

Town Planning Report

Works and Earthworks associated with Informal Outdoor Recreation (Walking Trail) and Vegetation Removal

Berrbang Biik Trail (1000 Steps)

2991 Heidelberg-Kinglake Road & 1 Whittlesea-
Kinglake Road, Kinglake

Prepared by Taylors for
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1.0 Introduction

Taylor's Development Strategists have been engaged by JRKV Pty Ltd c/o Roscorp & Birchmore Group to prepare this report to support an application for works and native vegetation removal associated with informal outdoor recreation in the form of the proposed Kinglake Memorial Trail.

The site is partially located within the Commercial 1 Zone ('C1Z'), partially within the Farming Zone ('FZ') and is subject to the Bushfire Management Overlay ('BMO') pursuant to the provisions of the Murrindindi Planning Scheme ('the Planning Scheme'). The site is also located within a designated bushfire prone area.

This Report outlines the proposed development, provides an assessment against the provisions of the Murrindindi Planning Scheme and expresses our recommendation for a permit to be granted. The following material should also be read in conjunction with this report:

- Bushfire Management Plan prepared by Bushfire Planning North East
- Ecological Impact Assessment prepared by Ranges Environmental
- Landscape Concept Plans prepared by CJ Arms

The primary aspirations of this report are to detail the proposals response to relevant planning policy and statutory requirements.

A permit is required for the following:

- To carry out works pursuant to Clause 34.01-4 of the Planning Scheme.
- For earthworks pursuant to Clause 35.07-4 of the Planning Scheme.
- To carry out works pursuant to 44.06-2 of the Planning Scheme.
- To remove native vegetation pursuant to Clause 52.17 of the Planning Scheme.

1.1 Background

The **Berrbang Biik Trail** (1000 Steps) is a 1.7-kilometre-long walking trail which will be designed and formalised to operate as a tourism attraction within the Kinglake Township, whilst also operating as a memorial for the 2009 Black Saturday Bushfires. The trail has been resolved and divided into six (6) stages to maximise the accessibility and usability for all community members and visitors.

This project is for the community and by the community. Whilst JRKV Pty Ltd are the permit applicants in this instance, and as Council are aware, this project was conceived and is continued to be resolved in consultation with an extensive list of relevant stakeholders who not only represent the community, but also the natural environment, the species that inhabit it and the history of Kinglake.

The trail is aptly named the **Berrbang Biik Trail** (1000 Steps), meaning connection to country in the local Wurundjeri language. This name was discussed workshoped and voted upon in a community and stakeholder engagement meeting held in Kinglake on 15 November 2022.

Our primary focus and aspiration as part of this application to enhance and contribute to the Kinglake and Murrindindi community, as well as visitors to the community. From this project's inception, it has been of

paramount importance to ensure that the community trail is a reflection of the community by virtue of their vital contributions and inputs into the Trail.

There have been two (2) stakeholder and community engagement meetings to date, and there will most definitely be more. At this current stage, the application and development of the material which forms part of this application has been resolved in consultation with and considering inputs from the following individuals, community groups, traditional owners and public authorities:

- To Good Use
- Regional Development Victoria
- U.P.C.C (the landowners)
- Murrindindi Shire Council
- Parks Victoria
- Kinglake SES
- Kinglake CFA
- Bushfire education Foundation
- Rotary Club for Kinglake Ranges
- Tourism North East
- Kinglake Historical Society
- Kinglake Football and Netball Club
- Cheeky Fox Trail
- Kinglake Ranges Neighbourhood House
- Wurundjeri Council
- Taungurung Indigenous Group

The vision for this project is resolved as follows:

“A trail that welcomes locals and visitors to discover a new part of the Kinglake Ranges, creating new experiences that respectfully honour and share past experiences.

Starting in the heart of the Kinglake township at Kinglake Village, the trail has the potential to become a key attractor for regional tourism – complementing the local economy and embracing identified opportunities for new experiences that enhance the local fabric.”

This vision has gone on to inform the following three (3) key considerations most pertinent to a statutory assessment of the proposal:

1. Providing a comprehensive and detailed bushfire and emergency plan.
2. To avoid, minimise or offset the removal of native vegetation where possible.
3. Facilitate the provisions of works, including surface/trail treatments, fencing and signage in appropriate and contextually responsive locations to ensure that significant trees and environs are protected.



Figure 1: Site Aerial Photograph (CJ Arms)

2.0 Subject Site and Surrounds

2.1 Subject Site

The site is generally referred to as 2991 Heidelberg-Kinglake Road & 1 Whittlesea-Kinglake Road, Kinglake and comprises of part of the land formally known as Lots A & B on Plan of Subdivision 823254 ('the site'). We say "partially" in this instance as the entire site is not subject to this application.



Figure 2: Subject Site and Trail Location (Ranges Environmental)

The vast majority of the site is located within the FZ which is reflected by its physical attributes. The site is currently occupied by largely vacant fields with scattered vegetation and densely vegetated and generously sloped areas.

The atypical shape of the site provides two frontages to Heidelberg-Kinglake Road and a single frontage to Whittlesea-Kinglake Road. The total site maintains an approximate land area of 44 hectares, although the area in which this application is limited to is roughly shown in Figure 2 above and more specifically in Figure 5 within Section 3 of this report.

As previously referenced, the site is subject to relatively drastic topographical shifts and contours. Figure 3 below details the extent of the prevailing topography. At the most extreme point, a fall of approximately 160 metres is provided from east to west.

