Claire Scott Planning

Maroondah City Council
Vegetation Planning Policy Review

Issues & Options: December 2018



Contents

1. Introduction 3

2. Executive Summary: Key Issues & Options 4

3. Maroondah Planning Scheme 6

Local Planning Policy Framework

Residential Zones

Green Wedge A Zone

Vegetation Protection Overlay

Significant Landscape Overlay

Design and Development Overlay

Bushfire Management Overlay

4. Background Technical Work 18

Tree Canopy Cover Analysis

Supplementary Commercial Tree Canopy Cover Analysis

Biodiversity Analysis

5. Other Relevant Material 24

Practice Notes, Advisory Notes & Ministerial Directions

Environmental Significance Overlay (ESO)

VCAT Findings

Planning Permit Conditions

Additional Background Documents

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1. Introduction

The natural environment of Maroondah, including its tree canopy cover and biodiversity values, are highly cherished by the Council and community alike.

It is these special qualities that provide Maroondah with its unique residential and landscape character, and are the attributes that have rightly influenced strategic planning and policy decisions for many years.

The benefits of these decisions are visible in the near continuous tree canopy cover across many areas of Maroondah, and particularly the locally significant Wicklow Hills and Loughnan-Waranwood ridgelines, and the wide range of habitats, including waterways, native ecosystems and bushland reserves.

In order to update and further strengthen its protection and management of vegetation and biodiversity, Council is undertaking the *Maroondah Vegetation Review*.

This report is a key input to that review, and provides a full assessment of the *Maroondah Planning Scheme* provisions in relation to the protection and management of landscape, vegetation (including canopy trees), and biodiversity.

This review has been undertaken within the context of the findings of three key pieces of technical work undertaken by the Council – the tree canopy cover analysis (and supplementary analysis in commercial areas) and a study of Maroondah's biodiversity.





Executive Summary: Key Issues & Options

The key issues arising from a review of the *Maroondah Planning Scheme*, within the context of the technical work findings, are:

In order to successfully protect and manage Maroondah's tree canopy cover, landscape character and biodiversity, a combination of 'protection' and 'proactive requirements' are required.

The Vegetation Protection Overlay (VPO) is a 'protection' mechanism only i.e. it requires a permit for the removal of vegetation and provides decision guidelines regarding its removal. Compared to the Significant Landscape Overlay (SLO), it is sparingly used in Maroondah.

The effectiveness of the VPO in the *Maroondah Planning Scheme* should be assessed within the context of where it is applied i.e. public reserves of biodiversity significance, where the retention of vegetation is the responsibility of Council, and otherwise, areas of private land (some of the largest blocks in the municipality) where zoning and other overlay provisions also impact vegetation retention and subsistence through minimum lot sizes, and site coverage and cut and fill 'incentives'.

Feedback from the community consistently bemoans the disregard for tree removal requirements by some developers, who simply factor the $1,200 fine (imposed by the *Planning and Environment Act*) into the construction budget. Stronger penalties and a multi-dimensional approach are required through the planning scheme.

Schedules to the residential zones offer the opportunity for 'proactive requirements' that are essential for planting and supporting canopy tree cover and biodiversity.

Specifically, the requirements that most affect the planting and sustenance of vegetation i.e. site coverage, permeability, landscaping, and to a lesser degree minimum street setback, can be varied through a schedule to either the NRZ or the GRZ. Side and rear boundary setbacks are already varied across Maroondah.

Permeability percentages and landscaping requirements for private land are the key to successful vegetation planning scheme provisions. This is reinforced by a key finding of the tree canopy cover analysis that on private land for the five-year period assessed, there was a significant increase in hard surfacing and a significant loss of grass/bare earth.

Following VC148 up to five objectives can be included in a schedule, and *"a quantifiable and measurable figure/amount"* in relation to the above variations to Clause 54 and Clause 55. Application requirements can also be included in the schedule.

Variations to Clauses 54 and 55 are numerical and therefore undisputable e.g. 40% permeability, and in relation to landscaping - a certain number of canopy trees can be required to be planted within a measurable area, with a minimum amount of permeable land to support them.

This 'two-pronged' (protection + requirements) approach is supported by the findings of the tree canopy cover analysis, which include that the net loss in DDO areas (i.e. ridgelines and other topographical high points) was not solely due to tree loss, but also that growth did not compensate for losses.

VC148 and the requirement to prepare an updated Municipal Planning Strategy (at Clause 02) provides the opportunity to strengthen and streamline Maroondah's new Planning Policy Framework (PPF) in relation to vegetation protection and management, and biodiversity.

VC148 and the requirement to integrate existing local policies into a new PPF provides the opportunity to review the need for/purpose of existing local policies, and provide new and focused guidance on decision making where discretion is required i.e. 'Development on Sites of Biodiversity Significance'. Alternatively, the appropriate level of guidance may be able to be provided in the schedules to the VPO, or ESO.

Currently sites of biodiversity significance are covered by the VPO, which only provides a permit trigger for vegetation removal. This may be appropriate for some specific sites, as identified by the biodiversity strategy.

A list of exemptions should be included in any schedule to the VPO (there are currently none). Following VC148, up to five objectives can be included in the schedule to the VPO, together with application requirements.

Other sites of biodiversity significance may be better protected and managed by the Environmental Significance Overlay (ESO), where a permit trigger can be enacted for subdivision, buildings and works, fences, bike paths and vegetation removal, and broader environmental issues can be managed. Environmental objectives, application requirements and decision guidelines can be included in a schedule to the ESO. Again, appropriate exemptions should be listed.

Mapping of VPO and/or ESO areas may include consideration of a 'buffer', as appropriate. This approach is referenced in the biodiversity analysis and has been implemented in Manningham, for example.

The SLO can be used as a permit trigger for buildings and works and/or vegetation removal, but cannot stipulate quantifiable and measurable requirements that directly affect the ability to plant and sustain vegetation, in the manner of a schedule to the NRZ or the GRZ.

The SLO is effectively used as a tree protection/residential character management tool across Maroondah's residential areas.

SLO3, which applies to NRZ zoned areas, includes design and siting 'incentives' (i.e. if they are met a permit is not required) and a permit requirement for tree removal.

SLO3 applies to the locally significant landscape features of the municipality, but the 'statement of nature and key elements of landscape' refers only to canopy trees and not the character or significance of the ridgelines themselves.

While its use for tree protection and neighbourhood character management is not the purpose stated in the head clause, SLO3 at least, is able to be justified in its location, and is contributing to the maintenance of low site coverage and the protection of the tree canopy cover.

SLO4, which applies to GRZ zoned areas, only includes a permit requirement for tree removal. If SLO4 is to be retained it requires a full re-write of contents, including a new and focused 'statement of nature and key elements of landscape' and objectives etc.

While consideration could be given to transferring the contents of the SLO schedules to the NRZ and GRZ schedules, and reviewing the appropriateness of at least Schedule 4 to the SLO, it is important not to dispense entirely with a planning scheme overlay where the end is justifying the means. The SLO also performs a key role of providing a permit trigger for the removal of canopy trees.

The above issues and findings lead to the following possible options in relation to the way vegetation and biodiversity are protected and managed in the *Maroondah Planning Scheme*:

- New and multiple GRZ and NRZ schedules, tailored to aspirational residential and landscape character outcomes, with specific variations to site coverage, permeability and landscaping.
- Retention of the VPO on sites of biodiversity significance, where vegetation removal is the only required planning permit trigger.
- Application of the ESO to sites of biodiversity significance, where broader environmental issues require assessment and guidance.
- Introduction of a list of exempt species to the VPO and ESO schedules.
- New mapping for the VPO and ESO areas that incorporates a justifiable 'buffer'.
- Re-drafted SLO3 schedule with a focus on the nature and key elements of landscape i.e. the key landscape features and dominance of vegetation. Consideration of a permit trigger for vegetation removal, not just canopy trees.
- Re-drafted SLO4 schedule with a focus on the role of tree canopy cover in residential areas (and maintaining a balance between built form and vegetation), and retention of the tree removal trigger. Consideration of the introduction of justifiable 'incentives' (as per SLO3) under permit requirements.
- Review of the requirement for separate SLO1 and SLO2 schedules (they effectively mimic SLO4 and SLO4).
- Retention and review of useful content of DDO schedules for minimum lot size/subdivision guidance.
- Strengthening of the objectives, design requirements and decision guidelines in the schedules to the commercial zones regarding the retention and planting of canopy trees, especially in car parks.
- Pending advice from DELWP on the translation of local policies into a new PPF, consideration as to whether their contents can be accommodated in zone and overlay schedules. If not, ensuring any local policy is specific and focussed, and provides clear guidance where discretion is required in decision-making.
- Pending advice from DELWP, a re-focussed Municipal Planning Strategy that supports the new vegetation protection and management, and biodiversity provisions elsewhere in the planning scheme.
- All of the above, supported and justified by technical work, including the tree canopy cover analysis (including supplementary work), biodiversity analysis and NCS review.



3. Maroondah Planning Scheme

Council and the community highly value the natural environment of Maroondah, including the topography, flora and fauna, wetlands, parks and bushland reserves, and this is reflected in the current planning scheme provisions.

Almost 80% of land in Maroondah is affected by landscape and/or vegetation controls, such as the Vegetation Protection Overlay (VPO) and the Significant Landscape Overlay (SLO). The Design and Development Overlay (DDO) is also in place on the two major ridgelines, and includes minimum lot size requirements (also contained in the schedules to the NRZ) that encourage lower density residential development. This maintains large lot sizes (i.e. 864 to 2,000 square metres) and contributes to the retention of canopy trees and other vegetation.

The zones, overlays and other provisions in the *Maroondah Planning Scheme* that relate to the retention, planting and sustenance of vegetation and biodiversity, and their relationship to each other, are outlined below.

Local Planning Policy Framework

21.10 Natural Resources

The theme of Clause 21.10 of the Local Planning Policy Framework (LPPF) is Natural Resources, with the following included in the overview:

> *"Maroondah has a high quality natural environment which characterises a significant portion of the municipality. Protection and enhancement of the natural environment through the encouragement of sustainable development is a key strategy of Maroondah City Council. The quality of our environment is important for economic and social reasons…*
>
> *Maroondah is physically dominated by two geographical features locally referred to as the Wicklow Hills Ridge and the Loughnan Warranwood Ridge. In the context of the municipality as a residential suburb, these two natural features are primarily characterised by low-density subdivision, developed with a variety of housing choices and covered by an extensive canopy of native and exotic vegetation.*
>
> *Waterways of Maroondah extend to major catchment areas that ultimately lead to Port Phillip Bay. The northern portion of the municipality drains to the Yarra Catchment, whilst the southern section drains to Dandenong Creek.*
>
> *Major threats to the natural environment in Maroondah include the loss of native vegetation, waterway degradation, and pollution and climate change resulting from wasteful resource consumption."*

The objectives outlined at 21.10-2 are:

- *To ensure the quality and attractiveness of Maroondah's urban areas.*
- *To minimise the physical impact and stress of development and land use on the natural environment.*
- *To encourage the preservation and enhancement of the natural environment including the maintenance of clean air and water and protection of canopy vegetation.*
- *To prevent the overdevelopment of the ridgelines.*
- *To encourage the complete regeneration of the Wicklow Hills Ridge and Loughnan Warranwood Ridge environment.*
- *To promote the benefits of controlled and sustainable residential development in headwater catchments and minimise any form of degradation of the catchment or watercourse of both the Yarra River and Dandenong Creek.*

This section of the Municipal Strategic Statement provides the high-level objectives, strategies and actions relating to the protection and management of vegetation and biodiversity across Maroondah. The gazettal of VC148 and the eventual translation of the current MSS into the new Municipal Planning Strategy (MPS) provide the opportunity for review of the content of this clause. This is discussed further at the end of this section.

22.01 Waterways Protection Policy

This policy applies to all development; its key objectives being to ensure that development contributes to the long-term sustainability of waterways, and does not adversely impact upon them. Policy statements are to:

- *Ensure development minimises the potential for erosion and loss of vegetation.*
- *Ensure development minimises contaminant and sediment laden runoff entering the drainage and water systems.*
- *Ensure existing and natural wetlands values be recognised in improving water quality.*
- *Recognise existing streamside vegetation values in improving water quality.*
- *Retain vegetated buffer zones at least 20 metres wide along permanent waterways to provide habitat and achieve a corridor effect for the movement of flora and fauna along waterways.*
- *Minimise off-site discharges of storm water contaminated by sediment by appropriate means, including restriction of storm water flow onto the site, minimising the area of exposed soil at one time, revegetating or otherwise protecting exposed soil as soon as practicable and removing suspended sediment from off-site flows by reducing water velocity in grassed drains, vegetated filtration zones and settlement dams.*
- *Retain waterways in a natural state.*

22.03 Non Urban Areas

This policy applies to land outside the urban growth boundary of Warranwood, Croydon Hills and Kilsyth South; its objective being to that the landscape and environmental values of non-urban areas are protected. Policy statements include to:

- *Maintain, protect and enhance the non-urban areas as low intensity land use areas.*
- *Maintain the existing subdivision and dwelling density.*
- *Ensure development provides for the retention and regeneration of native vegetation and natural systems.*
- *Maintain and enhance the openness of the landscape and the rural character of the non- urban areas.*

22.04 Sites of Biological Significance

This policy applies to applications for vegetation removal under the VPO1, and encourages the preservation and enhancement of the natural environment, including the protection of canopy vegetation. The policy statements are to:

- *Ensure development does not result in a net loss of indigenous vegetation or biodiversity.*
- *Ensure development maintains and improves the on-going viability of the biological diversity of the site.*
- *Recognise and protect dead and fallen vegetation with habitat value.*
- *Recognise the linkage and wildlife corridor value of indigenous vegetation.*

The policy also includes a list of vegetation removal application requirements, to be prepared by a qualified botanist or horticulturalist.

