



Colac Otway
SHIRE

PLANNING COMMITTEE MEETING

AGENDA

Wednesday 13 July 2022

at 4:00 PM

COPACC

95 - 97 Gellibrand Street, Colac



COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

Wednesday 13 July 2022

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COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

NOTICE is hereby given that the next **PLANNING COMMITTEE MEETING OF THE COLAC OTWAY SHIRE COUNCIL** will be held at COPACC on Wednesday 13 July 2022 at 4:00 PM.

AGENDA

1 DECLARATION OF OPENING OF MEETING

OPENING PRAYER

Almighty God, we seek your blessing and guidance in our deliberations on behalf of the people of the Colac Otway Shire. Enable this Council's decisions to be those that contribute to the true welfare and betterment of our community.

AMEN

2 PRESENT

3 APOLOGIES AND LEAVES OF ABSENCE

4 WELCOME AND ACKNOWLEDGEMENT OF COUNTRY

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past, present and emerging and welcomes any descendants here today.

RECORDING AND PUBLICATION OF MEETINGS

Please note: Planning Committee meetings are live streamed and recorded when the meeting is held either at COPACC or online. This includes the public participation sections of the meetings. When meetings are held in other locations, Council will endeavour to make an audio recording of the meeting for community access. Matters identified as confidential items in the Agenda will not be live streamed or recorded regardless of venue of mode.

By participating in open Planning meetings, individuals consent to the use and disclosure of the information they share at the meeting (including any personal and/or sensitive information).

As soon as practicable following each open Planning Committee meeting, the live stream recording will be accessible on Council's website. Recordings are also taken to facilitate the preparation of the minutes of open Council and Planning Committee meetings and to ensure their accuracy. Recordings will be retained by Council for a period of four years.

As stated in the Governance Rules, other than an official Council recording, no video or audio recording of proceedings of Council Meetings will be permitted without specific approval by resolution of the relevant Planning Meeting.

This meeting will be livestreamed to the public via Council's YouTube channel (search Colac Otway Shire Council at www.youtube.com).

5 DECLARATIONS OF INTEREST

A Councillor who has declared a conflict of interest, must leave the meeting and remain outside the room while the matter is being considered, or any vote is taken.

6 CONFIRMATION OF MINUTES

- **Scheduled Planning Committee meeting held on 8 June 2022.**
- **Unscheduled Planning Committee meeting held on 29 June 2022.**

RECOMMENDATION

That the Planning Committee confirm the minutes of the:

- 1. Scheduled Planning Committee meeting held on 8 June 2022.***
- 2. Unscheduled Planning Committee meeting held on 29 June 2022.***

7 VERBAL SUBMISSIONS FROM APPLICANTS/OBJECTORS

The Mayor is to read out the names of those applicants and objectors who have confirmed in writing that they wish to make a verbal submission. These verbal submissions will be made in relation to each respective agenda item and must be directly relevant to the respective agenda item. A time limit of five minutes will apply.

Item: 8.1

PP301/2022-1 - 5-7 Skene Street Birregurra - Removal of Vegetation (3 Trees)

ADDRESS AND PROPERTY DETAILS	5-7 Skene Street BIRREGURRA Lot 2 PS: 833731 V/F: 12321/292 Parish of Birregurra	APPLICATION NUMBER	PP301/2021-1
PROPOSAL	Removal of Three (3) Trees		
PERMIT TRIGGERS	Clause 42.02 (VPO3): a planning permit is required for tree removal		
TRIGGER FOR DETERMINATION BY COMMITTEE	More than three (3) objections received		
ZONE	Township Zone (TZ)	OVERLAYS	Vegetation Protection Overlay, Schedule 3 (VPO3) - Birregurra Tree Protection Area Heritage Overlays: HO98 - Catholic Church and Presbytery, 5-11 Skene Street HO304 –Birregurra Church Precinct, Birregurra Design and Development Overlay, Schedule 13 (DDO13) - Birregurra Preferred Character Area C (Roadknight Street Entry and South of Main Street)
COVENANTS	No		

Item: 8.1

PP301/2022-1 - 5-7 Skene Street Birregurra - Removal of Vegetation (3 Trees)

CULTURAL HERITAGE The subject site is in an area of cultural heritage sensitivity; however, tree removal is not a high impact activity under the *Aboriginal Heritage Regulations 2018*.

