

PART A & PART B SUBMISSION

Banyule City Council as Planning Authority

Amendment C107bany to the Banyule Planning Scheme

Treetop Adventure Park

340-680 The Boulevard, Ivanhoe East

Date of Submission: 23 June 2021

Panel Hearing: 5 July 2021 – 9 July 2021

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INTRODUCTION

1. Banyule City Council (**Council**) is the planning authority for Amendment C107 (**Amendment**) to the Banyule Planning Scheme (**Planning Scheme**). Council has prepared the Amendment at the request of Ecoline Pty Ltd, which is the **Proponent** for the Amendment.
2. For the benefit of all parties, a 'proponent-led' amendment is a request to amend the planning scheme made by a party that is not the planning authority. The Amendment was drafted by the Proponent and provided to Council for its consideration about whether to progress it.
3. This is Council's combined Part A and Part B submission to the Planning Panel pursuant to direction 5 in the Panel's Directions dated 11 May 2021.
4. Part A of this submission addresses the matters in provided for in Directions 4 and 5, which comprise:
 - 4.1 background to the Amendment including chronology of events and notification of the Amendment;
 - 4.2 strategic context and assessment (including of the documents set out in Direction 2) and Amendment VC197;
 - 4.3 outline engagement undertaken to date with the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation and other agencies before the preparation of the Amendment and in response to Direction 4;
 - 4.4 issues identified in submissions; and
 - 4.5 any suggested changes to the Incorporated Document in response to submissions in a summary table and tracked changes format (to be identified as 'Day 1 Hearing version').
5. Part B of this submission, which follows the Part A submission, addresses the remaining matters in provided for in Direction 5, which comprise:
 - 5.1 Council's response to submissions referred to the Panel as part of the Amendment; and
 - 5.2 Council's position on the Amendment.
6. This submission has been prepared in advance of any expert evidence that is to be circulated by other parties on 25 June 2021.
7. Accordingly, Council intends to file and circulate a supplementary submission, Council's 'Part C' Submission, which seeks to consider that evidence, and any additional matters as relevant, on 2 July 2021 in accordance with the Panel's Directions.
8. Finally, Council will present its case on 9 July 2021, prior to which it intends to file and circulate a closing or 'Part D' submission.
9. Council's Part A and Part B submissions are supported by a number of documents referred to throughout, and which are provided as **Appendices** to the submissions.

PART A

10. This is Council's Part A Submission and addresses the matters outlined in Directions 4 and 5 of the Panel's Directions dated 11 May 2021.
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OVERVIEW

Subject Land

11. The Amendment applies to land referred to as 340-680 The Boulevard, Ivanhoe East (**Land**).
12. The Land comprises two parcels of Crown Land being:
- 12.1 the eastern portion of Crown Allotment 2E within the Parish of Keelbundora, created by instrument M1121222X, in Crown Diagram CD048476M; and
 - 12.2 the north-eastern portion of Crown Allotment 2H within the Parish of Keelbundora, created by instrument M1121225R, in Crown Diagram CD048477K.
13. Both Crown Allotments are reserved under the *Crown Land Reserves Act 1978* for the following purposes:
- 13.1 Crown Allotment 2E, for 'Public Park and Recreation'
 - 13.2 Crown Allotment 2H - Conservation, Recreation, Leisure and Tourism
14. Parkland managed by Parks Victoria (**ParksVic**) is Crown Land reserved under the *Crown Land (Reserves) Act 1978* (*Vic.*).

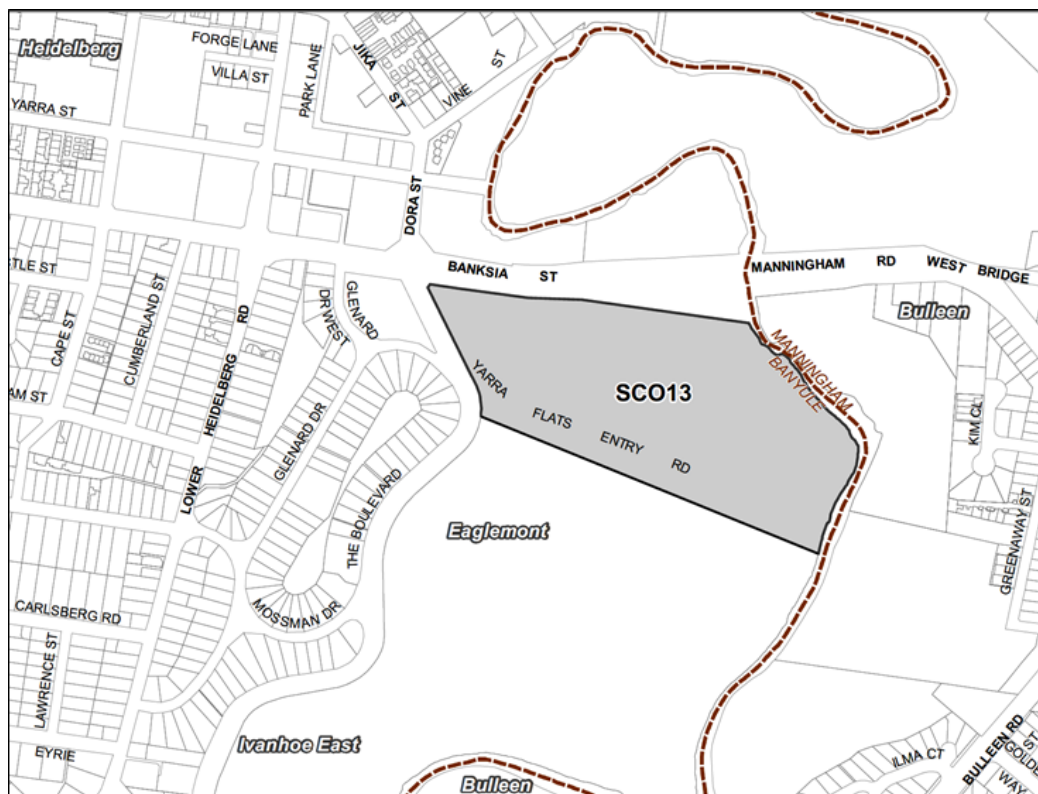


Figure 1 - Land affected by Amendment C107 (shaded grey and labelled 'SCO13').



Figure 2 - Aerial photo of the amendment area outlined in blue.

15. The location for the outdoor recreation facility proposed in the Amendment is located in the area marked as Treetop Activity Area (in red). Areas within the blue line will be used for car parking and access in clearly defined areas.

The Proposal

16. A general overview of the Proposal is provided as follows.
17. The Amendment seeks to facilitate the use and development of the Land for:
 - 17.1 an outdoor recreation facility, specifically a treetop adventure park;
 - 17.2 removal of native vegetation; and
 - 17.3 display of advertising signage associated with the outdoor recreation facility.
 (the **Proposal**).
18. In order to permit the use and development of the Land for the Proposal, the Amendment proposes to amend the Planning Scheme to:
 - 18.1 apply the Specific Controls Overlay - Schedule 13 (**SCO13**) to the Land;
 - 18.2 insert the Incorporated Document 'Treetop Adventure Park, 340-680 The Boulevard, Ivanhoe East, September 2020' (**Incorporated Document**) in the:
 - 18.2.1 Schedule to Clause 45.12 Specific Controls Overlay;
 - 18.2.2 Schedule to Clause 72.04 Incorporated Documents; and
 - 18.3 amend Planning Scheme Map 16SCO to apply SCO13 to the Land.

19. The Proponent seeks to use and develop the Land for an outdoor recreation facility comprising a tree-top ropes-based adventure climbing course, comprising 8 courses for participants of different ages and abilities.
20. More specifically, the Amendment proposes to facilitate the use and development of the Land for the Proposal as follows:
 - 20.1 construction of a site office, including shipping container structures, for administration and 'home tree' structure;
 - 20.2 upgrades to existing amenities on the Land to provide for the Proposal; and
 - 20.3 provision of 127 car spaces existing on the Land for the Proposal.
21. The Proposal is described in detail in the Proponent's supporting documentation that exhibited with the Amendment, including in particular, the town planning report prepared by Perry Town Planning dated September 2020 (**Town Planning Report**).
22. Additionally, the Proposal avoids the removal of large trees or significant areas of vegetation from the Land.¹
23. Impacts on native vegetation are assessed and described in the Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan prepared by Practical Ecology dated December 2018, which was exhibited with the Amendment material.

Role of Council, Parks Victoria and the Proponent in Amendment

24. There are three parties that sit behind the Amendment, each with a distinct role:
 - 24.1 Council is the Planning Authority and has prepared the Amendment;
 - 24.2 Parks Victoria (**ParksVic**) is the consenting public land manager². ParksVic is a statutory authority originally established under the *Parks Victoria Act 1998* re-established on 12 September 2018 under the *Parks Victoria Act 2018*, with clear objectives and functions. ParksVic is responsible for the management of the Land, which comprises part of the broader Yarra Valley Parklands. ParksVic was responsible for the expression of interest process that invited proposals from commercial operators to establish and operate tree-based eco-adventure facilities at a number of locations throughout Victoria; and
 - 24.3 Ecoline Pty Ltd is a commercial entity and the Proponent for the Amendment. The Proponent requested the Amendment, prepared all of the background reports and drafted the Amendment documentation.

BACKGROUND TO THE AMENDMENT

Introduction

25. This section provides an overview of the preparation of the Amendment.
26. A '**Chronology of Events**' is attached to this Submission at **Attachment A**, and should be read in conjunction with this section. The Chronology provides a summary of the key steps in the planning process in respect of the Amendment pursuant to *the Planning and Environment Act 1987* (the **Act**).

¹ *Arboricultural Tree Health & Hazard Assessment* prepared by Russell Kingdom dated 31 August 2017, page 16.

² As in providing its consent as public land manager to the Proponent to progress a planning scheme amendment on Crown Land.

Preparation of Amendment

27. On 11 May 2018, the Proponent lodged a combined permit and amendment application with Council (**Amendment Application**) seeking permission:
- 27.1 to amend the Banyule Planning Scheme, including:
- 27.1.1 amending the Schedule to Clause 36.03 'Public Conservation and Resource Zone' to refer to the Incorporated Document – 'Tree Top Adventure Facility, 340-680 The Boulevard, Ivanhoe East, May 2018';
- 27.1.2 amending the Schedule to Clause 51.01 'Specific Sites and Exclusions' to refer to the Incorporated Document – 'Tree Top Adventure Facility, 340-680 The Boulevard, Ivanhoe East, May 2018'; and
- 27.2 for a planning permit to use and develop the Land for an outdoor recreation facility, removal of vegetation and the display of advertising signage.
28. In 2009, Parks Victoria published an expression of interest document³ (the **EOI**), calling for proposals to use and develop particular sites for tree-based eco-adventure facilities from suitable operators.
29. This was a direct attempt, at the time, to implement the actions of a key State Government strategy – the *Nature Based Tourism Strategy* (the **NBTS**)⁴.
30. Notably, the *Yarra Valley Parklands Management Plan (YVPM Plan)*⁵ identified the Land as suitable for recreation and leisure purposes. The YVPM Plan also earmarked the prospect of engaging commercial partnerships to achieve these purposes, on the basis that any proposal:
- 30.1 establishes a public benefit; and
- 30.2 achieves consistency with the:
- 30.2.1 purpose of Crown land reservations;
- 30.2.2 the requirements of the Scheme; and
- 30.2.3 the role of parklands identified by ParksVic.
31. On the basis of its response to the EOI, the Proponent was chosen as the preferred operator for the site proposed within the Yarra Flats Parks.
32. Following this, Council understands that advancement of the EOI proposal was put on hold to enable Parks Victoria to develop the *Yarra Flats Concept Plan 2013 (Yarra Flats Concept Plan)*.⁶
33. After the adoption⁷ of the *Yarra Flats Concept Plan 2013*, Council understands that the Proponent reconvened to establish the planning approval pathway necessary to enable the Proposal to be established on the Land.
34. The *Yarra Flats Concept Plan 2013*, alongside other relevant strategic frameworks, is described in more detail later in this submission.

³ Expression of Interest, 'Establishment and operation of tree-based eco adventure facilities, at Selected Sites: (R.J. Hamer Arboretum, Otway Forest Park, Toolangi State Forest)', September 2009. Provided to all parties to the Panel by Parks Victoria.

⁴ The State's 'Nature Based Tourism Strategy' is no longer operative but see: <https://vqls.sdp.sirsidynix.net.au/client/search/asset/1287258>

⁵ Published by Parks Victoria (November 2008).

⁶ The Yarra Flats Concept Plan is not included in the Scheme as a background or reference document.

⁷ Council did not formally adopt or endorse the Yarra Flats Concept Plan, but participated in its preparation with Parks Victoria and Melbourne Water.