Implications for this review

The three most relevant local policies outlined above were prepared before the release of Planning Practice Note 8, and no longer conform to what is considered the key purpose of local policies (which also requires updating post VC148):

- An LPP should not repeat or contradict the State Planning Policy Framework (SPPF).
- An LPP should not repeat or contradict the MSS.
- An LPP should not contain broad strategic objectives and strategies. Policies that address broad level strategic planning issues should be included in the MSS rather than as an LPP.
- Use zones and overlays to deliver the policy objective where possible. Where possible, the use of schedules to zones, overlays or particular provisions should be used instead of local policies to express local policy objectives.
- An LPP should be derived from an objective or strategy in the MSS. An LPP guides the exercise of discretion under a planning scheme control to deliver an objective or strategy in the MSS. It is important that the broader objective or strategy that it is implementing is clear.
- An LPP should relate to a specific permit discretion.
- An LPP should assist the council to make a decision.
- An LPP should not repeat or contradict other LPPs. (Some LPPs may compete and deciding between them is a normal function of the planning system.)
- An LPP should not repeat or contradict controls in a zone. There is no need to repeat application requirements or decision guidelines that are set out in a zone and in the general decision guidelines in Clause 65.
- An LPP should not repeat or contradict controls in an overlay. There is generally no need to have a separate policy that relates only to the implementation of an overlay.
- An LPP should be self-contained. Policies should not rely on external documents or guidelines unless those documents are incorporated into the scheme. Incorporated documents should not contain unnecessary background or descriptive material.
- An LPP should not contain mandatory requirements. An LPP is a guideline about how discretion is likely to be decided and cannot prescribe mandatory requirements. A 'mandatory' requirement included in an LPP has no statutory weight. An LPP is not a control. If a mandatory requirement is appropriate it must be prescribed in schedules to zones, overlays and particular provisions.
- An LPP should be clear. A well written, clear and unambiguous LPP can reduce challenges at VCAT and make the whole decision process more transparent.

As noted previously, this policy review project provides the opportunity for a review of the current LPPF in relation to vegetation and biodiversity, in light of Amendment VC148.

In relation to local policies and the MSS (which will eventually be replaced with the Municipal Planning Strategy) Planning Advisory Note 71 (July 2018) states:

> … *(DELWP) will shortly provide further information (on) how existing LPPF content will be translated into the PPF, completing integration of all tiers of policy into a single PPF in each planning*

scheme. DELWP will work closely with local councils on the future integration of local content into the PPF.

And further:

> *When a planning authority translates its LPPF into the new PPF, it will also be required to introduce a Municipal Planning Strategy (MPS) at Clause 02 of the planning scheme. The MPS supports but does not form part of the PPF. The PPF and MPS will work together to form the strategic basis of a planning scheme.*
>
> *The MPS will be a succinct expression of the overarching strategic policy directions of a municipality. It will provide for the planning scheme's policy foundation, based on the municipality's location and regional context, history, assets, strengths, key attributes and influences. Planning schemes already have similar clauses in the MSS, however the new concise format will ensure a more focused and direct message about a council's planning aspirations.*
>
> *… DELWP will shortly provide further information on preparing an MPS as part of the broader changes associated with the PPF. DELWP will work closely with local councils on this process.*

It should be noted though, that the new basic structure of the MPS and the form and content of a local planning policy are included in the Ministerial Direction *The Form and Content of Planning Schemes*, which has been updated following the introduction of VC148.



Residential Zones

The application of the residential zones across Maroondah is directly related to landscape character. Their distribution is shown on the map on the following page.

The Neighbourhood Residential Zone (NRZ) has been applied to the topographical high points of the Wicklow Hills Ridgeline and foothills, Loughnan's Hill, the Loughnan-Warranwood Ridge, the 'secondary ridgelines' to the north-east and south of Croydon, and the landscape area of the Jumping Creek Valley.

Furthermore, separate schedules to the NRZ differentiate between the highest slopes where lot sizes are historically large and a minimum lots size of 2,000 square metres (NRZ1 Ridgeline Protection Area A) or 864 square metres (NRZ2 Ridgeline Protection Area B) applies; and the lower hill slopes and foothills where a minimum lot size is not specified (NRZ3 Canopy Cover Ridgeline).

The NRZ head clause stipulates that a schedule to the zone must contain neighbourhood, heritage, environment or landscape character objectives to be achieved for the area. Otherwise, the NRZ is most distinguishable from the General Residential Zone (GRZ) by its maximum building height limit of 9 metres and two storeys (as opposed to 11 metres and 3 storeys in the GRZ).

Apart from the minimum subdivision area (which is also reflected in the DDO schedules), there is nothing to distinguish the NRZ zoned areas of the municipality from each other. Indeed, the requirements of Clause 54 and Clause 55 are also varied in the same manner as GRZ zoned areas (a carry over from when requirements in different residential areas could not be tailored), and include larger side and rear setback requirements, larger private open space requirements, and lower front fence heights.

The General Residential Zone has been applied elsewhere, in lower topographical areas that are less visible, and generally less treed. The Low Density Residential Zone applies to two previously unsewered areas at the edge of the municipality in Warranwood and Ringwood North.

Implications for this review

The opportunity to tailor residential schedules to different neighbourhoods based on character, including landscape character, provides an opportunity for protecting and strengthening tree canopy cover and biodiversity in Maroondah.

Specifically, the requirements that most affect the planting and sustenance of vegetation i.e. site coverage, permeability, landscaping, and to a lesser degree minimum street setback, can be varied through a schedule to either the NRZ or the GRZ.

Integral to the protection and enhancement of Maroondah's tree canopy cover and biodiversity is a combination of 'protection' mechanisms and 'positive agenda' requirements.

Following VC148 up to five objectives can be included in the schedule, and "a quantifiable and measurable figure/amount" in relation to the above variations to Clause 54 and Clause 55. Application requirements can also be included in the schedule.

By way of example, the following 'positive agenda' requirements have been recommended for the NRZ that applies to Ruskin Park:

Landscape character objectives:

- To maintain and increase the vegetation cover, particularly the existence of large canopy trees.
- To enhance visual links from Ruskin Park to the heavily vegetated Dandenong Ranges.
- To ensure that vegetation and canopy trees remain the dominant visual feature of the landscape.
- To ensure that there is a balance between the provision of vegetation and built form, by requiring an adequate amount of permeable land for planting and sustaining vegetation.
- To ensure that the skyline is dominated by tree canopies as opposed to rooftops and built form.

The following variations to Clauses 54 and 55:

- Maximum site coverage 50%
- Minimum permeability 30%

And in relation to landscaping:

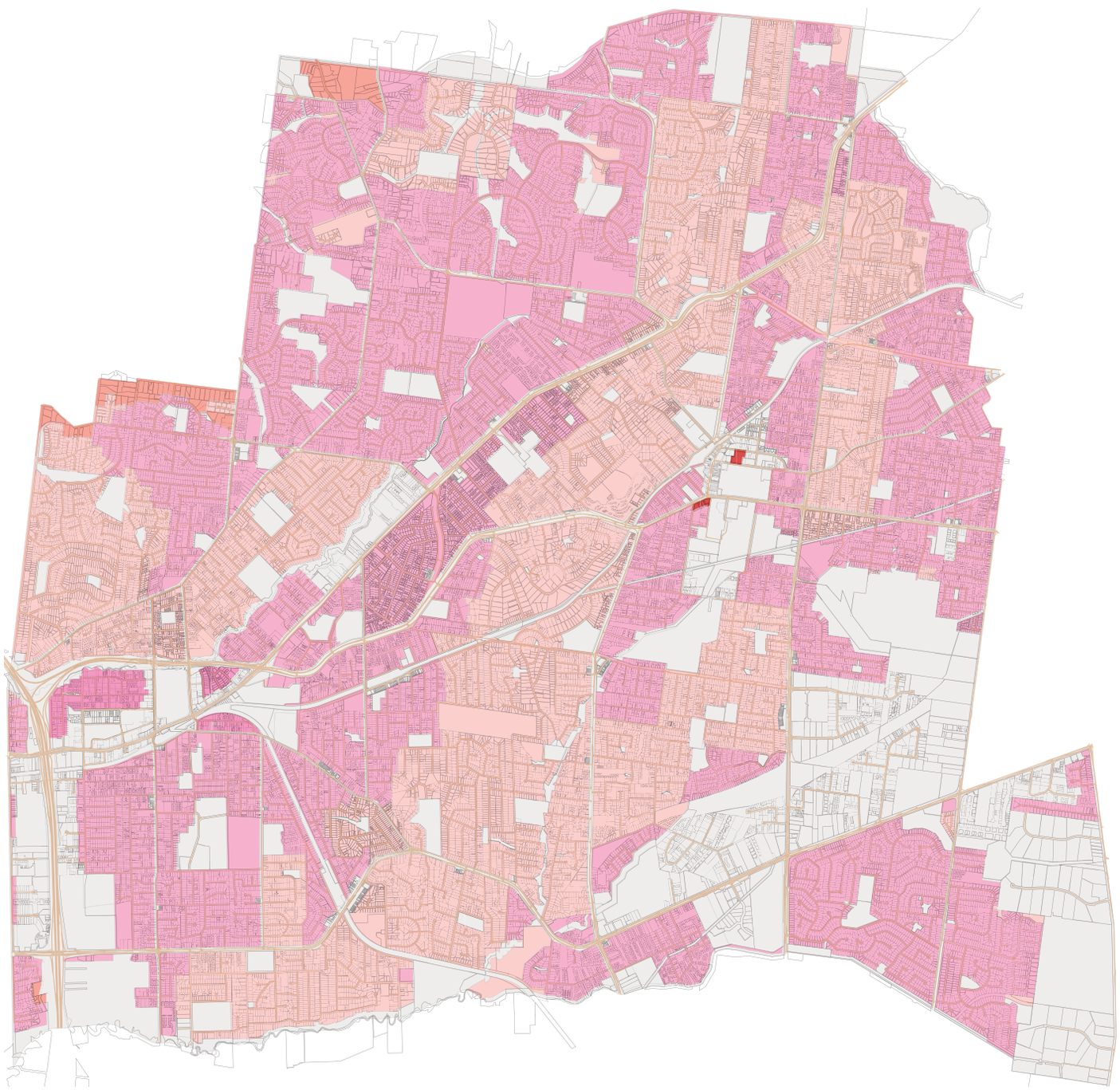
- Provision of a minimum of one canopy tree per 175 square metres of the site area, that will reach a minimum mature height that equals the height of the proposed development, including:
    - a minimum of one canopy tree within each area of secluded private open space; and,
    - a minimum of one canopy tree within the front setback per 5 metres of width of the site (excluding the width of one driveway).
- Each tree should be surrounded by 20 square metres permeable surface with a minimum radius of 3 metres. Up to 50% of the permeable surface may be shared with another tree.

It should be noted that similar (or the same) residential zoning provisions were recently discussed and supported in the Panel report for Monash Amendment C125.

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Residential Zones

Maroondah City Council 2018 Vegetation Planning Policy Review



- Low Density Residential Zone
- Neighbourhood Residential Zone
- General Residential Zone
- Residential Growth Zone
- Mixed Use Zone
- Other
- Residential zone boundaries

Scale = Metre

500 1000 1500 2000 2500

N

Green Wedge A Zone

The Green Wedge A Zone applies to land at the interface with rural/rural living landscapes at the north and south-eastern edges of the municipality. The head clause includes the following purpose statements:

- *To protect, conserve and enhance the biodiversity, natural resources, scenic landscapes and heritage values of the area.*
- *To protect, conserve and enhance the cultural heritage significance and the character of rural and scenic non-urban landscapes.*

Generally, a permit is required for buildings and works, except for Section 1 uses, and a minor (50 square metres) extension to an existing dwelling. The head clause also includes decision guidelines relating to the following environmental issues:

- *The impact of the use or development on the flora and fauna on the site and its surrounds.*
- *An assessment of the likely environmental impact on the natural physical features and resources of the area and in particular any impact caused by the proposal on soil and water quality and by the emission of effluent, noise, dust and odours.*
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and fauna habitat and the revegetation of land including riparian buffers along waterways, gullies, ridge lines, property boundaries and saline recharge and discharge areas.*
- *How the use or development relates to sustainable land management and the need to prepare a sustainable land management plan.*
- *The location of on site effluent disposal areas to minimise impact of nutrient loads on waterways and native vegetation.*

The minimum lot size specified in the schedule to the zone in the *Maroondah Planning Scheme* is 2 hectares. The GWAZ areas within Maroondah are also subject to the provisions of the VPO, with some minor exceptions.





Vegetation Protection Overlay (VPO)

The purpose of the VPO outlined at Clause 42.02 includes:

- *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.*

The VPO requires a permit to remove, destroy or lop any vegetation specified in the schedule (in this case all native vegetation, including dead or fallen trees that provide habitat for native fauna), and includes a set of decision guidelines in the head clause that the Council must consider.

VPO1 Sites of Biological Significance

The VPO in Maroondah has only one schedule (VPO1) and relates to sites of biological significance. It is based on work undertaken by G. Lorimer et al in 1997 (which will be updated, based on the more current technical work by the same author), and covers mostly public land, including waterway corridors and numerous bushland reserves. Publicly zoned land and the application of the VPO in Maroondah are illustrated on the following pages.

Aside from linear creek corridors, the largest areas to which the VPO1 applies are the Melbourne Water Retarding Basin/Eastwood Golf Club (and some adjacent residential lots); the industrial precinct north of Dandenong Creek in Bayswater; land generally between Dandenong and Bungalook Creeks in Heathmont, incorporating HE Parker Reserve and the Heathmont Golf Park; Ringwood Lake Park/Bedford Park; and the Hochkins Ridge Nature Conservation Reserve.

The most substantial areas of private residential land to which the VPO applies are around Ruthven Way and Vasey Concourse atop the Wicklow Hills Ridgeline; properties in Richardson Way adjacent to Birt's Hill Reserve; residential lots in the Jumping Creek Valley area; and the now subdivided and developed former Croydon and District Golf Course.

VPO1 includes the following statement of nature and significance of vegetation to be protected:

> *Remnant indigenous vegetation communities in Maroondah now account for only 3% of the municipality. This vegetation is significant for its biological diversity, habitat and floristic values. The vegetation contains species and communities that are significant at a local, municipal, regional, state and national level.*
>
> *The retention and enhancement of the remnant vegetation is critical to maintaining and increasing biological diversity in Maroondah. Remnant vegetation provides the basis for the development of wildlife corridors for native flora and fauna.*
>
> *Indigenous vegetation contributes to the maintenance of the natural systems of Maroondah.*
>
> *In addition, the attractiveness of many areas of Maroondah is created by the presence of remnant indigenous vegetation.*

Reference: Sites of Biological Significance in Maroondah Vols 1 & 2, G. S. Lorimer, J. C. Reid, L. P. Smith and H. Moss, 1997

Implications for this review

The VPO in Maroondah applies to all significant, public bushland reserves, and some discreet areas of private land.

Compared to the Significant Landscape Overlay, it is sparingly used.

The VPO is a vegetation protection mechanism only, providing a permit trigger for all native vegetation removal (no exemptions are listed in the schedule).

In relation to private land, the success or otherwise of the VPO must be considered together with the zoning and other overlay provisions that apply, as these maintain very large lot sizes (DDO1 and DDO2), and provide site coverage and cut and fill 'incentives' (SLO3).

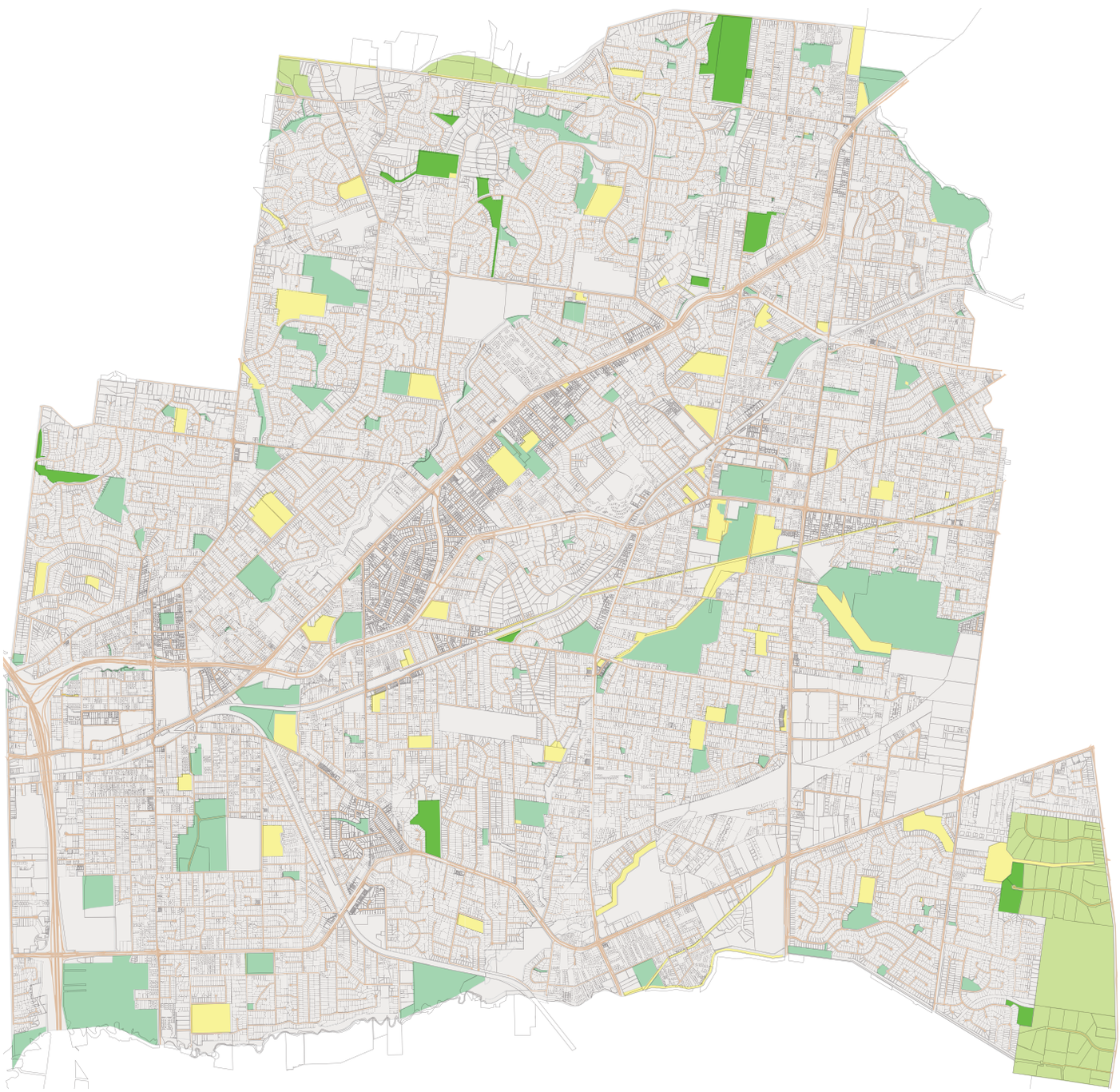
Following VC148, up to five objectives can be included in the schedule to the VPO, together with application requirements.



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Public Zones

Maroondah City Council 2018 Vegetation Planning Policy Review



- Public Use (1, 2, 3, 6, 7) Zone
- Public Park And Recreation Zone
- Public Conservation and Resource Zone
- Green Wedge A Zone
- Other
- Residential zone boundaries

Scale = Metre

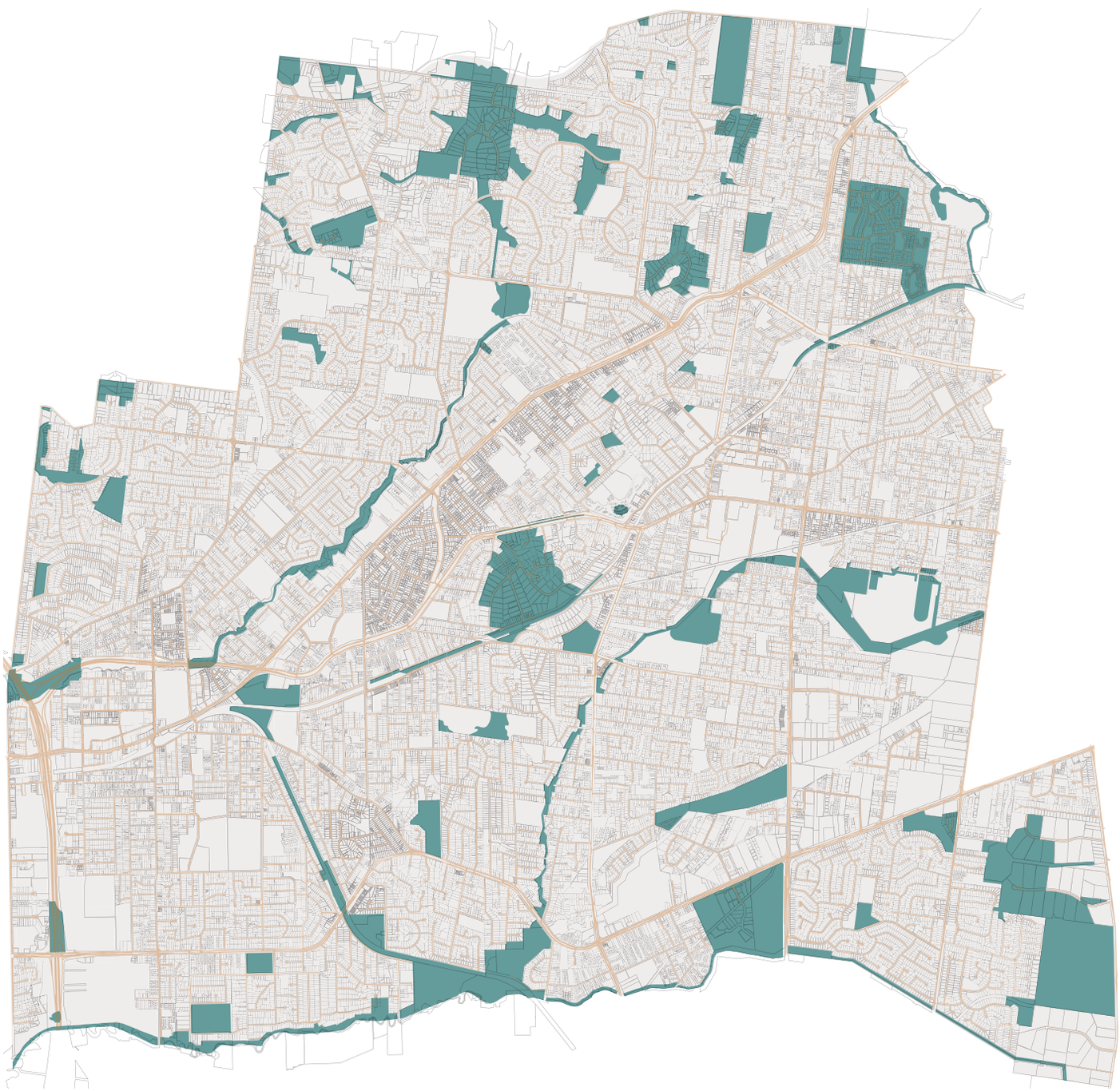
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N

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Vegetation Protection Overlay

Maroondah City Council 2018 Vegetation Planning Policy Review



Vegetation Protection Overlay - Schedule 1
Not covered by VPO

Scale = Metre

500 1000 1500 2000 2500

N

Significant Landscape Overlay (SLO)

The purpose of the SLO outlined in the head clause at 42.03 includes:

- *To identify significant landscapes.*
- *To conserve and enhance the character of significant landscapes.*

The SLO requires a permit to construct a building or construct or carry out works, unless exempted (this does not apply to agricultural activities such as ploughing and fencing, unless specified); construct a fence (if specified); and remove, destroy or lop any vegetation (unless exempted). As outlined, these requirements can be exempted and/or tailored to meet the specific objectives of the overlay.

An extensive list of additional exemptions relating to vegetation removal is outlined at clause 42.03-3, and includes vegetation removal related to emergency works, fire protection, mineral exploration and extraction, noxious weeds, the functioning of an existing railway, road safety, Traditional Owners acting under a specified agreement, and others.

The decision guidelines outlined in the head clause (42.03-5) that the Council must consider are:

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The statement of the nature and key elements of the landscape and the landscape character objectives contained in a schedule to this overlay.*
- *The conservation and enhancement of the landscape values of the area.*
- *The need to remove, destroy or lop vegetation to create a defendable space to reduce the risk of bushfire to life and property.*
- *The impact of the proposed buildings and works on the landscape due to height, bulk, colour, general appearance or the need to remove vegetation.*
- *The extent to which the buildings and works are designed to enhance or promote the landscape character objectives of the area.*
- *The impact of buildings and works on significant views.*
- *Any other matters specified in a schedule to this overlay.*

SLO3 Wicklow Hills Ridge & Loughnan-Warranwood Ridge Landscape Protection Area

The SLO applies extensively across Maroondah (illustrated on the map following p. 15 of this report), and also relates directly to the application of the Residential Zones, with Schedule 3 applying to NRZ land (SLO3 'Wicklow Hills Ridge and Loughnan-Warranwood Ridge Landscape Protection Area'). The statement of nature and key elements of landscape outlined in Schedule 3 is:

> *Canopy trees are the main element of the urban character of Maroondah. Canopy trees in particular soften the impact of buildings in the environment and provide a distinct leafy character to Maroondah.*
>
> *The continuous nature of the canopy vegetation throughout the ridgelines of Maroondah provides a strong character element and is much valued by the community. The canopy vegetation is a defining element of the ridgelines of Maroondah.*
>
> *Contiguous canopy vegetation contributes to the maintenance of biodiversity through the provision of wildlife movement corridors, habitat and shelter areas.*

And the objectives of SLO3 are:

- *To conserve the existing pattern of vegetation, landscape quality and ecosystems within the area and encourage the re-generation of vegetation.*
- *To maintain a dense vegetation canopy that contributes to the environmental significance of the area.*
- *To control or minimise the effect of future development upon natural features, particularly canopy trees and ridgelines.*
- *To ensure that the development, use and management of land is compatible with the existing character and landscape protection of the area.*
- *To maintain the overall scenic beauty of the municipality.*

Under SLO3 a permit is not required to construct a building or construct or carry out works provided that:

- *The building does not cover more that 40 per cent of the site when combined with the area of any existing building.*
- *The land has an average slope of less than 20 per cent.*
- *The natural surface level of the ground is not altered by more than 2.5 metres of cut or fill.*
- *The building is not more than 2 storeys, or higher than 8 metres, above the natural surface level of the ground directly below that part of the building.*

A permit is also required to remove a tree of 5m or more in height that has a trunk circumference of 0.5m or more, one metre above the ground (unless it is dead, dying or dangerous, or within 3 metres of an existing dwelling). Thus SLO3 is primarily concerned with vegetation protection and its visual dominance, in encouraging minimal site coverage (though a maximum permeability percentage is not included) and relatively low-scale building forms (though the NRZ maximum building height is 9 metres and 2 storeys).

