

Fingerboards EES Inquiry and Advisory Committee Hearing

Submission by Forest Fire and Regions Group
Gippsland Regional Directorate
Department of Environment, Land, Water and Planning
19 May 2021

Introduction

My name is Carmel Henderson and I am the Program Manager Planning and Approvals for Gippsland with the Department of Environment, Land Water and Planning (DELWP).

DELWP has tabled its submission, document 521, and I would like to thank the IAC for this opportunity to be heard.

The Gippsland FFR submission responds to the project scoping requirement objectives relevant to DELWP as follows:

- a. *to avoid or minimise potential adverse effects on native vegetation, listed threatened and migratory species and ecological communities, and habitat for these species, as well as address offset requirements for residual environmental effects consistent with State and Commonwealth policies*
- b. *to minimise effects on water resources and on beneficial and licensed uses of surface water, groundwater and related catchment values (including the Gippsland Lakes Ramsar site) over the short and long-term, and*
- c. *to establish safe progressive rehabilitation and post-closure stable rehabilitated landforms capable of supporting native ecosystems and/or productive agriculture that will enable long-term sustainable use of the project area.*

Rather than read the Gippsland FFR submission, we will focus on key matters of concern particularly where changes have evolved with the proposal.

Key concerns


The matters of concern that I will address include:

- the proposed railway siding facility siting
- construction and use of a new road, new powerlines and a new pipeline in the vicinity of Chettles Road and associated vegetation removal
- haulage roads and the potential for impacts upon existing native vegetation
- the amount of affected native vegetation and its value
- proposed management plans within the incorporated document, and
- the offset management strategy within Document 23 the *Biodiversity Offset Management Strategy* (E&HP, August 2020).

I would like to introduce Debbie Shaw, Program Manager within the Natural Environment Program who will be presenting the DELWP Gippsland Forest Fire and Regions (FFR) presentation.

Proposed railway siding facility siting

In its original submission FFR Gippsland stated the proposal had not fully explored the feasible opportunities to avoid and minimise impacts on native vegetation at the Fernbank East railway siding.



The proponent has since presented a variation of the Fernbank East railway siding option (in document 42). DELWP accepts this variation over the original proposal. However, DELWP prefers the Fennings rail siding located in Bairnsdale. The proponent has not provided enough information describing why the Fennings option wasn't adopted.

One of the reasons given for the proponent's preference of the Fernbank East railway siding option was reduced ecological impact compared with other options considered. Since that time, the Department of Transport (DoT) has undertaken road improvements works at Princes Highway and the Racecourse Road roundabout. There has been no subsequent discussion about:

- whether the DoT road upgrades recently undertaken reduce the native vegetation impacts previously determined when the proponent was considering alternative options to the Fernbank East Railway siding option
- the comparative native vegetation impacts (area of impact and significance) of all options considered, or
- whether the Fennings rail siding in Bairnsdale is now a feasible option.

Should the Fernbank East Railway siding proceed as the preferred option, DELWP will address consequential matters to be resolved in the proposed Incorporated Document.

Incorporated Document

Works described and native vegetation impacts

The current version of the Incorporated Document (IAC version dated 28 April 2021, document 247) includes the following provisions:

- 4.2.1 *A new water pipeline, overhead 22kV powerline and a 30 metres wide easement over private land to a new pumping station on the Mitchell River*
- 4.2.2 *A water pipeline and associated bore pumps to the south of the Project Area*
- 4.2.4 *Construction and use of a new road adjacent to Chettles Road, and new roads continuing south from Chettles Road over private land to the new railway siding*
- 4.2.5 *New 66kV and 22kV powerlines adjacent to Chettles Road and the new roads south and north of Chettles Road*
- 4.2.6 *A new water pipeline adjacent to Chettles Road and the new road extensions south and north of Chettles Road*
- 4.2.13 *Vegetation removal associated with any of the above.*

DELWP requires clarification about whether there will be any native vegetation impacts associated with 4.2.1 and 4.2.2 above.