Council Resolution

35. On its Ordinary Meeting on 7 October 2019, Council resolved:

That Council:

1. *Supports the preparation and exhibition of Amendment C107 to the Banyule Planning Scheme to insert an Incorporated Plan into the Schedules at Clauses 36.03, 51.01 and 72.04 of the Banyule Planning Scheme to allow the 'Tree Top Adventure Facility, 340- 680 The Boulevard, Ivanhoe East, May 2018' as a site specific exemption for the use and development of the land as an outdoor recreation facility.*
2. *Supports the Draft Planning Permit to allow the use and development of the land for an outdoor recreation facility, display of advertising signage, removal of native vegetation and heritage considerations in accordance with the Incorporated Document.*
3. *Requests the Minister for Planning to authorise the preparation and exhibition of Amendment C107 to the Banyule Planning Scheme to allow for a combined Planning Scheme amendment and Planning Permit for the use and development of land at 340- 680 The Boulevard, Ivanhoe East as outdoor recreation facility, pursuant to S96A of the Planning and Environment Act 1987 by:*
 - a) *Amending the Schedule to Clause 36.03 'Public Conservation and Resource Zone' to refer to the Incorporated Document – 'Tree Top Adventure Facility, 340-680 The Boulevard, Ivanhoe East, May 2018';*
 - b) *Amending the Schedule to Clause 51.01 'Specific Sites and Exclusions' to refer to the Incorporated Document – 'Tree Top Adventure Facility, 340-680 The Boulevard, Ivanhoe East, May 2018';*
 - c) *Amending the Schedule to Clause 72.04 'Documents Incorporated in this Planning Scheme' to refer to the Incorporated Document – 'Tree Top Adventure Facility, 340-680 The Boulevard, Ivanhoe East, May 2018';*

36. Further, at Council's Ordinary Meeting on 1 March 2021, it was resolved, at resolution 4:

That Council

...

4. *Explores further key issues in relation to the Amendment through the Planning Panel particularly in relation to:*
 - a) *The arboricultural assessment undertaken including the age and type of vegetation, vegetation to be removed and tree safety.*
 - b) *The opportunity to limit the footprint of the ropes course and minimise the extent of any vegetation removal through the final approval so that the proponent does not have the ability to remove up to 50% of vegetation.*
 - c) *Ensuring that replacement planting and new landscaping is undertaken with indigenous vegetation which is suitable for the local environment.*
 - d) *Reviewing the aboriginal heritage issues and important cultural heritage considerations.*

37. For the purposes of clarity, Council notes that this resolution effectively identifies what it considers the key outstanding issues to be following the receipt and consideration of submissions. Council's response to submissions is considered in its Part B submission.

38. By implication, it also establishes Council's continued intent to seek further assurance from the Proponent that these matters have been adequately addressed, or may be addressed through any agreed changes to the Amendment.

Authorisation

39. On 20 July 2020, the Minister for Planning, under delegation, issued Council with an authorisation to prepare the Amendment, subject to the following conditions:
1. *Remove the s96A permit from the amendment and place all relevant conditions into the incorporated document. This will ensure that the basis for the special control is to facilitate a specified form of development.*
 2. *Make necessary consequential changes to the amendment documents.*
 3. *Change the amendment to insert the incorporated document ('Tree Top Adventure Facility, 340- 680 The Boulevard, Ivanhoe East, May 2018') in the Schedule to the Clause 45.12 (Specific Controls Overlay) and Clause 72.04 of the Banyule Planning Scheme and provide planning scheme maps for the land to which the Specific Controls Overlay applies.*
 4. *Amend the incorporated document as necessary to address the changes required by conditions of this authorisation, including the use of the Specific Controls Overlay and the removal of the planning permit.*
 5. The ordinance changes must be authored in the Amendment Tracking System (ATS) and must be in accordance with the Ministerial Direction on the Form and Content of the Planning Scheme.
40. On 10 August 2020, Council formally requested an exemption from section 4(1) of *Ministerial Direction No 15*⁸ to prepare and give notice of an amendment within 40 business days after authorisation. The exemption was requested to accommodate the Council caretaker period in September/October and to allow time for the proponent to amend the documentation in accordance with the authorisation conditions. The exemption request was filed via the Amendment Tracking System.
41. On 10 August 2020, the Minister granted an exemption to section 4(1) of *Ministerial Direction No 15*.

Consultation

Exhibition of Amendment

42. Between 29 October 2020 and 10 December 2020, the Amendment was formally exhibited under section 19 of the Act for a period of six weeks.⁹
43. Council considered that the implications of the ongoing COVID-19 emergency should be reasonably factored into its exhibition. For this reason, exhibition of the Amendment – undertaken over 6 weeks - ran for 2 weeks longer than the 4 weeks typically required. Additionally, Council sought to ensure that its public engagement website, 'Shaping Banyule', contained all information necessary to support exhibition of the Amendment.¹⁰
44. Council also acknowledged COVID-19 related changes to the Act¹¹ implemented by the State Government in order to address matters such as the availability of documents electronically during periods when a Council office may not be open, alongside broader privacy matters associated with a move to the circulation of electric documents.

⁸ Advisory Note 48, published by the Department of Planning and Community Development (September 2012).

⁹ Noting this was two weeks more than the period required.

¹⁰ The website can be found at the following link: <https://shaping.banyule.vic.gov.au/C107>.

¹¹ Via the COVID-19 Omnibus (Emergency Measures) Bill 2020.

45. In accordance with section 19 of the Act, notice of the Amendment was:
- 45.1 made available, including all exhibited documents, at Council's offices and on its and the Department of Environment, Land, Water and Planning's (**DELWP**) websites;
 - 45.2 sent to adjoining property owners, comprising 125 properties broadly located between Banksia Street and Bourke Road fronting The Boulevard;
 - 45.3 sent to prescribed Ministers and public authorities;
 - 45.4 published in the *Herald Sun* on 29 October 2020; and
 - 45.5 published in the Victorian Government Gazette on 29 October 2020.
46. In addition, Council provided notice:
- 46.1 to local environment groups associated with Yarra Flats Park; and
 - 46.2 via the erection of two signs placed on the Land - one at the entrance and one next to the Main Yarra Trail.
47. The documents exhibited as part of the Amendment comprised the:
- 47.1 Explanatory Report;
 - 47.2 Notice of Preparation of an Amendment;
 - 47.3 Instruction Sheet;
 - 47.4 proposed Schedule to Clause 45.12 Specific Controls Overlay;
 - 47.5 proposed Schedule to Clause 72.04 Incorporated Documents;
 - 47.6 revised Planning Scheme Map 16SCO; and
 - 47.7 proposed Incorporated Document - Treetop Adventure Park, 340-680 The Boulevard, Ivanhoe East, September 2020.
48. The following documents were submitted in support of the Amendment and exhibited:
- 48.1 Letter of Authorisation of the Amendment from DELWP dated 17 July 2020;
 - 48.2 TreeTops at Yarra Flats' Information Brochure prepared by the Proponent dated September 2020;
 - 48.3 Site and Administration Office Plans prepared by the Proponent dated September 2020,
 - 48.4 'Planning Scheme Amendment, 340-680 The Boulevard' Planning Report prepared by Terry Town Planning dated September 2020;
 - 48.5 'TreeTop Adventure Park Ivanhoe' Transport Impact Assessment prepared by One Mile Grid dated 31 May 2016;
 - 48.6 'Yarra Flats TreeTop Adventure Park, Ivanhoe East' Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan prepared by Practical Ecology dated December 2018;

- 48.7 'TreeTop Adventure Park, Yarra Flats, Ivanhoe East VIC 3079' Arboricultural Tree Health & Hazard Assessment (2018 Update with Addendum) prepared by Advanced Treescape Consulting dated 25 February 2019;
- 48.8 Biodiversity Impact and Offset Requirements Report prepared by the Proponent dated 28 July 2016;
- 48.9 Native Vegetation Removal Report prepared by the Proponent dated 9 November 2018;
- 48.10 Aboriginal Heritage Due Diligence Report, Proposed Treetop Ropes Course Development, Eaglemont, 19 September 2018, prepared by Heritage Insight Pty Ltd;
- 48.11 Letter of Pre-Development Advice from Melbourne Water dated 26 April 2017; and
- 48.12 Letter of support from ParksVic dated 30 April 2018.

Agency/Authority Engagement

- 49. Agencies and authorities notified of the amendment include:

- 49.1 Aboriginal Victoria;
- 49.2 Manningham City Council;
- 49.3 Melbourne Water;
- 49.4 ParksVic (via Port Phillip Region of DELWP);
- 49.5 VicRoads;
- 49.6 North East Link Project;
- 49.7 Heidelberg Fire Station; and
- 49.8 SPI Powernet.

Engagement with the WWCHAC

- 50. Pursuant to Directions 4 & 5 of the Panel's Directions of 11 May 2021, Council provides the following overview of consultation with the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation (**WWCHAC**) .
- 51. Council defers to Parks Victoria for their engagement with the WWCHAC prior to Council's consideration of the Amendment Application.
- 52. On 29 October 2020, Council sent a letter addressed to the CEO of the WWCHAC providing notice of the Amendment and advising that Parks Victoria and the Proponent would welcome an opportunity to discuss the Proposal.
- 53. Council advises that it made a number of follow-up phone calls to the WWCHAC in relation to the above, which advised Council that time constraints and resourcing made it challenging to provide or discuss its submission ahead of Council's 1 March 2021 meeting to consider its requirements under section 23 of the Act.
- 54. Council's communications with WWCHAC included:

- 54.1 November and December 2020, emails and phone calls between Council representatives and the Heritage Unit at WWCHAC to discuss a possible meeting between Elders, Council, Parks Victoria and Proponent;
- 54.2 On 21 January 2021, email correspondence sent to Council from the Water Unit at WWCHAC enquiring when submissions were due; and
- 54.3 In January and February 2021, additional emails between Council and the WWCHAC Water Unit regarding a late submission to the Amendment culminating in a late submission being received on Friday 26 February 2021
55. Council has also been engaged in the preparation of the *Yarra Strategic Plan (Strategic Plan)* as a representative on the Yarra Collaboration Committee, alongside the WWCHAC and ParksVic. The development and implement of the Strategic Plan is a primary purpose of the *Yarra River Protection (Wilip-gin Birrarung murrnong) Act 2017 (YRP Act)*.¹²
56. The Strategic Plan is described in more detail later in this submission.
57. Although the WWCHAC made a late submission responding to the Amendment, its submission has been referred to the Panel.

EXISTING PLANNING CONTROLS

Introduction

58. The Town Planning Report lodged with the application Town Planning Report September 2020¹³ (the **Town Planning Report**) considered the Proposal against the current provisions of the Planning Scheme. The Town Planning Report identified the relevant provisions and permit triggers of the Planning Scheme under which the proposal would otherwise be tested if permits for buildings and works were required¹⁴.

Land Use Zone

59. The Land is located in the Public Conservation and Resource Zone (**PCRZ**) contained in Clause 36.03 of the Planning Scheme.



Zoning Map

¹² See section 1(b).

¹³ Planning Report Planning Scheme Amendment 340-680 The Boulevard, Ivanhoe by Perry Town Planning (September 2020) - see https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ban-shapingbanyule.files/6416/0281/9116/Banyule_C107bany_Planning_Report_Sept_2020_Exhibition.pdf

¹⁴ Noting that the use of the Special Controls Overlay would, if approved, remove the need or any other permit approvals under the Planning Scheme.

60. The purpose of the PCRZ is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.
- To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.
- To provide for appropriate resource based uses.

Overlays

61. The Land is subject to a number of overlays:

- 61.1 Environmental Significance Overlay (Schedule 1)(**ESO1**) contained in Clause 42.01 of the Planning Scheme;
- 61.2 Environmental Significance Overlay (Schedule 4)(**ESO4**) contained in Clause 42.01 of the Planning Scheme;
- 61.3 Heritage Overlay (Schedule 134)(**HO134**) contained in Clause 43.01 of the Planning Scheme;
- 61.4 Land Subject to Inundation Overlay (**LSIO**) contained in Clause 44.04 of the Planning Scheme; and
- 61.5 Significant Landscape Overlay (Schedule 1)(**SLO1**) contained in Clause 42.03 of the Planning Scheme.

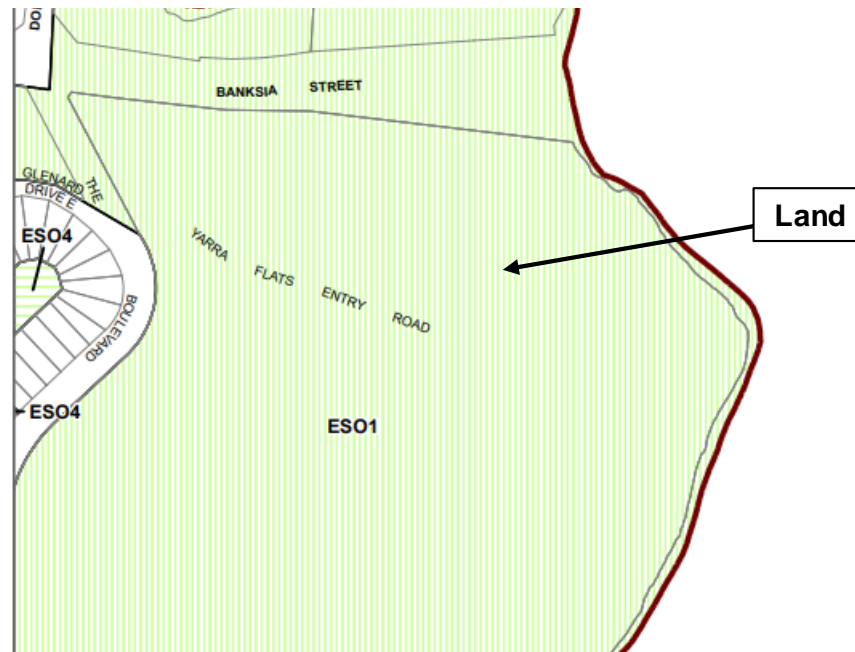
Environmental Significance Overlay (Schedule 1 and Schedule 4)

62. The Land is subject to Environmental Significance Overlay (Schedule 1)(**ESO1**) and Schedule 4 (**ESO4**) contained in Clause 42.01 of the Planning Scheme.