Additional decision guidelines outlined in the schedule are:

- *The effect of the proposed removal of the vegetation on the character and canopy of the area.*
- *The significance of the vegetation to the character and environment of the area.*
- *The habitat value of the vegetation.*
- *The role of the vegetation in providing vegetation and habitat corridors throughout Maroondah and the region.*
- *The benefit of planting indigenous vegetation.*
- *The role of the vegetation in contributing to and maintaining biodiversity and the landscape of Maroondah.*
- *The benefits of requiring replanting elsewhere on the site.*
- *The reason for removing the vegetation and the practicality of alternative options, which do not require the removal of the vegetation.*
- *The effect of the building on the profile of the ridgeline or skyline.*
- *Whether buildings and works have been designed and sited to allow for the maximum retention of canopy vegetation on the site.*

SLO4 Landscape Canopy Protection

Schedule 4 to the Significant Landscape Overlay (SLO4 'Landscape Canopy Protection') in the *Maroondah Planning Scheme* applies to GRZ zoned land, with its statement and nature of key elements of landscape being:

> *The combination of canopy trees and steep to undulating topography contribute to major elements of the urban character of Maroondah. Canopy trees in particular soften the impact of buildings in the environment and provide a distinct leafy character to Maroondah.*
>
> *The continuous nature of the canopy vegetation throughout Maroondah provides a strong character element and is valued by the community. The canopy vegetation is a defining element of the urban character of Maroondah.*

Under SLO4 a permit is not required for buildings and works; however, the tree removal requirements are as per SLO3.

The objectives of SLO4 are:

- *To conserve the existing pattern of vegetation, landscape quality and ecosystems within the area.*
- *To encourage the re-generation of vegetation.*
- *To maintain a dense vegetation canopy that contributes to the special environmental character of Maroondah.*
- *To maintain the overall scenic beauty of the municipality.*

The above objectives are almost identical to those contained in SLO3, as are the decision guidelines included in the schedule, with the exception of one addition:

- *The benefits of seed collection from any indigenous vegetation.*

In summary SLO4 operates as a vegetation protection mechanism, and while there are objectives relating to encouraging regeneration of vegetation, there are no proactive inclusions to support this relating to site coverage, permeability or requirements to plant vegetation.

SLO1 Ridgeline Protection Area

SLO1 relates to areas of Maroondah within the Green Wedge Zone (north of the Jumping Creek Valley and in the south-eastern corner of the Municipality around the Eastwood Golf Club), and is somewhat confusingly titled 'Ridgeline Protection Area' (while there is a local rise in topography generally on the golf club land, this SLO schedule also applies to flatter land to the north, and land associated with the Jumping Creek Valley/valley walls). Its statement of nature and key elements of landscape is the same as SLO3, as are its permit requirements. The decision guidelines in the schedule are also almost identical.

SLO2 Maroondah Canopy Tree Protection Area

SLO2 relates to a relatively small parcel of Green Wedge Zoned land in the north-western corner of the Municipality, at the municipal boundary shared with Manningham. The statement of nature and key elements of landscape in the schedule is the same as SLO4, as are the objectives, permit requirements and decision guidelines.

Implications for this review

The SLO can be used as a permit trigger for buildings and works and/or vegetation removal, but cannot stipulate quantifiable and measurable requirements that directly affect the ability to plant and sustain vegetation, in the manner of a schedule to the NRZ or the GRZ.

The SLO is effectively used as a tree protection/residential character management tool across Maroondah's residential areas.

SLO3, which applies to NRZ zoned areas effectively includes design and siting 'incentives' (i.e. if they are met a permit is not required) and a permit requirement for tree removal.

SLO3 applies to the locally significant landscape features of the municipality, but the 'statement of nature and key elements of landscape' refers only to canopy trees and not the character or significance of the ridgelines themselves.

While its use for tree protection and neighbourhood character management is not the purpose stated in the head clause, SLO3 at least, is able to be justified in its location, and is operating largely

effectively in minimising site coverage and protecting the tree canopy cover.

SLO4, which applies to GRZ zoned areas only includes a permit requirement for tree removal. It is unlikely that SLO4 would be able to be justified and approved by Panel nowadays, because it does not apply to a significant landscape.

While consideration could be given to transferring the contents of the SLO schedules to the NRZ and GRZ schedules, and reviewing the appropriateness of at least Schedule 4 to the SLO, it is important not to dispense entirely with a planning scheme overlay where the end is justifying the means (i.e. control over tree removal).

Following VC148, up to five landscape character objectives can be included in any schedule to the SLO, together with application requirements.

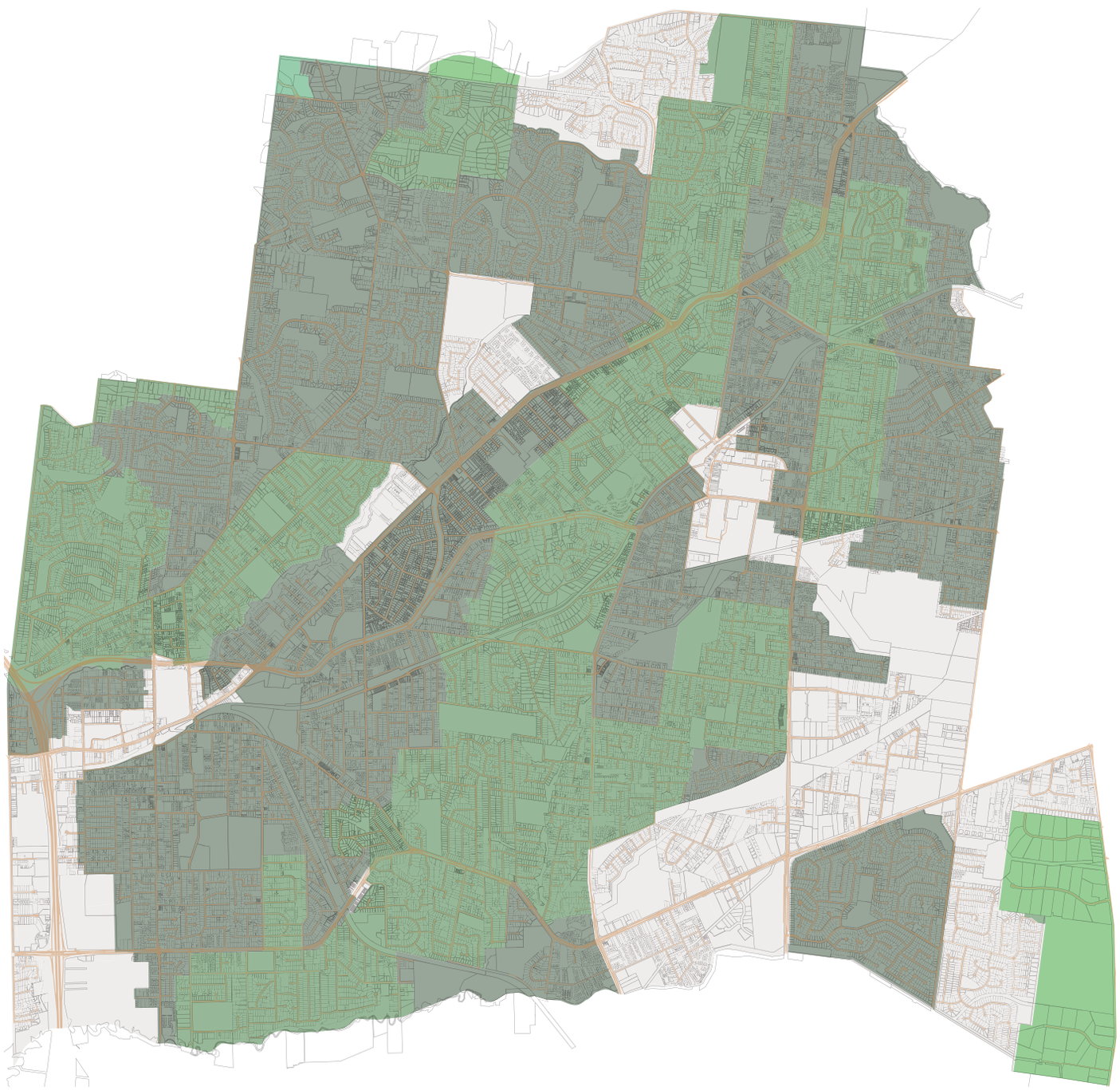




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Significant Landscape Overlay

Maroondah City Council 2018 Vegetation Planning Policy Review



Significant Landscape Overlay - Schedule 1
Significant Landscape Overlay - Schedule 2
Significant Landscape Overlay - Schedule 3
Significant Landscape Overlay - Schedule 4
Not covered by SLO

Scale = Metre

500 1000 1500 2000 2500

N

Design and Development Overlay (DDO)

The purpose of the Design and Development Overlay as outlined at Clause 43.02 includes:

- *To identify areas which are affected by specific requirements relating to the design and built form of new development.*

Under the DDO, as permit is required for buildings and works (unless exempted in the schedule), and the schedule must include design objectives, and may include requirements relating to building height and setbacks, plot ratio, landscaping, and any other relevant requirements relating to design or built form. A permit can be required for a swimming pool through the schedule.

A permit is also required for subdivision, unless exempted in the schedule, where the minimum lot size can also be specified.

In so far as it can affect vegetation and biodiversity, in the *Maroondah Planning Scheme*, the DDO applies to the ridgelines and high points of the municipality, and the Jumping Creek landscape area, and includes minimum lot size requirements (also contained in the schedules to the NRZ) that encourage lower density development. This maintains large lot sizes (i.e. 864 and 2,000 square metres) and in turn contributes somewhat to the retention and protection of canopy trees and other vegetation.

The more specific provisions of the DDO schedules applied in Maroondah are outlined below, and are shown on the map following p. 17.

DDO1 Ridgeline Protection Area - A

DDO1 applies generally to Birt's Hill, the Burley Griffin Neighbourhood Area adjacent to Cheong Park, and part of the Jumping Creek Valley, which are the NRZ1 zoned areas of Maroondah. The minimum subdivision requirement is the largest in the municipality in these areas, being a minimum of 2,000 square metres. The key objective relating to vegetation and biodiversity outlined in the schedule is:

- *To ensure that lot size allows for the protection and enhancement of areas of high environmental quality and biological or landscape significance, particularly ridgelines and headwater catchments.*

In addition to the 2,000 square metres minimum requirement, no more than 5% of the minimum lot size can be derived from a battle axe driveway or similar, and access ways must be at lease 5 metes wide. It is specified in the schedule that a permit is not required for buildings and works.

Additional decision guidelines outlined in the schedule, which the Council must consider, are:

- *The capability of the land to accommodate the lot size, addressing site quality attributes including soil type, soil fertility, soil structure, soil permeability, aspect, slope, vegetation retention and drainage patterns.*
- *The ability of the lot to allow for the sensitive siting of future development and the relationship to adjoining properties, including the provision of development and effluent envelopes for any building or works.*
- *The ability of the lot size and configuration to accommodate future development while providing opportunities for the retention of vegetation.*
- *The location and design of existing and proposed roads and their impact on the landscape and whether the use or development will cause significant traffic generation which will require additional traffic management programs to be initiated.*
- *The ability of the lot to provide the opportunity for good solar access for future development.*

DDO2 Ridgeline Protection Area - B

DDO2 applies to the NRZ2 zoned areas, which are located along the full length of the Wicklow Hills Ridgeline, Loughnan's Hill and the 'Golf Links Estate' Neighbourhood Area 21, atop the Croydon 'secondary ridgeline'. The minimum lot size for subdivision is 864 square metres, no more than 5% of the minimum lot size can be derived from a battle axe driveway, and access ways must be a minimum of 4 metres wide.

The design objectives outlined in the schedule are:

- *To provide a planning framework for lower density residential development and subdivision.*
- *To ensure that the pattern of subdivision and lot size contributes to the creation of urban precincts with high levels of visual and environmental amenity.*
- *To ensure that subdivision contributes to a coordinated and attractive streetscape.*
- *To provide lots of a size and configuration to allow adequate scope for the retention and development of canopy vegetation in garden settings.*

As per DDO1, the overlay does not trigger a permit requirement for buildings and works.

