

**1.2 11 CHANCELLOR DRIVE WHEELERS HILL
REMOVAL OF TWO (2) TREES IN A VEGETATION PROTECTION OVERLAY
(TPA/52757)**

EXECUTIVE SUMMARY:

This application proposes the removal of two (2) trees at the subject site.

The application was exempt from public notification.

Key issues to be considered relate to the trees and their contribution to the landscape character of the surrounding area, their health and whether other measures can be adopted to future construction that allow for retention.

This report assesses the proposal against the provisions of the Monash Planning Scheme including the relevant state and local planning policy framework.

The reason for presenting this report to Council is because Officers do not support the removal of both trees proposed to be removed.

The proposed removal of two trees is inconsistent with the relevant provisions of the Monash Planning Scheme and it is recommended that a permit should be granted to allow the removal of the *Grevillea robusta* - Silky Oak tree only and require the retention of the *Allocasurina torulosa* - Rose She-oak tree.

RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Di Stanley
WARD:	Mulgrave
PROPERTY ADDRESS:	11 Chancellor Drive, Wheelers Hill
EXISTING LAND USE:	Single Dwelling
PRE-APPLICATION MEETING:	No
NUMBER OF OBJECTIONS:	N/A
ZONING:	Neighbourhood Residential Zone – Schedule 4
OVERLAY:	Vegetation Protection Overlay 1
RELEVANT CLAUSES: <u>Planning Policy Framework</u> Clause 12 – Environmental and Landscape Values	<u>Local Planning Policy Framework</u> Clause 21- Municipal Strategic Statement - Introduction

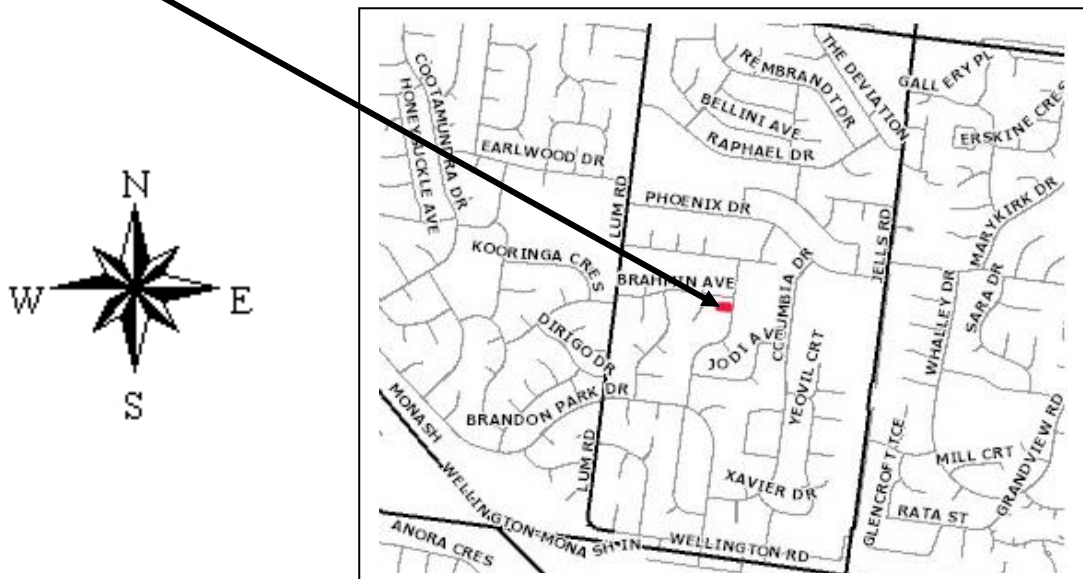
Clause 15.01-5S- Neighbourhood Character	Clause 21.04- Residential Development Clause 21.13- Sustainability and Environment Clause 22.01- Residential Development and Character Policy Clause 22.05 – Tree Conservation Policy
STATUTORY PROCESSING DATE:	23 September 2021
DEVELOPMENT COST:	Nil

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

- A. That Council resolves to issue a **Planning Permit (TPA/52757)** for the removal of one (1) tree (*Grevillea robusta* - Silky Oak tree) in a Vegetation Protection Overlay at 11 Chancellor Drive, Wheelers Hill subject to the following conditions:

Amended Plan

1. Before removal of the subject tree/s, an amended plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When the plans are endorsed they will then form part of the Permit. The plans must be generally in accordance with the decision plans received by Council on 20 August 2021, but modified to show:
 - a) Retention of Tree 13 – Rose She-oak tree located at the rear of the existing dwelling.
 - b) One (1) replacement canopy tree, which must be advanced specimen, to be planted in a suitable location on the property. The tree must grow to a mature height of at least 8 metres. The common and botanical name of the tree, its height at planting and maturity must be shown.

