

## Delegate's Report

**Application No:** 2017/285

**Application Type:** Use & Development

**Received:** 9 October 2017

**The Applicant:**

Name: South Gippsland Shire Council  
Address: PRIVATE BAG 4  
Leongatha VIC 3953

**The Proposal:**

Proposal: Native vegetation removal

**The Land:**

Land Address: 141-143 Jupiter Boulevard Venus Bay VIC 3956  
Land Description: L22 LP52658 Parish of Tarwin, L23 LP52658 Parish of Tarwin

**Assessment:**

By: Tanya Cooper

**Planning Scheme and/or Planning and Environment Act Definition**

History of application and definition

The application was originally lodged for Use and Development of the land for Leisure and Recreation (Skate Park), removal of Native Vegetation and ancillary works.

In the course of assessing the application, it was determined that the use and development of the land for a skate park does not require a planning permit under the provisions of the Township Zone of the South Gippsland Planning Scheme.

*Leisure and Recreation* is defined as land used for leisure, recreation or sport and which includes more specific land uses such as Major Sports and Recreation Facility, Minor Sports and Recreation Facility and Motor Racing Track.

This broad definition includes all of the more specific types of leisure and recreation use and is therefore not "incorrect" however it is generally preferable to determine the most specific land use term possible, rather than a broad land use definition.

It is considered the proposal more appropriately falls within the definition of *Informal Outdoor Recreation* – which is land open to the public and used by non-paying persons for leisure or recreation, such as a cycle track, picnic or barbeque area, playground, and walking or jogging

track. Use of the land for Informal Outdoor Recreation does not need a planning permit in the Township Zone (as it is a Section 1 use at Clause 32.05-2).

The definition of Informal Outdoor Recreation has previously been used to consider similar skate ramp proposals in the Shire, many of which have not required a planning permit for use or development.

There is no trigger for buildings and works associated with a Section 1 use in Clause 32.05. Furthermore there is also an exemption at Clause 62.02-1 of the Planning Scheme for buildings and works by or on behalf of a municipality where the cost of development is less than \$1M. Therefore, the use and development of the land for a skate park and ancillary works does not require a planning permit.

Removal of vegetation is not exempted and a planning permit is required. The planning permit application has therefore been amended to be for "removal of native vegetation" only.

#### Land Use

Information Outdoor Recreation – no permit required as discussed above

#### Development

Removal of vegetation

### **Zone and Overlays:**

**Zone: Township**

**Overlays:**

- **Environmental Significance Overlay - Schedule 7 – Coastal Settlements**
- **Design And Development Overlay - Schedule 5 – Venus Bay**
- **Bushfire Management Overlay - Schedule 2**

### **Why is a Permit Required?**

Zone

Use

NA

Development

NA

Overlays

Clause 42.01-2 – A permit is required to construct a building or construct or carry out works and to remove, destroy or lop any vegetation, including dead vegetation and to construct a fence if specified in a schedule to this overlay. This does not apply if a schedule to this overlay specifically states that a permit is not required. The Schedule 7 to this overlay does not contain a relevant exemption because the proposal includes vegetation removal.

- Clause 44.06-2 – (BMO) - A permit is not required for vegetation removal.

- Clause 43.02-2 - (DD05) - A permit is not required for vegetation removal.

Note: The trigger for buildings and works under these overlays is overridden by Clause 62.02-1 (building and works undertaken by or on behalf of a municipality, with a value of less than \$1M).

Particular provisions

NA

Particular provisions that are relevant but do not trigger a permit

NA – a permit is not required to remove native vegetation under Clause 52.17 -1 Native Vegetation as due to the site area of the land being less than 0.4ha, the vegetation removal is exempt under the Table at Clause 52.17-7.