63. The purpose of the ESO is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify areas where the development of land may be affected by environmental constraints.
- To ensure that development is compatible with identified environmental values.

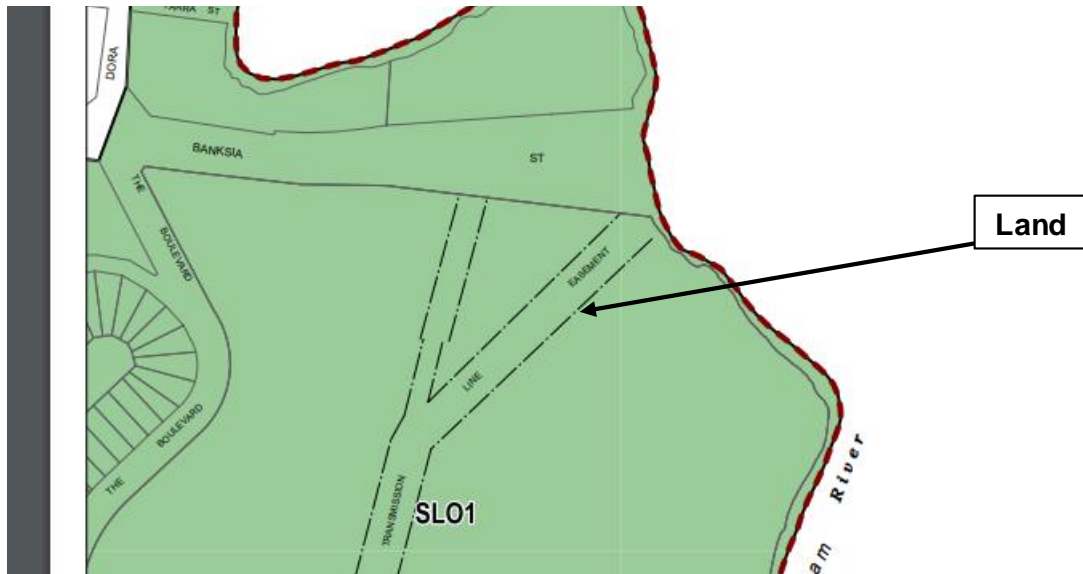
64. ESO1 applies to land along the Yarra River, Plenty River and Darebin Creek.



65. ESO1, at section 2.0, contains numerous objectives, including.
- To enhance and encourage the conservation and maintenance of the streamside environment as a conservation, ecological and recreation resource.
 - To encourage development consistent with any approved concept plan for the area.
66. ESO4 applies to Significant Trees and Areas of Vegetation through the municipality.
67. The environmental objective of the ESO is 'to protect and enhance trees and areas of vegetation that are significant'.

Significant Landscape Overlay (Schedule 1)

68. The Land is subject to the Significant Landscape Overlay (Schedule 1)(**SLO1**) contained in Clause 42.04 of the Planning Scheme.
69. The purpose of the SLO is:
- To implement the Municipal Planning Strategy and the Planning Policy Framework.
 - To identify significant landscapes.
 - To conserve and enhance the character of significant landscapes.
70. The SLO1 applies to land along the Yarra (Birrarung) River Corridor Environs.

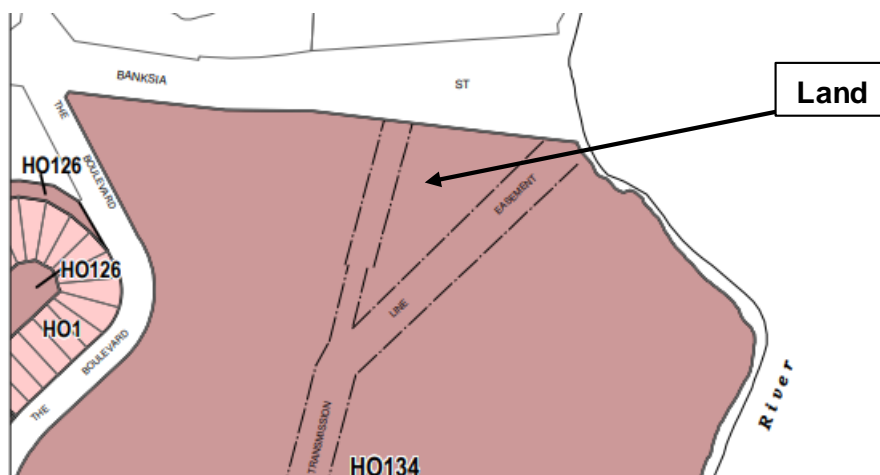


71. Relevant to the Amendment, landscape character objectives of the SLO1 include:

- To retain vegetation that contributes to landscape character, heritage values or neighbourhood character.
- To maintain and protect linear public open space and provide for secluded areas of public open space with access to the river where appropriate.
- To encourage the co-location or clustering of buildings, jetties and mooring facilities on public land.
- To encourage bicycle and shared paths that are safe, well located and require minimal earthworks and vegetation removal.
- To ensure fencing within close proximity to the Yarra River is low in scale, visually permeable and does not contrast with the natural landscape character.

Heritage Overlay (Schedule 134)

72. The Land is subject to the Heritage Overlay (Schedule 134)(**HO134**) contained in Clause 43.01 of the Planning Scheme.



73. The purpose of the HO is:

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

- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

74. HO134 applies to the 'Yarra Flats' and is subject to the following controls:

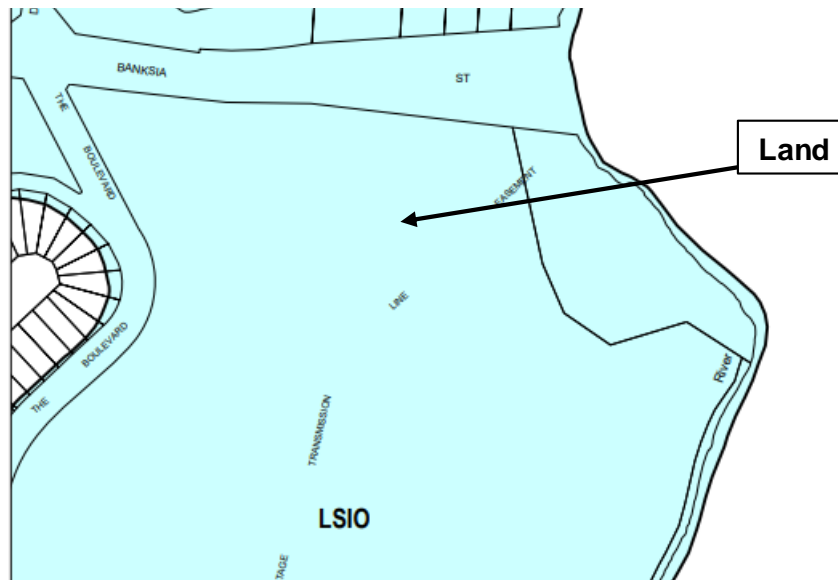
PS map ref	Heritage place	External paint controls apply?	Internal alteration controls apply?	Tree controls apply?	Outbuildings or fences not exempt under Clause 43.01-4	Included on the Victorian Heritage Register under the Heritage Act 2017?	Prohibited uses permitted?	Aboriginal heritage place?
HO134	Yarra Flats 340-680 The Boulevard, Eaglemont	No	No	Yes	No	No	No	Yes

Land Subject to Inundation Overlay

75. The Land is subject to the Land Subject to Inundation Overlay (**LSIO**) contained in Clause 44.04 of the Planning Scheme.

76. The purpose of the LSIO is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made.
- To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.



77. Melbourne Water has considered the Amendment and has required a number of conditions to be included in the Incorporated Document. It is also noted that the design of the shipping containers reflects part of the requirements of Melbourne Water to ensure that the container is not impacted by potential floods

Particular Provisions

78. Clause 52.05 - Signs seeks to regulate the display of signs and associated structures, including the provision of distinct requirements for different 'categories' of land. In the PCRZ, Clause 36.03-9 provides that land within the PCRZ is to be assessed against the 'Category 4 – Sensitive Areas' requirements at Clause 52.05-14.
79. Clause 52.17 Native Vegetation seeks to ensure there is no net less to biodiversity as a result of the removal, destruction or lopping of native vegetation.
80. Clause 52.34 Bicycle Facilities seeks to ensure bicycle facilities and associated signage are provided on land as required.
81. Clause 65 of the Banyule Planning Scheme sets out the matters a responsible authority would have been required to consider before deciding on an application or approval of a plan. They are:
- The matters set out in section 60 of the Act.
 - The Municipal Planning Strategy and the Planning Policy Framework.
 - The purpose of the zone, overlay or other provision.
 - Any matter required to be considered in the zone, overlay or other provision.
 - The orderly planning of the area.
 - The effect on the amenity of the area.
 - The proximity of the land to any public land.
 - Factors likely to cause or contribute to land degradation, salinity or reduce water quality.

- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.

Amendment VC197

82. Council refers to the Panel's direction requesting that Council's submission consider Planning Scheme Amendment VC197 (**Amendment VC197**), which was gazetted on 20 April 2021.
83. Amendment VC197 was requested and prepared by the Minister for Planning and applies to Banyule, Boroondara, Manningham, Nillumbik, Stonnington and Yarra planning schemes.
84. Broadly amendment VC197 removes expiry dates and updates schedules to:
 - 84.1 SLO1; and
 - 84.2 Design and Development Overlay (**DDO2**)
within the Yarra River corridor.
85. Amendment VC197 also makes consequential updates to Clause 12.03-1R Yarra River Protection in the Planning Scheme by adding an additional strategy to protect, conserve and enhance areas of cultural and archaeological significance.
86. In preparing this submission, Council has assessed the Amendment against:
 - 86.1 Clause 12.03-1R;
 - 86.2 SLO1;
 as amended by Amendment VC197.
87. The Land is not subject to the DDO2.

'By or on behalf of'

88. The Amendment seeks to enable the use of the land for the purpose of an 'outdoor recreation facility'¹⁵ along with allowing a number of ancillary components associated with the installation of the facility.
89. Under the PCRZ, a 'public land manager' can establish a broad range of uses without the need for a planning permit.
90. Council submits that this is an important consideration for the Panel.

¹⁵ The defined land use term for the proposed use of land by Amendment C107's Incorporated Document, as defined by the Table to Clause 73.03 of the Banyule Planning Scheme - https://planning-schemes.api.delwp.vic.gov.au/schemes/vpp/73_03.pdf?_ga=2.268747313.1124264856.1623229651-592720602.1571107455.

91. Firstly, it establishes the principle that the use and development of the Land for a facility such as an 'outdoor recreation facility' is permissible under the PCRZ if undertaken 'by or on behalf of' the public land manager, in this case, ParksVic.
92. Conversely, the PCRZ provides that where a use is not undertaken 'by or on behalf of' the public land manager, the use is prohibited.
93. For present purposes, the Panel should simply note that the proposed use of the Land by the Proponent, despite being advanced in response to an outcome sought by ParksVic, may not meet this 'by or on behalf of' threshold in the PCRZ.
94. In this submission, Council does not seek to venture into the murky area of law dealing with what 'by or on behalf of' means. It is obvious that in the processing of the Authorisation of the Amendment, a decision was taken to avoid that murky area by ensuring that the planning framework did not raise that issue as a point of argument. No doubt, that was likely as a result of the litigation in the case of *Wertheimer v Bayside City Council*¹⁶ which involved the demolition and reconstruction of a lifesaving club at Elwood Beach a case that had been before the Tribunal for 4 years and is currently venturing into its second Supreme Court proceeding .
95. Having regard to this, it is submitted that the Panel is required to consider two distinct aspects for the purposes of this hearing:
 - 95.1 Firstly, the Panel must consider the appropriateness, or otherwise, of the use and development of Land by the Proponent under the provisions of the proposed SCO having regard to its strategic context. This will involve an assessment of policies both existing and to some extent, the developing policy framework.
 - 95.2 Secondly, Council submits that the Panel must conduct a planning assessment of the proposed use and development enabled by the proposed SCO and Incorporated Document. That involves an assessment of, by way of illustration, potential amenity impacts and whether the drafting of the relevant documents is 'fit for purpose'.
96. As such, it is acknowledged that this may necessitate changes to the documents considered in this hearing.

Existing Permit Triggers

97. If:
 - 97.1 the Proposal was sought to be undertaken by ParksVic; and
 - 97.2 accordingly, a permit was not required to use or develop the Land under the PCRZ -
 a permit would still be required to develop the Land in the manner proposed under other planning provisions.
98. Accordingly, an assessment of the relevant permit requirements is provided as follows.
99. If the Proposal was not proposed to be subject to the SCO, a planning permit would likely be required under the following provisions:
 - 99.1 under Clause 42.01-2 (**ESO1**), to:
 - 99.1.1 construct a building and carry out works; and
 - 99.1.2 remove, destroy or log vegetation, unless:

¹⁶ [2017] VCAT 726.

- (a) pruning vegetation to maintain or improve its health or appearance; or
 - (b) the removal, destruction or lopping of dead vegetation, unless the dead vegetation is a habitat tree containing hollows.
- 99.2 under Clause 42.01-2 (**ESO4**), to:
 - 99.2.1 remove, destroy or lop vegetation, unless for the purpose of pruning vegetation to maintain or improve its health or appearance.
- 99.3 under Clause 43.01-1 (**HO134**), to:
 - 99.3.1 construct a building or carry out works, including constructing or displaying a sign; and
 - 99.3.2 remove, destroy or lop trees, on the basis that tree controls apply.
- 99.4 under Clause 42.03-2 (**SLO1**), to:
 - 99.4.1 construct a building or carry out works; and
 - 99.4.2 remove, destroy or lop vegetation, unless for the purpose of pruning vegetation to maintain or improve its health or appearance.
- 99.5 under Clause 44.04-2 (**LSIO**), to construct a building and carry out works;
- 99.6 under clause 52.17-1 Native Vegetation, to remove, destroy or lop native vegetation, unless it is undertaken by or on behalf of ParksVic to manage Crown land; and
- 99.7 under Clause 52.05-14, a permit is required to erect business identification signs, provided the total display area to each premises does not exceed 3m².

Assessment against Existing Planning Controls

- 100. Council has established the planning controls applicable to the Land, including any relevant permit triggers applicable to the Proposal.
- 101. Since its inception, a key aspect in assessing the Amendment was whether the Proposal could have been advanced by the Proponent under the current Planning.
- 102. Council, ParksVic and the Proponent spent a considerable period between 2014 and 2018 considering a range of matters relating to planning and, in particular, the need for the Amendment.¹⁷
- 103. When first presented with the proposed use for public land by ParksVic and the Proponent, two key questions arose:
 - 103.1 Was the use and development 'for and on behalf of the public land manager' and therefore 'as of right'¹⁸ under the PCRZ?¹⁹
 - 103.2 If not, was the use and development permissible²⁰ under any other provision of the Planning Scheme?
- 104. The Planning Scheme currently allows permits to be sought for all buildings and works and lopping, pruning or removal of vegetation components of the Proponent's proposal.

¹⁷ See Chronology of Amendment at **Attachment A**.

¹⁸ Means that the use and development is already permitted by the Planning Scheme.

¹⁹ Noting the potential for approvals such as native vegetation removal could still be triggered.

²⁰ Permissible via the pursuit of planning permits.

105. This type of provision in a public zone, such as the PCRZ, ordinarily enables the public land manager to establish a broad range of uses (and buildings and works associated to a use) without the administrative need for approvals under the planning scheme or an amendment to the planning scheme.
106. In Council's submission, this effectively means that a use and development of the type put forward by the Proponent in the Amendment could be legitimately established under the current zone in the Planning Scheme if the 'for and on behalf of' test is met and other relevant planning permissions obtained.
107. Council submits that the EOI made it very clear that the intent of ParksVic was to help deliver outcomes of the Victorian 'Nature Based Tourism Strategy (NBTS)²¹. To help achieve this, ParksVic identified opportunities at a number of locations in Victoria through its EOI where commercial partners could help it to do so. In respect of the Yarra Flats site, this led to the emergence of the proposal that is the subject of the Amendment. The relevance and implementation of the NBTS is provided in the EOI as follows:²²

Consistent with the Growing Victoria Together ten-year goals, Victoria has the potential to convert the current high visitation to public land attractions to create jobs and sustainable communities. The vision of Victoria's 10 Year Tourism and Events Strategy is to grow tourism from a \$10.8 billion industry to an \$18 billion industry by 2016. Nature-based tourism is key to achieving that growth. Last year, Victoria launched its comprehensive Nature Based Tourism Strategy ("NBTS") to guide the development of this segment over the next five years.

Implementation of relevant NBTS actions is a key priority for Parks Victoria. In accordance with the NBTS, there is a need for Victorian public lands to have contemporary infrastructure and services at the right locations; to enhance our inspirational natural and cultural experiences, create complementary private investment opportunities, and strengthen regional tourism.

108. In the context of the EOI, it is arguable that any operator would be implementing identified actions 'on behalf' of Parks Victoria.
109. Council also submits that much of the intent of the NBTS has been carried forward into more recent plans and frameworks adopted by the State Government, including 'Healthy Parks Healthy People (2020)²³ and the Victorian Tourism Strategy²⁴ and that the objectives of the original EOI therefore remain directly relevant.
110. Given this context and the 'for and on behalf of' test that would otherwise be required to be considered, Council refers to the *Practitioner's Guide to Planning Scheme* (January) 2020 (the **Practitioner's Guide**).
111. The Practitioner's Guide provides the following discussion about the intent for the use and development of public land:²⁵

A public land manager should be able to use and develop public land for any purpose under the relevant land management legislation without the need for a permit. This is achieved by allowing many uses to be Section 1 within a public

²¹ The State's Nature Based Tourism Strategy is no longer operative but see:

<https://vqls.sdp.sirsidynix.net.au/client/search/asset/1287258>

²² EOI, page 2.

²³ Healthy Parks Healthy People Framework 2020, Parks Victoria – see <https://www.parks.vic.gov.au/healthy-parks-healthy-people>.

²⁴ https://economicdevelopment.vic.gov.au/data/assets/pdf_file/0006/1340979/Visitor_Economy_Strategy.pdf.

²⁵ Practitioner's Guide, page 32.

land zone, subject to the use being conducted by or on behalf of the public land manager or a specified public authority.

112. However, the Practitioners Guide cautions that:²⁶

These words should not be interpreted to allow a public land manager to have a blanket exemption within the zone to the extent that it could consent to any use or development by another party and have that use or development also automatically exempt from planning control.

113. Finally, in respect of the interpretation of '*for and on behalf of*,' the Practitioner's Guide adds the following:²⁷

The words *by or on behalf of* should be interpreted with regard to the particular statutory charter of the public land manager under its governing legislation and indicate that the use or development must be undertaken by the public land manager itself or by some other person or entity having a direct representative interest or relationship with the public land manager.

114. Council submits that the need for the Amendment is, therefore, borne out of a precautionary approach to the planning scheme and to put in place the necessary *certainty* for Parks Victoria and the Proponent that the use can be lawfully carried on.
115. The relevance of the above analysis is that it demonstrates the extent to which the planning scheme already finds it entirely acceptable to establish the use of an outdoor recreation facility on public land when the use is carried out for or on behalf of the public land manager. The question then is how does the exactly same use somehow become inappropriate, or lack strategic basis, if it is carried out by a different personality?

Why is the Amendment required?

116. As noted above, the proposed use of the Land for an outdoor recreation facility is a permissible land use without any further planning permission provided it is undertaken by or on behalf of the public land manager.
117. Given potential for dispute on the facts as to what is meant by that expression in the context of a commercial operator undertaking the operation to contribute to ParksVic's broader strategic objectives for the use of recreation facilities, the Amendment avoids the arguments as to whether the use would be permissible (as of right) or not.
118. Instead, the Amendment permits the use subject to compliance with the conditions in the Incorporated Document. As such, the strategic objectives for the use of the Land can be otherwise achieved with the approval of ParksVic, as the case is here.
119. Accordingly, the Amendment is required because of the lack of clarity that would exist in circumstances where the use was simply commenced without seeking any planning permission in reliance upon the '*for and on behalf of*' provision within the PCRZ.
120. This is an important consideration to help understand the strategic drivers and context that underpins the Amendment. It is unusual in a planning sense to form views about whether a proposed land use and development is appropriate depending on the identity of the person undertaking that use. In the circumstances of this case, it unusually leads to the scenario where the commercial nature of the entity provokes an assessment that would not otherwise have any relevance in respect of land use noting the use (and development) would be 'as of right' under the PCRZ.

²⁶ Ibid.

²⁷ Ibid.

121. In its consideration of this proponent-led amendment, Council identified a range of issues that it needed to consider and inform itself about before deciding on the best way to proceed, including:
 - 121.1 the intent and purpose for Crown Land reservation set aside under the *Crown Land Reserves Act 1978*;
 - 121.2 strategic policy drivers relevant to ParksVic;
 - 121.3 the intent and purpose of the PCRZ;
 - 121.4 the ongoing roles of ParksVic, as public land manager, and its relationship to the use of the Land by the Proponent;
 - 121.5 the implications of the concept of 'for and on behalf of the public land manager' in the light of various VCAT and Panel proceedings;
 - 121.6 any relevant Management Plan for the Land; and
 - 121.7 More recent changes to the Planning Scheme by the State Government by Amendment VC194 to create a possible alternative approval process on public or Crown Land under which the current proposal might alternatively be proposed – and not require an amendment to the planning scheme.

Amendment VC194

122. The Panel has requested that these submissions address the gazettal of Planning Scheme Amendment VC194 (**VC194**) into the Planning Scheme.
123. Amendment VC194 was approved by the Minister for Planning and gazetted on 25 March 2021. Notably, VC194 was gazetted after Council had resolved to refer the Amendment to the Panel.
124. VC194 introduced two new '*Particular Provisions*' into all Victorian Planning Schemes to 'facilitate the timely delivery of state and local government infrastructure projects to support Victoria's social and economic recovery from the coronavirus (COVID-19) pandemic,'²⁸ being:
 - 124.1 Clause 52.30 State Projects; and
 - 124.2 Clause 52.31 Local Government Projects.
125. Clauses 52.30 and 52.31 provide an approval pathway for qualifying projects that would exempt those projects from planning permit and notice and review requirements.
126. Clause 52.30 established a process whereby projects declared by the Minister for Planning to be a 'State Project' are exempt from other requirements of the Planning Scheme.
127. However, there are some qualifications in the provision that are relevant to the Proposal.
128. For example, the State Project must be consistent with the Yarra Strategic Plan, once it is adopted. It is also clear that the exemption applies even if the State Project is carried out in partnership with a commercial operator.
129. Clause 52.31 provides for a similar process for Local Government Projects with a cost of less than \$10 million.
130. In the context of this proceeding, VC194 provides for two things:

²⁸ See VC194 Explanatory Report, prepared by State Government of Victoria - <https://www.planning.vic.gov.au/schemes-and-amendments/browse-planning-scheme/amendments?f.Scheme%7CplanningSchemeName=banyule#Amendments-VC194>

- 130.1 it provides a possible alternative approvals pathway that ParksVic and the Proponent could pursue if the project was declared to be a State Project; and
- 130.2 it establishes a clear expectation that public land, including Crown Land, might be used or developed under partnerships between the State and private entities.
- 131. Further, Council is also aware that the Minister for Planning, at the request of neighbouring Nillumbik Shire Council, recently approved Amendment C125 to the Nillumbik Planning Scheme, which was gazetted on 2 July 2020²⁹.
- 132. Amendment C125 established a commercial use for the 'Laughing Waters' site for the purpose of 'Artists Residency Centre including accommodation and art and craft centre'. In that instance, the use was prohibited by the PCRZ. The Special Controls Overlay (SCO) was used to overcome the prohibited use established by the zone in Amendment C125. The amendment was prepared under Section 20, Part 4 of the PE Act without exhibition.
- 133. Council considers that reference in VC194 to 'partnerships' signals that the 'by or on behalf of' requirement in the public use zone to be given a broader meaning with a focus on partnerships on public or Crown land.
- 134. In light of the above, Council submits that in considering the need for the Amendment, the Panel must be mindful that:
 - 134.1 The Amendment is pursued to avoid the issues raised by the by or on behalf of requirement in the PCRZ;
 - 134.2 at current, there are potential alternative pathways that may not necessitate the requirement for any planning permit under the Planning Scheme; and
 - 134.3 the proposed SCO is intended to 'clear the way,' as it were, and ensure that the Proposal may proceed regardless of the PCRZ, on the basis of broader strategic support subject to a proper assessment of the usual planning issues.

STRATEGIC BACKGROUND

Overview

- 135. This submission establishes that:
 - 135.1 the Land is reserved for the purpose of conservation, recreation, leisure and tourism under section 4 the *Crown Land (Reserves) Act 1978*;³⁰
 - 135.2 planning policy broadly identifies the Land as suitable for recreation and leisure purposes with the intention to employ commercial partnerships to achieve those outcomes;
 - 135.3 ParksVic, as the public land manager, clearly supports the establishment of the use on the land;
 - 135.4 ParksVic could otherwise use and develop the land for an outdoor recreation facility with no requirement for a planning permit under the PCRZ; and
 - 135.5 broader strategic frameworks support the use and development of the Land for an outdoor recreation facility.

²⁹ See https://www.planning.vic.gov.au/schemes-and-amendments/browse-planning-scheme/amendments?f.Scheme%7CplanningSchemeName=nillumbik&start_rank=101#Amendments--VC125.

³⁰ *Expression of Interest 1267 – Establishment and Operation of Tree-Based Eco Adventure Facilities*, Parks Victoria (September 2009).

136. To underpin the broader strategic support for the Amendment, the following section chronologically highlights key government strategies and frameworks that previously supported, or currently support the Proposal in its current location and form.

Victorian Frameworks and Strategies

Yarra Valley Parklands Management Plan 2008

137. The *Yarra Valley Parklands Management Plan (YVPMP)*³¹ was prepared by ParksVic in November 2008. The role of this plan is to provide a 10 to 15 year strategic framework and clear direction for the management of the Yarra Valley Parklands.
138. Although the YVPMP was adopted some time ago now, its consideration of a form of proposal on the Land is relevant to this proceeding.
139. Section 5.2 (Park Visitors) provides for the following actions:
- Use Parks Victoria's Levels of Service Framework to develop priorities for the parklands relating to:
 - providing sustainable facilities and services;
 - providing a range of existing and evolving visitor opportunities; and
 - **maintaining the diversity of recreational experiences**
 - Ensure that any new facilities or services are consistent with the purpose of the land reservation, complement the role of the parklands, provide a public benefit and facilitate visitor enjoyment of the parklands environment.
 - Investigate the feasibility **of allowing adventure and intensive recreation activities in appropriate management zones in the parklands**, to avoid adverse impacts on areas of significant environmental and cultural values.