When approved, the plan will be endorsed and will then form part of the permit.

Layout not to be Altered

2. The tree removal as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority

Replacement Tree / Completion

3. The replacement tree must be planted, in a healthy state, within 6 months of the removal of the subject tree/s or completion of the new building.

Permit to Expire

4. This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if the tree is not removed before two (2) years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the period referred to if a request is made in writing before the permit expires, or within six (6) months afterwards.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

NOTES:

- A. Tree planting should be kept clear of the drainage easement.
- B. That Council write to the Owner advising that Tree 13 are to be retained, and that:
 - 1. A professional arborist should be engaged to remove deadwood and undertake routine crown maintenance pruning works of the tree. All pruning must be in accordance with the Australian Standard - AS4373 Pruning of Amenity Trees.

BACKGROUND:

History

An application to remove two (2) trees in a Vegetation Protection Overlay was received on 16 June 2021.

A previous planning permit application (TPA/48176) was made for the removal of all vegetation at the site to accommodate the construction of a new double storey dwelling. Council officers requested further information on 9 October 2017 and identified that the Arboricultural Report submitted with the application included information for another site and did not relate to the subject site. Additional information to support the removal of vegetation was not provided and the application lapsed on 14 November 2017.

The Site and Surrounds

The subject land is located on the western side of Chancellor Drive approximately 320 metres east of Lum Road and 950 metres south of Ferntree Gully Road, in Wheelers Hill.

The site is regular in shape, with an area of 652 square metres and a fall of 1.3 metres from north-eastern section of the front setback down to the western boundary at the rear of the site.

The site contains reasonably generous landscaping, particularly at the rear of the site including diverse vegetation and several significant trees. The front setback area includes a large Red Ironbark tree which has a height of 10 metres and is located approximately 2 metres from the front boundary. The applicant has confirmed that this tree will be retained.

The subject land is currently developed by a single storey rendered brick dwelling and includes a corrugated steel garage at the rear of the dwelling, adjacent to the southern property boundary.

The surrounding land is predominantly residential and developed with detached single and double storey dwellings surrounded by reasonably generous landscaping. The secluded private open space areas of adjoining properties include small to medium canopy trees.

East of the site on the other side of Chancellor Drive are the well landscaped grounds of the Waverley Meadows Primary School, which include a row of densely planted mature native trees opposite the subject site.

Street trees along this section of Chancellor Drive include medium to large native trees with spreading canopies.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 2).

PROPOSAL:

The application proposes the removal of two (2) trees located at the rear of the site adjacent to the western boundary as follows:

Tree 13: *Allocasuarina torulosa* (Rose Sheoak) tree

- Height: 11 metres / DBH: 0.51 metres
- Location: Tree is growing in the back garden adjacent to the western property boundary.
- The independent Arborist has described the health of the tree as average and the structure as poor and the retention value as moderate. The useful life expectancy (ULE) is described as medium (16-39 years).

Tree 14: *Grevillea robusta* (Silky Oak) tree

- Height: 11 metres / DBH: 0.56 metres
- Location: Tree is growing at the rear of the back garden adjacent to the northern property boundary.
- The independent Arborist has described the health of the tree as poor to average and the structure of the tree as poor. The useful life expectancy (ULE) is described as short (5-15 years).

The property Owners have indicated that the existing dwelling will be demolished and the removal of vegetation is sought to accommodate the construction a new double storey dwelling.

In justifying the application for removal, the applicant has stated: Tree 13 (Rose Sheoak) is large and overbearing on the site. The owners are nervous about the safety of the tree but it was only since receiving the arborist report that their concerns were confirmed by the arborist comments regarding the hazard risk.

The tree is very dominant in the backyard and it causes significant western shadowing over the site. So while the owners do wish to develop the site, there are other factors here, including potential hazard risk due to the structure of the tree and the overbearing nature of the tree on the site. Please refer to the arborist report for more detail.

One other significant tree was identified in the Arboricultural report identified as Tree 3, a Red Ironbark tree with a height of 10 metres, located at the front of the site. The property owners have indicated that this tree will be retained.

The Owners have submitted an Arboricultural Assessment prepared by Nicholas Buckley of Treemendous Consulting, dated 16 August 2017, in support of their application.