**Size of the Land (Square meters or hectares):**

Lot 22 PS052658 – 804m<sup>2</sup>

Lot 23 PS052658 -1120m<sup>2</sup>

The total area of land is approximately 1924m<sup>2</sup>

**Is there a registered restrictive covenant or a Section 173 Agreement on the title? If so, does the proposal comply with the restriction or Section 173 Agreement?**

No. There are no restrictive covenants or section 173 agreements noted on the copies of title submitted with the application, dated 12 September 2017.

There is a 1.8m wide easement for drainage and sewerage along the northern property boundary of each lot. The proposed vegetation removal will not impact the easement.

**Does the land abut a Road Zone Category 1 or a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road?**

No. Both Jupiter Boulevard and Centre Road are sealed Council roads.

**Is there a designated waterway on the land?**

No.

**Is the land within a Special Water Supply Catchment Area listed in Schedule 5 of the Catchment and Land Protection Act 1994?**

No.

**Does the application require car parking / bicycle facilities?**

NA

**Is an Aboriginal Cultural Heritage Management Plan required?**

No, a CHMP is not required because the proposed development is not in an area of cultural heritage sensitivity.

### Was Further Information Requested under Section 54?

Further information was required regarding the following:

- Vegetation removal – location and type of vegetation to be removed
- Landscaping plan showing location and extent of planting, species proposed

### Inspections:

Date Inspected	Observations
15 December 2017 and 7 March 2017	<p>The land comprises two adjacent lots at the corner of Centre Road and Jupiter Boulevard Venus Bay.</p> <p>Lot 22 PS052658 The land has an area of 804m<sup>2</sup>, with a frontage to Jupiter Boulevard of approximately 14m. The land also has a frontage to Centre Road of approximately 44m.</p> <p>The land adjacent to Jupiter Boulevard is generally flat, however the site rises steeply towards the rear of the lot. There are no waterways on the land or within 100m of the land.</p> <p>There is an area of native vegetation located adjacent Centre Road and Jupiter Boulevard and across the rear of the lot, with a cleared area near the centre of the lot. The vegetation comprises a mix of Coast Tea-tree, Coast Wattle, Coast Beard-heath and Coast Banksia species.</p> <p>The land is currently undeveloped. The lot appears to have access to reticulated power, telecommunications but not water or sewer.</p> <p>Lot 23 PS052658 The land has an area of 1120m<sup>2</sup> and has frontage to Jupiter Boulevard of approximately 17m.</p> <p>The land is generally flat adjacent Jupiter Boulevard, but rises steeply at the rear of the lot.</p> <p>There are no waterways on the land or within 100m of the land.</p> <p>There is established native vegetation across the rear of the lot. This vegetation comprises Coast Tea-tree, Coast Wattle species. The majority of the lot has been previously cleared of vegetation has a cover of exotic grass such as Kikuyu.</p>

	The lot appears to have access to reticulated power, telecommunications but not water or sewer.
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**Was notice of the application given under Section 52(1), 52(1AA), 52(3) or 57B?**

The application was notified to adjoining/adjacent owners and occupiers. The application was also notified by placing a sign on the land and by publishing a notice in newspapers generally circulating in the area.

**Were there any objections received?**

Twelve (12) written objections/submissions have been received in relation to the use and development of the land for a Skate Park. Of these written submissions, one submission has raised an objection to the removal of native vegetation. The basis for the objection has not been specified. The submissions are discussed later in this report.

**Was the application referred under Section 55 or 57C?**

The application was not required to be referred under section 55 of the Planning and Environment Act 1987.

**Were there any non-statutory or internal referrals?**

There were no non-statutory or internal referrals.