Chettles Road contains remnant roadside native vegetation. DELWP requires clarification about whether the new works described in 4.2.4, 4.2.5 and 4.2.6 will impact on the remnant roadside vegetation.

DELWP was also unable to determine if there will be any native vegetation impacts associated with the use and development of the water pipeline and bore pumps described in 4.2.2.

DELWP was unable to determine if there will be any implications for native vegetation as the location of these new works are not shown in relation to the Ecological Features mapping in EHP 2020a (Document 34).




Construction Management Plan

The Incorporated Document has provision at part 5.6 for a Construction Management Plan. 5.6.3 (i) specifies the *Protection of native vegetation*. DELWP requires the protection of native vegetation to include measures to the satisfaction of DELWP. This is standard practice with projects that impact native vegetation that area assessed under the detailed assessment pathway.

Native Vegetation Management Plan

The Incorporated Document has provision at part 5.7 for a Native Vegetation Management Plan as follows:

- 5.7.1 *Prior to the removal, lopping or destruction of any native vegetation within the Infrastructure Area, a Native Vegetation Management Plan must be prepared to the satisfaction of and approved by the Department of Environment, Land, Water and Planning. The plan must include:*
- a. *A photograph or site plan (drawn to scale) showing the boundaries of the site, existing native vegetation and the native vegetation to be removed*
 - b. *A description of the native vegetation to be removed, including the extent and type of native vegetation, the number and size of any trees to be removed and the Ecological Vegetation Class of the native vegetation*
 - c. *A written explanation of the steps that have been taken to:*
 - i. *avoid the removal of native vegetation*
 - ii. *minimise the removal of native vegetation;*
 - iii. *appropriately offset the loss of native vegetation, if required*
 - d. *A written explanation that addresses the Guidelines for the Removal, Destruction or Lopping of Native Vegetation (DELWP, 2017) as if a permit was required to remove native vegetation.*
- 5.7.2 *Prior to the removal, lopping or destruction of any native vegetation, an Offset Management Plan must be prepared to the satisfaction of the Department of Environment, Land, Water and Planning. The plan must include:*
- a. *Methods of permanent protection for established offsets*
 - b. *Location of the offsets*
 - c. *Type of offsets to be provided*
 - d. *Details of any revegetation including number of trees, shrubs and other plants; species mix; density; methods of interim protection and management until vegetation is established; and a Schedule of Works*
 - e. *Details of any existing vegetation to be retained including methods of managing and restoring the vegetation and a Schedule of Works*
 - f. *Actions to protect Large Old Trees and Very Large Old Trees that are hollow bearing and provide fauna habitat*
 - g. *Identification of those responsible for implementing and monitoring the plan*
 - h. *Time frames for implementing the plan.*




FFR notes the proposed Native Vegetation Management Plan is to be prepared to the satisfaction of the Department of Environment, Land, Water and Planning. The conditions listed in the proposed Native Vegetation Management Plan are not consistent with the requirements of *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017). FFR recommends substitution of the above conditions with the conditions below:

5.7.1 Before the removal of any native vegetation associated with the project can begin, a Native Vegetation Management Plan must be prepared to the satisfaction of and approved by the Department of Environment, Land, Water and Planning. The plan must be:

- a. drawn to scale with a key, north point, dimensions and georeferences (such as VicGrid94 coordinates), that clearly shows:*
 - i) the location and identification of the land affected by this incorporated document, including standard parcel identifiers for the affected and adjacent land*
 - ii) the location and area of all native vegetation present, including large trees within patches and scattered trees to be removed*
 - iii) all areas of native vegetation to be retained, including patch native vegetation, large trees within patches and scattered trees within the immediate vicinity of all construction impact areas*