OFFICER Vikram Kumar **GENERAL MANAGER** Ian Seuren

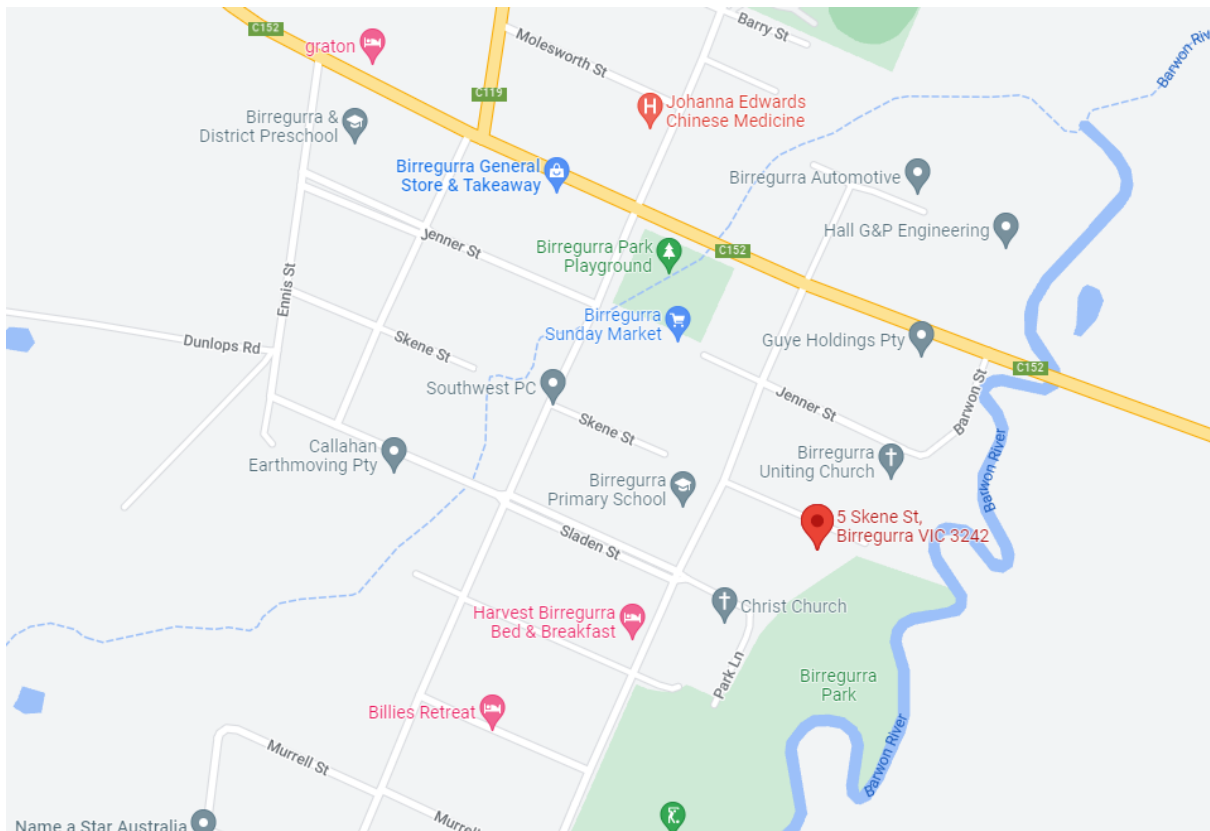
DIVISION Development and Community Services

ATTACHMENTS

1. Site Plan [8.1.1 - 1 page]
2. Draft Conditions if Permit Issued - Not Officer Recommendation [8.1.2 - 1 page]

1. LOCATION PLAN / AERIAL PHOTO

LOCATION PLAN



AERIAL PHOTO



2. RECOMMENDATION

That the Planning Committee resolves to Refuse to Grant a Permit for the removal of three (3) trees at 5-7 Skene Street, Birregurra (Lot 2 PS: 833731 V/F: 12321/292), on the following grounds:

- 1. The proposed removal of three established mature trees, which are in a publicly prominent location and could be retained with pruning, would be detrimental to the character of the area. As such, the proposed tree removal is contrary to the objectives of the Vegetation Protection Overlay, Schedule 3 (Birregurra Tree Protection Area) and of Clause 11.03-6L of the Colac Otway Planning Scheme, which seek to protect tree vegetation for its aesthetic value and its contribution to the landscape character of Birregurra, and to encourage the retention of trees where possible.***

3. PROPOSAL

The application seeks a planning permit for the removal of three large, non-native pine trees. These trees are located along the eastern boundary of the site, in the locations highlighted on the aerial image below:

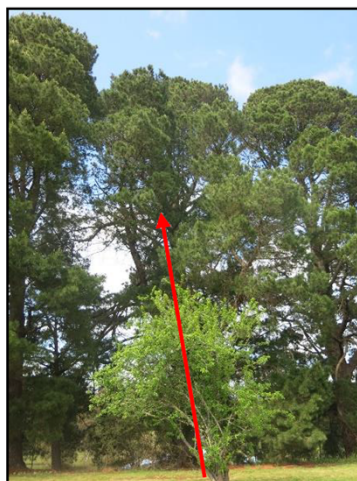


Fig. 1 – Site plan

Below are photographs of the trees proposed to be removed:



(#5) Tree 1



(#6) Tree 2



(#7) Tree 3

The applicant has advised that the reason for the removal of these trees is that *“the pine trees in their current condition pose a significant risk to the public (as noted in the arborist report) and a significant fire danger”*.

The applicant has also advised that it is intended to re-vegetate the site and said that a designer would be engaged to prepare a master plan for the site. The applicant stated that it is proposed to *“replace pine trees with advanced trees to a minimum of 2 metres in height selected for their low flammability and low retention of dead foliage”*.

4 SUBJECT LAND & SURROUNDINGS

The subject site is located within the Township Zone (TZ) of Birregurra, and is known as 5-7 Skene Street (Lot 2 PS: 833731 V/F: 12321/292 Parish of Birregurra). The site has a total area of 2282sqm.

The site is occupied by a dwelling, which was formerly a Presbytery. To the immediate west of the site is the church with which the dwelling on the subject site was previously associated. To the east is a golf course, which abuts the boundary on which the trees are located. Surrounding lots are occupied by dwellings, with a couple of other churches in the vicinity also abutting the golf course.

A path, along which there is public access, and picnic benches are located near the eastern boundary of the subject site, as shown in the photographs from the submitted Arborist Report below:



(Photo #1) Subject site, Tree 1 and public footpath viewed from the north



(#3) Public footpath viewed from the north



(#4) Public footpath, garden and picnic benches underneath the trees' canopies.

5. PLANNING SCHEME PROVISIONS

Planning Policy Framework

The Planning Policy Framework (PPF) seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development policies. The key policy considered relevant to the application is Clause 11.03-6L (Birregurra). This policy seeks, inter alia, to protect the landscape character and view lines of town entrances as defining elements of the north, east and west gateways, and to protect the town's significant and contributory heritage places.

Another policy worth noting is Clause 12.02-1S (Protection of Biodiversity), which seeks to protect and enhance Victoria's biodiversity, including supporting land use and development that contributes to protecting and enhancing habitat for indigenous plants and animals in urban areas.

Clause 15.03-1S (Heritage Conservation) is also of relevance, given the heritage overlay/s (see discussion below) affecting the site. This policy seeks, inter alia, to ensure an appropriate setting and context for heritage places is maintained or enhanced.

Zone

The subject site is in the Township Zone (TZ). A planning permit is not required for the removal of trees under the provisions of the zone.

Overlay

Vegetation Protection Overlay, Schedule 3 (VPO3) - Birregurra Tree Protection Area

The subject site is covered by Vegetation Protection Overlay, Schedule 3 (VPO3). A key purpose of this overlay is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To protect areas of significant vegetation.*
- *To ensure that development minimises loss of vegetation.*
- *To preserve existing trees and other vegetation.*
- *To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.*
- *To maintain and enhance habitat and habitat corridors for indigenous fauna.*
- *To encourage the regeneration of native vegetation.*

Vegetation protection objectives to be achieved under this VPO3 are:

- *To protect tree vegetation for its aesthetic value and its contribution to the character of Birregurra.*
- *To encourage the retention of trees where possible and the planting of new canopy trees and understorey vegetation.*

The statement of nature and significance of vegetation to be protected under VPO3 states:

“Both native and exotic trees are significant to Birregurra as they contribute to a strong landscape presence that is integral to the rural character of the area.”

Under the provisions of this overlay, a planning permit is required for tree removal.

Of note is the fact that a planning permit is not required for *“pruning of trees to maintain or improve health, safety or structure”*.