**Planning Scheme Requirements and policies:**

SPPF

The following SPPF clauses are considered relevant to the assessment of this application:

11 SETTLEMENT

- 11.05 Planning for distinctive areas and landscapes
  - 11.05-1 Coastal settlement

12 ENVIRONMENTAL AND LANDSCAPE VALUES

- 12.01 Biodiversity
  - 12.01-1 Protection of biodiversity
  - 12.01-2 Native vegetation management
- 12.04 Significant environments and landscapes
  - 12.04-1 Environmentally sensitive areas
  - 12.04-2 Landscapes

LPPF

The following LPPF clauses are considered relevant to the assessment of this application:

21.02 MUNICIPAL PROFILE

- 21.02-1 Location
- 21.02-2 History
- 21.02-3 People and settlement

- 21.02-4 Environment
- 21.02-5 Natural resource management

## 21.03 KEY ISSUES

- 21.03-2 Environmental and landscape values
- 21.03-3 Environmental risks

## 21.04 VISION

- 21.04-1 South Gippsland Shire Council – Council Plan 2010 – 2014
- 21.04-2 Vision

## 21.06 ENVIRONMENTAL AND LANDSCAPE VALUES

- 21.06-1 Biodiversity
- 21.06-2 Coastal and hinterland landscapes

## 21.07 ENVIRONMENTAL RISKS

- 21.07-2 Land and catchment management

## 21.15 LOCAL AREAS

- 21.15-9 Venus Bay
- 21.15-15 Landscape Character Areas
  - Character Area 4.1 – Venus Bay dunes

Clause 22 policies

There are no Clause 22 policies considered relevant to the assessment of this application.

**General Assessment:**State Planning Policy Framework

The proposal is consistent with the relevant objectives and strategies of the SPPF clauses listed above.

Local Planning Policy Framework and Local policies

The proposal is consistent with the relevant objectives and strategies of the LPPF clauses and Local policies listed above.

Clause 42.01 Environmental Significance Overlay Schedule 7 Decision Guidelines – Coastal Settlements

<b>Decision Guidelines</b>	<b>Response</b>
The environmental objectives of this schedule, being: <ul style="list-style-type: none"> <li>• To protect and enhance the natural beauty of the coastal townships.</li> <li>• To protect and enhance the</li> </ul>	The site is in a prominent location near the commercial area of Venus Bay.  There is a large clump of 5, spreading Coast Wattle, Coast Tea-tree, Coast Banksia and Coast Beard-heath trees adjacent Centre Road. The clump is approximately