5.7.2 The Native Vegetation Removal Plan must include:

- b. a master plan and detailed subplans that include current aerial photography of a scale that makes enables the responsible authority to locate and identify the native vegetation permitted to be removed and audit for compliance, to the satisfaction of the Department of Environment, Land, Water and Planning*
- c. a detailed description of the measures to be implemented to protect the native vegetation to be retained throughout the life of the project, including decommissioning, and the person/s responsible for implementation and compliance. These measures must include the erection of a native vegetation protection fence around all native vegetation to be retained on site, including the tree protection zones of all native trees to be retained. All tree protection zones must comply with AS 4970-2009 Protection of Trees on Development Sites and be clearly marked as 'no go zones'.*
- d. an avoid and minimise statement to the satisfaction of the Department of Environment, Land, Water and Planning. The statement must describe all efforts to avoid the removal of and minimise the impacts on the biodiversity and other values of native vegetation, and how these efforts focussed on areas of native vegetation that have the most value. The statement must include details that demonstrate the following:*
 - Strategic level planning – any regional or landscape scale strategic planning process that the site has been subject to that avoided and minimised impacts on native vegetation across a region or landscape*
 - Site level planning – how the proposed use or development has been sited or designed to avoid and minimise impacts on native vegetation.*

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- *That no feasible opportunities exist to further avoid and minimise impacts on native vegetation without undermining the key objectives of the proposal.*

5.7.3 *Where the removal of native vegetation is to create defensible space and/or satisfy bushfire risk mitigation requirements under the Fire and Emergency Management Plan and/or the Bushfire Attack Level required for buildings and infrastructure associated with the use and development, a written statement explaining why the removal of native vegetation is necessary must be provided to the satisfaction of the Department of Environment, Land, Water and Planning. This statement must have regard to other available bushfire risk mitigation measures and must account for the impacts to native vegetation in the DELWP generated Native vegetation removal report and subsequent offset requirements.*

5.7.4 *Except with the written consent of the Department of Environment, Land, Water and Planning, within the area of native vegetation to be retained and any tree or vegetation protection zone associated with the permitted use and/or development, the following is prohibited:*

- vehicular or pedestrian access*
- trenching or soil excavation*
- storage or dumping of any soils, materials, equipment, vehicles, machinery or waste products*
- entry and exit pits for the provision of underground services*
- any other actions or activities that may result in adverse impacts to retained native vegetation.*

5.7.5 *The native vegetation permitted to be removed, destroyed or lopped under this incorporated document is [X.XXX] hectares of native vegetation, which is comprised of:*

- [X.XXX] hectares of patch native vegetation including [XXX] large trees, with a strategic biodiversity value of [X.XXX]*
- [XXX] scattered large trees*
- [XXX] scattered small trees.*

(NOTE: [XXX] for final quantities of impacts and offset requirements to be completed once the final DELWP generated Native vegetation removal report has been generated to the satisfaction of the Department of Environment, Land, Water and Planning)

5.7.6 *To offset the removal of [XXX] hectares of native vegetation, the permit holder must secure the following native vegetation offset in accordance with Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017):*

- a general offset of [XXX] general habitat units located within the East or West Gippsland Catchment Management boundaries or East Gippsland municipal area with a minimum strategic biodiversity value of at least 0.243, and*
- 34.264 species habitat units for [ID#] Australian Grayling, [Genus species]*


- c. 63.411 species habitat units for [ID#] Flinders Pygmy Perch, [Genus species]
- d. 136.537 species habitat units for [ID#] Sticky Wattle, [Genus species]
- e. 38.540 species habitat units for [ID#] Yellow-wood, [Genus species]
- f. 46.084 species habitat units for [ID#] Thick-lip Spider-orchid, [Genus species]
- g. 139.674 species habitat units for [ID#] Purple Diuris, [Genus species]
- h. 144.335 species habitat units for [ID#] Bushy Hedgehog-grass, [Genus species]
- i. 140.249 species habitat units for [ID#] Rough-grain Love-grass, [Genus species]
- j. 111.068 species habitat units for [ID#] Slender Violet-bush, [Genus species]
- k. 144.335 species habitat units for [ID#] Slender Wire-lily, [Genus species]
- l. 144.335 species habitat units for [ID#] Golden Pomaderris, [Genus species]
- m. 28.412 species habitat units for [ID#] Star Cucumber, [Genus species]
- n. 140.057 species habitat units for [ID#] One-flower Early Nancy, [Genus species]
- o. 130.087 species habitat units for [ID#] Limestone Blue Wattle, [Genus species]
- p. 98.648 species habitat units for [ID#] Thin-leaf Daisy-bush, [Genus species]
- q. 137.980 species habitat units for [ID#] Forest Red Gum, [Genus species]
- r. 0.057 species habitat units for [ID#] Gaping Leek-orchid, [Genus species]
- s. 140.249 species habitat units for [ID#] Silky Kidney-weed, [Genus species]
- t. 40.829 species habitat units for [ID#] Heath Spider-orchid, [Genus species]