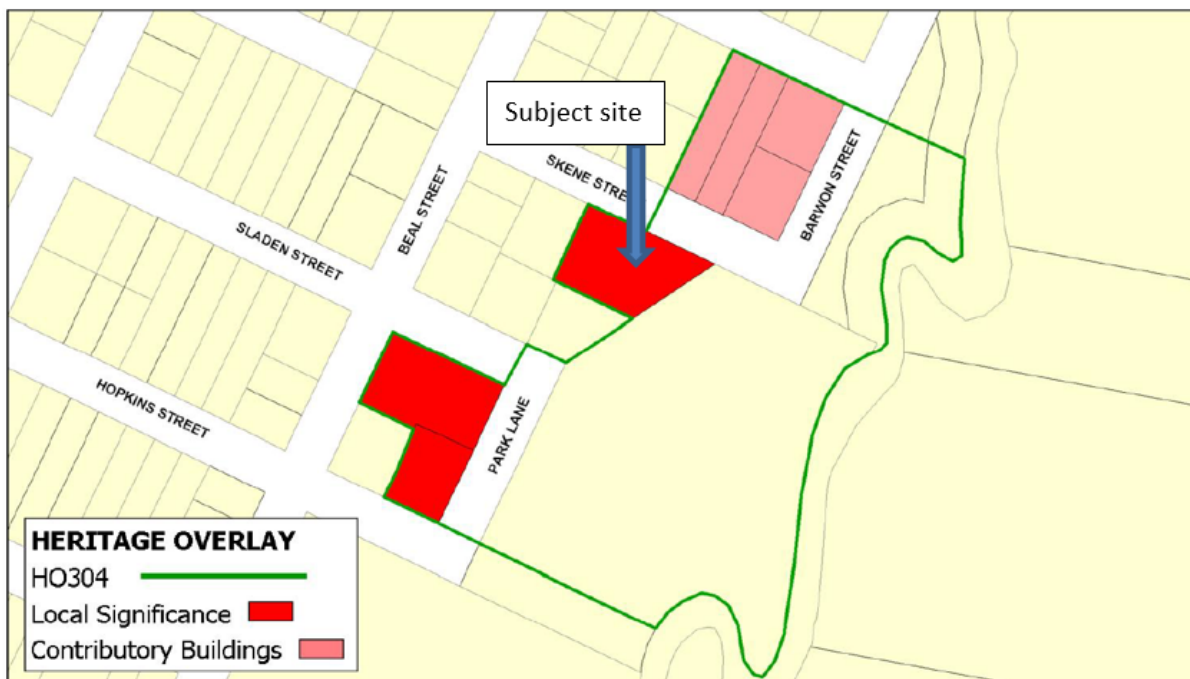
Heritage Overlays

HO98 - Catholic Church and Presbytery, 5-11 Skene Street, Birregurra

HO304 – Birregurra Church Precinct, Birregurra

The subject site itself is covered by Heritage Overlay HO98. There are no tree controls under HO98 and, as such, no permit trigger for tree removal under this overlay.

It is not clear whether HO304 covers the site or not. In the *Colac Otway Heritage Study 2003*, the subject site is identified as being within the Birregurra Church Precinct, as shown on the plan from the study below:



Tree controls apply under HO304, with the requirement for a planning permit for the removal of trees.

Whilst shown on the plan above, and whilst it would appear logical that the site is included in the overlay given the historic use of the dwelling as a presbytery for the adjacent church, neither Council's, nor the Department of Environment, Land, Water and Planning's (DELWP's), mapping systems show the subject lot as being within HO304. Council's Heritage Advisor was contacted about this, but was not able to clarify the anomaly. However, the Heritage Advisor noted that, if it was determined by Council that a planning permit is required under HO304 and a permit is issued, details should be required of the replacement trees.

Given the Heritage Advisor did not object in principle to the proposed tree removal, the issue of whether the site is covered by HO304 does not have a significant impact on the decision in this case. In the event that a permit is issued against the recommendation in this report, details of the replacement trees would be required by permit condition. Those details would be assessed by the Heritage Advisor, ensuring any replacement trees would be acceptable from a heritage perspective.

The anomaly with the HO304 coverage has been flagged to the Strategic Planning team.

Other relevant provisions

There are no particular provisions relevant to this application.

Relevant Planning Scheme amendments

Not applicable.

6. REFERRALS

Internal Referrals

The application was referred to Council's Environment Unit, and the Parks and Gardens Unit.

The Environment Unit does not support removal of the trees. The Parks and Gardens Unit, following a site visit, agreed with the recommendation of the submitted Arborist Report that the trees be trimmed.

As outlined earlier in this report, the application was also discussed with Council's Heritage Advisor.

External Referrals

Not required.

7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application in the form of a site notice and letters to adjoining landowners/occupiers.

Six (6) objections were received, raising the following concerns:

- The trees are an integral part of the overall amenity of the Birregurra landscape and provide valuable shelter and shade for people using the trail to admire the historic buildings including the three churches and their accompanying houses. The trees contribute significantly to the amenity of the Heritage Walk and the Golf Course which is adjacent to the trees. They are an intrinsic part of the town's settlement heritage.
- The removal of these pine trees would leave a gaping hole in this attractive landscape.
- The trees are a valuable resource for birds, with a family of white-faced herons.
- The arborist's report recommends judicious trimming, not removal.
- The applicant references the Colac Otway Heritage Study (Vol II) and lists the St. Peter's Catholic Church and Presbytery (HO98) noting that tree protection is not included; however, it is clear from the same study that the trees are protected under the Birregurra Church Precinct citation (HO304). This specifically refers to the "mature exotic plantings". There is also reference to the "architectural and aesthetic importance" of the church buildings and exotic plantings.
- Pine trees were one of the most popular trees planted for shade and shelter more than 100 years ago. They were planted for their beauty, their strength and shade and were a fond reminder for many early Victorians of countries left far behind on the other side of the world.
- The three pine trees are on the eastern boundary of the property, with overshadowing in the mornings and, as such, the trees do not block the north-easterly to westerly light, nor will they prevent prevailing rainfall coming mostly from the west to south west.

8. OFFICER'S ASSESSMENT

The key issue for consideration with this application is whether the proposal complies with the objectives of both Schedule 3 to the Vegetation Protection Overlay and of clause 11.03-6L.

The application included an Arborist's Report which advises that, with trimming, any risk from the trees could be reduced to an acceptable level. The report notes the current status of each tree and makes specific recommendations in relation to each, as set out below:

“Tree 1:

- *The tree poses a Tolerable risk of harm.*
- *Prune tree to further reduce the risk of harm.*
- *Remove any major deadwood, >50mm ø which overhangs the public footpath.*
- *Work is to comply with AS4373-2007 ‘Pruning of amenity trees’ and completed by a suitably qualified arborist (min. AQF Level 3).*
- *A VPO3 permit is not required for pruning work of this nature.*
- *Once work is complete, the tree will pose a Broadly Acceptable risk of harm.*

Tree 2:

- *The tree poses an Unacceptable risk of harm.*
- *Prune tree to reduce the risk of harm.*
- *Remove any major deadwood, >50mm ø. which overhangs the public footpath or picnic area.*
- *Remove hanging limbs which are retained within the canopy.*
- *Reduce any long lateral limbs (max. 30%) which overhang the public footpath.*
- *Work is to comply with AS4373-2007 ‘Pruning of amenity trees’ and completed by a suitably qualified arborist (min. AQF Level 3).*
- *A VPO3 permit is not required for pruning work of this nature.*
- *Once work is complete, the tree will pose a Broadly Acceptable risk of harm.*

Tree 3:

- *The tree poses a Tolerable risk of harm.*
- *Prune tree to further reduce the risk of harm.*
- *Remove any major deadwood, >50mm ø. which overhangs the public footpath or picnic area.*
- *Reduce any long lateral limbs (max. 30%) which overhang the public footpath.*
- *Work is to comply with AS4373-2007 ‘Pruning of amenity trees’ and completed by a suitably qualified arborist (min. AQF Level 3).*
- *A VPO3 permit is not required for pruning work of this nature.*
- *Once work is complete, the tree will pose a Broadly Acceptable risk of harm.*

Note - Although removal has not been recommended, if this is to be considered, the whole group should be removed, not just any one individual. The changed wind exposure by the removal of a single tree within this group is likely to increase the probability of canopy or whole tree failure of remaining trees to an unacceptable level. “

Given the advice from the Arborist, it is considered that, if it is determined that the trees provide a valuable contribution to the landscape character of the town, it would be difficult to argue that their removal would accord with the objectives of VPO3. As noted above, VPO3 seeks to preserve existing trees and other vegetation, for its aesthetic value and its contribution to the character of Birregurra, and encourages the retention of trees where possible. The VPO3, which seeks to protect exotic as well as native vegetation, also includes a specific exemption that allows the “*pruning of trees to maintain or improve health, safety or structure*”. This would allow necessary maintenance works to be carried out at any time by the landowner without the need for planning permission.

To determine the contribution that the trees make to the character of this part of Birregurra, a site visit was undertaken. The visibility and significance of the trees in question was assessed from various viewpoints in the area, as identified below:









As shown in the photographs above, the trees are visible from Skene Street, Beal Street, Sladen Street, Park Lane and Jenner Street. Given the size, maturity and visibility of the trees, it is considered that their removal would change the existing character of the area.

Given the advice in the submitted Arborist's Report, as quoted above, it is considered that the proposal would fail to meet the following application requirement of section 4 of Schedule 3 to the VPO:

“Demonstration that the removal, destruction or lopping has been reduced to the minimum extent that is reasonable and practicable.”

As such, the proposal is not considered acceptable in terms of the requirement of the provisions of VPO3.

The application was referred to the Council's Environment Unit, which commented as follows:

“The planning application report states that the pine trees in their current condition pose a significant risk to the public (as noted in the attached arborist report) and a significant fire danger.

The trees are located more than 10 metres from the existing dwelling and no other supporting documentation has been provided on their significant fire risk.

The arborist report states that the three trees do pose some safety concerns, but can be pruned to manage the risk and it does not recommend their removal.

These trees in my opinion would significantly contribute towards the landscape and overall character of the township as per VPO3 and their removal should be refused on these grounds.”

It is noted that the planning property report for this site shows the subject site is not in a bushfire prone area:



As part of the assessment process, the application was also referred to the Council’s Parks and Gardens Unit, which agreed that trimming of the pine trees is required if removal is not supported by the consulting arborist and Council officers. It was noted that the trees require broken limbs to be trimmed, and also limbs that are hanging very low in the private property and public walkway. It was advised that allowing the trimming of these limbs would reduce the risk factor for path and private land users.

As noted above, such pruning would not require a planning permit.

It must be acknowledged that the applicant has proposed planting replacement trees “with advanced trees to a minimum of 2 metres in height selected for their low flammability and low retention of dead foliage”. Had the trees proposed for removal not been so significant in the landscape, and had the Arborist not advised that pruning would reduce risk to an acceptable level, there may have been a stronger argument that the tree removal would not prejudice the objectives of VPO3 and Clause 11.03-6L subject to such replacement planting.

On balance, however, having regard to the contribution the existing trees make to the character of this part of Birregurra, and the recommendations of the Arborist Report, it is considered that the removal of the trees would be contrary to the objectives of VPO3 and Clause 11.03-6L.

9. OFFICER DIRECT OR INDIRECT INTEREST

No officer declared an interest under the *Local Government Act 2020* in the preparation of this report.



5 Skene St
5 Skene St, Birraurra VIC 3242

PP301/2022-1 – 5-7 Skene Street, Birregurra – Draft Conditions (Not Officer Recommendation)

That Council resolves to Grant a Permit for the removal of three (3) trees at 5-7 Skene Street, Birregurra (Lot 2 PS: 833731 V/F: 12321/292), subject to the following conditions:

Endorsed Plans

- 1. The removal of the vegetation must be in accordance with the endorsed plan to the satisfaction of the Responsible Authority.**

Replacement Trees

- 2. Prior to the removal of any tree, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan, which must be drawn to scale with dimensions must show:**

- a) a survey (including botanical names) of all existing vegetation to be retained along the eastern boundary of the site**
- b) a planting schedule of all proposed trees, shrubs and ground covers along the eastern boundary of the site, in the general location of the trees being removed, including botanical names, common names, sizes at maturity, and quantities of each plant,**
- c) a sufficient number of canopy trees (minimum two metres tall when planted), and not less than 3 trees, to ensure that the replacement trees contribute to the character of the area in a similar way to the trees being removed under this permit**

An in-ground irrigation system is to be provided to the trees.

All species selected must be to the satisfaction of the Responsible Authority.

- 3. Within one (1) month of the date of the removal of the three trees allowed by this permit, or by such later date as is approved by the Responsible Authority in writing, the replacement trees shown on the endorsed plans must be planted to the satisfaction of the Responsible Authority. The trees must thereafter be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.**

Protection of Vegetation

- 4. Vegetation removal and disposal must not cause damage to vegetation to be retained, to the satisfaction of the Responsible Authority.**
- 5. Prior to commencement of the vegetation removal, the boundaries of all vegetation stands to be removed and retained must be clearly marked on the ground or marked with tape or temporary fencing to the satisfaction of the Responsible Authority.**

Expiry

- 6. This permit will expire if one of the following circumstances applies:**
 - a) The vegetation removal works have not commenced within two years of the date of this permit.**
 - b) The vegetation removal works have not been completed within four years of the date of this permit.**

In accordance with section 69 of the Planning and Environment Act 1987, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