<p>environmental quality of the townships.</p> <ul style="list-style-type: none"> <li>• To minimise the risk of erosion, and destruction of the environment through poorly managed development.</li> <li>• To ensure that development adjacent to coastal areas is compatible with the environment and does not result in adverse impacts on coastal processes.</li> </ul>	<p>3m high and approximately 17m long. Currently this vegetation forms an effective visual screen to the subject land when viewed from the commercial area and from Centre Road. It is proposed all the Coast Wattle and Coast Tea-tree from this clump, retaining the Coast Banksia and Coast Beard-heath, which are rarer species in the area. The removal of the majority of the vegetation in this area will open up views of the subject land from the commercial area and Centre Road.</p> <p>There is a clump of vegetation approximately 3m high extending across the rear of both subject lots. This vegetation provides a physical and partial visual barrier to the dwellings immediately behind the subject land and which front Centre Road and Inlet View Road. Four trees within this area will be removed (2 Coast Tea-trees and 2 Coast Wattles) however the majority of the vegetation at the rear of the lots will be retained. The removal of 4 trees is not expected to significantly reduce the effectiveness of the remaining vegetation in forming a buffer to the neighbouring dwellings.</p> <p>There are 2 Coast banksias close to the corner of Jupiter Boulevard and Centre Road that were originally proposed for removal, but which on review are proposed to be retained. These trees are in excess of 3m in height and contribute to the visual screen effect of the land when viewed from Jupiter Boulevard.</p> <p>In total 7 trees are proposed for removal. The extent of vegetation to be removed is comparatively small in the context of the subject land and the township of Venus Bay.</p> <p>While the existing vegetation on the land does contribute to the amenity of the land, it is considered that removal of the vegetation will not impact on the scenic character of the area, which is predominantly established by the extensive coastal reserve surrounding the estate.</p> <p>The environmental quality of the land will not be significantly affected due to the comparatively small quantity of vegetation to be removed.</p> <p>The extent of vegetation removal is not expected to result in erosion or landslip provided the area is revegetated with suitable ground cover species. The area has sandy soils that may erode if vegetation cover is</p>
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	<p>permanently removed.</p> <p>The proposed vegetation removal does not directly adjoin a coastal area, being setback approximately 830m from the coastline. The proposed vegetation removal will not impact coastal processes.</p>
<p>Whether the proposal will assist in achieving the Vision, Objectives and Strategies for Venus Bay contained in Clause 21.04.</p> <p>Clause 21.15-9 – Venus Bay - Environment</p> <ul style="list-style-type: none"> <li>• Ensure that each site is capable of on-site waste disposal that does not prejudice groundwater quality.</li> <li>• Retain areas of indigenous and native vegetation where possible.</li> <li>• Protect the environmental values of Anderson Inlet and Cape Liptrap Coastal Park</li> </ul>	<p>The removal of a small area of vegetation will not impact on the coastal environment. The removal of vegetation will allow for the site to be developed with physical infrastructure to support the needs of the community and to ensure that a range of recreation facilities are available to meet the needs of the community.</p> <p>The proposal will not impact on the ground water quality in the local area. No on-site wastewater disposal is proposed or required.</p> <p>The proposal will retain an area of the existing native vegetation at the rear of the lot.</p> <p>The land is not adjacent to Anderson Inlet or the Cape Liptrap Coastal Park and will not impact the environmental values of those areas.</p>
<p>Whether the proposal will assist in the maintenance and improvement of the stability of the coastal dunes and coastlines.</p>	<p>The land is setback approximately 830m from the coast line and the vegetation removal will not directly impact the coastline.</p> <p>Venus Bay has been developed on an old coastal dune system. The rear of the subject land forms part of a long dune structure that runs parallel to Jupiter Boulevard. The majority of vegetation in the steeper part of the land that forms the side of the old dune will be retained. A total of 4 trees will be removed from this area. The removal of the 4 trees is not expected to impact the stability of soil within the old dune provided the land is replanted with suitable ground cover species to prevent loss of sand from erosion.</p>
<p>The impact of the proposal on the extent of natural vegetation retained on the site.</p>	<p>An area of established native vegetation will be retained on the land, at the rear of the lots and it is also proposed to retain the Coast Banksia and Coast Beard-heath trees.</p>
<p>The impact of the proposal on the conservation of any areas of environmental importance or significance.</p>	<p>The subject land is within an area of Environmental Significance associated with being a coastal area.</p> <p>The subject site does not have any other known features of specific environmental significance.</p>

	<p>The vegetation on the land is within the Coastal Dune Scrub/Coastal Dune Grassland Mosaic Ecological Vegetation Class. This class of vegetation has a bioregional conservation status of Depleted.</p> <p>Removal of the Coast Tea-tree and Coast Wattle species from the land is not expected to significant impact the biodiversity of the local area. Both species are coloniser species that are easily spread and re-established following removal. These species are well represented in the local area.</p> <p>Retention of the slower growing and rarer Coastal Banksia and Coast Beard-heath trees will protect the biodiversity values of the land.</p>
<p>Whether opportunities exist to avoid excavation by the use of alternative building designs, including split level and staggered building forms that follow the natural slope of the land.</p>	<p>No excavation is proposed or required in order to remove the native vegetation on the land.</p> <p>It is considered that the extent of vegetation removal has been minimised by the location of the proposed skate ramp on the land. However it should be noted that any development of these lots is likely to require the removal of this vegetation (or a large proportion of it).</p> <p>A significant portion of the existing vegetation on the land is proposed to be retained at the rear of the lot and the rarer of the tree species will also be retained.</p>
<p>Whether the development of the land will be detrimental to the natural environment.</p>	<p>The vegetation to be removed comprises Coast Tea-tree and Coast Wattle species. These are robust species that are found throughout the local area. Removal of these trees is not expected be detrimental to the natural environment of Venus Bay. The proposal will retain the slower growing and rarer Coast Banksia and Coast Beard-heath trees on the land.</p>
<p>Any relevant coastal study adopted by the Shire of South Gippsland.</p>	<p>The proposal is consistent with the recommendations for the South Gippsland Coastal Dunes area as set out in the Department of Sustainability and Environment Coastal Spaces Landscape Assessment Study (2006).</p> <p>The Coastal Spaces Landscape Assessment Study recommended that state and regionally significant coastal landscapes be included within a Significant Landscapes Overlay in the Planning Scheme. While part of the land at Venus Bay is within the Significant Landscape Overlay, the subject land is not within the Overlay, being setback some distance from the coastline.</p>

