



## Department of Energy, Environment and Climate Action

Brimbank City Council  
PO Box 70  
SUNSHINE VIC 3020

Ref: 00006133

[info@brimbank.vic.gov.au](mailto:info@brimbank.vic.gov.au)

Dear Sir/Madam,

**REFERENCE NUMBER:** P0366/2024  
**PROPOSAL:** STAGED SUBDIVISION OF THE LAND WITHIN A ENVIRONMENTAL SIGNIFICANCE OVERLAY, LAND SUBJECT TO INUNDATION OVERLAY, SPECIAL BUILDING OVERLAY AND HERITAGE OVERLAY, DEMOLITION WITHIN A HERITAGE OVERLAY, REMOVAL OF NATIVE VEGETATION; CREATION AND REMOVAL OF EASEMENTS AND, CREATION OF AN ACCESS TO A TRANSPORT 2 ZONE ROAD  
**ADDRESS:** 179 TILBURN ROAD, DEER PARK

Thank you for your correspondence received 3 September 2024 referring the above application to the Department of Energy, Environment and Climate Action (DEECA) (the Department) pursuant to Section 55 of the *Planning and Environment Act 1987* (the Act). Further information was requested 23 September 2024 and a response received 13 January 2025.

The application includes a staged subdivision of the land and native vegetation removal, generally in accordance with the approved Development Plan for the site (The Deer Park Development Plan, prepared by Urbis on behalf of HB+B Property, application P392/2023 considered by Brimbank City Council for the approval 21 August 2024). The subject land is within the Commercial 2 Zone and subject to the Environmental Significance Overlay – Schedule 4, Heritage Overlay, Environmental Audit Overlay, Land Subject to Inundation Overlay, Development Contributions Plan Overlay – Schedule 2 and Development Plan Overlay – Schedule 16 of the Brimbank Planning Scheme.

The Department is a recommending referral authority under Section 55 of the Act, with the specific referral trigger being Clause 66.02-2 (Native Vegetation) of the Brimbank Planning Scheme to remove, destroy or lop native vegetation in the Detailed Assessment Pathway

### **No Objection – subject to conditions (s56(1)(b)(2))**

The Department has considered the proposal as a referral authority pursuant to Section 55 of the Act and has no objection to the planning permit application, subject to the following conditions and permit notes being included as part of any planning permit issued:

#### **Native vegetation permitted to be removed, destroyed or lopped**

1. The native vegetation identified in Native Vegetation Report (NVR) ID 308\_20241129\_8OL and permitted to be removed, destroyed or lopped under this permit is 2.818 hectares of native vegetation, which is comprised of:
  - a) 2.436 hectares of native vegetation within patches
  - b) 1 scattered large tree
  - c) 3 scattered small trees
  - d) 0.234 hectares of past removal, comprising of 4 large, scattered trees.

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## Native vegetation offsets

2. To offset the removal of 2.818 hectares of native vegetation, the permit holder must secure a native vegetation offset in accordance with [Guidelines for the removal, destruction or lopping of native vegetation \(DELWP 2017\)](#), the permit holder must secure the following offsets:
  - a) A general offset of 0.1660 general habitat units:
    - i. located within the Melbourne Water Catchment Management boundary or Brimbank City municipal area
    - ii. with a minimum strategic biodiversity value of at least 0.3978, and
  - b) Species offset(s) of 1.099 species habitat units for Growling Grass Frog (*Litoria raniformis*) (13207).
  - c) The offset(s) secured must provide protection of at least 1 large tree.

## Offset evidence

3. Before any native vegetation is removed, evidence that the required offset by this permit has been secured must be provided to the satisfaction of the responsible authority.

This evidence must be 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,
  - i) If a security agreement is entered into, 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 a statutory authority.
- 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.

## Notification of permit conditions

4. 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.