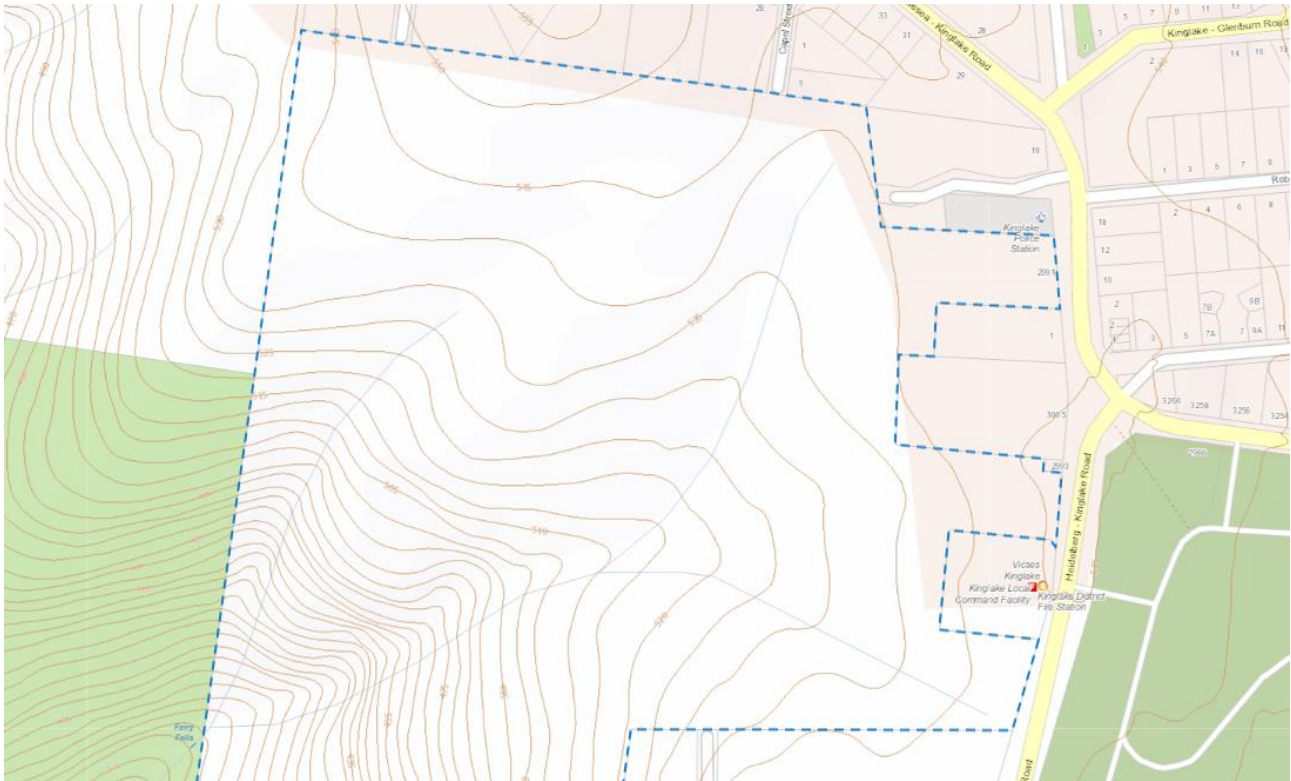


Figure 3: Subject Site Contours (DPCD Planning Maps Online)

Large portions of the proposed trail, detailed in Section 3 of this report, already exist in a formal capacity and operates largely as vehicle paths for the current land owners and managers.

It is intended that the Kinglake Memorial Trail is delivered concurrent with Planning Permit 2019/41 ('the Planning Permit') which was issued on 10 October 2019 by the responsible authority and pertains to the land at 1 Whittlesea-Kinglake Road, Kinglake. The Planning Permit allows the following:

Buildings and works associated with the use of 1 Whittlesea-Kinglake Road, Kinglake (Lot 1 TP 365174/P) and part of 2991 Heidelberg-Kinglake Road, Kinglake (Lot 3 PS 635306J) as a supermarket; food and drink premises; restaurant; office; postal agency; arts and crafts centre and retail premises. Alteration of access to a Road Zone Category 1. Reduction of the number of car parking spaces required. Variation and reduction of bicycle facility requirements.

It is intended that the proposed works associated with the outdoor informal recreation will serve as another attraction within Kinglake and the broader Murrindindi area.

2.2 Surrounding Area

The site immediately abuts an established and evolving commercial area to the east. This includes a variety of commercial and residential land uses, including the future development approved under Planning Permit 2019/41 which will be delivered by our client.

To the north of the site, the property boundaries abut to Kinglake Police Station and a number of other accommodation-based uses and development.

The land abutting the western property boundary is located within the Rural Conservation Zone and contains the land that makes up the Kinglake National Park.

The land abutting the southern property boundary is undeveloped and densely vegetated.

Importantly, we would like to highlight that the proposed works associated with the informal outdoor recreation is largely contained within the centre of the site and away from property boundaries, with the exception of the sites frontage to 1 Whittlesea-Kinglake Road, Kinglake.

Details of the physical context of the site is detailed in Figure 4 below.

