

AMENDMENT C399ggee, ARMSTRONG CREEK NVPP CORRECTION - CONSIDERATION OF SUBMISSIONS

To: Peter Smith – Coordinator Strategic Implementation
From: Barry Gough – Strategic Planner
Subject: Resolution to consider submissions to an amendment
under delegation
File number: C399ggee

Purpose

This report considers submissions to Amendment C399ggee and recommends that Council resolves (under delegation) to refer the submissions to an Independent Panel.

Summary

- The amendment corrects errors in the native vegetation offset requirements identified in the Native Vegetation Precinct Plans, which resulted from an error in the direction provided by the then Department of Environment and Primary Industries (DEPI), as to the methodology to be used to calculate the offsets.
- The Council resolved under delegation on 16th September 2019, revised 16th January 2020 to exhibit a planning scheme amendment (C399) to replace the existing schedules 4 & 5 to Clause 37.07, Urban Growth Zone with new Schedules and to replace the existing schedule to Clauses 52.16 and 72.04 into the Greater Geelong Planning Scheme.
- Exhibition of Amendment C399 commenced on 19 March and closed on 20 April 2020. Notice of the amendment appeared in local newspapers, the Geelong Australia website and letters were sent to prescribed Ministers and owners and occupiers of land to which the Native Vegetation Protection Plans apply.
- Submissions were received from a Department of Environment, Land Water and Planning and from Denis Family Homes (Ashbury) Pty Ltd. In addition a submission was received, from a third party, however Council was unable to contact the individual identified in the document at the street address or e-mail cited in the document.
- It is recommended that all submissions be referred to an Independent Panel appointed by the Minister for Planning.

Recommendation

That Council having considered all submissions to Amendment C399ggee to the Greater Geelong Planning Scheme resolves to:

- 1) Request the Minister for Planning to appoint an Independent Panel under Part 8 of the Planning and Environment Act, 1987;**
- 2) Refer all submissions to the Panel; and**
- 3) Submit to the Panel its response to the submissions generally as outlined in this report.**

**Approved as a resolution of Council by Council's delegate: P.Smith
Date: 21 December 2020**

Background

The amendment is required to correct an anomaly relating to the native vegetation off-set requirements in the Horseshoe Bend and Armstrong Creek Town Centre Native Vegetation Precinct Plans (NVPPs), in relation to the method specified by the then DEPI used to calculate offsets for native vegetation proposed to be removed.

The Horseshoe Bend and Armstrong Creek Town Centre NVPPs were overlooked by the then Department of Environment and Primary Industry (DEPI) when other NVPPs were corrected and were therefor incorporated into the planning scheme with incorrect offset calculations, which are higher than required.

Authorisation to prepare and exhibit the amendment was granted on 3 February 2020.

Amendment C399 was exhibited between 19 March and closed on 20 April 2020.

Discussion

Exhibition of Amendment C399 resulted in submissions from the following persons/ organisations:

1. Department of Environment, Land, Water and Planning.
2. Denis Family Corporation (Ashbury) Pty Ltd
3. A submission lodged by an individual was also received, however all attempts by Council officers to contact the individual at the property address or the e-mail address provided with the submission have proved unsuccessful.

Independent legal advice obtained by Council indicates that Council is not required to treat the document as a submission however, as a Planning Panel will need to be appointed to consider the two submissions, above, this document will also be referred to the Panel.

The next section of this report identifies matters raised in submissions and provides a Council officer response to the submissions.

DELWP

- Suggested Minor Edits to the exhibited NVPPs:

Supported by Council Officers. - Final revision subject to Panel consideration.

- Exhibited changes to Urban Growth Zone Schedules.

Does not support the exhibited proposal to require a design response to be prepared by a suitably qualified professional.

Supported by Council Officers. Council's Team Leader - Environmental Planning indicates that the requirement for a suitably qualified

professional to undertake an assessment of practical retention trees, while being a good inclusion to actually ensure that applicants are taking the practical retention seriously, it can be done by anyone with a basic understanding of avoid and minimise principles.

DENNIS FAMILY CORPORATION (ASHBURY) PTY LTD

- Opposed to proposed requirement for the design response to be prepared by a suitably qualified professional, as it will “give considerable weight to the retention of vegetation identified for ‘practical retention’.”

Supported See the above comment by Council’s Team Leader – Environmental Planning in relation to the exhibited proposal to require a qualified professional to undertake the assessment of practical retention trees.

- Seeks to change the wording of the UGZ Schedules to reference the current native vegetation policy.

Not supported by Council Officers as the original assessments and NVPPs were done under the previous policy (Biodiversity Assessment Guidelines 2013). Updating the UGZ to reflect the 2017 policy would require applicants to address both, or require the City to amend the NVPPs fully to reflect the 2017 policy. To ensure consistency the 2013 reference should be maintained.