[Emphasis added]

140. Section 6.1 (Recreation) provides for the following actions:
- **Consider proposals for commercial and community partnerships** to enhance visitor experiences that are compatible with the recreation zone role and the relevant planning scheme.
 - Investigate innovative ways to improve the visitor experience at Yarra Flats by improving visibility **and appropriate recreational activities** to reflect the changed population dynamics **of the adjacent activity centre at Heidelberg**.

[Emphasis added]

141. Further, section 6.3 (Conservation and Recreation) provides for the following action:
- Consider proposals for commercial and community partnerships** to enhance visitor experiences that are compatible with the Conservation and Recreation Zone and the relevant planning scheme.

[Emphasis added]

Nature Based Tourism Strategy 2008-2012

142. As detailed above, a leading driver for the release of the ParksVic EOI was to assist in the implementation of the NBTS.

³¹ <https://www.banyule.vic.gov.au/Planning-building/More-in-planning-building/Planning-controls-policies/Planning-scheme-background-documents> under clause 21.05.

143. The NBTS was implemented in 2008 to stimulate nature-based tourism through a co-ordinated approach to policy, planning, sustainable development and marketing. The NBTS was jointly funded by Tourism Victoria, ParksVic and the then Department of Sustainability and Environment.

144. Although the NBTS is no longer in operation, its goals and strategies assist in assessing the planning policy basis for the Proposal.

145. The relevant context for the implementation of the NBTS is provided as follows:³²

For Victoria to develop successful nature-based tourism destinations and experiences, gaps in the five A's – attractions, access, activities, amenities and accommodation – must be filled.

This strategy focuses on growing Victoria's offerings of nature-based tourism experiences that will attract high yielding visitors. For example, Victoria's key natural attractions have opportunities for self-reliant nature based tourism visitors, but have limited experiences for high yield visitors.

146. As its overarching 'vision,' the NBTS set the following aspiration:³³

Victoria will be recognised as the leading sustainable nature-based tourism destination in Australia renowned for its diverse and accessible natural attractions.

147. Further, the NBTS identified 5 directions aimed at achieving this 'vision', being:³⁴

1. *Creating supportive frameworks and partnerships.*
2. *Planning and managing sustainable destinations.*
3. *Developing authentic, memorable experiences.*
4. *Facilitating viable and innovative businesses.*
5. *Effective marketing.*

148. As such, all of the directions provided in the NBTS would apply to the Land and are considered relevant overall in terms of the intent and purpose at the time ParksVic circulated its EOI.

149. Council submits that the most pertinent in terms of considering the use of public land by a commercial operator is that set out in Direction 1 of the NBTS, which states:³⁵

DIRECTION I

Creating supportive frameworks and partnerships

This direction will create an 'enabling environment' to attract nature-based tourism investment and maintain the integrity of the natural environment Initiatives include:

...

- creating a sustainable model for private investment into public land infrastructure.

150. Direction 1 is consistent with the YVPMP's express intent to pursue commercial partnerships.

151. In respect of the strategic direction of eco-based tourism, the NBTS further highlights several challenges present at the time it was implemented, including:³⁶

³² NBTS, page 5.

³³ Ibid. page 7.

³⁴ Ibid..

³⁵ Ibid.

³⁶ Ibid. page 34.

Key nature-based tourism issues

Following extensive research and consultation, a number of top-line issues that are impeding nature-based tourism growth were identified. These include:

- lack of a fully integrated policy and planning framework to enable private nature-based tourism investment ('enabling environment').

Victorian Visitor Economy Strategy 2016

152. The *Victorian Visitor Economy Strategy* (the **VVES**) was prepared by the Victorian Government Department of Economic Development, Jobs, Transport and Resources in 2016.³⁷
153. The VVES is the State's overarching strategy in relation to tourism, noting that the NBTS is no longer operational. Consistent with the NBTS, the VVES further emphasises the need and importance of private sector investment into the visitor economy.
154. Relevant to the Amendment, the VVES includes a number of 'priorities' ensure its directions are met, including the need for private sector investment into the industry.³⁸

2025 outcome

Significant private sector investment is needed to deliver better visitor experiences.

155. Mirroring much of the discussion of the NBTS about some of the barriers to investment, the VVTS supports why action is required to support the above priority:³⁹

Why action is required

Significant private sector investment is needed to deliver better visitor experiences. Improved facilities at key visitor attractions, and new commercial developments, including innovative accommodation offerings, will help attract more visitors and get them staying longer

Governments have an important role in creating an environment for investment to occur. **Some investment opportunities are not being realised because of some regulatory settings related to land use planning and public land.** Investors often face Government processes that are difficult to navigate and more needs to be done to proactively facilitate appropriate development.

[Emphasis added]

156. Accordingly, the VVES demonstrates the broader aspiration for greater opportunities for private investment in the tourism industry.

Protecting Victoria's Environment – Biodiversity 2037

157. *Protecting Victoria's Environment – Biodiversity 2037*⁴⁰ (**Biodiversity 2037**) was prepared by DELWP in 2017.
158. Broadly, Biodiversity 2037 recognises the opportunity for biodiversity to benefit and enhance economic development. It identifies the broader value of biodiversity to individuals, communities, Aboriginal Australians and society as whole. Further, it identifies specified tools, tasks and roles required to be employed to ensure its value is protected:⁴¹

³⁷ https://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0006/1340979/Visitor_Economy_Strategy.pdf.

³⁸ VVES, page 17.

³⁹ Ibid.

⁴⁰ See https://www.environment.vic.gov.au/_data/assets/pdf_file/0022/51259/Protecting-Victorias-Environment-Biodiversity-2037.pdf

⁴¹ Biodiversity 2037, page 4.

Protecting Victoria's Environment – Biodiversity 2037 is Victoria's new plan for the future of Victoria's biodiversity. The Biodiversity Plan embraces transformational developments in thinking about conservation and the sustainability of human civilisation and economic development. As such, the Plan is a big step forward for Victoria; it sets the ambitious and achievable task of stopping the decline of our biodiversity. It also marks the start of a long-term pathway for the overall improvement of biodiversity, while sustaining the state's strong economy.

159. Biodiversity 2037 adopts an integrated and balanced approach consistent with other key government strategies and frameworks.⁴²:

The government's Victorian Public Health and Wellbeing Plan 2015-2019 highlights the importance of creating liveable neighbourhoods to improve health and wellbeing, and recognises that interacting with nature contributes to a reduction in chronic disease risk factors, increases social inclusion and builds strong communities. Reported health outcomes include physiological benefits from improved fitness, and psychological benefits from improved attentional capacity and stress reduction.

160. In 'making [its] case for biodiversity', Biodiversity 2037 recognises Victoria's natural environment as its primary tourist attraction, providing.⁴³

Victoria's nature-based tourism is built on the quality of the state's natural assets – our national parks, reserves and marine protected areas, along with great natural icons, farmland, wildlife attractions and varied rural landscapes, from beaches to mountains, rivers and lakes. These natural assets attract millions of local, domestic and international visitors every year. Increasingly, a focus on personal, environmental and community wellbeing has helped drive growth in the demand for nature-based experiences.

161. Biodiversity 2037 recognises the wider benefits of Victoria's connection with its natural environment, providing.⁴⁴

...a healthy natural environment is good for us – for individuals and for society as a whole. People who spend time in nature – be it native, introduced, cultivated or wild – are more likely to recognise its importance to their own wellbeing and to society, and therefore to behave in ways that help to protect and sustain the natural environment.

162. In ensuring this connection is preserved and enhanced, Biodiversity 2037 acknowledges the need for a 'new triple bottom-line' objective.⁴⁵

It is clear from this example that Victoria must adopt a new triple bottom-line objective – a prosperous Victoria that strives for liveability and rebuilds natural capital while continuing to experience long-term economic growth. This can be achieved if our policies and practices drive co-benefits for both the environment and the economy. This requires a shared vision of success across government agencies, communities, Traditional Owner groups, environmental groups, private landholders and businesses.

163. Priority 8 in Biodiversity 2037 relates to nature-based tourism and accentuates the importance of a proper balance between economic development, including tourism, and the natural environment. It recognises that tourism and recreation and the natural environment are not mutually exclusive – it is a question of balanced and sensitive outcomes.

164. Biodiversity 2037 recognises that Parks Victoria has a role in delivering nature-based tourism, consistent with the objectives in the Victorian Visitor Economy Strategy.

⁴² Ibid. page 25.

⁴³ Ibid.

⁴⁴ Ibid. page 24.

⁴⁵ Ibid. page 29.

Tourism Victoria and public land managers such as the Department, Parks Victoria, Alpine Resorts, Traditional Owner Land Management Boards and local councils will work with the community to ensure that Victoria's iconic natural and built assets continue to offer opportunities to connect with nature.

165. In its goals, Biodiversity 2037 supports the following broad principles:
- 165.1 that a healthy natural environment is important for Victoria;
 - 165.2 that Victoria's natural environment and access and time spent in it is important for everyone, alongside increasing opportunities for people to maintain daily connections with nature;
 - 165.3 the environment and economic development are not mutually exclusive; and
 - 165.4 it is impossible to have a concept such as 'nature-based' tourism without an expectation that activities are to take place in natural environments.
166. Council submits that the Amendment is consistent with the balanced objectives of Biodiversity 2037 as it would help to encourage participation in nature based activities, appeal to a broad range of people and would be a lightweight, removable facility that would have limited impact on its setting.

Healthy Parks Healthy People Framework 2020

167. The *Healthy Parks Healthy People Framework (HPHP)* was prepared by ParksVic in 2020⁴⁶. The HPHP, on page 4 that the it 'is recognised within Parks Victoria's Statement of Obligations under the Parks Victoria Act: 'Healthy Parks Healthy People, which recognises the fundamental connections between human health and environmental health, is an underlying philosophy of Parks Victoria..
168. The Policy context setting for the HPHP provides:⁴⁷
- The Framework directly contributes to outcomes for Protecting Victoria's Environment - Biodiversity 2037 and the Victorian Health and Wellbeing Plan 2019-23 and is underpinned by the Victorian Memorandum for Health and Nature, a statement signed by the Ministers for Health and Human Services and Energy, Environment and Climate Change to provide drive stronger connections between environment and health policy, knowledge and programs .
169. HPHP details five key 'strategic priorities' to 'activate' parks for their health and wellbeing benefits:
- 169.1 Healthy places and setting;
 - 169.2 Program partnerships;
 - 169.3 Information and knowledge;
 - 169.4 Leadership and advocacy;
 - 169.5 Healthy workplace
170. Under its 'Program Partnerships' strategic priority, the HPHP provides for the following priorities:⁴⁸

⁴⁶ See link *Healthy Parks Healthy People* web page and navigate to further link within for Health Parks Healthy People pdf download: <https://www.parks.vic.gov.au/healthy-parks-healthy-people>

⁴⁷ HPHP, page 4.

⁴⁸ Ibid. page 8.

- Collaborations that promote nature play, outdoor learning, physical activity and social connection
- Events and programs that promote regular participation in physical activity, resilience and positive mental health in nature

171. In achieving the ‘program partnerships’ priority, the HPHP focusses on, amongst other facts, ‘mutually beneficial program partnerships’.⁴⁹

172. In respect of ‘healthy places and settings’, the HPHP provides for the following deliverables:⁵⁰

- Sustainable natural settings and all abilities facilities that encourage and support nature play, outdoor learning, physical exercise, physical activity and recreation and social connection
- Trails and other tailored infrastructure that promote fitness and challenge
- Inspiring, reflective settings to promote positive mental health and spiritual connection.

[Emphasis added]

173. The HPHP provides that these can and should be applied through:⁵¹

Nature play, outdoor learning and adventure.

Innovative settings and program partnerships (e.g. Bush Kinder and Nature Play Groups, Outdoor education, Nature-based playscapes, and building youth resilience through adventure).

174. Accordingly, Council submits that the HPHP establishes a clear intent to deliver the type of outcome proposed by the Amendment.

Open Space for Everyone, Victorian State Government

175. *Open Space for Everyone, Open Space Strategy for Metropolitan Melbourne*⁵² (**MOSS**) was prepared by the Victorian State Government in 2021. The MOSS was prepared pursuant to Action 93 of Plan Melbourne.

176. The MOSS outlines some of the key issues facing Melbourne’s open space network. Amongst others, the MOSS explores a variety of issues relating to open space including healthy biodiversity, population growth and housing density, economic benefits and the value of open space to health and wellbeing.

177. The MOSS actively refers to the *Victorian Public Health and Well-Being plan 2019 – 2023*, and emphasises the importance of open space to promoting active living, tackling climate change and improving mental health and wellbeing.⁵³

The [MOSS] prioritises making access easier to parks, open spaces and public spaces that support active living; increasing active transport; and increasing participation in sport and active recreation activities to help achieve these priorities.

178. The MOSS establishes a ‘Innovation and creativity’ principle that seeks to:⁵⁴

- find new ways to plan and manage open space for multiple outcomes, including community benefits. High-quality open space can create delight, support multiple activities and encourage social connectedness

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² https://www.environment.vic.gov.au/data/assets/pdf_file/0025/520594/Metro-Open-Space-Strategy-FA4-book-WEB.pdf.

⁵³ MOSS, page 22.

⁵⁴ Ibid. Page 30.

- encourage programs that activate underutilised sites and connect new types of users with open space.