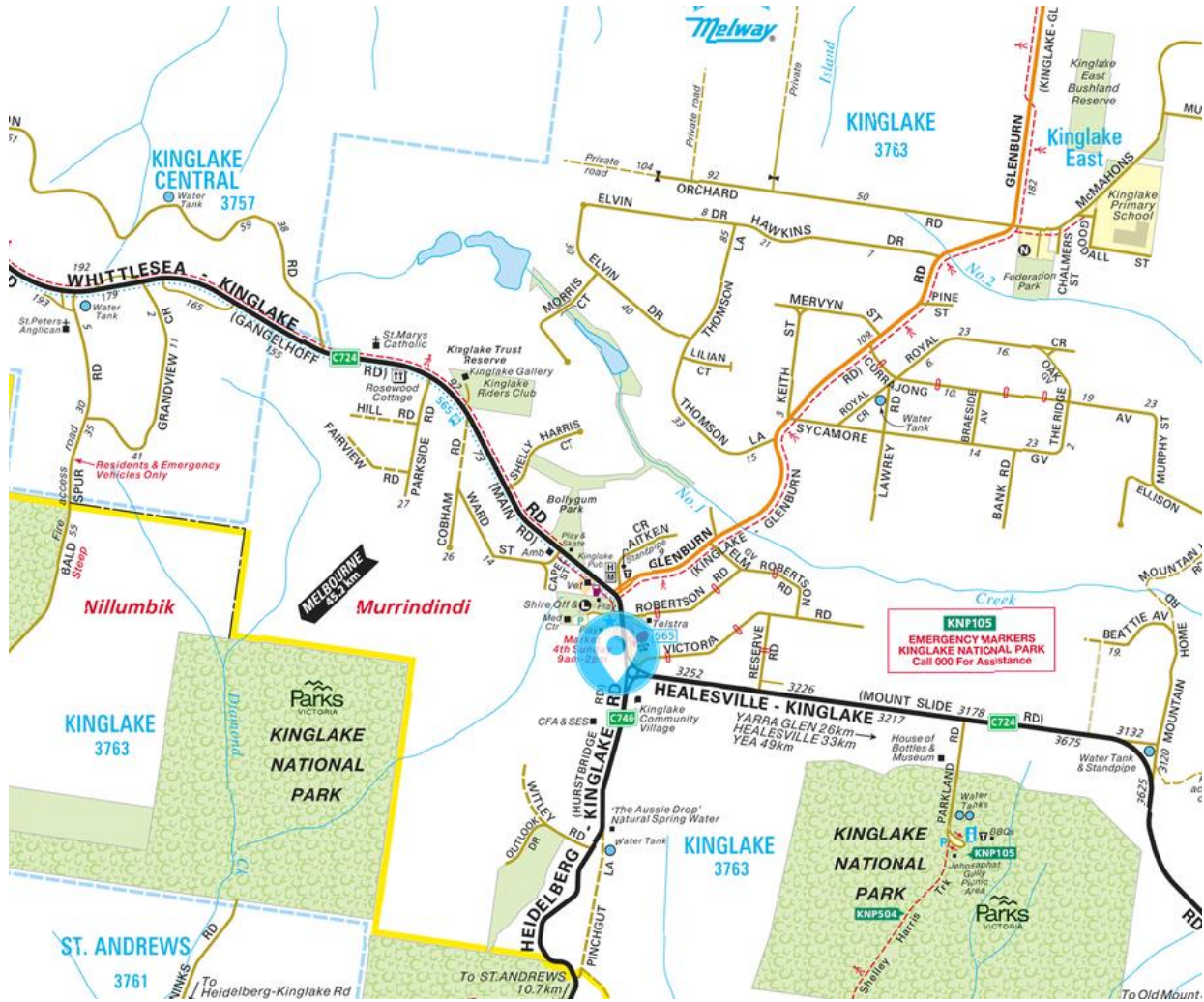


Figure 4: Location Map (melway.com.au)

3.0 Proposal

The trail is broken into six (6) sections. Each section will be identified by a designated theme which will be resolved to reflect the physical and environmental characteristics of each section, or the historical features and attributes of each section. The theme of each section of the trail is still being resolved and will be done so in consultation with relevant stakeholders and the wider community.

When resolved, the key features of the proposed trail will be as follows:

- *An avenue of trees to commemorate the community of volunteers who fought the Black Saturday bushfires.*
- *'The Balcony' lookout point, which overlooks Fairy Falls with views of the Melbourne skyline.*
- *Art and cultural elements and information and signage.*
- *The quarry, smaller falls, and forest.*
- *Opportunities to slow down and listen for the unique calls of the Superb Lyrebird.*
- *Nodes for picnic, incidental play, and storytelling.*

(CJ Arms)

The proposal seeks to establish the use of outdoor informal recreation in the form of a walking trail. The trail already exists in an informal capacity but is not currently to a standard in which members of the public can currently trek.

Whilst the site is currently in private ownership, the permit applicants have entered into a 99-year lease with the current private owners to deliver what will ultimately be a public trail.

The extent of the proposed works, including the trail and surface coverings, fencing, platforms and signage are broadly delineated on the plans to give Council and the public an idea of the intentions of the practical realities of the proposed trail, but to also demonstrate how the proposal will be responsive to and protect the existing native vegetation and environs. One of the mantras and overarching objectives of this proposal and project is to "retain, protect, and avoid". As a result, the siting of the proposed trail has been resolved to meander through the varying topography, around significant native vegetation, natural and historical features.

Importantly, pursuant to Section 3(1) of the *Planning and Environment Act 1987* ('the Act'), works is defined as (inter-alia):

"any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil"

As the proposed changes to the existing conditions on-site to facilitate the delivery of the informal outdoor recreation (memorial walking trail) comfortably fit within the above definition, for the statutory purposes and for the purposes of this application, the changes will constitute "works".

The extent, locations and sections of the proposed trail is set out in the Landscape Concept Report prepared by CJ Arms and is shown below in Figure 5.

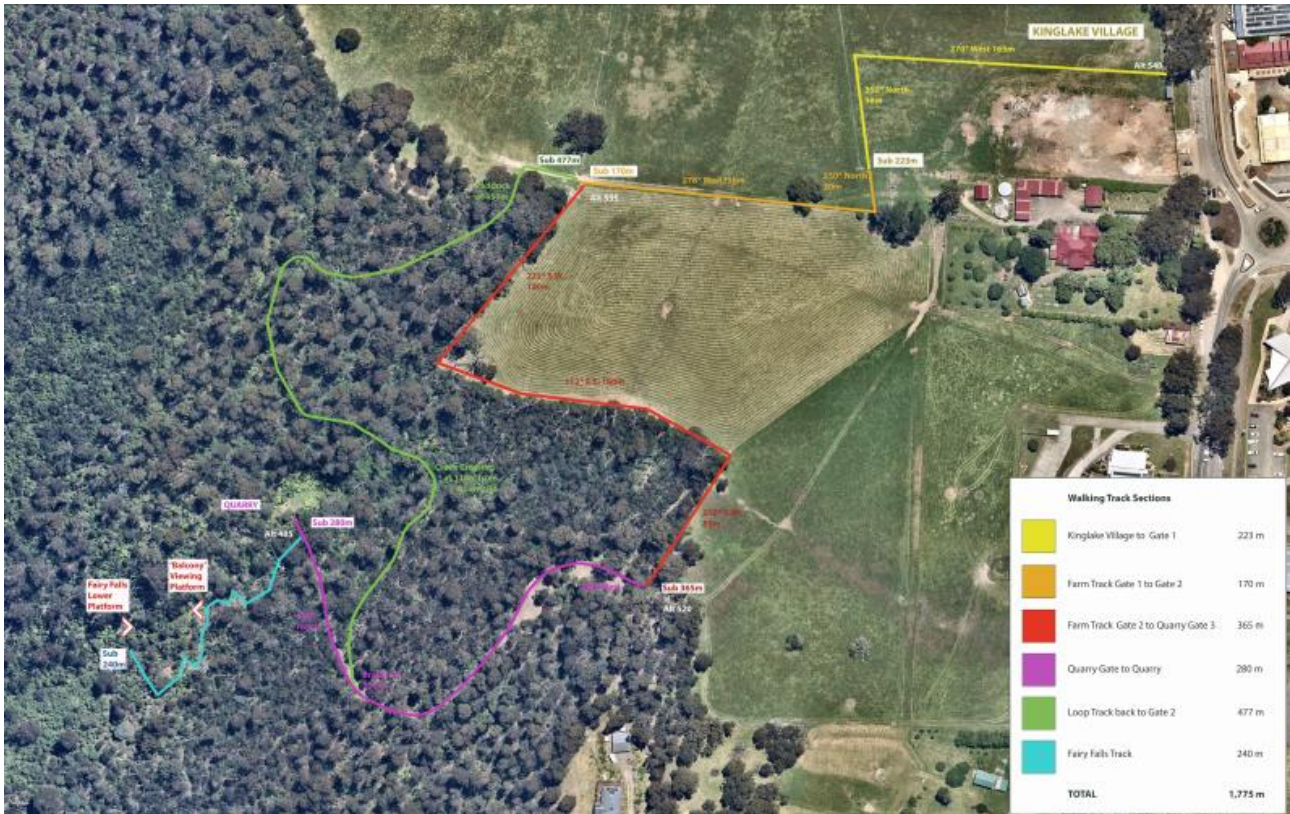


Figure 5: Walking Trail Section Map

The nature and extent of the proposed works within each of the six (6) sections of the trail are set out in the Landscape Concept Report prepared by CJ Arms and is summarised below in Table 1:

Table 1: Summary and breakdown of proposed walking trail.

Section	Accessibility and Difficulty	Proposed Surface Coverings	Additional works/features
Section 1 - Kinglake Village to Gate 1	Fully accessible, sealed at-grade path.	Concrete or compacted gravel path.	Wayfinding signage, post and rail fencing, signpost gating, accessible ramps, avenue planting
Section 2 – Farm Track (Gate 1 to Gate 2)	Fully accessible, sealed at-grade path with ramps where necessary.	Concrete or compacted gravel path.	Culvert drains for drainage and wombat access, post and rail fencing, multiple gated points, avenue planting.
Section 3 – Farm Track (Gate 2 to Quarry Gate 3)	Suitable for wheelchair users with some assistance from either a helper or an electric wheelchair. Stairs will be	Concrete or compacted gravel path and steps.	FRP composite boardwalk, post and wire fencing, gate systems, wayfinding and

	<p>accompanied by a ramp which may or may not be DDA compliant.</p>		<p>educational signage, trail planting.</p>
<p>Section 4 – Quarry Gate to Quarry</p>	<p>Suitable for most ages and fitness levels. Some bush walking experience recommended. Tracks may have short steep sections, a rough surface and steps.</p> <p>Trail Rider Grade – Intermediate +3-4 Operators. Suitable for people with experience on uneven surfaces. Operators may encounter short steep sections. A high level of fitness required.</p>	<p>Concrete or compacted gravel path and steps.</p>	<p>Gate systems, FRP composite boardwalk and viewing platform, wayfinding and educational signage, and picnic, nature play and educational signage at clearing in track section 4</p>
<p>Section 5 – Loop Track back to Gate 2</p>	<p>Suitable for most ages and fitness levels. Some bush walking experience recommended. Tracks may have short steep sections, a rough surface and steps.</p> <p>Trail Rider Grade – ADVANCED +3-4 Operators. Suitable for people with experience on uneven surfaces. Operators may encounter short steep hills, narrow sections, staircases and sharp bends. A high level of fitness required.</p>	<p>Concrete or compacted gravel path and steps.</p>	<p>Gate systems, FRP composite boardwalk and bridging, wayfinding and educational signage, rest spot.</p>
<p>Section 6 – Fairy Falls Track</p>	<p>Bush walking experience recommended. Track may be long, rough & very steep. This section of track is not suitable for Trail Rider</p>	<p>Concrete or compacted gravel path and steps.</p>	<p>Wayfinding and educational signage, two (2) viewing platforms/balconies, and steel cable safety rails.</p>

As set out in the Landscape Concept Report prepared by CJ Arms, various surface treatments are proposed for the trail. The specifics of treatments for each section of the trail is still to be resolved as there are a number of detailed design considerations and factors which will influence which treatment is appropriate in each component, section and area of the trail. This will largely be determined by:

- Construction methodology restrictions and considerations which are still being resolved.
- Land management and maintenance requirements to ensure the trail is durable and has a longevity which ensures its usability and functionality is protected.
- The aspirations of keeping the trail as accessible to all people, including those with limited or impaired mobility.
- Ensuring that the health and viability of significant vegetation is protected.

Typically speaking, three (3) trail/surface treatments will be considered:

1. Durable concrete materials – This treatment will be used in accessible sections of the trail, we maintenance should be minimised, where it can be demonstrated that the material will not be degraded by the elements, and where the proposed surface treatment will not unreasonably impact significant trees.
2. Compacted gravel/stone – this treatment will be utilised where durable concrete materials are not deemed to be appropriate or possible.
3. FRP Composite Boardwalk – This will be utilised where works within proximity to existing streams, waterways or structural root zones of significant trees can't be avoided. Non-destructive footings will be utilised to ensure that these components of the trail will be in-situ with the natural environs and surroundings. This treatment will also be used for platforms and lookouts and again will use non-destructive footings.

Considering the extent of detailed design, construction methodology and engineering to still be resolved, the most efficient mechanism of facilitating the most appropriate trail and surface coverings outcome is by way of a suitably worded condition of permit requiring details of the locations of each of these treatments to be provided to the **satisfaction of the responsible authority**. This will allow the conversation and consideration of the various restrictions and encumbrances of the site to continue and be resolved in such a way that is amicable to the permit applicant, the land owners, Council, relevant stakeholders and the community.

4.0 Planning Controls

4.1 Zone & Overlay Controls

The site is located within the C1Z, the FZ and is subject to the BMO pursuant to the provisions of the Planning Scheme.

A permit is required for the following:

- To carry out works pursuant to Clause 34.01-4 of the Planning Scheme.
- For earthworks pursuant to Clause 35.07-4 of the Planning Scheme.
- To carry out works pursuant to 44.06-2 of the Planning Scheme.
- To remove native vegetation pursuant to Clause 52.17 of the Planning Scheme.

Pursuant to Clause 73.03 informal outdoor recreation is defined as emphasis added:

*Land open to the public and used by non-paying persons for leisure or recreation, such as a cycle track, park, picnic or barbecue area, playground, plaza, and **walking or jogging track**.*

We are of the opinion, and postulate, that this is the most appropriate and pertinent land use definition as it unambiguously refers to a walking track which is the practical reality of the proposed memorial trail. This is congruent with a number of VCAT decisions, notably in *Nevin v Indigo SC [2011] VCAT 504* in which the land use for informal outdoor recreation in the form of a length walking and bush trail.

4.2 Commercial 1 Zone

The site is located within the C1Z pursuant to the provisions of the Planning Scheme.



Figure 6: Zoning Map (Source: DELWP).

The relevant purposes of this zone are as follows:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
- To provide for residential uses at densities complementary to the role and scale of the commercial centre.

Pursuant to Clause 34.01-1 of the Planning Scheme, the use of the land located within the C1Z for the purpose of informal outdoor recreation does not require planning permission.