	<p>The study also made a number of general recommendations in relation to vegetation. The study recommends that where removal of native vegetation cannot be avoided, that its removal be balanced with appropriate rehabilitation on the site using appropriate indigenous species or non-invasive native and exotic plantings that are already a feature of the area.</p>
<p>The views of the Department of Sustainability and Environment in respect to:</p> <ul style="list-style-type: none"> <li>• Applications which immediately abut Crown land.</li> <li>• Applications which in the opinion of the responsible authority may adversely affect coastal processes, dune systems (including tertiary systems), or have any possible effect on aquatic habitat and flora and fauna habitat.</li> <li>• Applications which in the opinion of the responsible authority may cause or otherwise cause erosion, land degradation or affect land stability on either the subject land or on adjoining land.</li> <li>• Applications which in the opinion of the responsible authority may adversely affect wildlife habitat and sites of biological or zoological significance.</li> </ul>	<p>The views of the Department of Sustainability and Environment (now Department of Environment, Land, Water and Planning) are not relevant because:</p> <ul style="list-style-type: none"> <li>• The subject land does not immediately abut Crown Land</li> <li>• The proposal is not expected to impact coastal processes, dune systems or flora and fauna habitat.</li> <li>• The proposal is not expected to cause erosion, land degradation or affect land stability provided a revegetation plan is required to be submitted prior to any works commencing, demonstrating the site will be replanted with suitable indigenous ground covers.</li> <li>• The site is not known to have any species of biological or zoological significance.</li> </ul>

#### Public Submissions

##### *Submissions in relation to the use and development of the land for a skate park*

Response: All submissions relating to the skate park are no longer relevant to the assessment of this application because it is exempt from a planning permit, as discussed previously.

##### *Submission: Objection to the removal of native vegetation*

Response: The number of trees to be removed is the minimum necessary to improve views into the land from Jupiter Boulevard and Centre Avenue so that the land can be developed as a skate park for the local community. Improving views into the site will

allow passive surveillance of the land by passers-by and contribute to the safety and usability of the future skate park.

The majority of native vegetation at the rear of the both lots will be retained. The trees to be removed are fast growing species that are common in the local area. The rarer and slower growing Coast Banksia and Coast Beard-heath will be retained on the site and will contribute to the character and amenity of the local area through provision of shade, screening and visual interest. It is recommended that a landscaping plan, demonstrating revegetation of the site with native ground covers be submitted before any plans are endorsed for the proposed vegetation removal. Revegetation of the site with native ground cover species will ensure the site is not affected by erosion following removal of the vegetation cover.

It is also noted that removal of vegetation is likely to be required prior to any other use or development of the land for either public or private purposes.

**Conclusion and Recommendation:**

Council has considered the matters under Section 60 of the Planning & Environment Act 1987. It considers that the proposed development is appropriate having regard to the relevant matters and can be managed through appropriate conditions.

It is recommended that a report be written to Council supporting the proposed native vegetation removal and recommending that a Notice of Decision be granted, in accordance with the endorsed plans

Signed.

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Planning Officer  
Date:

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Planning Co-ordinator  
Date: