to provide a chance of protecting life. However, it is also acknowledged that the safest option when escaping a major fire event, or for emergency vehicles to service the site, is to travel 3.3km to the Neighbourhood Safer Place in Yarra Glen township at the racecourse. This would involve negotiating 7km of unsealed gravel road, surrounded by intact vegetation, before reaching a main road (Eltham-Yarra Glen Road) and traversing part of the Christmas Hills to reach the valley below to the township of Yarra Glen.

These deficiencies are acknowledged in the applicant's BMS and they seek to overcome them with the Bushfire Management Statement proposing an alternate method of bushfire protection. Along with the bushfire shelter and driveway passing area, this would comprise a high BAL-40 building construction standard due to significant siting constraints and an enhanced defendable space clearance area of BAL-29. Generally the higher the BAL level, the lower the defendable space is as the house construction is able to sustain a higher level of heat and therefore less vegetation needs to be cleared. The applicant is proposing to increase the size of the defendable space to provide greater separation from the bushfire hazard (vegetation) and this is based on modelling on Flame Length undertaken by the applicant assessor as per the Australian Standard (Method 2, AS3959-2009).

While these responses may improve the level of bushfire safety on the site, there is serious concern that they are being over relied upon (in that this is the only option available if they do not leave in time) and that they do not address the high bushfire risk associated with the broader landscape.

Overall, given the extreme bushfire risk, based on site's isolation, the fact that a junction fire scenario driven by strong convective winds as stated in the letter of advice from the CFA, it is considered that the risk to life and property is too extreme.

Vegetation Impacts

Environmental Impact

The Rural Conservation Zone, Environmental Significance Overlay and Local Policy on Vegetation Protection include specific environmental objectives, policies, information requirements and decision guidelines that need to be addressed as part of any development proposal. Particular attention should be drawn to the information requirements for any proposal to remove native vegetation.

Allowing the construction of a dwelling on a property in a Rural Conservation Zone with high environmental values should only be considered if the environmental impacts associated with the new use and development are acceptable and that the environmental management of the site can in fact be improved over the long term.

There are instances where dwellings have been successfully located in bushland settings but these are usually on sites where there has been past historical clearing, or there are highly disturbed parts of the site where a dwelling can be accommodated without introducing a fresh disturbance to the site. In this instance, two small cleared sections of the land, both on the top of major ridgelines, were considered for the siting of the dwelling and associated buildings, yet in the order of 1,279 trees are still required to be removed due to the defensible space requirements of the BMO and size of the combined footprint of the proposed buildings. The type of vegetation impact resulting from the proposal, even in a small cleared area, does raise questions on whether a new impact should be introduced and what level of environmental impact is acceptable.

Of relevance to these considerations, it is noted that the property is part of a Nationally Significant BioSite. As detailed in the Practical Ecology report, the BioSite includes large populations of flora species listed under Rare or Threatened Australian Plants (ROTAP) and Victorian Rare or Threatened (VRoT) species. A search of the Victorian Biodiversity Atlas found recent (since 1990) records of 14 Victorian rare or threatened (VRoT) flora species and 32 state or nationally significant fauna species in the VBA within 5 km of the site.

In particular, any proposal to remove remnant vegetation from land included in an Environmental Significance Overlay or to remove intact remnant vegetation should provide a quantitative and qualitative assessment of the native vegetation, any impacts proposed which may be relevant to threatened species and communities, the impact on water quality, soil erosion and land degradation. The applicant has submitted an ecological assessment that addresses the above information requirements.

The site is within Location C and would follow a High Risk-based Pathway (DEPI 2013a) due to impacts to remnant vegetation from within Location C areas of the site, as well as

more than 1 hectare of native vegetation is impacted. The area of loss currently includes the 0.58ha domestic zone (includes dwelling, associated outbuildings, and driveway), the 0.035ha effluent zone and a 1.7ha Defendable Space Area. The vegetation management requirements result in extensive vegetation losses, which in forested environments are considered by DELWP to constitute 100% loss.

Overall, it is acknowledged that the site is located both in an area of high environmental significance as indicated for both ESO's and contains strong policy to protect native vegetation that makes a significant contribution to Victoria's biodiversity. This is reinforced by overriding strategic policies under Clause 12.01 'Biodiversity' and Clause 21.09 'Environment' of the Municipal Strategic Statement and the Rural Conservation Zone that seeks to protect and enhance the natural resources and biodiversity of the area as a key priority. These objectives are also most importantly reinforced by the State Native Vegetation Framework contained in Clause 52.17. On all levels of policy within the Scheme, there is an overwhelming lack of policy support for the extent of native vegetation loss resulting from the proposal.

After feedback provided by Council's Environment officer and the CFA, it is clear that there is no other option on the site that would result in a significantly lesser impact on the biodiversity of this site, given the extent of remnant vegetation, and strong habitat corridors from all aspects external the site.

Landscape Impact

Forming part of the main western ridge of the Yarra Valley, the site carries a high profile within the Yarra Glen and Yering regions of the Yarra Valley, also known as the significant landscape of the 'Upper Yarra River & Environs' including the major tourist road corridor of Melba Highway. The site can be clearly seen from the major tourist corridor of Melba Highway more than 3.9km east of the site. The loss of a 1.959ha patch of native vegetation (1,279 trees) extending up to 65 metres around the proposed dwelling, located on the edge of the major ridge-line, would have long term visual impact in altering the appearance of this section of ridgeline (refer to Attachments 6 and 12).

It is acknowledged that there are limited options to locate a dwelling on the site. However, there is also ample space away from the major ridge line and closer to the site frontage, or valleys in between the ridgelines, where a dwelling may be located to remove the extreme level of visual exposure within the wider significant rural landscape.

As part of the Christmas Hills wider rural landscape, creating an open bald patch on top of a ridge that currently forms as a continuous forested section of the Yarra Valley western ridge would compromise the landscape and environmental qualities of the surrounding area, and substantially change the natural land form. Comments from the National Trust reinforce this issue as follows:

'When viewed from the east, the density of this woodland forest is readily apparent. The extent of tree removal required for the construction of a dwelling represents a significant loss of vegetation for the surrounding landscape. As such we have serious concerns that the scale of the dwelling and the extent of tree removal would disrupt the continuity of canopy cover on the ridge and be highly visible from the valley below, permanently detracting from the environmental, scenic, visual, cultural and scientific values of this landscape.'

Overall, there is a lack of policy support for the significant landscape impacts from the excessive vegetation loss, as driven by Clauses 21.07 'Landscape', the ESO and Rural Conservation Zone, which is consistent with the objection received from the National Trust.

Landslip

Council's geotechnical engineers have expressed concern that the submitted plans do not accord with the recommendations of the geotechnical report. Slopes appear to have a gradient ratio exceeding 1H:1V with some sub vertical cut batters exceeding 1.5 metres in height. The EMO guideline recommend unsupported cuts greater than 1 metre to be supported by retaining walls, with batters not exceeding 1H:2V or 25% in slope.

The plans are well in excess of the recommendations from the geotechnical engineering report (E-Struct 2017), and *"do not provide appropriate batter slopes, retaining walls, method of disposal, drainage and erosion prevention measures"*.

The proposal in its current form has not addressed landslip risk to an 'tolerable level' and would not comply with the EMO, which seeks to *"ensure that development can be carried out in a manner which will not adversely increase the landslip risk to life or property affecting the subject land or adjoining or nearby land"*.

Septic Containment

The applicant has not provided a Land Capability Assessment (LCA) from a qualified consultant that seeks to provide a solution to waste water treatment as part of the application which could have confirmed appropriate measures for septic area in context to the site's geology (ability to filter or retain water), slope and landslip risk. It is acknowledged that Council's Health officer has provided conditional consent to the application.

However, it is also acknowledged that for a modest dwelling, 350-600m² is the normal area requirement for an effluent envelope in managing waste water on a flat site not subject to landslip. The proposed dwelling contains 4 bedrooms with many fixtures, is located on steep land affected by landslip risk, and a 180m² effluent area has been proposed.

CONCLUSION

The proposal is not consistent with the purpose of the Rural Conservation Zone, Environmental Significance, Significant Landscape and Erosion Management Overlays applying to the site. The proposal introduces substantial impact to the site and to the broader landscape.

A major concern is the significant and extreme landscape risk from bushfire. The site is surrounded by extensive vegetation. Officers conclude that the proposal cannot comply with the provisions of the Bushfire Management Overlay or Clause 52.47 Bushfire Planning and it is considered that Council should exercise the precautionary principle as required by State Government policy and determine that the risk of living on this site is too great. Consequently, Officers recommend that Council should not support the application and issue a Notice of Refusal.

ATTACHMENTS

- 1 Grounds of Refusal
- 2 Policy
- 3 Locality and Advertising
- 4 Aerial Plan
- 5 CFA Referral Response
- 6 Bushfire Management Plan
- 7 Site Plan
- 8 Existing Dwelling Floor Plan
- 9 Proposed Dwelling Floor Plan
- 10 North and South Elevations
- 11 East and West Elevations
- 12 Photos

(Attachments to this report are available for viewing separately on Council's website)