Notwithstanding this, a planning permit is required to construct a building or construct or carry out works pursuant to Clause 34.01-4 of the Planning Scheme.

The proposed works within the land subject to the C1Z can be described as the establishment of a concrete path from the approved Kinglake Village commercial development as shown below in Figure 7.



Figure 7: Proposed Works and Walking Track in C1Z

We maintain that the proposed works are entirely appropriate as they are largely minor in nature and positively respond to the relevant decision guidelines contained within Clause 34.01-8 of the Planning Scheme. A response to the relevant decision guidelines is provided below (inter-alia):

Relevant Decision Guideline	Response
<i>The Municipal Planning Strategy and the Planning Policy Framework.</i>	Please refer to Section 5 of this report.

<p><i>The interface with adjoining zones, especially the relationship with residential areas.</i></p>	<p>The proposed works are a continuation on and connection to the proposed informal outdoor recreation which is also as of right in the abutting FZ area. Furthermore, the majority of works proposed as part of this application are located within the FZ area.</p>
<p><i>The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.</i></p>	<p>The purpose of the works in this section of the site is to provide a connection to the balance of the informal outdoor recreation located on the abutting property to the west.</p>
<p><i>The provision of car parking.</i></p>	<p>Car parking associated with and attributed to the proposed use and development will be contained within the Kinglake Village commercial development approved under Planning Permit 2019/41 originally issued on 10 October 2019.</p>
<p><i>The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road.</i></p>	<p>The proposed works within the C1Z consist of a linear pedestrian path providing connection between Whittlesea-Kinglake Road and the Berrbang Biik Trail (1000 Steps). The proposed pedestrian path has and will be integrated into the design of the Kinglake Village commercial development approved under Planning Permit 2019/41.</p>
<p><i>The storage of rubbish and materials for recycling.</i></p>	<p>This is not relevant for the component of the application as the works contained within the C1Z is a pedestrian path. Notwithstanding this, signage and public bins will be delivered as part of the Kinglake Village commercial development approved under Planning Permit 2019/41.</p>
<p><i>Defining the responsibility for the maintenance of buildings, landscaping and paved areas.</i></p>	<p>Maintenance of the proposed pedestrian path will be the responsibility of the land owner.</p>
<p><i>The availability of and connection to services.</i></p>	<p>N/A</p>

On this basis, the proposed works associated with the informal outdoor recreation are entirely appropriate in the context of the C1Z.

4.3 Farming Zone

The site is located within the FZ pursuant to the provisions of the Planning Scheme.

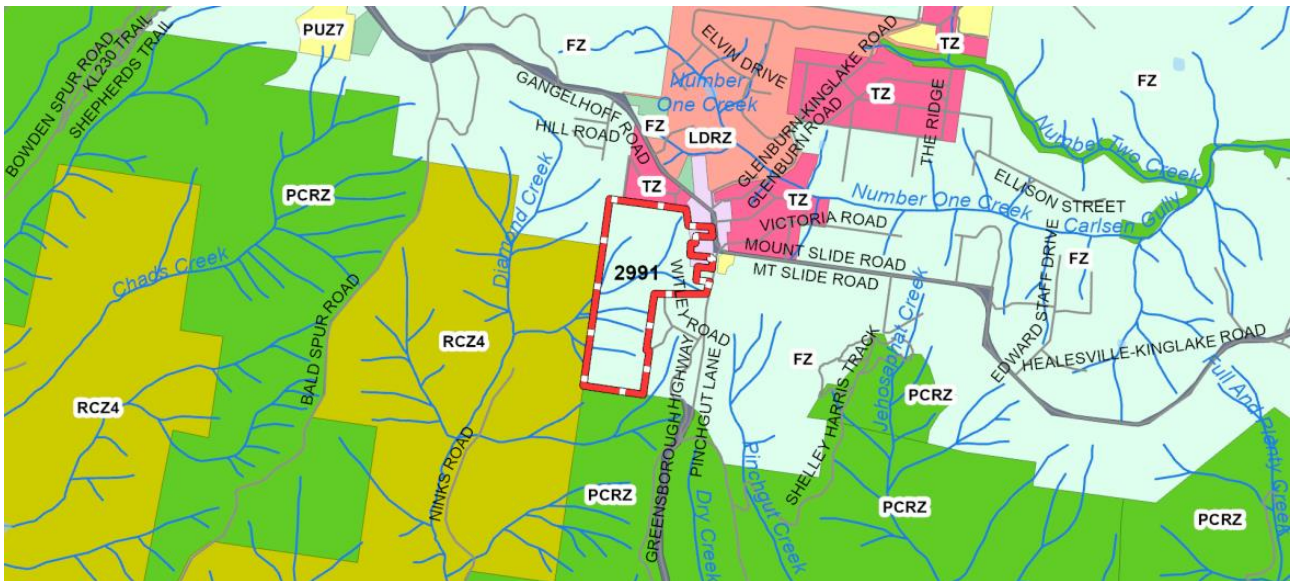


Figure 7: Zoning Map (Source: DELWP).

The purpose of the FZ is as follows:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

Pursuant to Clause 35.07-01 of the Planning Scheme, a permit is not required to use the land for the purpose of informal outdoor recreation.

Notwithstanding this, pursuant to Clause 35.07-4 of the Planning Scheme a permit is required to carry out works. Additionally, the schedule to the FZ specifies that a permit is required on all land within the FZ to conduct and carry out earthworks. Earthworks is defined in Clause 73.01 of the Planning Scheme as:

Land forming, laser grading, levee banks, raised access roads and tracks, building pads, storage embankments, channel banks and drain banks and associated structures.

The proposed works contemplated within this zone includes the following:

- The development of a terraced amphitheatre at the commencement of the trail.
- Installation of picnic furniture throughout the trail.

- Minor excavation and the provision of new surface coverings, in the form of all weather concrete, compacted and crushed rock or non-invasive footings associated with FRP composite boardwalks, landings and lookouts.
- Installation of wayfinding and educational signage.
- Installation of various gate systems at the beginning and end of each section of the trail.
- Various forms of fencing along and lining the paths along each section of the trail

As each of the above either constitutes as works under the relevant definition contained within the Act, or earthworks as per the definition contained within Clause 73.01 of the Planning Scheme, or both, a planning permit is required for works and earthworks.