Following a request to provide further information to support the removal of the two trees, the applicant submitted an updated Arboricultural report prepared by Adrian Keene of Landscapes by Design, dated 20 August 2021.

With regard to tree 13, the arborist has stated: Tree 13 is a Rose Sheoak to the west of the site. It has matured typically for the species forming an upright mid-sized tree. Whilst its form is relatively uniform it is supported by poorly structured branches with minor and major branch tear outs likely overtime, particularly the main bifurcation. If this was to occur it presents a hazard risk to anyone present on the site. As such its removal should be considered, with a replacement tree of smaller stature considered. It would require a permit for removal, under the VPO1.

The permit applicant has not provided details of the proposed dwelling (nor are they required to), although it is noted that the 2017 arborist report includes a footprint of a dwelling that the applicant notes is no longer reflective of the building that it is intended to ultimately construct.

Definition of terms:

Tree Health

- *Good*
- *Fair*
- *Poor*
- *Very poor*
- *Dead*

Good: The tree is demonstrating good or exceptional growth for the species. The tree should exhibit a full canopy of foliage and have only minor pest or disease problems. Foliage colour size and density should be typical of a health specimen of that species.

Fair: The tree is in reasonable condition and growing well for the species. The tree should exhibit an adequate canopy of foliage. There may be some dead wood in the crown, some grazing by

insect or animals may be evident, and/or foliage colour, size or density may be atypical for a healthy specimen of that species.

Poor: *The tree is not growing to its full capacity. Extension growth of the laterals may be minimal. The canopy may be thinning or sparse. Large amounts of dead wood may be evident throughout the crown, as well as significant pest and disease problems. Other symptoms of stress indicating tree decline may be present.*

Very poor:

The tree appears to be in a state of decline, and the canopy may be very thin and sparse. A significant volume of dead wood may be present in the canopy, or pest and disease problems may be causing a severe decline in tree health.

Dead: *The tree is no longer alive.*

Tree Structure

The definition of structure is the likelihood of the tree to fail under normal condition. A tree with good structure is highly unlikely to suffer any significant failure, while a tree with poor to very poor structure is likely or very likely to fail.

Good: *The tree has a well-defined and balanced crown. Branch unions appear to be strong, with no defects evident in the trunks or the branches. Major limbs are well defined. The tree would be considered a good example for the species. Probability of significant failure is highly unlikely.*

Fair: *The tree has some minor problems in the structure of the crown. The crown may be slightly out of balance at some branch unions or branches may be exhibiting minor structural faults. If the tree has a single trunk, this may be on a slight lean, or be exhibiting minor defects. Probability of significant failure is low.*

Poor: *The tree may have a poorly structured crown, the crown may be unbalanced, or exhibit large gaps. Major limbs may not be well defined; branches may be rubbing or crossing over. Branch unions may be poor or faulty at the point of attachment. The tree may have suffered major root damage. Probability of significant failure is moderate.*

Very poor:

The tree has a poorly structured crown. The crown is unbalanced, or exhibits large gaps. Major limbs are not well defined. Branch unions may be poor or faulty at the point of attachment. A section of the tree has failed, or is in imminent danger of failure. Active failure may be present, or failure is probably in the immediate future.

Failed: *A significant section of the tree or the whole tree has failed.*

Attachment 1 details plans forming part of the application.

PERMIT TRIGGERS:

Zoning

The land is zoned Neighbourhood Residential Zone - Schedule 4. Pursuant to Clause 32.09 of the Monash Planning Scheme, a Permit is not required for the removal of vegetation.

Overlay

The land is affected by Vegetation Protection Overlay - Schedule 1.

- Pursuant to Clause 42.02 of the Monash Planning Scheme, a permit is required to remove or destroy any vegetation that:
 - Has a trunk circumference greater than 500mm (160mm diameter) at 1200mm above ground level and
 - Is higher than 10 metres.

Attachment 3 details the zoning and overlays applicable to the subject site and surrounding land.

CONSULTATION:

The Applicant has been advised that the application was coming to the October Council meeting, and a letter was sent to the Applicant with the details of the Council meeting.

The Applicant has been verbally advised that this application is recommended for approval subject to conditions for the removal of only 1 tree, and an outline of the conditions and the ramifications of the conditions on the proposal has been explained.

Public Notice

Tree removal is exempt from public notification requirements of Section 52 of the *Planning and Environment Act 1987* pursuant to clause 3.0 of the Vegetation Protection Overlay controls.