Apart from DDO7, the application of the DDO elsewhere in the municipality is not concerned with vegetation or biodiversity, but schedules could be expanded to incorporate such objectives and requirements. Other DDOs in place are:

DDO3 Design Controls - Ringwood Activity Centre

This DDO is primarily concerned with the scale of built form in the Ringwood MAC, and incorporates a table of required building heights.

DDO4 North Croydon Shopping Centre

This DDO is focused on the front setback of buildings, and outlines decision guidelines relating to a reduced setback scenario.

DDO5 Canterbury Road and Dorset Road Strategic Industrial Area

This area is also covered by the VPO1.

DDO6 Ringwood East Neighbourhood Activity Centre Commercial Precinct

This DDO schedule includes an objective requiring the protection and enhancement of the centre's landscape character, together with a buildings and works requirement that:

- *Existing canopy vegetation should be retained and new landscaping provided where appropriate.*

DDO7 Northern Gateway Area

DDO7 applies to an isolated parcel of NRZ3 zoned land, adjacent to Warrandyte Road. The area is surrounded by low density residential development, on previously unsewered lots. The minimum lot size outlined in the schedule is 1,500 square metres, and it includes the following design objectives relating to vegetation:

- *To provide lots of a size and configuration that allow adequate scope for the retention and provision of indigenous vegetation and canopy in garden settings.*
- *To ensure that structures do not dominate the treed landscape and are compatible with the character of the site.*

DDO8 Heathmont Neighbourhood Activity Centre Commercial Precinct

DDO8 is focused on development responding to the *"village character and feel"* of Heathmont, but includes the following objective relating to landscape:

- *To protect and enhance Heathmont's leafy backdrop, hilly landscape and bush setting.*

And the following requirements relating to buildings and works:

- *Retain canopy vegetation throughout the activity centre and seek additional planting where possible.*
- *Ensure that development is integrated into the topography, in order to avoid substantial cut and fill in the landscape.*

DDO9 Maroondah Hospital Medical Precinct

DDO10 Croydon Major Activities Area

DDO10 is concerned with the intensification of the Croydon Major Activity Centre, and includes a built form (and building heights) map, but also references its *"unique ridgeline setting."* The retention of view lines are also a key consideration in the overlay schedule, with a number of requirements relating to the protection of views from within the centre to the Wicklow Hills Ridgeline and the Dandenong Ranges.

Implications for this review

Across Maroondah, in so far as it relates to tree canopy cover, the DDO is used as a minimum lot size control, and subdivision assessment tool.

DDO1 is directly related to the application of the NRZ1 (and the 2,000 square metres minimum), and the DDO2 to the NRZ2 (and the 864 square metres minimum).

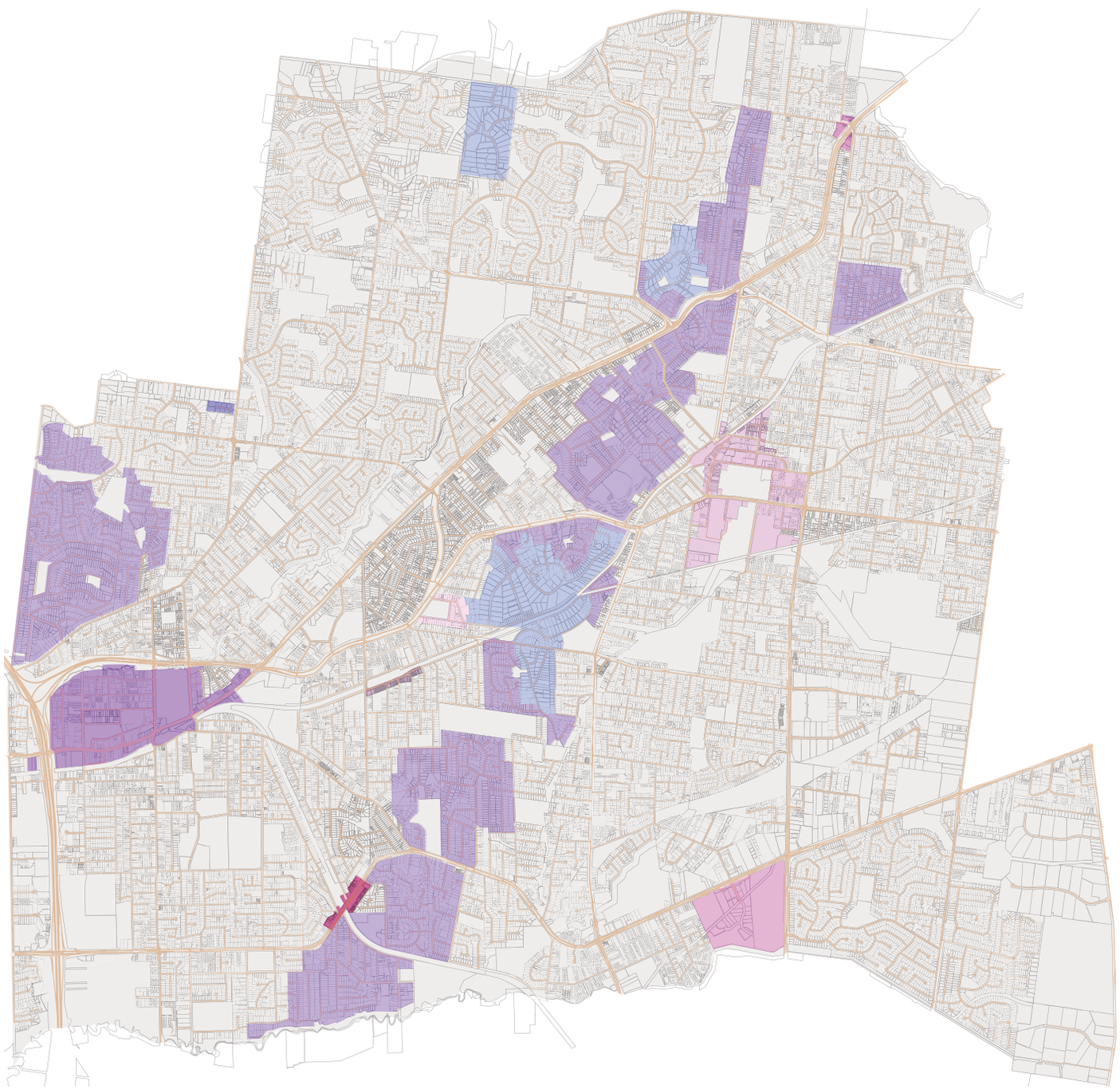
There is inevitably a double-up in content with the NRZ schedules.



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Design & Development Overlay

Maroondah City Council 2018 Vegetation Planning Policy Review



Design And Development Overlay - Schedule 1
Design And Development Overlay - Schedule 2
Design And Development Overlay - Schedule 3
Design And Development Overlay - Schedule 4
Design And Development Overlay - Schedule 5
Design And Development Overlay - Schedule 1
Design And Development Overlay - Schedule 7
Design And Development Overlay - Schedule 8
Design And Development Overlay - Schedule 9
Design And Development Overlay - Schedule 10
Not covered by DDO

Scale = Metre

500 1000 1500 2000 2500

N

Bushfire Management Overlay (BMO)

The Bushfire Management Overlay has the potential to impact vegetation coverage and biodiversity, and applies to some properties in Maroondah, along the northern (Jumping Creek Valley), north-western (Croydon Road west to Middlebrook Drive) and western (Williams Road west to Kubis Drive west, and east of Glenvale Road) edges of the municipality.

The purpose of the BMO includes:

- *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.*

The head clause requires a permit for subdivision and buildings and works associated with certain uses, and application requirements include a bushfire hazard site assessment, a bushfire hazard landscape assessment and a bushfire management statement. A number of conditions set out in the head clause relating to bushfire protection measures must form part of any permit issued.

The requirements of the BMO head clause can be varied through a schedule to the overlay (and bushfire management objectives must be included in any schedule), but there is no schedule to the BMO in the *Maroondah Planning Scheme*.



4. Background Technical Work

Three key pieces of technical work have been commissioned by the Council, and will underpin and justify the changes to the *Maroondah Planning Scheme* at the completion of the Maroondah Vegetation Review project. They are:

- *Maroondah Canopy and Landscape Analysis 2011 to 2016*, Joseph Kaspar Greenspace Consultant, June 2018
- *Supplementary canopy cover analysis of commercially zoned areas in Maroondah 2011 to 2016*, Joseph Kaspar Greenspace Consultant, October 2018
- *Biodiversity in Maroondah* (final draft report), Graeme S. Lorimer PhD, October 2018

A synopsis of the studies and the key findings follows.

Maroondah Canopy & Landscape Analysis (June 2018)

This technical report provides estimates of change in tree canopy cover and landscape characteristics in non-commercial areas between 2011 and 2016. Specifically, the purpose of the research was to:

- estimate change in tree canopy cover and cover class in public, streetscape and private areas;
- identify the primary cause of canopy cover change e.g. construction, removal etc; and,
- broadly identify areas for priority planting.

It is intended that the findings from this study will facilitate the Council's ability to develop evidence-based policy for the long-term protection and management of Maroondah's highly valued tree canopy cover. As noted by the author:

> *"Trees make an important contribution to the urban environment and constitute an integral aspect of the character of a municipality. Trees provide ecosystem services that have physical, biological and social benefits such as air purification, temperature regulation, stormwater attenuation and increased real estate prices… Urban tree canopy cover and urban tree canopy cover growth is a critical concern of landscape policy with implications for land use and development policy more broadly."*[1]

Sensibly, the spatial areas for assessment relate directly to planning scheme controls, namely overlay areas (which in turn relate to zoning), and in most instances, where these overlay areas overlap. Areas that were formerly subjected to Local Law No. 5 (under the former City of Croydon) are also separated out, as well as areas where vegetation controls have never been applied.

In the article *'Identifying spatial areas for canopy analysis based on combinations of planning controls'*, prepared by Peter Newbigin (June 2018), the following 9 combinations of planning influence over vegetation/landscape character are identified:

- VPO1 where it overlaps with the DDO1 (and therefore also the SLO3). Note that the NRZ1 also applies.
- VPO1 where it overlaps with the DDO2 (and therefore the SLO3). Note that the NRZ2 applies.
- VPO1 where it has no overlap with the DDO
- DDO1 (and therefore SLO3) where it does not overlap with the VPO1. Note that the NRZ1 applies.
- DDO2 (and therefore SLO3) where it does not overlap with the VPO1. Note that the NRZ2 applies.
- SLO1 where no other overlays apply. Note that the GWAZ applies.
- SLO2 where no other overlays apply. Note that the GWAZ applies.
- SLO3 where no other overlays apply. Note that the NRZ1, NRZ2 or NRZ3 applies.
- SLO4 where no other overlays apply. Note that the GRZ1 applies.

Remaining land was separated into two additional assessment areas:

- Areas without a VPO, DDO or SLO but previously subject to Local Law No. 5
- Areas without a VPO, DDO or SLO but not previously subject to Local Law No. 5

The key findings from the canopy cover and landscape analysis, many with direct implications for vegetation planning policy and controls in the *Maroondah Planning Scheme*, are outlined and discussed further, below.

In the five-year period analysed, Maroondah had a relatively high urban tree canopy cover of 27.1%, with no statistically significant growth or loss.

However, the stable tree canopy cover was accompanied by significant increases to hard surfaces on private land across the municipality (117 hectares over five years), and a significant decrease to grass/bare earth (a decrease of 104 hectares over five years).

Canopy cover and canopy cover change was not uniform, with land use tenure (and therefore *zoning*, as well as overlays) playing an important role in distribution.

Public space had the highest tree canopy cover in 2016 (37.3%), followed by private land (25.9%), and streetscapes (25.2%). That is,

[1] Kaspar, J., *Maroondah Canopy & Landscape Analysis 2011 to 2016*, June 2018, p. 4

62.5% of Maroondah's tree canopy cover was/is located on public land.

Public space disproportionately contributed to canopy growth, and private land was also a net contributor, particularly where the VPO applies. However, it should be noted that the VPO is not widely applied across Maroondah and, apart from public land, its application coincides with the largest lots in the municipality (i.e. DDO1), and/or the SLO3 (with site coverage and cut and fill incentives) or the Green Wedge Zone and SLO1 (also with site coverage and cut and fill incentives). The only exception is the former Croydon and District Golf Course, where a greater site coverage allowance (60%) and pre-approved building envelopes nullified the overlay objectives, and where tree canopy loss has been significant.

Areas not covered by the VPO, but subject to either the DDO1 (note that only a handful of sites are covered by the DDO1 and not the VPO) or DDO2 (i.e. generally the Wicklow Hills Ridgeline, NA21 and Loughnan's Hill) experienced a net significant loss of tree canopy cover (-2.0%).

Further investigations revealed that there was slightly higher construction activity in DDO1 and DDO2 areas, which resulted in canopy cover loss. However, the other key factor was that *canopy growth over the period did not compensate for losses*. This was determined to be due to factors such as tree age/morbidity, or lag time between new trees becoming large enough to be recognised as canopy.

Most of the significant changes, both growth and loss, occurred in the ridgeline environments (i.e. the Wicklow Hills Ridgeline, NA21 and Loughnan's Hill), where the VPO, DDO and SLO3 all apply. While some of these areas experienced significant loss, it is important to note that these areas still support some of the highest levels of canopy cover in Maroondah (32.7% DDO and 42.1% VPO). It is also worth noting the influence of the NRZ2 on these areas i.e. the (existing and) required minimum lot sizes, and that these areas represent much smaller sample sizes than say, Spatial Area 10 SLO4 in isolation.

Of particular note is the following finding:

> *"One of the most consistent and significant findings in this research was the increase in hard surfaces and the decrease in grass/bare earth and shrubs. This suggests that the intensity of land use in Maroondah is shifting to the provision of constructed environments and tree centered ecosystem services at the expense of lawns, garden areas and open land."*[2]

Overall, it was concluded by the author that Maroondah's canopy cover and landscape protection policies are proving effective, simply because tree canopy did not significantly decline over the period.

Further conclusions that can be extrapolated, when considered in conjunction with the detailed provisions of the relevant zoning and overlays include the following:

The VPO is a vegetation *protection* mechanism only (albeit a strong one as it relates to native vegetation, and not just canopy trees of a certain size). It does not provide any incentives or requirements for the planting of vegetation or canopy trees, in the form of site coverage, permeability or landscaping provisions.

The VPO in Maroondah covers all public bushland reserves/parks that contain significant vegetation/biodiversity. Therefore the success of the VPO in these areas has more to do with land tenure and management by the Council, than the overlay itself.

The most insight into the effectiveness of the VPO is where it applies to private land in Maroondah, which is relatively limited (compared to the application of the SLO, for example), and occurs in conjunction with other influential provisions such as the NRZ1, DDO1 (with large minimum lot size requirements) and the SLO3 (with site coverage and cut and fill 'incentives'), or the GWAZ (also with large minimum lot size requirements, and landscape and biodiversity 'objectives').

Feedback from the community consistently reveals that while vegetation protection mechanisms are valuable and necessary, it does not always stop illegal tree removal because of the minimal fines imposed by the *Planning and Environment Act 1987* (i.e. $1,200). Furthermore, it is regularly asserted by community members that developers merely factor in the tree removal fines as part of the overall development cost.

The most effective planning scheme provisions for landscape and canopy tree protection and planting/sustenance/growth is a combination of preservation and 'positive agenda' mechanisms (i.e. requirements and incentives through schedules to the zones), ideally without a double-up of requirements.

It is also worth noting that the impacts of the 'minimum garden area requirements' introduced to the NRZ and GRZ through VC110 are yet to be fully realised. These require a minimum percentage of a lot set aside as garden area, related to lot size:

- 400 – 500 square metres: 25%
- 500+ - 650 square metres: 30%
- 650+ square metres: 35%

However, the minimum garden area requirement relates more to the provision of 'open space' than permeability (and the ability to sustain vegetation), as while a garden area does not include driveways, car parking areas or roofed buildings, it does include decked and paved areas, swimming pools and tennis courts.

[2] ibid., p. 5

Supplementary Canopy Cover Analysis of Commercially Zoned Areas in Maroondah (October 2018)

This supplementary analysis provides an assessment of tree canopy cover and landscape characteristics for three commercial areas in Maroondah, also between 2011 and 2016:

- The Ringwood Major Activity Centre (MAC)
- The Croydon MAC
- Commercially zoned areas outside the MACs

The application of the Commercial Zone across Maroondah is shown on the map on the following page.

The areas were assessed as having a high percentage of private land (80+%), with the remainder classified as streetscapes. In 2016, the areas were highly urbanised with mostly hard surfacing (approximately 85%), with a low canopy coverage (6.4% - 9.9%).

The changes observed in the three areas over the time period were:

- The Ringwood MAC experienced a significant net tree canopy cover decrease (-0.9%) due to construction and development.
- The Croydon MAC had no significant net change in tree canopy cover, due to a moderate decrease being off set by a moderate increase.
- Other commercially zoned areas had a significant (+1.5%) net tree canopy cover increase due to low construction and tree removal rates, and moderate tree growth.

Overall, streetscapes had a much higher canopy cover in all areas (12.2% - 17.8%), compared to private land (5.5% - 8%). Other observations included that there was a significant decline in grass/bare earth surfaces in all three areas, and a significant increase in hard paved surfaces in the Ringwood MAC and the other commercially zoned areas.

The relatively small size of the assessment areas allowed for closer scrutiny of the locations of the tree canopy cover changes. This revealed that increases occurred mostly through streetscape trees (i.e. an investment/planting program by the Council or possibly as a result of developer contributions), and through car parks with mature trees. Whether the car park trees were required to be planted in association with their development, or whether the trees matured over the five-year period is unclear. However, a key conclusion is that streetscapes and car parks play an important role in commercial centres, in supporting tree canopy cover.

A key recommendation from the study is therefore for Council to investigate methods into increasing and maintaining canopy cover in car parks and streetscapes, in or adjacent to commercial areas.

Utilising the *Maroondah Planning Scheme*, this is possible through a schedule to the DDO (i.e. amending existing DDO schedules) and including clear design objectives, indisputable buildings and works requirements, and decision guidelines relating to landscaping.

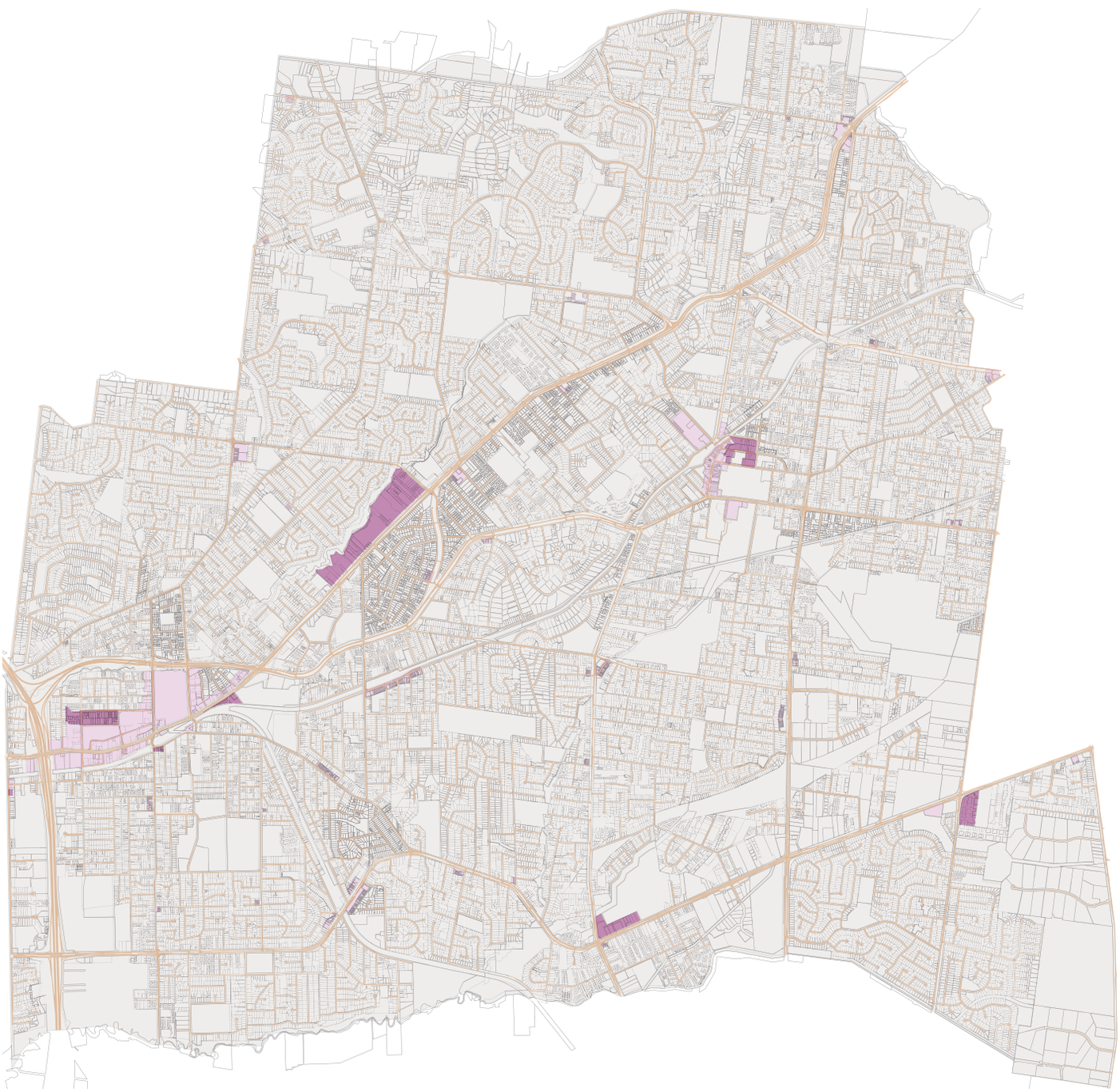




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Commercial Zones

Maroondah City Council 2018 Vegetation Planning Policy Review



Commercial 1 Zone
Commercial 2 Zone

Scale = Metre

500 1000 1500 2000 2500

N

Biodiversity in Maroondah (draft final report, October 2018)

At the time of drafting this report, the biodiversity analysis was at final draft stage. The document, *Biodiversity in Maroondah*, is being prepared by Graeme Lorimer PhD, who also drafted Council's 1997 biodiversity report (which underpins the 82 VPOs currently in the *Maroondah Planning Scheme*).

The study aims to provide a current understanding of Maroondah's biodiversity i.e. what ecosystems and species it is made up of; where it is located/concentrated; what sustains it and what threatens it, and what can be done to protect and enhance it.

The biodiversity analysis covers plants, but also insects (just butterflies), algae, mosses and liverwarts, and is the second piece of technical analysis that will input directly, and support, this vegetation planning policy review.

The importance of maintaining biodiversity is illustrated by its many benefits, including the existence of natural 'ecosystem services' including microclimate moderation, air purification and noise reduction; financial and economic benefits including increased property values and employment relating to park/vegetation management; health, wellbeing and quality of life benefits associated with an attachment to nature and caring for species other than our own; and, the value of natural heritage to sense of place and community.

Key findings relating to Maroondah's biodiversity that can be directly influenced by the planning scheme, are primarily related to urbanisation:

- Clearing of vegetation results in loss of species, loss of habitat and opportunity for invasive species. This can be influenced by the requirements of the VPO and the SLO, and the objectives and decision guidelines in both, together with local policy.
- Population growth leads to a requirement for housing and infrastructure, resulting in risk-motivated removal of vegetation and an increase in site coverage and hard surfaces. Other implications include capping of land, fragmentation of nature, diversion of rainfall (including increased storm water runoff), disruption to natural hydrology and increased pollution. The planning scheme implications for these issues are far reaching, but at a detailed level can be influenced most effectively through schedules to the NRZ and GRZ i.e. through site coverage, permeability and setback requirements.
- Excavation and fill leads to loss of species, loss of habitat, disruption to natural hydrology and compaction of earth. Cut and fill and site slope percentage are currently included as 'incentives' in the permit requirements under the SLO3. These issues can also be addressed through objectives and decision guidelines in schedules to zones or overlays.

All of the above should have their foundation and basis in the LPPF, and its eventual translation into a new Planning Policy Framework, incorporating a new Municipal Planning Strategy (VC148).

Specific recommendations arising from the biodiversity analysis, and relating directly to the *Maroondah Planning Scheme* are discussed further below.

Local Planning Policy Framework

As outlined in Section 3 of this report, the current LPPF contains Clause 21.10 Natural Resources, and local policies 22.01 Waterways Protection Policy, 22.03 Non Urban Areas, and 22.04 Sites of Biological Significance, that are most relevant to vegetation/canopy tree protection and biodiversity.

And while ideally a consideration of vegetation protection and maintaining biodiversity would be contained in every part of the LPPF, clear directions exist from DELWP relating to a themed MSS (and future MPS) and concise and focused local policies (it is assumed that these directions will be maintained through implementation of VC148).

In relation to the current LPPF, the following recommendations are made in the biodiversity work:

Clause 21.06 Built Form and Urban Design

Amend the clause to include an additional objective to encourage larger developments to provide rooftop and community gardens.

This initiative is supported in principle, and should be considered during the update of the current MSS to the future MPS (as a strategy or action, rather than an objective). An initiative such as this could also be implemented as an offset or development contribution.

Clause 21.10 Natural Resources

Include in the clause the reasons for protecting locally threatened species, and refer to them at Objective 3 together with associated strategies.

Include a reference to the importance of locally indigenous and Australian native trees to Maroondah.

Refer to the Sites of Biological Significance local policy as an implementation measure.

Include an additional objective such as:

> *"Restore more natural patterns of water runoff and seepage by encouraging on-site stormwater retention and influencing how urban*

development responds to the capacity of small catchments to cope with peak flows from urban runoff."

These recommendations are supported in principle, but may be incorporated into a more comprehensive review of the MSS, in conjunction with consideration of the purpose/requirement for a local policy on Sites of Biological Significance (may be better titled Development on sites of Biological Significance). On-site storm water management should also be a standard requirement for any planning permit application, and reinforced with planning permit conditions and inspection/enforcement.