## Construction management plan

5. Before any native vegetation removal starts, 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 form part of this permit.
6. The plans must include:
  - a) a detailed description of the measures to be implemented to protect the native vegetation to be retained during construction works, and the person/s responsible for implementation and compliance. These measures must include the erection of a native vegetation protection fence around all native vegetation to be retained on site, to the satisfaction of the responsible authority, including the tree protection zones of all native trees to be retained. All tree protection zones must comply with AS 4970-2009 *Protection of Trees on Development Sites*, to the satisfaction of the responsible authority.
  - b) a detailed description of the measures to be implemented to protect Kororoit Creek during construction works, and the person/s responsible for implementation and compliance. These measures must include the boundary fencing and sediment fencing around the designated buffer zone.
  - c) an amended site plan, drawn to scale with dimensions and georeferences (such as VicGrid94 co-ordinates), that clearly shows:
    - i. the location and identification of the land affected by this permit, including standard parcel identifiers for freehold land

- ii. the location and area of all native vegetation present, including scattered trees, that are permitted to be removed under this permit
- iii. all areas of native vegetation to be retained
- iv. the designated Kororoit Creek buffer area

#### **Protection of patches of native vegetation and scattered trees to be retained**

7. Before works start, a native vegetation protection fence must be erected around all patches of native vegetation and scattered trees to be retained on site. This fence must be erected around the patch of native vegetation at a minimum distance of 2 metres from retained native vegetation and/or at a radius of 12 × 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 tree. The fence must be constructed of star pickets/chain mesh/or similar and must remain in place until all works are completed to the satisfaction of the responsible authority.
8. Except with the written consent of the responsible authority, within the buffer zone of Kororoit Creek, areas 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.

#### **Conservation Management Plan**

9. *The Growling Grass Frog Conservation Management Plan (GGFCMP)* (Nature Advisory, 2024) must be endorsed and implemented to the satisfaction of the responsible authority and Melbourne Water.
  - a) Revegetation works must align with the relevant standards in the *Growling Grass Frog Habitat Design Standards* (DELWP 2017) to the satisfaction of the responsible authority.
  - b) Water quality parameters as per the *Growling Grass Frog Habitat Design Standards* (DELWP 2017) must be monitored at sufficient frequency during construction to ensure the objectives of the *Growling Grass Frog Conservation Management Plan (GGFCMP)* (Nature Advisory, 2024) are maintained, to the satisfaction of the responsible authority.

#### **Wildlife**

10. A suitably qualified wildlife handler or zoologist is to be present when felling trees/removing native vegetation, to ensure affected wildlife is not harmed. If displaced wildlife that cannot be relocated on site to an appropriate location away from the construction footprint, or injured wildlife is captured, please contact DEECA on 136 186 for further advice.

#### **Permit Notes**

1. The granting of this permit does not exempt the holder of a permit from the requirements of other Commonwealth and State legislation or policy.
2. Landowners remain responsible for managing risks to wildlife on their land and for ensuring that management actions do not contravene the *Wildlife Act 1975 (Wildlife Act)* and *Prevention of Cruelty to Animals Act 1986*. To obtain an Authority to Control Wildlife or further information on obligations and approvals under the Wildlife Act, please contact DEECA's Office of the Conservation Regulator on: [atcw.portphillipregion@deeca.vic.gov.au](mailto:atcw.portphillipregion@deeca.vic.gov.au)
3. Threatened fauna detected within the site that are proposed to be relocated beyond 100 metres of the capture location must obtain separate approval under the Wildlife Act. To apply for approval to translocate threatened fauna or for further information, please contact DEECA's Translocation Evaluation Panel on: [wildlife.policy@deeca.vic.gov.au](mailto:wildlife.policy@deeca.vic.gov.au)

4. Before any works on public land start, a permit to take protected flora under the Flora and Fauna Guarantee (FFG) Act 1988 may be required. An application can be obtained from [www.deeca.vic.gov.au/conserving-threatened-species/protected-flora-and-listed-fish](http://www.deeca.vic.gov.au/conserving-threatened-species/protected-flora-and-listed-fish), under Protected flora permit. To obtain an FFG permit or further information, please contact a Natural Environment Program officer in the [nep.ppr@delwp.vic.gov.au](mailto:nep.ppr@delwp.vic.gov.au).

## COMMENTS (s56(3))

DEECA is satisfied that the applicant has taken adequate steps to avoid and minimise the proposed native vegetation removal, and that the required offsets can be secured.

DEECA acknowledges that the planting exemption has been applied to numerous trees across the site. DEECA is satisfied that the NVRP supplied with the application adequately describes the native vegetation to be removed and the offset requirements, should clearing be approved. However, suitable evidence as determined by the responsible authority, must be provided to the responsible authority to support the use of the planting exemption and the removal of identified significant trees.