Referrals

The application was referred to Council's Horticulture department and given that a site visit was not permitted under the current Covid-19 restrictions, Council's Arborist provided the following comments based on the information submitted with the application:

- Tree 13 – Sheoak (*Allocasaurina*), can be a long lived tree providing good amenity with little incidence of failure despite the presence of acute branch attachments. It would be more concerning if it were noted there was a

certain amount of dieback through the canopy and evidence of several branch failures (at the attachment point).

- Tree 14 - Silky Oak (*Grevillea*) appears to display fairly good foliage vigour and density, which can be quite meaningful in this species of tree. Of possible concern, though, is the tree “lopped in its upper canopy”. This tree is not the best at compartmentalising wounds, so if there is a big wound in this manner, then it is likely that structure has been compromised. However, it may be the case that this tree has developed good responsive wound wood and with appropriate management would survive reasonably well.

DISCUSSION:

Consistency with State and Local Planning Policies

State planning policies provide guidance with regard to the development of urban areas. In particular, the importance of landscaping and vegetation is considered to contribute positively to the local urban character, which is characterised by leafy suburbs throughout the City of Monash.

Clause 21.01 - Municipal Strategic Statement makes reference to the Garden City Character in the City of Monash which is represented by extensive treed residential areas that create leafy suburbs.

Clause 22.01 – Residential Development and Character Policy makes reference to the Garden City and streetscape character of the neighbourhood, being maintained and enhanced where possible. This policy provides guidance to ensure that new development is designed *‘to achieve outcomes that enhance the garden city character of the area’* and to *‘ensure that development is adequately setback from existing and proposed trees to ensure their protection and longevity.’*

This subject site is within the Dandenong Valley Escarpment area, which includes a preferred future character statement for *‘Dwellings will be designed to sympathetically integrate with any existing native trees and shrubs on or adjacent to the development site and to the topography.’* Additionally objectives for this area include, *‘existing trees will be retained where possible and landscaping will reduce the dominance of buildings and provide filtered views of the architecture.’*

Clause 22.05 – Tree Conservation Policy. The objective of this policy is to promote the retention of mature trees to maintain, extend the Garden City character throughout the Monash municipality, as well as meet criteria in the schedule to the VPO.

Vegetation Protection Overlay (VPO)

The VPO provides a clear objective and decision guidelines for the removal and protection of significant vegetation, to preserve existing trees and enhance the character of neighbourhoods;

“To conserve significant treed environments and ensure that new development complements the Garden City Character of the neighbourhood.”

In assessing an application the Responsible Authority has considered as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework. The statement of the nature and significance of the vegetation to be protected and the vegetation protection objective contained in a schedule to this overlay.
- Whether the provision is made or is to be made to establish and maintain vegetation elsewhere on the land. Any other matters specified in a schedule to this overlay.
- The reason for removing or destroying the vegetation and the practicality of alternative options which do not require removal or destruction of vegetation.
- The practicality and benefits of relocating significant vegetation.
- The condition and quality of the vegetation.

Assessment

The application was assessed against the relevant State and Local Planning policies with particular regards to the Clause 22.05 - Tree Conservation Policy and Clause 42.02 - Vegetation Protection Overlay of the Monash Planning Scheme. As stated in Clause 22.05 new development should enhance and extend the Garden City Character of the City of Monash by ensuring retention of existing semi-mature and mature canopy trees wherever possible. Additionally, the purpose of VPO is to ensure developments minimise the loss of vegetation and to preserve existing significant trees, which has not been considered in this proposal.

In support of this application, the applicant has provided two reports both prepared by separate arborist's. These Arboricultural reports submitted with the application provide an assessment of the health and structure of the trees proposed for removal, as outlined above.

Tree 14: *Grevillea robusta* (Silky Oak) tree

The independent Arborist has described the health of this tree as poor to average and the structure as poor and the amenity value as low.

The Arborist has described the tree as having *‘matured poorly having been lopped in its upper canopy’* which has resulted in *‘poor branch structure and canopy form’*. The point of lopping was carried out to the central leading branch that was *‘likely to have had a substantial diameter’* at the time. This has resulted in a large surface wound which could develop decay. Ivy has invaded the minor and main branches of the tree which has *exacerbated the conditions for decay to occur’* and *‘increases the likelihood of decay to be present at the old lopping point.’*

The Arborist describes the tree as having a low retention value and goes on to say that it *'may be hazardous if retained, with failure of secondary branches likely, posing a risk to anyone on the site, or neighbouring, particularly around the neighbouring pool which is within its fall zone.'*

Photos of the tree submitted with the application clearly demonstrate the poor structure that has developed around the point of previous lopping and the extent of the tree's structure that has been invaded by ivy.