Clause 22.01 Waterway Protection

Amend the clause to highlight the importance of native vegetation along waterways as wildlife habitat. This inclusion could be considered as part of the translation of local policies into the new PPF, but bearing in mind the required 'focused' nature of local policies. It may be a recommendation that is better incorporated into the future MPS.

Clause 22.04 Sites of Biological Significance

Expand the policy to cover additional sites of biological significance. Expand the policy to apply to all development in the current and expanded area. This recommendation is supported in principle, as it is consistent with the intent that a local policy should provide guidance on decision making for a specific issue. However, for the policy to be expanded beyond permit applications for vegetation removal, it would need to apply to sites of biological significance that are covered by an alternative overlay, such as the ESO. The policy would also need to be completely re-written.

Include an objective in the aforementioned policy relating to human health and well being e.g:

"To maintain and improve the opportunities for the Maroondah community to experience the benefits that natural environments provide for health, wellbeing and quality of life."

A high level, non-focused objective such as this would not be supported by DELWP for inclusion in a local policy. It could be considered for inclusion in the restructured future MPS.

Include the following 'three-step, sequential approach' to decision making, in the Sites of Biological Significance Policy:

- *Avoid direct and indirect adverse ecological impacts to sites of biological significance, such as loss of native vegetation or alteration of soil hydrology;*
- *minimise such impacts where they cannot be avoided; and*
- *compensate for unavoidable impacts.*

This is considered unnecessary and would not be supported by DELWP as it repeats Clause 52.17.

Also include in the aforementioned clause, the policy statement to prioritise the protection of locally threatened plan species. This initiative is supported, but would need to be accompanied by a list of said species, either in the policy (DELWP prefer local policies to be self contained), or as a Reference (or Incorporated) Document.

Include in the local policy an additional application requirement that threatened species are critically appraised by a suitably qualified professional. This recommendation is supported in principle but may be better accommodated in the schedule to the relevant overlay (i.e. VPO or ESO).

Include a schedule of locally threatened species that can be updated without requiring a planning scheme amendment. This is not possible, unless the list is a Reference Document to the planning scheme (and therefore carries less weight, as it does not form part of the planning scheme). This scenario may be acceptable for a species list that is not open to interpretation. Further research required.

Overall, the purpose of 22.04 should be re-considered. A local policy should be focused on providing specific advice on a particular issue in decision-making. The above recommendations may be better accommodated in the future MPS, together with a schedule to the overlay, be it the VPO or the ESO.

Vegetation Protection Overlay

Retain the VPO for specific sites of biological significance (categories provided in biodiversity analysis).

This recommendation is supported for those sites for which a permit trigger is only required for vegetation removal. The content and usefulness of the existing schedule to the VPO should be reviewed (and updated following VC148) and the requirements for additional schedules should be considered.

Expand the mapping of the VPO areas to include a 'buffer', which is considered to be best practice.

This is the approach taken in adjacent municipalities in their mapping of the ESO, for example. Initiative supported.

Exempt the removal of *Pittosporum undulatum* in the VPO schedule.

The above recommendation is supported.

Significant Landscape Overlay

Amend the schedules to the SLO to include a landscape character objective regarding the importance of indigenous and Australian native vegetation for the habitat they provide.

This recommendation is supported in conjunction with a full review of all SLO schedules, and bearing in mind that no more than five objectives can be included in the schedules.

Environmental Significance Overlay

Introduce the ESO to some sites of biological significance in order to provide a permit trigger and guidance on more than just vegetation removal. Undertake mapping, including appropriate 'buffers', as part of this initiative. For justification at a Panel hearing the methodology and criteria for defining the 'buffer' area will need to be established.

This recommendation is supported, provided appropriate justification is provided through the biodiversity strategy, including full content for the overlay schedule(s) and guidance for decision making not just within the ESO 'proper' but also the 'buffer' areas.

The ESO is discussed further in Section 5 of this report.

Clause 52.17 Native Vegetation

Include Sweet Pittosporum in the table to Clause 52.17-7 so that a permit is not required for its removal. Include additional exemptions (as per *Knox Planning Scheme*).

The above recommendation is supported.





5. Other Relevant Material

This project (and the wider *Maroondah Vegetation Review*) has an extensive background and context, both of which highlight the influence of vegetation and biodiversity (and the protection of the tree canopy cover and the natural landscape) on the character of Maroondah, and subsequently on strategic planning within the Municipality.

Other research, materials and documents of relevance to this review are noted and discussed below.

Practice Notes, Advisory Notes & Ministerial Directions

Planning for biodiversity: Guidance

The role of the planning system in protecting and conserving biodiversity in Victoria is established through the objectives in the *Planning and Environment Act 1987*:

- *To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.*
- *To establish a system of planning schemes based on municipal districts as the principal way of setting out objectives, policies and controls for the use, development and protection of land.*
- *To ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land.*

Protecting Victoria's Environment – Biodiversity 2037, DELWP (2017) outlines Victoria's plan for the future of its biodiversity. In association with the plan, DELWP has also prepared a guidance document: *Planning for biodiversity* (December, 2017).

The purpose of the document is to assist Councils to use the planning system in order to meet the statewide and local objectives to protect and conserve Victoria's biodiversity. This is an essential reference document for this review, and includes the following:

- *a discussion of the importance of protecting and managing biodiversity values*
- *identification of the role of the planning system in protecting and conserving biodiversity*
- *the various policy frameworks that guide actions to protect and conserve biodiversity in Victoria*
- *guidance for the process of planning for biodiversity protection and conservation, including the planning toolkit that can be used*
- *what biodiversity information tools are available to inform planning for biodiversity.*

In relation to the MSS (or future MPS), this section of the planning scheme provides the opportunity to articulate the statewide policies into objectives and strategies at a local level (which in turn supports the application of zone and overlay controls). Biodiversity objectives in the MPS should generally fall within the following categories:

- protecting native vegetation and species' habitat;
- managing threats to species and ecological communities;
- promoting and protecting links between fragmented areas of native vegetation;
- maintaining and improving the quality and the health of watercourses, wetlands, terrestrial, coastal and marine environments; and,
- maintaining and improving the quality of soils and their structure.

In relation to the above objectives, the document provides the following guidance as to what the biodiversity component of an MPS could incorporate:

- *include a description of the significant threats to local biodiversity from activities that occur in the municipality or bioregion;*
- *identify biodiversity assets and locations where additional policies or controls over the use and development of land may be warranted to reflect their significance;*
- *indicate the role of biodiversity in maintaining ecosystem services;*
- *recognise and apply the precautionary principle; and,*
- *identify strategies to protect biodiversity e.g:*
  - ✓ *to describe at a local level the native vegetation that is prioritised for protection;*
  - ✓ *to ensure that riparian land is used and managed to protect its biodiversity value;*
  - ✓ *to assist in the restoration of riparian and wildlife corridors; and,*
  - ✓ *to describe the mechanisms for implementing the MSS objectives and strategies.*

Overall, where a Council has biodiversity values it wishes to conserve and manage, the MSS must clearly articulate exactly what the local biodiversity values are; justification for how they have been deemed to be locally important; and, the planning mechanisms that will be used to protect and manage them.

In relation to local policies, the document provides the following pertinent advice:

"If the planning authority is satisfied that the SPPF, the MSS and/or the decision guidelines in the zone or overlay provide sufficient direction for the exercise of discretion, there is no need to include a LPP. A LPP should be practical to implement and provide clear guidance about on-ground outcomes that will be expected as a result of exercising a specific discretion in the planning scheme…"

In relation to the application of overlays, the following differences between the ESO and the VPO are highlighted:

The ESO contains additional controls over the construction of buildings, works, fence construction, subdivision and the removal of vegetation. It can be used to control impacts on biodiversity from development activities other than the removal of native vegetation. The ESO has broader applicability than the VPO and is the preferred overlay when seeking to achieve biodiversity outcomes.

The ESO could be used to control impacts on biodiversity in the following contexts:

- *along waterways;*
- *to rare or threatened species habitat that is non- native vegetation, for example the golden sun moth lives in non-native as well as native grasses;*
- *where development or works other than the removal of native vegetation may have a significant impact on high value biodiversity, for example earthworks; and,*
- *on a biodiversity value that is locally important and is articulated in the LPPF.*

And regarding the VPO:

Unlike the ESO, the VPO is limited to regulation of the removal of vegetation and does not require permits for buildings and works or subdivision. The VPO is focused on vegetation protection and conservation for habitat, land management, amenity or cultural purposes. It is not specifically designed to meet biodiversity objectives, but does relate to habitat values provided by vegetation…

The VPO can be used to meet local objectives for the management of vegetation.

A table outlining the most appropriate planning scheme provisions for various scenarios is outlined on p. 16 of the document, and supports the initial options outlined in the Executive Summary of this report.

And also of relevance is the following commentary in relation to the SLO:

… is designed to identify significant landscapes and conserve and enhance their character. This may be for the aesthetic, amenity or cultural importance of a landscape. It is not appropriate to use this overlay for the protection and conservation of biodiversity values.

Guidelines for the removal, destruction or lopping of native vegetation

These guidelines were also produced by DELWP in December, 2017, are incorporated into every planning scheme in Victoria. This means that the guidelines must be considered by Council when preparing a planning scheme amendment, and must be applied when assessing a planning permit application.

The guidelines set out and describe Victoria's policy in relation to assessing and compensating for the removal of native vegetation.

Planning Practice Note 7: Vegetation protection in urban areas

While prepared in 1999, this VPP Practice Note is still relevant for the information it provides in relation to the assessment of the significance of vegetation in urban areas, and how to protect significant vegetation through the planning scheme.

As there is no specific DELWP guidance regarding the application of the SLO, the following is insightful:

The SLO also has broader applicability than the VPO. Its function is to identify and conserve the character of a significant landscape. The SLO is appropriate when vegetation is primarily of aesthetic or visual importance in the broader landscape and should be used where vegetation is identified as an important contributor to the character of an area.

Examples of where the SLO has been applied where vegetation contributes to the landscape significance of an area include:

- *Baw Baw Planning Scheme*: Walhalla township
- *Wyndham Planning Scheme*: Werribee River; Skeleton Creek, including the Dry Creek Tributary
- *Queenscliffe Planning Scheme*: Swan Bay landscape area; Point Lonsdale Lookout and Queenscliffe Lighthouse/Ocean View car park; The Narrows (area between Point Lonsdale and Queenscliff)

Ministerial Direction - The Form and Content of Planning Schemes

The Ministerial Direction *The Form and Content of Planning Schemes* has been updated post Amendment VC148, and must be referred to when re-drafting zone and overlay schedules Changes of most relevance to this review include that up to five objectives can be included in overlay schedules, together with planning permit application requirements.

Environmental Significance Overlay (ESO)

The ESO is another overlay that forms part of the Victoria Planning Provisions that can be used to protect and manage areas of environmental significance. The purpose of the overlay includes:

- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*

A schedule to the overlay in any planning scheme must contain a statement of environmental significance, and the environmental objectives to be achieved.

The ESO can provide a permit trigger for buildings and works, to construct a fence, to construct bicycle pathways, to subdivide land and to remove vegetation. All of these requirements can be varied and tailored in a schedule.

Adjacent municipalities apply the ESO as follows:

- Yarra Ranges ESO1-B1 to ESO1-B75 Sites of Botanical Significance
- Yarra Ranges ESO1-Z1 to ESO1-Z39 Sites of Zoological Significance

The statement of environmental significance for these overlays includes:

> *"The Shire contains extensive areas of remnant bushland which are an intrinsic part of the Shire's unique landscape and environmental character.*
>
> *Sites of botanical and zoological significance also play an important role in contributing to the ecological processes and biodiversity of the region by forming core habitat areas within a complex network of wildlife corridors along roadsides and watercourses. Development within and around these sites needs to be appropriately managed to ensure the long term protection and sustainability of these ecological processes."*

- Manningham ESO2 Sites of Biological Significance

The statement of environmental significance includes:

> *"The sites covered by this schedule have been assessed as being the most intact and significant areas of indigenous vegetation, within Manningham. They are classified into 35 Sites of Biological Significance (Biosites) and are identified as being of national, state or regional biological significance… The Biosites support a diverse range of indigenous flora, fauna and ecological vegetation communities, many of which are rare or threatened.*
>
> *… While at a State level some of the Ecological Vegetation Classes (EVCs) in the Core and Critical Conservation Areas may be adequately represented, in Manningham they are less secure and are threatened by a range of processes. These include vegetation clearance, fragmentation of bushland areas, overgrazing by stock, pest plant and animal invasion, changes in burning regimes, soil erosion and hydrological changes."*

- Manningham ESO3 Buffer Conservation Areas Supporting Sites of Biological Significance

The statement of environmental significance includes:

> *"… Buffer Conservation Areas whilst usually more modified from their presumed 'natural' condition than Core Conservation Areas, nevertheless have environmental values in their own right, as well as providing additional (usually adjacent) habitat that supports the ecological integrity and function of Core Conservation Areas. In Buffer Conservation Areas, indigenous vegetation provides the best habitat for indigenous flora and fauna, however large planted trees that are native to Australia also play a supporting role…"*

- Manningham ESO4 Sites of Biological Significance and Buffer Conservation Areas in Low Density Residential Areas
- Manningham ESO5 Environmentally Significant Urban Areas (applying to Residential zoned sites)

The introduction of the ESO to the *Maroondah Planning Scheme* is recommended in the final draft biodiversity report to protect sites of biological significance. The ESO is recommended over the VPO in some instances because:

> *"… (the) vegetation protection overlay cannot affect a development that causes runoff or seepage of water, nutrients and pollutants into an adjacent environmentally sensitive site, even if it will kill native vegetation and destroy wildlife habitat. As another example, a VPO cannot influence subdivision design to provide a bushfire buffer within the subdivision rather than forcing an abutting part of a conservation reserve to be cleared for a firebreak to protect the new houses.*
>
> *An Environmental Significance Overlay (ESO) is not subject to these restrictions."*[3]

In other words, the VPO can only require a permit for vegetation removal, whereas the ESO can provide a permit trigger for subdivision, buildings and works, fences, bike paths and vegetation removal.

VCAT Findings

A number of VCAT decisions have been reviewed for the insights they provide into the key development issues affecting vegetation removal/protection and landscape character, and the effectiveness or otherwise of the *Maroondah Planning Scheme* in relation to these issues

[3] Newbigin, P., *'Summary of recommendations from Biodiversity Analysis Report'* (draft v0.3), p. 2

21 View Street, Croydon (VCAT P2274 2016)

In this case, the decision of the Council was set aside, and the construction of three dwellings and vegetation removal was granted a permit.

Key points to note include:

- The Council's grounds of refusal related primarily to neighbourhood character, including built form and landscape character considerations.
- Amendment C107 (on hold at the time of the hearing) was given limited weight.
- This was due to the fact that the NRZ no longer has a mandatory limit of two dwellings per lot, and that the proposed development was well below the 9 metres maximum building height allowed (under the NRZ, let alone the GRZ).
- It was noted by the Tribunal Member that the exhibited version of the Schedule 3 to the proposed NRZ included exactly the same local variations to the standards currently applicable to Schedule 1 of the GRZ.
- Furthermore, the exhibited Schedule 3 did not include any additional local variations over and above what is currently included in Schedule 1 to the GRZ. That is, no local variations in relation to setbacks, site coverage, permeability, landscaping etc.
- Tribunal decisions relating to the development of 17-19 View Street were referred to, and it was acknowledged that *"the strong presence of canopy trees, and the overall green, leafy look and feel of this neighbourhood"*[4] defines the local character and is important to be respected in any proposed development.
- Through requiring the modification of side boundary setbacks and decreasing the size of a proposed garage, it was considered that this would result in further opportunities for landscaping and decrease the amount of hard surfacing in the front garden area.

54 Pascoe Avenue, Croydon (VCAT P2409 2016)

In this case, the decision of the Council was upheld to refuse to grant a permit for the construction of four dwellings and vegetation removal.

Key points in this decision are:

- It was considered that the height and scale of the proposed dwellings was not excessive, but that their reduced front and side setbacks did not respect existing neighbourhood character, particularly in relation to the retention and planting of vegetation.
- The tribunal member agreed with the Council that the proposed development did not provide an adequate space for landscaping, and that *"some of the trees proposed simply do not have enough room to prosper."*[5]
- It was noted that the removal of canopy trees from the site had already had a detrimental impact on neighbourhood character, and that *"recent development in the vicinity has usually resulted in a loss of vegetation cover, and the extent of built form visually more dominant than landscaping."*[6]
- The ability of the proposal to protect retained trees on site and adjacent properties, and to provide a landscaping solution that meets the objectives of the SLO4 was not accepted.
- Furthermore, *"the preferred siting of buildings took precedence over retention of trees instead of the other way around."*[7]

It is worth noting that the requirements of SLO4 were the main reason why a permit was not granted for the proposed development. Particular emphasis was placed on the need for permeable space between dwellings and property boundaries, and an adequate volume of soil to retain and replace canopy trees, and have them thrive.

Additional VCAT cases have been provided by Statutory Planning for review, including:

- 40-42 Humber Road, Croydon North (VCAT P2527/2015)
- 2 Philip Street, Heathmont (VCAT P278/2017)
- 21 Berringa Road, Ringwood North (VCAT 2270)
- 48 & 48A Humber Road, Croydon North (VCAT 1562)
- 358-360 Mount Dandenong Road, Croydon (VCAT 1432)
- 9 Belle Vue Avenue, Ringwood (VCAT 1287)
- 1-9 Vasey Concourse, Croydon (VCAT 991)
- 25 Wonga Road, Ringwood North (VCAT 1675)
- 27 Taylors Road, Croydon (VCAT 1499)
- 18 Ireland Street, Ringwood (VCAT 203)
- 17 Ford Street, Ringwood (VCAT 183)

[4] Victorian Civil and Administrative Tribunal, Planning and Environment List, Hassan Kobaessi v Maroondah City Council, VCAT Reference No. P2274/2016, p. 5

[5] Victorian Civil and Administrative Tribunal, Planning and Environment List, Ramage v Maroondah City Council, VCAT Reference No. P2409/2016, p. 8

[6] Ibid. p. 10

[7] Ibid. p. 11

- 640 Dorset Road, Bayswater North (VCAT 999)

Key findings thus far include:

- Maroondah has a very small proportion of its planning decisions subjected to appeal (116 between January 2016 and January 2018, equating to 3.9% of applications), of which two thirds (76 decisions) were affirmed by VCAT.
- The un-achievability of the objective at Clause 21.10 encouraging the "complete regeneration" of the Wicklow Hills Ridge and Loughnan-Warranwood Ridge environment, in a primarily residential setting.
- The reality that vegetative landscapes change and evolve over time.
- From the summary of VCAT cases provided by Statutory Planning - Currently Residential Neighbourhood Character (Clause 22.02) contains statements of significance that are not self-contained. The policy at Clause 22.02 does not contain the preferred future character statement, but rather a series of dot points that states how the preferred future character will be achieved. Instead, one needs to turn to the reference document *Maroondah Neighbourhood Character Study (Planisphere, 2004)* to read the preferred future character statement. It may be appropriate to reference such study as background material, but it should not be necessary to refer to the study in order to understand what the real significance of the place is. The reader of a statement should be able to understand why are area is special from the statement alone.
- Also from the summary of VCAT cases - At Clause 22.02, Ruskin Park Neighbourhood Area, it is not clear whether the preferred character statement seeks landscaping to be provided between multiple dwellings that might be constructed on one allotment, or between dwellings as they occur on different allotments (Allen v Maroondah CC [2017] VCAT 2143 (20 December 2017).
- A local policy is not a control and should not include numerical requirements. They have a defined role to guide discretion in decision-making.
- Guidance on how discretion in a zone or overlay will be exercised can also be expressed in the MSS (or future MPS) as a Policy Guideline to avoid the need for a LPP.
- Reference documents referred to in the LPPF have only a limited role in decision-making as they are not part of the *Maroondah Planning Scheme*. They do not have the status of incorporated documents or carry the same weight.

Further VCAT cases and summaries have been provided by Council, and the review is ongoing.

Planning Permit Conditions

Maroondah currently has a *Manual of Standard Conditions* (2012), including conditions relating to landscaping and tree protection that form part of any planning permit, where relevant. The Council is currently reviewing its conditions, and has prepared a draft suite of preferred standard conditions for landscaping and tree protection. These cover many scenarios, and address the issues of:

- Amended plans/landscape plan/replanting plan being required before tree removal
- Tree protection measures required to be implemented/maintained/inspected by Council
- Tree protection fencing of trees on nature strips
- What constitutes landscaping completion
- Landscaping maintenance requirements, including on-going maintenance of replacement trees
- The limit of any approved tree lopping or removal
- Whether a building permit is required prior to tree removal
- Tree removal and replanting on land managed by Council
- Works affecting Council managed trees
- Replacement tree planting
- Re-vegetation of nature strips
- Vegetation offsets being secured prior to vegetation removal
- Time limit for tree removal
- Habitat inspection and salvage prior to tree removal

It is understood that Maroondah Council Officers are also investigating:

- Tree protection posters that more clearly communicate tree protection requirements on development sites and avoid tree protection being overlooked and trees being unintentionally damaged or destroyed.
- A requirement for construction management plans, to include approved tree protection (as per the relevant conditions of that permit) and to demonstrate that construction activity (e.g. vehicle access, storage, stockpiling etc.) accommodates protection.

Additional documents for on-going reference include:

The Places We Live - Maroondah Housing Strategy 2016

The *Maroondah Housing Strategy* was adopted by Council on 27 June 2016, and therefore reflects current aspirations and Council policy regarding the provision of housing across the municipality. A significant amount of background research underpins the strategy, and includes the following (Focus Area 3) of relevance to this study:

> *Balancing development and the natural environment was the most commonly stated priority housing issue for our community. Continuing to maintain the leafy green image of Maroondah while enhancing liveability across the municipality must be balanced with catering for the demand for new dwellings. With careful planning, this should be achievable and a minimum expectation.*

The housing strategy highlights that Maroondah is no longer simply a suburban community. It contains one of only nine designated Metropolitan Activity Centres (Ringwood), and being located at a major transport interchange, has a major role to play in housing supply in outer eastern Melbourne.

However, the housing strategy also acknowledges that Maroondah can only grow and prosper if those highly valued qualities - liveability, landscape, character and environmental attributes - are not compromised.

As described in the project brief, VC110 was gazette on 27 March 2017. VC110 made a number of changes to the residential zones, with the intention of improving housing capacity and choice, while protecting the neighbourhood character of established residential areas across Victoria. This further emphasizes the importance of the *Maroondah Vegetation Review* and is an opportunity to reflect place based vegetation objectives in the Maroondah Planning Scheme.

Habitat Corridors Strategy (2005)

The key objective of this strategy was:

> *To plan for a network of habitat links connecting larger areas of remnant vegetation in order to protect and enhance biodiversity within and beyond the City of Maroondah.*

The strategy highlighted the need for ecological linkages as a fundamental principle in land use planning and land management for biodiversity conservation in developed landscapes. This report was pursued at a time Council sought to enhance habitat corridors through introduction of an Environment Significance Overlay (ESO). However, this amendment recommendation was not pursued due to insufficient data and mapping available to Council to support the process.

Sites of Biological Significance (1997)

This study underpinned the introduction of the Vegetation Protection Overlay (Schedule 1) into the planning scheme. It focused on three key areas:

- Sites, species and ecological communities that were at risk.
- The most serious problems causing loss of biodiversity (i.e. flora, fauna, ecological communities and genetic material).
- How these problems should be dealt with.

Assessment of the Tree Canopy Cover in the City of Maroondah (1995)

The purpose of this study was to assess the tree canopy to provide a basis for the development of policies for the protection of remnant vegetation and strategic re-vegetation. The assessment was implemented into the Municipal Strategic Statement, Local Planning Policies and forms the basis of the Significant Landscape Overlay in the planning scheme.

Notable Trees of Maroondah (1997)

The aim of this study was to identify trees of particular aesthetic, scientific, cultural or historic importance. The strategy included recommendations on measures to protect the trees from damage to their health, appearance or cultural value, and was implemented via the Municipal Strategic Statement, Local Planning Policies and the Heritage Overlay.

Open Space Requirements for Provision and Retention of Canopy Trees in Maroondah (2002)

This study investigated characteristics of canopy trees, such as space, soil volume, tree stability and critical root zone, and provided the basis of the definition of 'canopy tree'. It also recommended a minimum open space requirement for private open space to enable sufficient area for growth of canopy trees that are small to medium in size. The report was implemented into the planning scheme via Amendment C16 that varied the standard open space; and side and rear setback provisions in Rescode.

Neighbourhood Character Study Review (underway)

Claire Scott Planning is currently undertaking a review of the *Neighbourhood Character Study (2005)*, and the recommendations of this Vegetation Policy Review will need to be fully integrated with the proposed planning scheme changes that are recommended as part of the *NCS Review*.

As described, the landscape, vegetation and biodiversity values of Maroondah are intrinsically linked to the highly valued residential character of the Municipality. This is also reflected in the current planning scheme controls where residential zoning reflects the

application of the SLO and DDO controls, and both overlays (and the zoning) operate to protect both neighbourhood character and canopy trees.

An intimate knowledge of the reasoning behind these controls, their contents, and how they can best be improved, will be critical to the success of both projects.

Additional Policy Context

A thorough grasp of the general policy environment encompassing this project is also required, including:

- ***Maroondah 2040*** – Council's long-term community vision.
- ***Plan Melbourne*** – Melbourne's 35-year blueprint.
- ***Protecting Victoria's Environment: Biodiversity 2037*** – Victoria's biodiversity plan based on the two goals of Victorians valuing nature, and a healthy natural environment.
- ***Environment Protection and Biodiversity Conservation Act 1999*** – the Australian Government's central piece of environmental legislation.
- ***Flora and Fauna Guarantee Act 1988*** – a key piece of Victorian legislation for the conservation of threatened species and the management of potentially threatening processes.
- ***Bushfire protection*** – the state planning response to wildfire management, including the introduction of the Bushfire Management Overlay (BMO), underpinned by up to date mapping, and related planning policies in the PPF.
- ***Electrical Safety Regulations 2015*** – regulations regarding the clearing of vegetation from overhead electrical supply lines, with the aim of achieving a balance between safety, amenity and the environment.
- ***Guidelines for the removal, lopping and destruction of native vegetation*** – implemented via VC148 with the intention of improving the protection of sensitive vegetation, tightening biodiversity offset requirements and increasing the effectiveness of monitoring and reporting.