179. Additionally, the MOSS recognises necessary governance arrangements for the planning, management and delivery of Melbourne's open space are inherently complex.⁵⁵

Public land managers also need design standards, practice notes and guidelines for open space to be contemporary and best practice, so open spaces are inclusive, safe and well-designed and they reflect the character and diversity of their neighbourhoods

180. The MOSS generally indicates support for the Proposal and, like the other strategies and plans discussed in this submission, continues to call for an integrated, measured and balanced approach to achieve proper outcomes.

Conclusion

181. Council submits that there is considerable strategic support to sensitively and meaningfully provide more active recreational facilities, with or without commercial partnerships. The delivery of these initiatives by private enterprise on public land is clearly defined as a means of delivering these broader strategic outcomes.

State Planning Policy Framework (PPF)

182. The Amendment is consistent with the following provisions of the Victorian Planning Policy Framework (PPF) contained in the Planning Scheme:

- 182.1 **Clause 12.01-2S (Native Vegetation Management)**, which seeks to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.
- 182.2 **Clause 12.03-1R (Yarra River protection)**, which seeks to maintain and enhance the natural landscape character of the Yarra River corridor.
- 182.3 **Clause 12.05-1S (Environmentally sensitive areas)**, which seeks to protect and conserve environmentally sensitive areas.
- 182.4 **Clause 12.05-2S (Landscapes)**, which seeks to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.
- 182.5 **Clause 17.04-1S (Facilitating Tourism)**, which seeks to encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.
- 182.6 **Clause 19.02-6S (Open Space)**, which seeks to establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community.

Local Planning Policy Framework (LPPF)

183. The Amendment is consistent with the following provisions of the LPPF:

184. **Clause 21.04-4 (Community Facilities)**, Objective 3 of which aims to provide recreational, cultural and leisure facilities and activities, that meets the community's needs and expectations, without causing detriment to the natural environment. Its relevant strategies include to:

- Encourage a linked system of high-quality, accessible public open spaces to maximize leisure and recreational opportunities.

⁵⁵ Ibid. page 42.

- Encourage environmentally sensitive tourism which delivers economic benefits to the community and maximises the natural advantages of the Yarra Valley and Banyule's heritage.
- Encourage a range of tourism infrastructure and facilities to encourage tourism activity and optimise access to tourist facilities.

The Amendment supports Clause 21.04-4 as it provides for an environmentally sensitive recreational tourism facility that maximises the natural advantages of the surrounding landscape.

185. **Clause 21.05 (Natural Environment)**, which seeks to protect, conserve and enhance areas of floral, faunal and habitat significance and protect and enhance the natural values of waterways and wetlands.

Plan Melbourne 2017-2050

186. *Plan Melbourne 2017-2050 (Plan Melbourne)*⁵⁶ was prepared by the State Government in 2017 to guide the growth of the city until 2050. Pursuant to Ministerial Direction 9, planning scheme amendments '*must have regard to the Metropolitan Planning Strategy*'.

187. Plan Melbourne contains a range of Directions and Policies that set out how the State will manage future growth. Those most relevant to Amendment C107 include:

187.1 **Policy 4.2.3** - Plan and facilitate private-sector tourism investment opportunities:

- Consistent with the long-term national tourism strategy and the Victorian Visitor Economy Strategy, Victoria aims to increase visitor spending to \$36.5 billion by 2025.

187.2 **Policy 5.4.1** - Develop a network of accessible, high-quality, local open spaces:

- Open space provision must be fair and equitable with the aim of providing access that meets the needs of all members of the community, regardless of age, gender, ability or a person's location.

187.3 **Policy 6.4.2** - Strengthen the integrated metropolitan open space network:

- Better planning, design and use of new and existing public open space is critical.
- Developing innovative approaches to access and making use of other types of public land, such as waterways, school grounds and utility easements, are also important parts of delivering an integrated open space network that responds to Melbourne's projected population growth.

187.4 **Policy 6.5.1** - Create a network of green spaces that support biodiversity conservation and opportunities to connect with nature:

- Melbourne's network of green spaces provides important areas of habitat for biodiversity conservation as well as opportunities for people to enjoy frequent contact with nature in urban environments.

Other relevant documents

Middle Yarra River Concept Plan 1993

188. The *Middle Yarra Concept Plan – Burke Road to Watsons Creek (MYCP)*⁵⁷, was prepared by Melbourne Parks & Waterways, an enterprise of the Melbourne Water Corporation in December

⁵⁶ https://www.planmelbourne.vic.gov.au/_data/assets/pdf_file/0007/377206/Plan_Melbourne_2017-2050_Strategy_.pdf

⁵⁷ https://www.planning.vic.gov.au/_data/assets/pdf_file/0028/95086/Melbourne-Water-1993-Middle-Yarra-Concept-Plan,-Burke-Road-to-Watsons-Creek,-1993.pdf

1993. It aims to implement Government policies for developing a continuous system of open space along the Middle Yarra Valley for conservation and recreation.

189. The MYCP is a Background Document to the Planning Scheme at:

189.1 Clause 21.03 Cultural Heritage;

189.2 Clause 22.06 Cultural Heritage Conservation Policy; and

189.3 Clause 42.03 SLO1.

190. At Section 4, the MYCP provides for 'Site Recommendations' in relation to the Yarra Flats Parkland, including a focus on heritage and bushland conservation and maintaining the existing picnic area and bicycle path, namely the Main Yarra Trail.⁵⁸

191. In respect of 'Recreation and Tourism,' the MYCP establishes policies to:⁵⁹

191.1 ensure that the construction of trails, buildings and other facilities associated with recreational activities does not damage streamside vegetation, the river banks, or areas of flora significance;

191.2 provide and maintain a range of outdoor settings for recreation, ranging from quiet, relatively natural areas to intensively developed recreation areas. Conflicts between recreation activities should be minimised;

191.3 investigate and promote opportunities for tourism that are consistent with park management objectives; and

191.4 investigate opportunities for providing adventure play facilities for all age groups and particularly older children and teenagers.

Banyule Wildlife Corridor Program 2000

192. The *Banyule Wildlife Corridor Program 2000 (BWCP 2000)*⁶⁰ aims to protect and re-establish wildlife corridors and habitat links within Banyule which allow for the movement and dispersal of native animals and plants.

193. Relevantly, the BWCP 2000 established the strategy to undertake revegetation and habitat restoration activities within the wildlife corridors and habitat links identified, and the identification of the Yarra River as a 'Major Wildlife Corridor'.⁶¹

Yarra Flats Concept Plan 2013

194. The *Yarra Flats Concept Plan (Concept Plan)*⁶² was prepared by Parks Victoria in association with Banyule Council and Melbourne Water in 2013.

195. The Concept Plan included three proposals for the northern section of Yarra Flats including a Tree-based Eco Adventure Course by Parks Victoria at the subject site.

196. On the basis of consultation, the Concept Plan provides the following community feedback:⁶³

⁵⁸ MYCP, page 50.

⁵⁹ Ibid. page 39.

⁶⁰ https://www.banyule.vic.gov.au/files/assets/public/operating-images-and-docs/documents/planning-documents/wildlife-corridor-program-2000.pdf?_ga=2.1593586.271643200.1623628932-561748941.1605757742

⁶¹ BWCP 2000, pages 5 & 14

⁶² <https://www.parks.vic.gov.au/search?search=yarra+flats>

⁶³ Concept Plan, page 1.

Around 50% of respondents agreed/strongly agreed that a tree based adventure course in the park would benefit the community and 35% say a tree course is likely/highly likely to increase their use of the park.

197. Council notes that the Concept Plan is not a Background Document in the Planning Scheme, and its application must be weighted accordingly to its status as a concept plan.
198. Further, Council has not formally adopted the Concept Plan.
199. However, the benefit of the Concept Plan is that it provides for clear consideration of a tree-top adventure course on the Land, and reinforces ParksVic's objective to use the Land in that manner.

Banyule Economic Development Plan 2015-2020

200. The Banyule Economic Development Plan 2015-2020 (**BEDP**)⁶⁴ provides a five-year strategy to guide and promote economic activity and growth in the municipality.
201. The BEDP outlines four strategic objectives, including, relevantly⁶⁵:
 - Strategic Objective 3 – Investment & Attraction.
 - Develop Banyule's product offering and tourism potential.
 - Promote Banyule's advantages as an investment location.
 - Strategic Objective 4 – Leadership & Partnerships.
 - We will facilitate the development of partnerships, bringing stakeholders together for mutual advantage.

Middle Yarra River Corridor Study Recommendations Report

202. The *Middle Yarra River Corridor Study, Recommendations Report (MYRCS)*⁶⁶ was prepared by the Victorian Government Department of Environment, Land, Water and Planning in 2016.
203. The objective of the MYRCS is to achieve consistent development outcomes along the Middle Yarra River to ensure that further development does not encroach on the River's landscape, environmental, aesthetic, cultural and recreational values.
204. Relevant to Yarra Flats, Section 6.3 Sub-area 1: Willsmere Park to Finns Reserve Suspension Bridge recommended the following strategies for managing public land in this sub area:⁶⁷
 - Support the role of the many formalised open spaces as highly valued places for active and passive recreation.
 - Design buildings and structures that are visible from the river and the Main Yarra Trail as distinctive features of these spaces that respond to the sensitivity of the riverside landscape and environment.
 - Retain conservation areas as undeveloped, naturalistic open spaces to maintain the variety of experiences and the integrity of the riverside landscape and environment.

⁶⁴ https://www.banyule.vic.gov.au/About-us/Policies-plans-strategies/Council-plans-and-strategies/Economic-development-plan?_ga=2.6592625.271643200.1623628932-561748941.1605757742

⁶⁵ BEDP, page 10.

⁶⁶ https://www.planning.vic.gov.au/_data/assets/pdf_file/0030/484356/Middle-Yarra-Recommendations-Report.pdf

⁶⁷ MYCRS, page 72.

Yarra River Action Plan 2016

205. The *Yarra River Action Plan, Wilip-gin Birrarung murrn* (YRAP)⁶⁸, was prepared by DELWP in 2017.
206. The YRAP provides for 30 actions to ensure the river's long-term protection. It is guided by five objectives and further supported by a number of aims outlined on page 7. These include:⁶⁹
- Objective - *The Great Yarra Parklands*, with the following aims:
 - increase opportunities to enjoy the river parklands for people of all ages and abilities
 - create more destinations and improve visitor experiences
 - Objective - *Securing the Yarra Footprint*, with the following aim:
 - recognise the importance of the river to the economic prosperity and vitality of Melbourne and the Yarra Valley.

Yarra River Protection (Wilip gin Birrarung murrn) Act 2017

207. The *Yarra River Protection (Wilip gin Birrarung murrn) Act 2017 (YRP Act)* effectively provides for a new legal framework for the management of the Yarra River environs. In broad terms the planning framework for the Yarra River now comprises:
- The YRP Act;
 - The Yarra Strategic Plan; and
 - The relevant location specific Framework Plan.
208. Further, Section 4AA of the *Planning and Environment Act 1987* provides for management of day to day decisions under the rest of the administrative provisions which apply.
209. However the above framework will not be fully effective until the finalisation and adoption of the Yarra Strategic Plan and the relevant framework plans.
210. Accordingly, it has limited relevance at the moment.
211. The YRP Act prescribes how a long-term Community Vision and the Yarra Strategic Plan are to be developed. It also prescribes the establishment of a new statutory body, the Birrarung Council, to be the first independent voice of the Yarra River, as part of recognising it as a living entity.
212. The YRP Act sets out protection principles under six sub-headings establish principles relating to:
- 212.1 general;
 - 212.2 environmental;
 - 212.3 social;
 - 212.4 recreational;
 - 212.5 cultural; and

⁶⁸ https://www.water.vic.gov.au/_data/assets/pdf_file/0029/436268/YarraRiverActionPlan.pdf

⁶⁹ YRAP, page 12.

212.6 management.

213. Relevant principles under the YRP Act include:

213.1 Section 8(1) - Proposed development and decision-making should be based on the effective integration of environmental, social and cultural considerations in order to improve public health and wellbeing and environmental benefit.

213.2 Section 9(2) - Environmental practices and procedures should ensure that biodiversity and ecological integrity is maintained or enhanced in ways that are proportionate to the significance of the environmental risks and consequences being addressed

213.3 Section 11(1) - Community access to, and use and enjoyment of, Yarra River land should be protected and enhanced through the design and management of public open space for compatible multiple uses that optimise community benefit.

213.4 Section 11(2) - Public open space should be used for recreational and community purposes that are within the capacity of that space, in order to sustain natural processes and not diminish the potential of that open space to meet the long-term aspirations of the community

214. Section 63 of the YRP, when it commences to operate⁷⁰, provides for an amendment to the *Planning and Environment Act 1987*, it inserts a new section as below:

Part 3AAA—Yarra River land protection

...

Division 1—Compliance with Yarra Strategic Plan

...

46AAA Responsible public entities to comply with Yarra Strategic Plan

A responsible public entity which is a planning authority must not prepare an amendment to a planning scheme that relates to Yarra River land that is inconsistent with anything in a Yarra Strategic Plan expressed to be binding on the responsible public entity.

215. While a large part of the YRP Act is devoted to the establishment of the Yarra Strategic Plan, the Yarra Strategic Plan is not yet finalised and only exists in draft format.

Yarra Strategic Plan

216. The *Draft Yarra Strategic Plan (Strategic Plan)*⁷¹ has been developed collaboratively by representatives from the WWCHAC, as well as all 15 state and local government agencies involved in managing the Yarra River. The Strategic Plan has been prepared by the Yarra Collaboration Committee which is led by Melbourne Water. Council is a representative on the Yarra Collaboration Committee.