The offset(s) secured must also protect 834 large trees. (Subject to confirmation once all known impacts and offsets have been verified by DELWP, before gazettal of the Incorporated Document)

5.7.7 Before any native vegetation is removed, evidence that the required offset must be provided to the satisfaction of the responsible authority and the Department of Environment, Land, Water and Planning. This evidence must be one or both of the following:

- a. *an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10-year management actions and ongoing management of the site, and/or*
- b. *credit extract(s) allocated to the project (Planning Scheme Amendment Number from the Native Vegetation Credit Register).*

5.7.8 A copy of the offset evidence will be endorsed by the responsible authority and form part of this incorporated document approval. Within 30 days of endorsement of the offset evidence, a copy of the



endorsed offset evidence must be provided to Planning & Approvals at the Department of Environment, Land, Water and Planning Gippsland regional office via Gippsland.Planning@delwp.vic.gov.au.

5.7.9 Where the offset includes a first party offset, the permit holder must provide an annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.

5.7.10 Within 12 months of the completion of the project, offset requirements can be reconciled with the written agreement of the responsible authority and the Department of Environment, Land, Water and Planning.

Fire and Emergency Management Plan

The Incorporated Document has provision at part 5.8 for a Fire and Emergency Management Plan. DELWP queries the implications for native vegetation and biodiversity values to be retained and/or protected under the following sections of this plan:

5.8.3 The plan must address all elements of the Project Infrastructure as relevant, having regard to the use and development of the Project Area. The plan must include, as appropriate:

- (a) Procedures for vegetation management, fuel control and the provision of firefighting equipment during declared fire danger periods*
- (b) Procedures for planned burns or other fuel reduction measures to reduce overall fuel hazard levels*
- (g) Minimum standards for access roads and tracks to allow access for firefighting vehicles*

The proposed Fernbank East rail siding is close to protected flora within the rail easement and Saplings Morass. FFR is concerned that the creation of defensible space and fire management practices may inadvertently compromise the vegetation values and existing management practices in these localities and within areas of native vegetation to be retained.


FFR seeks clarification of this vegetation management requirement and provision of defensible space as it relates to the railway siding (or any other native vegetation to be retained). Matters to be clarified include the location and size of the defensible space buffer and any consequential adverse impacts on the existing native vegetation and biodiversity values proposed to be retained and/or protected.

Should any of the above requirements result in impacts to native vegetation identified for retention, impacts must be clearly identified, quantified and assessed in accordance with the Guidelines. FFR also notes that the correct term in item 5.8.3 (k) should specify defensible space.

Decommissioning Plan

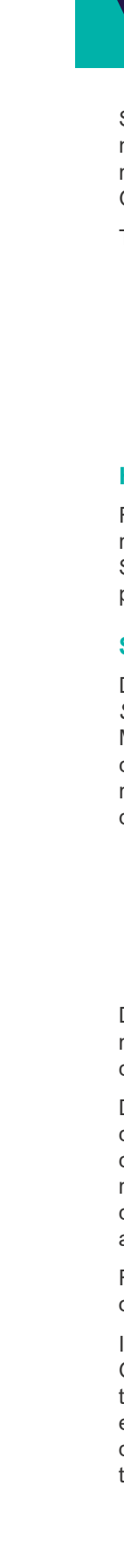
The Incorporated Document has provision at part 5.9 for a Decommissioning Plan. DELWP has comments about the following proposed conditions:

- 5.9.1 No less than five years prior to closure, a Decommissioning Plan must be prepared to the satisfaction of the responsible authority.*
- 5.9.2 The plan must address all elements of the Project Infrastructure within the Infrastructure Area. The plan must include, as appropriate:*

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- a. *The standard of remediation, being at a minimum the restoration of land to a standard suitable for uses previously capable of being undertaken on the land and to a soil quality of equal quality than previously existing on each site;*
 - b. *Demolition and removal of all buildings, except in accordance with clause **Error! Reference source not found.**;*
 - c. *Remediation of bores, roads and removal of all infrastructure, except in accordance with clause **Error! Reference source not found.**;*
 - d. *A staging plan for all remediation phases;*
 - e. *Location of any temporary construction works office and machinery storage area;*
 - f. *Remediation timeframes;*
 - g. *Intended access and routes of all remediation vehicles;*
 - h. *Vehicle and machinery exclusion zones;*
 - i. *Measures and techniques to manage surface water runoff and to protect drainage lines and watercourses from sediment runoff from disturbed or under remediation areas;*
 - j. *Measures to protect sites of conservation or archaeological significance during remediation;*
 - k. *Measure to protect existing vegetation;*
 - l. *Measures and techniques to manage weeds;*
 - m. *Measures and techniques to manage dust;*
 - n. *Measures and techniques to manage erosion;*
 - o. *Location of a machinery and vehicle wash down area;*
 - p. *Management of litter, remediation, wastes and chemical storage;*
 - q. *Details of where remediation personnel shall park;*
 - r. *Phone numbers of on-site personnel or other supervisory staff to be contactable in the event of issues arising on site;*
 - s. *The removal of works, buildings, and staging areas on completion of the remediation phase;*
 - t. *Methods of ensuring all contractors are informed of the requirements of the plan and persons responsible for ensuring the plan is adhered to.*
- 5.9.3 *The Decommissioning Plan may be amended from time to time to the satisfaction of the responsible authority.*
- 5.9.4 *Buildings, bores, roads and other infrastructure need not be demolished or removed if:*
- a. *The landowner on which the infrastructure is present requests that the infrastructure not be demolished or removed; and*
 - b. *The responsible authority approves that request in writing.*

FFR submits that clarity needs to be provided about the measures to protect existing vegetation and in what context, where it relates to existing native vegetation. DELWP would prefer that the responsible authority consult with FFR to ensure measures to protect native vegetation are appropriate.

Pump station and pipeline



Should there be any impacts to native vegetation resulting from the use and construction of these new assets, they must be described and accounted for in accordance with the Victorian Government's native vegetation removal regulations (*Guidelines for the removal, destruction and lopping of native vegetation* (DELWP 2012) (the Guidelines).

This would require amending:

- the total impacts to native vegetation in any subsequent DELWP generated Native vegetation removal report
- the supporting information including the avoid and minimise statement,
- the offset requirements, and
- the offset statement.

Haulage roads native vegetation

FFR was unable to find any discussion of the impacts to native vegetation and biodiversity assets within road reserves that respond to the objectives, purpose and decision guidelines in areas affected by the Environmental Significance and Vegetation Protection Overlays and applicable schedules. The EES process needs to consider all planning scheme requirements, both policy settings and provisions, before the Incorporated Document is gazetted.

Significance and amount of affected native vegetation and its biodiversity value

DELWP acknowledges document 290 *Additional Ecological Information for the Proposed Fingerboards Mineral Sands Project, Glenaladale, Victoria (Independent Advisory Committee)*, (Ecology & Heritage Partners Pty Ltd, May 2021) addresses the matters raised in the Ecology Expert Conclave held on 14 April 2021. As a result of changes to the EVC mapping and subsequent identification and assessment of additional native grasslands, the report now advises the total impacts to native vegetation is now 223.58 hectares of endangered, vulnerable and depleted EVCs and wetlands. It is not clear from the documentation tabled to date what the total impacts are to:


- large trees within patches
- large scattered trees
- small scattered trees
- and percentage of impact on threatened species habitat.