INDIVIDUAL SUBMITTER

- Questions the extent of vegetation listed for removal compared to that proposed to be retained,
- Questions why there are no “plans” or “consultations” with the local Indigenous Community;
- Recites detail with regard to the status of Bellarine Yellow Gums and Purple Blown Grass and claims that some species have been misidentified in the tables which form part of the NVPPs.
- Complains that “the report fails to describe what an Offset Multiplier is”.

Council Officers attempted to contact the submitter at the e-mail address included with the submission, however the e-mail address was not contactable.

A subsequent attempt to reach the submitter by mail to the street address provided with the submission resulted in the return of the mail to Council.

Legal advice obtained by Council indicates that, where a submitter has not provided the required details to enable them to be contacted Council is entitled to not regard the communication as a bona fide submission.

Inn this instance the document will be provided to the Planning Panel for its consideration, despite their being no address at which the Panel will be able to advise the individual concerned of the opportunity to be heard.

Financial Implications

There are no financial implications for Council which would arise from the adoption of the proposed amendment.

Stakeholder Consultation and Communication

The Amendment and Permit were exhibited in accordance with the provisions of the *Planning and Environment Act 1987*.

Following recent discussions with Planning Panels Victoria it was agreed to address the identification of dates for the Directions Hearing and Panel Hearing in early 2020.

Planning Panels Victoria will notify the submitters of the Panel dates and invite requests to be heard at the Panel Hearing.

Policy/Legal/Statutory Implications

The amendment is consistent with the State Planning Policy Framework as follows:

Clause 12 – *Environment and Landscape Values*.

Clause 12.01-1S *Protection of biodiversity*, which includes the following:

“Objective

To assist the protection and conservation of Victoria’s biodiversity.

Strategies

Use biodiversity information to identify important areas of biodiversity, including key habitat for rare or threatened species and communities, and strategically valuable biodiversity sites.

Strategically plan for the protection and conservation of Victoria’s important areas of biodiversity.

Ensure that decision making takes into account the impacts of land use and development on Victoria’s biodiversity, including consideration of:

- Cumulative impacts.
- Fragmentation of habitat. ...

Avoid impacts of land use and development on important areas of biodiversity.

...

Assist in the identification, protection and management of important areas of biodiversity. ...

Policy guidelines:

Consider as relevant:

- State biodiversity information maintained by the Department of Environment, Land, Water and Planning.

Policy documents:

- *Protecting Victoria’s Environment – Biodiversity 2037* (Department of Environment, Land, Water and Planning, 2017)

- *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017)
- Any applicable biodiversity strategies, including the relevant Regional Catchment Strategy (prepared under Part 4 of the *Catchment and Land Protection Act 1994*)”

Clause 12.01-2S *Native vegetation management* which includes the following:

Objective

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.

Strategies

Ensure decisions that involve, or will lead to, the removal, destruction or lopping of native vegetation, apply the 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):

- Avoid the removal, destruction or lopping of native vegetation.
- Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.
- Provide an offset to compensate for the biodiversity impact from the removal, destruction or lopping of native vegetation.

Policy guidelines

Consider as relevant:

- State biodiversity information maintained by the Department of Environment, Land, Water and Planning.

Policy documents

Consider as relevant:

- *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017)
- *Assessor’s handbook – applications to remove, destroy or lop native vegetation* (Department of Environment, Land, Water and Planning, 2017)

The amendment is consistent with the Local Planning Policy Framework as follows

Clause 21.05 *NATURAL ENVIRONMENT ...*

Clause 21.05-3 *Biodiversity*

Objective

To protect, maintain and enhance the biodiversity of the municipality.

Strategies

- Ensure that land use and development minimises the fragmentation of areas native vegetation and other habitats.
- Ensure habitats of indigenous species are protected from the impacts of land use and development.

Clause 21.11 *ARMSTRONG CREEK URBAN GROWTH AREA*

Clause 21.11- 2 *Objectives*

- To protect and enhance the natural environmental features and cultural heritage values of the Armstrong Creek area and provide a distinct urban character and green setting.

Alignment to City Plan

The Amendment supports the Sustainable Built and Natural Environment strategic directions of City Plan.

Conflict of Interest

No Council officer involved in the preparation of this report has any direct or indirect interest, in accordance with Section 80(c) of the Local Government Act.

Risk Assessment

There are no notable risks associated with implementing the recommendation contained in this report.

Environmental Implications

The proposed Amendment C399ggee will facilitate the assessment of any proposed offset requirements associated with applications for the removal of native vegetation.