Council's Arborist has also independently supported this assessment.

The applicant intends to construct a new double storey dwelling on the site and a statement submitted with the application, indicate that the proposed location of a major site cut would encroach the tree protection zones of both trees. The level of encroachment has not been indicated as the owners of the property intend to finalise a design for the new dwelling following the outcome of this application for vegetation removal.

Given the compromised structure of the tree and these conditions it is considered appropriate to allow the removal of this tree.

To compensate for the removal of the Silky oak tree, it is considered that a smaller replacement tree could be planted in a more suitable location within the rear setback of the site. Over time, the replacement tree will compensate for the loss of the Silky tree to the surrounding area and have greater opportunity to develop a healthy structure.

Tree 13: *Allocasuarina torulosa* (Rose Sheoak) tree

Whilst there are a moderate number of large canopy trees adjacent to the rear of the subject site, the Rose Sheoak tree proposed for removal is considered to make a significant contribution to the landscape character of the area and with regard for policies to *'ensure that new development complements the Garden City Character of the neighbourhood'* it's retention is supported.

The independent Arborist has described the health of this tree as average and the structure as poor to average and the amenity value as moderate.

The Arborist has described the tree as an *'upright mid-sized tree'* and noted the retention value of the tree as moderate, due to the structure including *'poorly structured branches with minor and major branch tear outs likely over time, particularly the main bifurcation and that if this were to occur it would present a hazard risk to anyone present at the site.'* However, the Arborist has also described the form of the tree as *'relatively uniform'*.

Council's Arborist has described the canopy of this tree as including *'reasonably good foliage vigour and density'* and noted that there was no evidence of dieback within the tree's canopy. Photos of the tree submitted with the application present an upright and relatively solid structure, with a healthy spreading canopy.

This tree has been assessed as being in an average condition with an upright structure and photos of the tree demonstrate a healthy canopy and an absence of any dieback. Overall, the retention of the Rose Sheoak tree is warranted as the tree a strong contribution to the landscape character of the area.

The permit applicant has stated in support of the removal of this tree that they are concerned with the hazard of the tree as confirmed by the arborist and the significant shadows. There are a number of matters that should be considered in this context. Notably, the arborist makes notes of the current structure of the tree and hypothesises that there may be minor and major branch tear outs likely overtime, particularly the main bifurcation. If this was to occur it presents a hazard risk to anyone. Notably this situation does not exist today. What the arborist does not venture commentary into is what effect regular maintenance and pruning is and may be required in in the future to maintain the tree on this possible eventuality.

With the proposed floor plan that was contained in the 2017 application, it is noted that it does not achieve the 5 metre minimum setback identified in the NRZ. This setback which would provide a greater separation between the dwelling and the tree and its critical root zone. The 5 metre setback was largely introduced for the provision of open space and tree planting. Whilst the applicant may apply for a building dispensation to reduce this setback, this has not occurred and officers have not assessed the suitability of a reduced setback on this allotment. It is observed however that with the exception of the existing garage on the subject site and on an adhoc basis on some other properties, that properties in this section of Chancellor Drive and Lorraine Court adjacent these sites, present generous rear setbacks of or in excess of 5 metres from the rear fence.

Having regard to the assessment above, there is little to support the removal of the tree in its current circumstance. It may be that at a point in the future, the tree may be an appropriate candidate for removal. A note has been included in the recommendation that the tree should be assessed and maintained in accordance with the recommendations of an arborist. It is of course up to the owner how they manage this.

CONCLUSION:

The purpose of the Vegetation Protection Overlay is to ensure minimal loss of vegetation and to preserve existing significant trees.

Based on the above assessment, it is recommended that Council grant permission for the removal of the Silky oak tree within the rear of the site and require the retention of the Rose sheoak tree also located at the rear of the site.

The Rose sheoak tree makes a significant contribution to the landscape character of the area and should be retained. Removal of the Rose sheoak tree is not consistent with the purposes of the Vegetation Protection Overlay or the Tree

Conservation Policy. It is considered that the removal of this tree would have a detrimental impact on the landscape character of the area.

Accordingly, it is recommended that the application should be supported in part to allow the removal of the *Grevillea robusta* - Silky Oak tree and require the retention of the *Allocasurina torulosa* - Rose She-oak tree.

LIST OF ATTACHMENTS:

Attachment 1 – Proposed Development Plans and Arboricultural Report.

Attachment 2 – Aerial Photograph (January 2021).

Attachment 3 – Zoning and Overlays Map.