



Department of Environment, Land, Water & Planning

Our ref: SP461162
Your ref: PP169/2017-1

22 August 2018

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Ms Dalia Cook
Panel Chair
Apollo Bay Tourism Resort Panel
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Dear Ms Cook

PLANNING APPLICATION: PP169/2017-1
PROPOSAL: Use and development of the land as residential hotel and leisure and recreation (wellness centre and swimming pool)
ADDRESS: 275 Barham River Road Apollo Bay

Further to the Panel's Directions and my Request to be Heard form in respect of this application, I wish to clarify some matters and withdraw my request to be heard.

I represent the Environment portfolio interests of DELWP (DELWP Environment) in relation to this application. I have reviewed the amended application details circulated in July 2018, in particular the "*Final Report (Updated) Biodiversity Assessment:275 Barham River Road, Apollo Bay*" (Ecology and Heritage Partners Pty Ltd May 2018)

The circumstances of the application are consistent with the Transitional provisions set out in Clause 52.17-6 in the Colac Otway Planning Scheme, in that the application was initially lodged prior to 12 December 2017, being the date that amendment VC138 which introduced those Transitional provisions was gazetted. Accordingly the application must be assessed in accordance with the form of Clause 52.17 that immediately predated gazettal of VC138. That form of Clause 52.17 references the "*Permitted clearing of native vegetation – Biodiversity assessment guidelines*" (DEPI 2013).

The application as amended includes removal of 2.795 hectares of Remnant Patch native vegetation, located within Location Risk Area C, meaning the application must follow the "Moderate risk-based pathway".

DELWP notes that VC138 did not introduce transitional provisions to Clause 66.02-2, and accordingly as the application is not in the "Detailed assessment pathway" as defined in the "*Guidelines for the removal, destruction or lopping of native vegetation*" (DELWP 2017), as no property vegetation plan is applied to the site, and as the site is not Crown land, Clause 66.02-2 does not make the Secretary of DELWP a referral authority for this application.

Nevertheless, to assist the Panel, I provide recommended conditions below taken from the suite of standard permit conditions contained in the "*Biodiversity assessment handbook – Permitted clearing of native vegetation*" (DEPI May 2015 – Version 1.0) .

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DELWP Environment has also considered the above application in accordance with Section 52 of the *Planning and Environment Act 1987*. The site is partly affected by schedule 3 to the Environmental Significance Overlay in the Planning Scheme. DELWP Environment has no comments to make in connection with ESO3.

I also confirm that the Section 52 Notice provision to the Western Coastal Board set out in Clause 66.06 in the planning scheme in respect of the application being made under Schedule to 3 to the Significant Landscape Overlay is inoperative. The Regional Coastal Boards were established in accordance with the *Coastal Management Act 1995*, but no longer exist under the provisions of the *Marine and Coastal Act 2018*.

DELWP Environment does not object to the granting of the planning permit and recommends that the Panel includes the following conditions, or similar, in any recommendation to issue a permit:

1. Before works start, the permit holder must advise all persons undertaking the vegetation removal or works on site of all relevant permit conditions and associated statutory requirements or approvals.
2. Before works start, a native vegetation protection fence must be erected around all remnant patches and trees to be retained on site. This fence must be erected around the remnant patch at a minimum distance of 2 metres from retained native vegetation and/or at a radius of $12 \times$ the diameter at a height of 1.3 metres to a maximum of 15 metres but no less than 2 metres from the base of the trunk of any tree to be retained. The fence must be constructed of chain mesh or similar to the satisfaction of the responsible authority. The fence must remain in place until all works are completed to the satisfaction of the responsible authority.
3. Except with the written consent of the responsible authority, within the area of native vegetation to be retained and any tree protection zone associated with the permitted use and/or development, the following is prohibited:
 - a. vehicular or pedestrian access
 - b. trenching or soil excavation
 - c. storage or dumping of any soils, materials, equipment, vehicles, machinery or waste products
 - d. entry and exit pits for underground services
 - e. any other actions or activities that may result in adverse impacts to retained native vegetation.
4. A general offset of 0.500 general biodiversity equivalence units with the following attributes:
 - be located within the Corangamite Catchment Management Authority boundary or Colac Otway municipal district
 - have a strategic biodiversity score of at least 0.529.
5. Before any native vegetation is removed, evidence that the required offset for the project or stage has been secured must be provided to the satisfaction of responsible authority. The offset evidence can be:
 - a security agreement signed by both parties, to the required standard, for the offset site or sites, including a 10 year offset management plan and/or

- an allocated credit extract from the Native Vegetation Credit Register.
6. 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.
 7. In the event that a security agreement is entered into as per the preceding condition, the applicant must provide the annual offset site condition report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.
 8. Unless otherwise agreed in writing by the Country Fire Authority and the Department of Environment, Land, Water and Planning, offsets must not be located within the 150 metre BMO assessment area in accordance with the *Planning for Bushfire Victoria, Guidelines for Meeting Victoria's Bushfire Planning Requirements* (CFA 2012).

In the circumstances that DELWP Environment is not a referral authority, does not object to the issue of a permit, and that the native vegetation removal component of the application can be addressed via the standard conditions indicated, DELWP Environment now does not propose to attend the hearing, and withdraws its Request to be heard.

If you have any queries regarding this matter, please contact me on telephone (03) 5226 4693.

Yours sincerely



Geoff Brooks

Program Manager Planning Approvals
Barwon South West Region