DELWP notes the proponent has yet to provide a copy of a revised DELWP generated Native vegetation removal report that confirms the estimated loss and offset requirements for the project. The report would enable consideration of the significance of impacts on mapped threatened species habitat.

DELWP does not support the statement in 3.1 of the above report that the EVC of the recently identified grasslands cannot be accurately determined due lack of lifeforms other than grasses. EVCs are determined through consideration of inferred fidelity to relevant environmental attributes (location in the landscape, geomorphology, rainfall, soil type) described in the applicable bioregional benchmarks, as well as floristics, lifeforms and ecological characteristics. Changes to the floristic/lifeform composition of a particular site needs to consider previous land use and other factors that may influence such changes over time.

FFR Gippsland participated as an observer to the conclave meeting. Apart from the above, FFR is satisfied that the other matters raised have now been satisfactorily addressed.

In its written submission at paragraph 12, FFR noted that the property at 2705 Dargo–Bairnsdale Road, Glenaladale was not included in detailed site assessment required under the Guidelines. DELWP understands that the proponent's ecologist has since used a desktop assessment process using default condition scores and estimated tree counts to generate the conservative loss and offset requirements associated with the use and development of this property. The estimated native vegetation and tree impacts also contribute to an increase in the total loss of native vegetation anticipated for the use and development of this proposal.



Until this property has been assessed in accordance with the requirements of the Guidelines, final figures for the total area of native vegetation removal, large tree impacts and impacts to threatened species habitat cannot be finalised in the requirements of the Native Vegetation Management Plan required under the Incorporated Document.

DELWP in its written submission indicated that the proponent needs to demonstrate clear changes to the project and the assessment have been made that:

- avoid adverse impacts on native vegetation with the highest biodiversity values. This includes mapped habitat for threatened species, endangered and vulnerable EVCs and large trees
- reduce the total area of native vegetation proposed for removal
- consolidate and revise all of the avoid and minimise undertaken across all documentation into a single avoid and minimise statement for the whole project and planning scheme amendment that demonstrates compliance with the requirements of the Guidelines
- redress avoidance statements and exclude already protected areas from consideration
- revise the avoid and minimise statement to demonstrate how measures are commensurate with the value of the biodiversity
- revise native vegetation removal and offset calculations to include the omitted property at 2705 Dargo – Bairnsdale Road and the changes to impacts resulting from the recently identified native grasslands
- revise the Biodiversity Offset management Strategy to include an offset statement that satisfies the requirements of the Guidelines by providing evidence that the offsets required are available and able to be secured.

DELWP submits that these matters remain incomplete.

The current version of the Incorporated Document (IAC version dated 28 April 2021, document 247) includes provisions in relation to management plans.

Offset management strategy

The current offset management strategy does not satisfy the requirements of the Guidelines. The proponent has not identified staged clearing and offsetting in accordance with the Guidelines in the documentation provided to date. The offset strategy does not include evidence that the offsets required, should removal be permitted, are available and able to be secured.

The Guidelines provide for staged clearing and offsetting, and there is a process by which the Native Vegetation Regulations policy team can modify a DELWP generated Native vegetation removal report to quantify staged clearing and offsetting requirements that can be included as conditions in the Native Vegetation Removal Plan within the Incorporated Document. It is not clear in the current documentation that this process has been applied.

Concluding remarks

Key areas of concern for DELWP are:

- the need for clarity and consistency between the EES, technical reports and emerging changes to the proposed project. This includes detailed clarification of:
 - how actions to avoid and minimise native vegetation impacts with the highest values have been addressed, with specific attention to cumulative impacts on endangered and vulnerable EVCs, large trees and habitat for threatened species as a result of the use and development
 - how impacts to areas of native vegetation affected by the Environmental Significance and Vegetation Protection Overlay have considered and addressed the objectives and decision guidelines as described in the relevant planning provisions



how the proposed Work Authority and planning scheme amendment complies with the regulatory and management framework and current best practice.