The proposed works positive response to the relevant decision guidelines contained within Clause 35.07-6 of the Planning Scheme. The proposals response to each of the relevant decision guidelines is set out below (inter-alia):

Relevant Decision Guideline	Response
<i>The Municipal Planning Strategy and the Planning Policy Framework.</i>	Please refer to Section 5 of this report.
<i>Any Regional Catchment Strategy and associated plan applying to the land.</i>	No such strategy is applicable in this instance.
<i>The capability of the land to accommodate the proposed use or development, including the disposal of effluent.</i>	The proposed use and development have and will continue to be resolved in close consultation with the community and relevant stakeholders. The site presents a unique opportunity where private, undevelopable and environmental significant land can be utilised to serve the community and provide a further tourism attraction without major development or native vegetation removal. The detail in which the proposal has been resolved is such that the removal of native vegetation and proposed works are minimalised to protect the environmental values and attributes of the site.
<i>How the use or development relates to sustainable land management.</i>	The proposal largely represents a formalisation of existing paths and trails and the preservation of habitats, natural environs and native vegetation. As such, the proposed use and development is congruent with the ongoing and existing use of the balance of the site.
<i>Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.</i>	The proposal facilitates a non-destructive tourism based use that will not unreasonably alter or impact the existing and ongoing use of the land.

<p><i>How the use and development makes use of existing infrastructure and services.</i></p>	<p>In order to protect significant native vegetation, the proposed trail is largely to be sited in existing clearings and informal path areas.</p>
<p><i>Whether the use or development will support and enhance agricultural production.</i></p>	<p>As discussed above, the proposal will facilitate a non-destructive and community-based use and development that can cohesively operate in conjunction with the existing and ongoing land use.</p>
<p><i>Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.</i></p>	<p>The proposed works are minor in nature and will largely not be situated in locations capable of supporting agricultural production as a result of topography or density of existing vegetation, or both.</p>
<p><i>The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.</i></p>	<p>As discussed above, the proposal will facilitate a non-destructive and community-based use and development that can cohesively operate in conjunction with the existing and ongoing land use.</p>
<p><i>The capacity of the site to sustain the agricultural use.</i></p>	<p>As above.</p>
<p><i>The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.</i></p>	<p>Please refer to the commentary above relating to soil quality and rural infrastructure. With regard to access to water, the proposal will incorporate FRP composite boardwalks with non-destructive footings over identified waterways and channels to ensure they are not unreasonably disrupted or altered as part of this application.</p>
<p><i>The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.</i></p>	<p>As above.</p>
<p><i>The impact of the use or development on the flora and fauna on the site and its surrounds.</i></p>	<p>As previously stated, the aspirations of this application is to avoid and minimise nature vegetation removal as much as practically possible. The informal nature of the existing trail all but assures this. Furthermore, a large component of this application is to educate and have visitors and the community appreciate the Suburb Lyrebird which identified as an inhabitant of the site. Furthermore, culverts are provided in Section 2 of the trail to allow the existing wombat population continual and safe passage and movement throughout the site.</p>

<p><i>The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.</i></p>	<p>As above.</p>
<p><i>The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.</i></p>	<p>The proposal seeks to provide access and integration to the natural beauty of site. This is achieved through the implementation of a tourism and community-based use, non-destructive works which are centralised around experiencing the features of the site. Furthermore, as Council is aware, the proposal trail will be a memorial, community and educational trail contributing to and enhancing access for the community and visitors to the natural and scenic beauty of the Kinglake Rangers.</p>
<p><i>The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.</i></p>	<p>N/A</p>
<p><i>Whether the use and development will require traffic management measures.</i></p>	<p>All proposed vehicles accessing the site will be required to park in the Kinglake Village commercial development approved under Planning Permit 2019/41.</p>

On the basis of the above, it is clear that the proposed earthworks represent an appropriate response to the relevant provisions contained within the FZ.

4.4 Bushfire Management Overlay

The site is subject to the BMO pursuant to the provisions of the Planning Scheme.

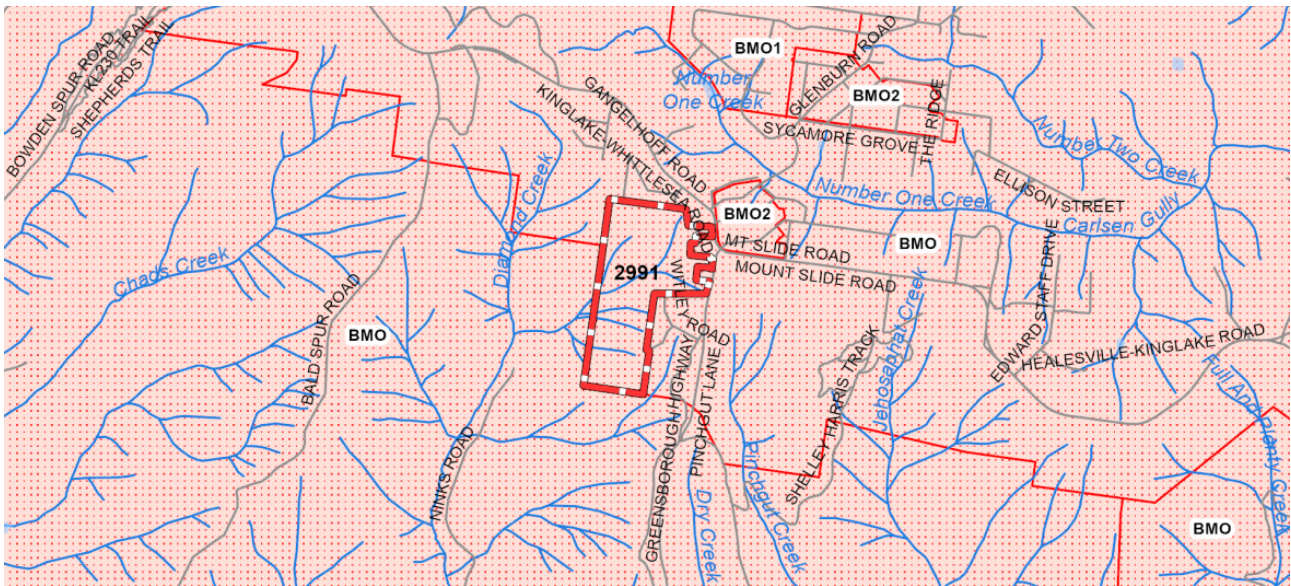


Figure 8: Overlay Map (Source: DELWP).

The purposes of the BMO are as follows:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

Pursuant to Clause 44.06-2 of the Planning Scheme a planning permit is required to carry out works associated with the following uses (inter-alia):

- ...
- Leisure and Recreation
- ...

As the proposed use of informal outdoor recreation is nested under leisure and recreation pursuant to Clause 73.04-6 of the Planning Scheme, a permit is required for the works associated with this use.

Pursuant to Clause 44.06-3 of the Planning Scheme, the following application requirements apply:

- A **bushfire hazard site assessment** including a plan that describes the bushfire hazard within 150 metres of the proposed development. The description of the hazard must be prepared in accordance with Sections 2.2.3 to 2.2.5 of AS3959:2009 Construction of buildings in bushfire prone areas (Standards Australia) excluding paragraph (a) of section 2.2.3.2. Photographs or other techniques may be used to assist in describing the bushfire hazard.
- A **bushfire hazard landscape assessment** including a plan that describes the bushfire hazard of the general locality more than 150 metres from the site. Photographs or other techniques may be used to

assist in describing the bushfire hazard. This requirement does not apply to a dwelling that includes all of the approved measures specified in Clause 53.02-3.

- *A **bushfire management statement** describing how the proposed development responds to the requirements in this clause and Clause 53.02. If the application proposes an alternative measure, the bushfire management statement must explain how the alternative measure meets the relevant objective.*

Furthermore, pursuant to Clause 44.06-4 of the Planning Scheme, the relevant provisions contained within Clause 53.02 of the Planning Scheme also must be adhered to.

Considering the nature of the proposed use and works, a Bushfire Emergency Management Plan has been prepared and provided by Bushfire Planning North East. We are of the opinion that this is the most relevant and pertinent bushfire input as the proposal does not facilitate use or works that will be permanently occupied or occupied for extensive periods of time (such as a place where people permanently live or work such as a dwelling or commercial premises). As such, the relevant risk to property and life primarily relates to the visitors and users of the trail being able to understand and act upon emergency management protocol when required. This protocol is set out in the aforementioned Bushfire Emergency Management Plan provided as part of this application.

5.0 Planning Policy Framework

The Planning Policy Framework sets out the relevant state wide and regional policies for protecting natural environs and managing environment risk at Clause 12 (Environmental and Landscape Values) and Clause 13 (Environmental Risks and Amenity). Clause 71 (Operation of this planning scheme) requires Council to integrate the range of policies relevant to the issues to be determined and to balance conflicting objectives in favour of net community benefit and sustainable development.

Clause 12 contains state-wide provisions that relate to the provision of biodiversity and native vegetation management, and applies objectives, strategies and policy to protect biodiversity and native vegetation.

The provisions of Clause 13 outline the need to prepare for and respond to the impacts of climate change. Clause 13 essentially highlights the importance of risk-based planning that prioritises the protection of human life. This clause outlines the importance of ensuring good future amenity outcomes within built form design.

Further to the above, and more specifically, the following local provisions within the PPF are relevant considerations in this instance:

- Clause 12.01-1S *Protection of biodiversity*
- Clause 12.01-2S – *Native vegetation management*
- Clause 13.02-1L – *Bushfire Planning*
- Clause 13.04-2S – *Erosion and landslip*

The relevant policies and strategies contained within the above local planning policies are set out and assessed as follows:

5.1 Clause 12.01-1S *Protection of biodiversity*

The overarching objective of this provision is as follows:

- *To protect and enhance Victoria's biodiversity.*

Furthermore, the following strategies apply:

- *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.*
 - *The spread of pest plants, animals and pathogens into natural ecosystems.*
- *Avoid impacts of land use and development on important areas of biodiversity.*
- *Consider impacts of any change in land use or development that may affect the biodiversity value of national parks and conservation reserves or nationally and internationally significant sites; including wetlands and wetland wildlife habitat designated under the Convention on Wetlands of International*

Importance (the Ramsar Convention) and sites utilised by species listed under the Japan-Australia Migratory Birds Agreement (JAMBA), the China-Australia Migratory Birds Agreement (CAMBA), or the Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA).

- *Assist in the identification, protection and management of important areas of biodiversity.*
- *Assist in the establishment, protection and re-establishment of links between important areas of biodiversity, including through a network of green spaces and large-scale native vegetation corridor projects.*
- *Support land use and development that contributes to protecting and enhancing habitat for indigenous plants and animals in urban areas.*

The removal of vegetation has been limited to an absolute minimum and is limited to understorey vegetation and only where the removal of the vegetation cannot be avoided. Please refer to Section 6.2 of this report and the Ecological Impact Assessment prepared by Ranges Environmental provided as part of this application.

5.2 Clause 12.01-2S – Native vegetation management

The overarching objective of this provision is as follows:

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

Furthermore, the following strategies apply:

- *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.*

Please refer to the response and details given in Section 6.2 of this report.

5.3 Clause 13.02-1L – Bushfire Planning

The overarching strategies contained within this provision are as follows:

- *Support:*
 - *the rebuilding of communities, destroyed homes and damaged infrastructure affected by the 2009 bushfires*
 - *the re-establishment of commercial centres affected by the 2009 bushfires in a way that mitigates bushfire risk.*
- *Locate, design and manage use and development to reduce the risk to human life, property and community infrastructure from bushfire to an acceptable level.*

- *Provide necessary bushfire protection measures, including through the design and construction of buildings, the creation of defensible space, the provision of a dedicated fire-fighting water supply and the need for fire authority access to and on the land.*
- *Implement and maintain necessary bushfire protection measures in conjunction with the ongoing use of the land.*
- *Facilitate the expansion of existing settlements, new subdivisions and uses that cater for vulnerable people only when:*
 - *The risk to life, property and community infrastructure from bushfire is reduced to an acceptable level.*
 - *The need for future occupants to implement and maintain bushfire protection measures is minimised through the careful location, siting and design of new development.*
 - *Emergency management arrangements, considered in consultation with the relevant authorities, can be practically established and implemented, including through the actions of the emergency services, operators and future land owners.*
 - *The ability for people to access safer locations and locations of last resort has been established.*

Please refer to Section 4.4 and 6.3 of this report which details the sufficiency and relevance of the Bushfire Emergency Management Plan prepared by Bushfire Planning North East which forms part of this application.

5.4 Clause 13.04-2S – Erosion and landslip

The overarching objective of this provision is as follows:

- *To protect areas prone to erosion, landslip or other land degradation processes.*

Furthermore, the following strategies are applied under this statewide policy:

- *Identify areas subject to erosion or instability in planning schemes and when considering the use and development of land.*
- *Prevent inappropriate development in unstable areas or areas prone to erosion.*
- *Promote vegetation retention, planting and rehabilitation in areas prone to erosion and land instability.*

As discussed throughout this report and the accompanying material, vegetation removal has been limited to a minimum. The proposed works and surface treatments along the trail will need to be resolved by way of suitably worded conditions of permit to delineate where each of the proposed and specific treatments are most appropriate. This will be determined by construction methodology, maintenance and management requirements, and the need to protect significant native vegetation. As part of this consideration will be the impact of the proposed surface treatments on the topography and stability of the land.

6.0 Particular Provisions

6.1 Clause 52.06 Car Parking

The purpose of this provision is as follows:

- *To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.*
- *To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.*
- *To support sustainable transport alternatives to the motor car.*
- *To promote the efficient use of car parking spaces through the consolidation of car parking facilities.*
- *To ensure that car parking does not adversely affect the amenity of the locality.*
- *To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.*

Clause 52.06-1 of the Planning scheme applies to a new use, regardless as to whether a permit is triggered for said use.

The use of informal outdoor recreation is not specified or assigned a specific car parking rate within Clause 52.06-5 of the Planning Scheme, as such car parking is required to be provided to the satisfaction of the responsible authority. On this basis, a permit is not triggered pursuant to Clause 52.06-3 of the Planning Scheme.

We maintain that the existing and surrounding community facilities, including the carparking associated with the commercial development approved under the Planning Permit will be more than sufficient to support the sporadic and informal use. Importantly, it is highly likely that those visiting and using the trail will be making dual purpose trips and will also likely be utilising the facilities to be delivered under the Planning Permit either before or after walking the trail. On the basis of the above, and on the basis of the informal nature of the intended use, we maintain that no additional car parking is required to accommodate the proposal.

6.2 Clause 52.17 Native Vegetation

The purpose of this provision is as follows:

- *To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following 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) (the Guidelines):*
 1. *Avoid the removal, destruction or lopping of native vegetation.*
 2. *Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*

3. *Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*
- *To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.*

Pursuant to Clause 52.17-1 of the Planning Scheme, a planning permit is required to remove, destroy or lop native vegetation.

One of the overarching mantras and aspirations of this project is to mirror first purpose of this provision; that being to avoid the removal of native vegetation where possible, where the removal cannot be avoided the extent of native vegetation removal is minimised, and where the removal of native vegetation can't be avoided it is offset.

As detailed in the Ecological Impact Assessment prepared by Ranges Environmental, the native vegetation impact is limited to understorey vegetation to facilitate to formalisation of the 900mm to 1200mm trail paths. The aforementioned Ecological Impact Assessment includes the following discussion regarding the proposal partial native vegetation loss:

In terms of assessing impacts to native vegetation as a result of the proposed works, 'partial loss' (i.e. 50% of the site condition score) is applied to the impact and native vegetation offset assessment. Partial or 50% loss is considered appropriate in this instance due to:

- *No anticipated loss of mature Eucalypts, or sub-canopy trees*
- *Minimal loss of midstorey and post-fire recruits (although there are some exceptions)*
- *No loss significant habitat logs (> 30cm diameter). Very few logs are directly within the alignment and where logs require relocation, these can be carefully placed within adjacent areas of native vegetation.*
- *Minimal loss of habitat connectivity within the forested landscape.*

As also delineated in the Ecological Impact Assessment prepared by Ranges Environmental specifies that the location and direction of the trail has been resolved to avoid the identified significant trees and vegetation. Where the structural root zones of these trees cannot be avoided, non-destructive trail treatments or board walks with non-destructive footings will be utilised to ensure the health and viability of these trees are protected. As previously discussed, the specific locations of each of the proposed surface and trail treatments will need to be resolved by way of a suitably worded condition of permit informed by based on the determined construction methodology, tree protection requirements and maintenance/management requirements.

On the basis of the above, and for the reasons set out in detail in the Ecological Impact Assessment prepared by Ranges Environmental, the proposal positively responds to the purposes of Clause 52.17 of the Planning Scheme.

6.3 Clause 53.02 Bushfire Planning

This provision contains the following overarching purposes:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*

- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To ensure that the location, design and construction of development appropriately responds to the bushfire hazard.*
- *To ensure development is only permitted where the risk to life, property and community infrastructure from bushfire can be reduced to an acceptable level.*
- *To specify location, design and construction measures for a single dwelling that reduces the bushfire risk to life and property to an acceptable level.*

By virtue of the nature of the proposal being associated with informal outdoor recreation (no buildings proposed), the relevant design objectives under this provision are limited to Measure AM 2.1 contained within Clause 53.02-4.1 of the Planning Scheme. A response to this measure is provided below:

Measure	Requirement	Response
AM 2.1	<i>The bushfire risk to the development from the landscape beyond the site can be mitigated to an acceptable level.</i>	<p>A challenging component of this application is balancing the relevant bushfire risk with the obvious community and tourism benefits of this project, and the necessity to retain and protect significant native vegetation and habitats.</p> <p>Regardless of the sites inclusion within the BMO and a designated bushfire prone area, planning permission is required for the removal of any native vegetation adjacent to or surrounding the trail. As detailed throughout the balance of this report, the preservation and protection of native vegetation and existing flora and fauna habitats is paramount and hence native vegetation removal is limited to an absolute minimum.</p> <p>As discussed, in Section 4.4 of this report, the nature of this application is such that not permanently habitable use of development is proposed. Hence, the relevant consideration is whether emergency management principals can be adopted and put into place to ensure that in the risk of a bushfire event, the protection of life and property is paramount and well considered.</p>

On the basis of the above, we are of the opinion that the Bushfire Emergency Management Plan prepared and provided by Bushfire Planning North East is sufficient to address the relevant and pertinent bushfire risk and appropriately respond to the relevant provisions of Clause 13.02-1L, the BMO and Clause 53.02 of the Planning Scheme.

7.0 Conclusion

It is considered that the proposal has a high level of compliance with the relevant provisions of the Planning Policy Framework, the applicable zones and overlays, and the relevant particular provisions. This project has and will continue to be resolved in close consultation with relevant stakeholders and the community to ensure that the trail that is eventually approved and delivered on-site is a valuable contribution to the community and lives up to its namesake; being a connection to country.

In terms of relevant statutory planning considerations, the proposal is considered to:

- Facilitate an appropriate bushfire emergency management response.
- Avoid, minimise and offset the removal of vegetation in accordance with the directions of *Guidelines for the removal, destruction or lopping of native vegetation*
- Seek permission of works and various treatments which will be contextually resolved to consider and protect the natural environment, biodiversity, flora and fauna.
- Provide a non-destructive tourism and community based development that will not hinder the existing and ongoing operation of farm land.

It is therefore submitted that a permit should be issued for the proposal.

Taylors Development Strategists Pty Ltd

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