### Clause 52.17 Native vegetation

The *Flora and Fauna Assessment* (Nature Advisory, December 2024) identifies opportunities to further mitigate impacts to native vegetation, specifically the FFG-Act listed Glaucous Flax-lily (*Dianella longifolia* var. *grandis* s.l.). This includes a recommendation to “Conduct a preconstruction flora salvage survey of the site to salvage the Glaucous Flax-lily (for translocation to Victorian Indigenous Nurseries Co-Operative (VINC) nursery) and any other found on the site and if deemed useful collect seed from the native species in the Natural Temperate Grassland of the Victorian Volcanic Plain (NTG VVP) patches”.

DEECA is satisfied compliance with the above-mentioned statement demonstrates adequate steps to avoid and minimise the proposed native vegetation removal.

### Wildlife Act 1975

Actions prescribed in Appendix 2 of the *Growling Grass Frog Conservation Management Plan* (GGFCMP) (Nature Advisory, December 2024) specify actions for the salvage and relocation of Growling Grass Frog, to be undertaken by a suitably qualified individual, licensed by DEECA (under the Wildlife Act). Management Authorisations presently require the authorisation holder to seek advice from DEECA’s Translocation Evaluation Panel (TEP) and to apply for separate permission under the Wildlife Act prior to the relocation of any threatened fauna beyond 100 metres of the capture site. The TEP consider applications for translocation on merit at the time of the application.

There is potential for Growling Grass Frog to be located within the site beyond 100 metres of the proposed release site(s) (Kororoit Creek environs). The responsible authority should ensure an endorsed GGFCMP for the proposal relating to this application complies with the *Procedure statement for translocation of threatened native fauna in Victoria* (DEECA, 2023). This includes seeking advice from the TEP for any incidental finds of threatened fauna beyond 100 metres of a suitable release site in the first instance.

### Water Quality Testing

DEECA acknowledge the GGFCMP prepared by Nature Advisory includes management and protection measures of Kororoit Creek and Growling Grass Frog habitat. It is acknowledged within the GGFCMP that “Testing of water quality upstream and downstream of outfalls (beyond the mixing zone) will be employed to determine the influence of stormwater inputs to Kororoit Creek and whether water quality meets the objectives for water quality as per the Environment Reference Standard 2021 (EPA Victoria 2021).”

DEECA recommends that the water quality parameters are also aligned with those detailed in the *Growling Grass Frog Habitat Design Standards* (DELWP 2017). DEECA recommends that the

frequency of water quality testing and reporting requirements are established to the satisfaction of the responsible authority, to ensure that water quality is maintained during construction periods, so that any deviation from the set parameters can be addressed quickly, to reduce any impacts to the objectives of the GGFCMP.

*Environment Protection and Biodiversity Conservation Act 1999*

DEECA are aware that the proponent has made a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and that a future referral will be made for Stage 3 of the project. DEECA have not been provided details of the final decision of the initial EPBC Act referral but note that the project works for Stage 1 and 2 have been deemed a controlled action. As a result of these referrals, additional conditions may be required under the EPBC Act. DEECA defer to the Commonwealth Department of Climate Change, Energy, Environment and Water (DCCEEW) to determine the requirements of any additional conditions and provide clarification around their implementation.

*Victorian Grassland Earless Dragon (VGED) Habitat Assessment Report*

DEECA has reviewed the *Victorian Grassland Earless Dragon (VGED) Habitat Assessment Report* (Nature Advisory, 2024). The survey effort described in the assessment does not align with the *Survey Guidelines for four Grassland Earless Dragons (Tympanocryptis spp.) of Southeast Australia* (DCCEEW 2024), and therefore cannot conclude that VGED is absent. However, based on the level of historical disturbance and the assessment of habitat characteristics, DEECA is satisfied that there is a low likelihood of presence.

If you have any further questions in relation to this matter, I can be contacted directly at [pe.assessment@deeca.vic.gov.au](mailto:pe.assessment@deeca.vic.gov.au).

Yours sincerely



**TODD PRYSE**

Senior Planning Officer, Planning Services (Central-East)

6 February 2025