217. The draft Strategic Plan was released for public comment on 23 January 2020. The Strategic Plan is a 10 year overarching policy and planning framework for the Yarra River corridor.

218. At the moment the final Yarra Strategic Plan has not been prepared and therefore has limited operation. However the statutory framework for the Yarra River is discussed further below.

⁷⁰ Under section 2(2) of the YRP Act, section 63 comes into operation on the day on which the initial Yarra Strategic Plan comes into operation.

⁷¹ <https://engage.vic.gov.au/help-us-shape-final-10-year-strategic-plan-yarra-river>

219. The Land is located with 'Yarra River Land' for the purposes of the Yarra Strategic Plan.
220. Once the Strategic Plan is finalised and adopted, it will be a statutory requirement that relevant use and development must be undertaken consistently with its requirements. Section 4AA of the P&E Act is concerned with 'Yarra River Land' and sets out, amongst other matters, the following:

Obligations of Department Head in relation to Yarra River land

- (1) The Department Head of the Department—
- (a) must not act inconsistently with any part of a Yarra Strategic Plan that is expressed to be binding on the Department Head when performing a function or duty or exercising a power under this Act in relation to Yarra River land; and
 - (b) must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on the Department Head, when performing a function or duty or exercising a power under this Act in relation to the Yarra Strategic Plan area that may affect Yarra River land.
221. Further, once the Strategic Plan is finalised, Clause 12.03-1R 'Yarra River Protection' of the PPF in the Planning Scheme will be updated, and the final Strategic Plan will be referenced or incorporated in planning schemes.
222. The Yarra Strategic Plan will:⁷²
- be used in the planning system to provide regional planning policy and strategic direction for all land within the Yarra Strategic Plan area
 - require that changes to a planning scheme (amendments) or a proposed development (permits) must consider the Yarra Strategic Plan and be consistent with its strategic objectives.
223. Performance Objective 3 in the draft Strategic Plan seeks to provide quality parklands for a growing population. It aims to 'improve the river's parklands to support community wellbeing and strengthen the relationship between the Yarra River, its community and visitors'. It is supported by the following action:⁷³
- Ensure park infrastructure and services are contemporary, inclusive, and provide multiple benefits.
224. The draft Strategic Plan identifies four distinct reaches along the Yarra River corridor. Yarra Flats falls with the 'suburban reach'.
225. The community vision for the suburban reach of the Yarra includes the community priority and value to 'collaborate to provide innovative immersive experiences with nature by expanding natural river tracks and creating environmental playgrounds along the corridor'.⁷⁴
226. Yarra Flats is identified in the Yarra Strategic Plan as Yarra River Land which comprises all public and state government owned land within 500m of a bank of the river as shown in Figure 3 below.

⁷² Strategic Plan, page 64

⁷³ Ibid. page 54.

⁷⁴ Ibid. page 98.

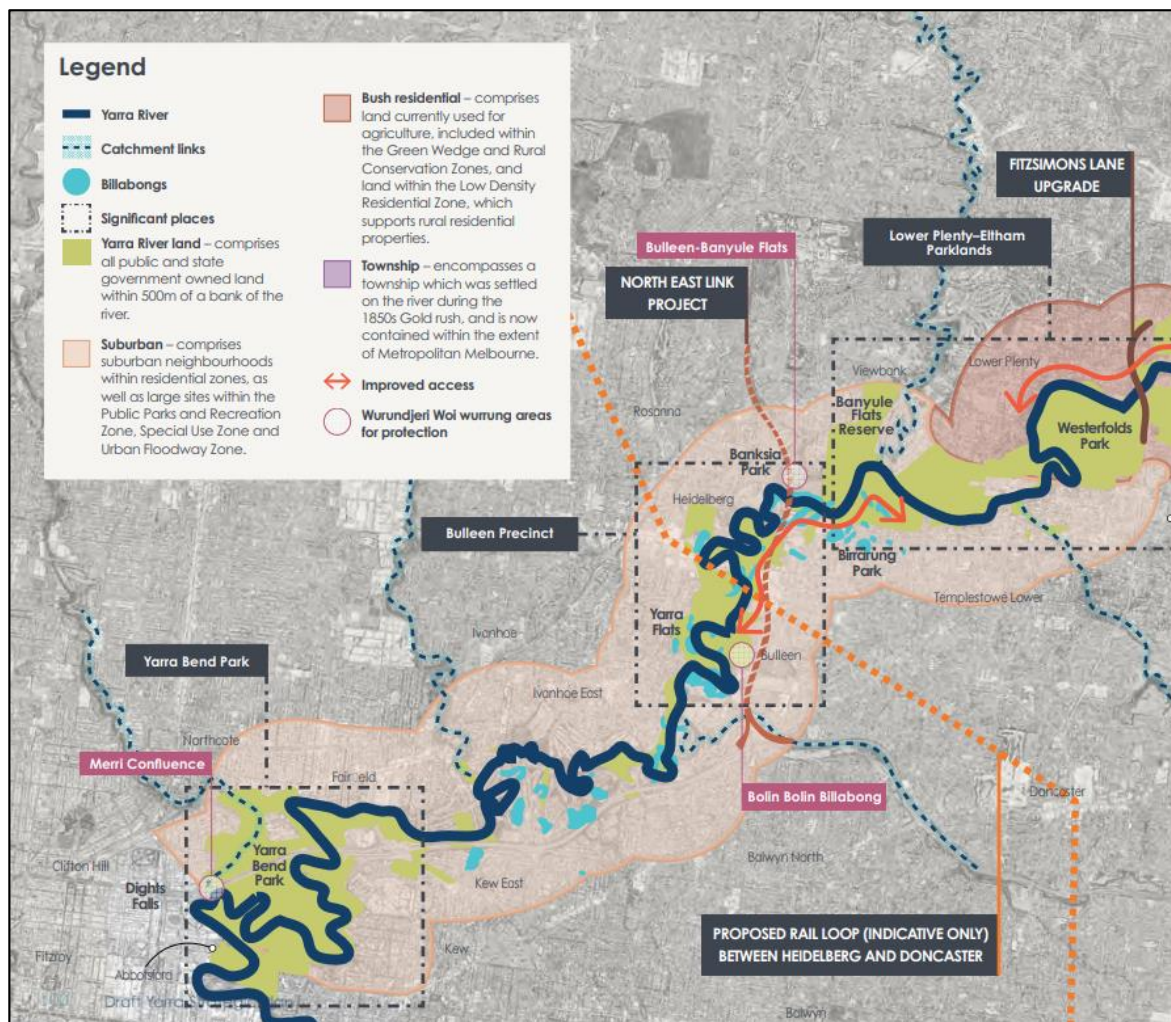


Figure 3: draft Strategic Plan, page 100.

227. Directions for future land use and development of Yarra River Land include:

- Design visitor facilities and boat launch sites to be sensitively incorporated into their natural surrounds.
- Maintain diverse park landscapes to connect people to the variety of past uses and enable a wide range of visitor experiences.⁷⁵

228. The Proposal is consistent with the objectives, aims, actions and directions outlined above in the draft Strategic Plan.

Yarra River – Bulleen Precinct Land Use Framework Plan (draft)

229. The *Consultation Draft Yarra River – Bulleen Precinct Land Use Framework Plan (Bulleen LUPF)*⁷⁶ was prepared by the Victorian Government Department of Environment, Land, Water and Planning in 2020.

230. The Land is included with the study area of the Bulleen LUPF.

⁷⁵ Strategic Plan, page 101.

⁷⁶ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/8815/9844/2527/Land_Use_Framework_Plan_2020_Consultation_Draft.pdf

231. The Bulleen LUFP arises from Action 21 of the YRAP, which committed to its preparation. However, it is also envisaged by the draft Strategic Plan.
232. The Bulleen LUFP recognizes the potential for the area to become an internationally significant cultural precinct, centred on the relationship between the arts, nature and traditional owner heritage.
233. The Bulleen LUFP includes a number of principles including delivering public value and to introduce a compatible mix of uses to improve the quality and amenity of parklands and open space⁷⁷.
234. Community views and values outlined in the Bulleen LUFP include, amongst others, support for more well-designed sporting and recreation opportunities in the study area, assessable to an increasingly diverse community.⁷⁸
235. The Bulleen LUFP is relatively silent on a specific direction or intent in respect of Yarra Flats. For example, like the draft Strategic Plan, it does not identify any specific actions in relation to the site or any cultural places.⁷⁹
236. Instead, Objective 4 the Bulleen Plan perhaps provides the most salient advice in respect of managing different land use expectations within its study area. It states: ⁸⁰

Within the study area there is the opportunity for residential, commercial and cultural uses to ‘activate’ open space and the public realm. Increased pedestrian activity from these land uses can benefit passive surveillance throughout the day and into the evening. **There is also an opportunity to leverage private investment in the public realm**, through development contributions and other mechanisms.

Given the study area's rich parkland setting and ecological and cultural values, it will be important to consider how future buildings can respond to and reflect their environment.

[Emphasis added]

Bulleen-Banyule Flats Cultural Values Study Summary Report

237. The *Bulleen-Banyule Flats Cultural Values Study Summary (Bulleen CVS)* ⁸¹ presents the results of the Bulleen-Banyule Flats Cultural Values Study, completed in 2020), prepared by the WWCHAC for DELWP
238. The Bulleen CVS documents the cultural values and significance of the Bulleen-Banyule Flats reach of the Birrarung (Yarra River) to the Wurundjeri Woi-wurrung people⁸².
239. A possible action from Bulleen CVS is to register the cultural landscape on the Victorian Aboriginal Heritage Register as an ‘Aboriginal Cultural Place’.⁸³
240. It is Council's understanding that the Bulleen CVS has not been formally registered on the Victorian Aboriginal Heritage Register as an Aboriginal Cultural Place, and no formal application has been made to do so. It is on this basis that Council understands the Bulleen CVS is not considered when an Aboriginal Heritage Due Diligence Report is prepared as part of the statutory planning process.
241. Nonetheless, the significance of the area to the Wurundjeri Woiwurrung people is clear from the Bulleen CVS, alongside the identification of cultural places on the Bullen LUFP considered in the previous section.

⁷⁷ Bulleen LUFP, page 4.

⁷⁸ Ibid. page 17

⁷⁹ See Map 5A of the Bulleen LUFP.

⁸⁰ See page 47 of the Bulleen LUFP.

⁸¹ https://www.planning.vic.gov.au/_data/assets/pdf_file/0025/517228/Bulleen-Banyule-Flats-Summary-Report.pdf

⁸² Bulleen CVS, page 5.

⁸³ Ibid. page 9

Banyule Biodiversity Plan 2019-2022

242. The Banyule Biodiversity Plan 2019-2022 (**BB Plan**)⁸⁴ provides an overview of Banyule's biodiversity assets and lists actions and indicators to justify, direct and monitor the management of biodiversity within the municipality.
243. The BB Plan prioritises four key approaches⁸⁵:
- Engagement and education – increase awareness, support community action, provide resources and training.
 - Manage land for biodiversity – manage biodiversity assets based on scientific and ecological evidence.
 - Partnerships – a coordinated approach – establish community and program partners to improve outcomes.
 - Minimise threats to biodiversity – undertake actions to minimise threats to biodiversity.
244. Relevant to the Amendment, the BB Plan recognises the need to minimise displacement of species and interruption to the existing 'wildlife corridor'.

Parks Victoria Act 2018

245. *Parks Victoria Act 2018* (**ParksVic Act**) provides for the establishment of ParksVic.
246. Section 7 of the ParksVic Act provides for the 'objects' of ParksVic, which include to:
- 246.1 provide for and encourage the community's enjoyment of and involvement in Parks Victoria managed land; and
- 246.2 contribute to the wellbeing of the community through the effective protection and management of Parks Victoria managed land; and
247. Further, section 8 of the ParksVic Act provides for the 'functions' of ParksVic, including:
- ...to control and manage Parks Victoria managed land, in a manner that protects, conserves and enhances the land and in a manner which provides for the land to be appropriately used, enjoyed and appreciated, including doing all or any of the following:
- providing opportunities for the community to enjoy and appreciate Parks Victoria managed land and providing facilities, information and services to support that enjoyment and appreciation.

Ministerial Directions

248. The Minister for Planning issues directions to planning authorities about the preparation of planning schemes and amendments to planning schemes. The Amendment is consistent with the following relevant Ministerial Directions under sections 7 and 12 of the P&E Act⁸⁶:
- 248.1 **Ministerial Direction - *The Form and Content of Planning Schemes*** (April 2017, as amended).
- The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

⁸⁴ <https://www.banyule.vic.gov.au/About-us/Policies-plans-strategies/Council-plans-and-strategies/Biodiversity-plan>

⁸⁵ BB Plan, page 6.

⁸⁶ See link for Ministerial Directions: <https://www.planning.vic.gov.au/guide-home/the-role-of-the-minister>

- 248.2 **Ministerial Direction 1 – *Potentially contaminated land*** (October 1989, as amended)

This Direction requires Council to satisfy itself that the use proposed by the Amendment is suitable. The amendment does not propose a ‘sensitive use’ as identified in this Direction.

- 248.3 **Ministerial Direction 9 – *Metropolitan Strategy*** (October 2002, as amended)

The amendment is consistent with the outcomes of Plan Melbourne 2017-2050: Metropolitan Planning Strategy

- 248.4 **Ministerial Direction 11 – *Strategic Assessment of Amendments*** (October 2013 - as amended).

The purpose of this Direction is to ensure a comprehensive strategic evaluation of a planning scheme amendment and the outcomes it produces. An amendment to a planning scheme requires an Explanatory Report to address all relevant strategic planning considerations. The preparation of the Explanatory Report that was exhibited with the Amendment complies with this Direction.

- 248.5 **Ministerial Direction 15 – *The Planning Scheme Amendment Process*** (October 2013)

Council has complied with all steps it is required to follow to date.

PROPOSED STATUTORY FRAMEWORK

Specific Controls Overlay and Incorporated Document

249. Amendment VC148, gazetted on 31 July 2018, introduced new SCO provisions into the Planning Scheme to replace Clause 51.01 – Specific Sites and Exclusions.⁸⁷ The SCO operates in the same way as Clause 51.01 – Specific Sites and Exclusions. A key difference is that the SCO is shown on planning scheme maps and planning certificates unlike the previous Clause 52.03.
250. The specific controls that apply to the land are contained within in the proposed Incorporated Document. The SCO removes the need to obtain individual planning permits for specific components or aspects of the project. It effectively “turns off” all other parts of the planning scheme which are inconsistent with the SCO and the Incorporated Document.
251. While the form of the Incorporated Document is also tailored for the specific use proposed here, the overall form of the document is very similar to many other incorporated documents that have been prepared for various projects. In this respect, the Incorporated Document:
- 251.1 explains its purpose;
 - 251.2 identifies the land;
 - 251.3 turns off all other inconsistent planning scheme provisions;
 - 251.4 identifies what it “permits”;
 - 251.5 sets out the conditions of the use and development of the Land.
252. Many of the conditions are similar to what are found in planning permits.

⁸⁷ Previously Clause 52.03.

253. The Amendment request was accompanied by various background reports and other material, all of which was exhibited with the proposed Amendment.⁸⁸
254. The various conditions of the exhibited Incorporated Document were informed by :
- 254.1 recommendations identified by the Proponent's background reports;
 - 254.2 Council internal referrals – including traffic engineering, biodiversity, arboricultural, statutory planning (including consideration of standard conditions for planning permits);
 - 254.3 consultation with the public land manager (ParksVic);
 - 254.4 recommended conditions of statutory referral bodies, notably Melbourne Water as floodplain manager.
255. Council submits that even though the intent of the SCO is to switch off all other provisions of the Planning Scheme, the Town Planning Report has had due regard to the relevant zones and overlays of the Planning Scheme that apply to the Land.

SUMMARY OF SUBMISSIONS

Overview of Submissions

256. In response to exhibition, Council received 217 submissions. Of those, 214⁸⁹ were received during the exhibition period and 3 were 'late submissions'. Of the submissions:
- 256.1 15 submissions supported the Amendment, including 1 late submission;
 - 256.2 8 submissions indicated conditional support of the Amendment, subject to changes; and
 - 256.3 194 submissions opposed the Amendment (inclusive 2 late submissions)
257. Agency or authority submissions responding to the Amendment included:
- 257.1 AusNet;
 - 257.2 Melbourne Water; and
 - 257.3 DELWP.
258. As noted above, three late submissions were received after the prescribed exhibition period, and were accepted by Council and referred to the Panel.⁹⁰ The submissions were:
- 258.1 two submissions are noted as late in the Council resolution on 1 March 2021 and Council acknowledged the issues raised as similar to those of other submissions during exhibition of C107. One was supportive, one opposed.
 - 258.2 Council received a late submission from the WWCHAC. As the Council Meeting was scheduled for the following Monday, 1 March 2021, neither officers or the Council report were afforded sufficient time to consider it.
259. Those submissions are considered more comprehensively in Council's Part B submission.

⁸⁸ See para 48.

⁸⁹ It is noted the Council Report on 1 March 2021 states 213 submissions were received instead of 214. A supportive submission from DELWP was inadvertently overlooked, this was corrected when submissions were referred to Panel.

⁹⁰ See resolution 3b of Council's Report dated 1 March 2021.

260. On 16 December 2020, Council sought exemption from *Ministerial Direction No 15*, section 4(3) to request the appointment of a Panel within 40 business days of the closing date for submissions. The exemption was requested to accommodate the Christmas holiday period and to allow the proponent and Council time to consider the large number of submissions received.
261. Exemption to *Ministerial Direction No 15*, section 4(3) was granted on 17 December 2020.

Identified Issues

262. Each of the submissions was considered by Council officers pursuant to the requirements of section 21(1) of the Act.
263. The Council Report considered at its meeting on 1 March 2021 (**2021 Council Report**) provides a summary of the issues raised in the submissions, together with Council's response to these issues.⁹¹
264. Each issue raised in individual submissions was identified as a *theme* for the purposes of categorising and responding to submissions. Attachment 2 to the 1 March 2021 Council Report summarises each submission and its issues by theme.
265. A detailed summary of, and response to, the submission themes identified was considered as Attachment 1 to the Council Report dated 1 March 2021 and forms **Appendix 2** to this submission. Council adopts that response as part of these submissions.
266. In summary, Council identified a total of 21 'key themes' and lists them below in order of most-often raised to least-often. In that order, the submission raises issues relating to the Amendment in respect of the following:⁹²
1. Commercial use of public land;
 2. Habitat and wildlife;
 3. Retention of parkland;
 4. Vegetation and environment;
 5. Traffic and parking;
 6. Amenity impacts;
 7. Parks Victoria;
 8. Banyule City Council;
 9. Location of the Amendment;
 10. Billabongs;
 11. Other existing and future park users, public access, paths;
 12. North East Link Project;
 13. Size of proposed Amendment area;
 14. Safety/risk;

⁹¹ See pages 47 to 50 of the 2021 Council Report.

⁹² Attachment 1 to the 2021 Council Report.

15. Impacts on River Red Gums;
 16. Planning controls and policy;
 17. Aboriginal cultural heritage;
 18. Heritage;
 19. Consultation regarding the Amendment;
 20. Public Conservation and Resource Zone; and
 21. Other issued not raised above.
267. As discussed, Council received a submission from the WWCHAC on 26 February 2021, the Friday evening prior to the Council meeting on Monday 1 March 2021. Accordingly, the WWCHAC's submission was not able to be formally considered and addressed in the 2021 Council Report. The WWCHAC's submission raised the following issues:
- 267.1 the outcomes raised in a Cultural Values Study (**CVS**) that contradict the conclusions of the Aboriginal Heritage Due Diligence Report exhibited with the Amendment regarding the extent of ground disturbance on the Land and its impact on cultural heritage sensitivity;
 - 267.2 the approach taken to consider Aboriginal heritage in the Amendment process in respect of the *Aboriginal Heritage Act 2006* and YRP Act;
 - 267.3 appropriate development and zoning of lands within the Bulleen-Banyule precinct that secures the Birrarung's footprint for the benefit of the Yarra River, which necessitate the relocation of the Proposal;
 - 267.4 the extent to which the Amendment provides a "net gain" and aligns with all of the principles of the YRP Act;
 - 267.5 the extent to which the Amendment delivers on the aspirations articulated in *Nhanbu narrun ba ngargunin twarn Birrarung*, which comprises the WWCHAC's policy response to the YRP Act; and
 - 267.6 requesting that Council and ParksVic provide the WWCHAC with a written submission establishing how changes to the assessment of planning approvals relating to the Yarra River will be implemented and when.
268. In accordance with direction 2(m) of the Panel's Directions dated 11 May 2021, copies of all submissions have been made available to parties on Council's '*Shaping Banyule*' website.
269. Council will provide its response to the key issues raised in the submissions in Part B of this submission.

Council Consideration of Submissions

270. Council has considered the submissions pursuant to Section 23 of the *Planning and Environment Act 1987*.
271. As noted earlier, at its ordinary meeting on 1 March 2021, and in the 2021 Council Report, Council considered submissions and resolved:

That Council:

1. *Note the submissions to Amendment C107bany to the Banyule Planning Scheme in accordance with Section 22 of the Planning and Environment Act 1987 (Attachment 2).*
2. *Request that the Minister for Planning appoint a Planning Panel to consider unresolved submissions to Amendment C107bany in accordance with Section 23 of the Planning and Environment Act 1987.*
3. *Notes the receipt of two late submissions and that:*
 - a. *Council acknowledge the issues raised as similar to those of other submissions during exhibition of C107.*
 - b. *All late submissions received by 1 March 2021 will be referred to any Planning Panel.*
4. *Explores further key issues in relation to the Amendment through the Planning Panel particularly in relation to:*
 - a. *The arboricultural assessment undertaken including the age and type of vegetation, vegetation to be removed and tree safety.*
 - b. *The opportunity to limit the footprint of the ropes course and minimise the extent of any vegetation removal through the final approval so that the proponent does not have the ability to remove up to 50% of vegetation.*
 - c. *Ensuring that replacement planting and new landscaping is undertaken with indigenous vegetation which is suitable for the local environment.*
 - d. *Reviewing the aboriginal heritage issues and important cultural heritage considerations.*

272. Council's response to the submissions is provided in Part B of this submission

PROPOSED CHANGES TO AMENDMENT DOCUMENTATION

273. At this stage, Council envisages that some changes will be required to the Amendment as exhibited. Some of those changes arise on account of Council resolution and others arise from further review of the Incorporated Document and matters raised in submissions and foreshadowed amended plans.
274. A track changes version of the Incorporated Document, identified as 'Day 1 Hearing version,' is included at **Appendix 5**.

CONCLUSION

275. This concludes Banyule City Council's Part A submission to the Panel for Amendment C107.
276. At the hearing Council will a Part C submission responding to any relevant matters in the evidence and will also provide its Part D closing submission.

PART B

INTRODUCTION

277. This 'Part B' submission addresses the following matters in accordance with Direction 5 of the Panel Directions dated 11 May 2021, which require the Part B submission to provide:

277.1 Council's response to submissions

277.2 Council's final position on the Amendment.

278. As detailed in the Part A submission, Council received a total of 217 submissions⁹³ to the Amendment:

278.1 15 were neutral or in support of the Amendment, including submissions from public authorities;

278.2 8 may support the Amendment if changes are made; and

278.3 194 opposed to the Amendment.

279. Council considered the submissions⁹⁴ in its Council Report of 1 March 2021⁹⁵ and included a thematic response to key issues raised by submissions at Attachment 1. Attachment 2 to the Council Report provided an individual summary of each submission and the issues raised therein. Council relies upon those documents as providing its detailed response to the submissions for the purposes of this hearing.

RESPONSE TO SUBMISSIONS

Response to Submissions in Support

280. Matters raised in the 15 submissions indicating support for the Amendment are outlined in Part A and included in **Appendix 4**.

281. Melbourne Water was one of the 15 supporting submissions.

282. Melbourne Water indicated overall support of the proposal subject to advice and recommendations relating to watering of the Banksia Billabong and flooding implications. Council is proposing further changes to the Incorporated Document in line with the recommendations from Melbourne Water. These are included in the 'Day 1 Hearing version' of the Incorporated Document at **Appendix 5**.

283. The submission from AusNet did not object to the Amendment. The submission noted that AusNet has a transmission line adjacent to and partly within the site and that any development within 60 metres of the transmission line must be referred to AusNet for approval prior to commencement of any works on site. Council has added this as a condition to the Day 1 Hearing version of the Incorporated Document at **Appendix 5**.

284. The remaining supportive submissions did not seek any changes to the Amendment and their support has been noted.

⁹³ Copies of all submissions have been made available to parties in accordance with Direction 2(m) of the Panel's Directions (11 May 2021), including making them available on Council's engagement website '*Shaping Banyule*'.

⁹⁴ Three (3) late submissions were received and were not considered by the 1 March 2021 Council Report, but have been referred to Panel (as outlined in Part A submission, para 258).

⁹⁵ See Appendices 2, 3 and 4.

285. No further consideration of supporting submissions is considered necessary.

Unresolved submissions

286. The remaining 202 submissions either conditionally supported the Amendment - 8 submissions - with the balance - 194 submissions - indicating they were opposed to the Amendment.

Late submissions

287. A total of 3 late submissions were received that were not considered by Attachment 1 to the 1 March Council Report.

288. The submission from the WWCHAC is discussed in Council's Part A submission. Concerns raised in the submission are addressed under the heading 'cultural heritage' below.

OUTSTANDING ISSUES

289. Council's Part A submission along with the Council Report of 1 March 2021 (and its attachments) outlines the key themes raised by submissions.

290. Based on its consideration of the extensive background and strategic assessment sections in its Part A submission, Council submits that there are two separate parts to the Amendment under which submissions are best addressed, being:

290.1 strategic planning consideration and in particular the principle of a commercial operator operating an outdoor recreation facility on public land at the request of the public land manager; and

290.2 statutory planning considerations associated with the effects of buildings and works.

291. This is also consistent with the 'key themes' that the Panel identified verbally during the Directions Hearing⁹⁶, where it highlighted four matters that needed to be considered by the Panel, being:

291.1 Strategic basis;

291.2 Use of public land;

291.3 Impacts of the Amendment; and

291.4 Process.

292. In respect of the matters raised by the Panel:

292.1 Council's Part A submission addresses the following matters:

292.1.1 'strategic basis';

292.1.2 'process';

292.2 'Use of public land' has been addressed in Council's Part A submission, although this matter is assessed further below;

292.3 'Impacts of the Amendment' is addressed below.

⁹⁶ Noting that these were not directly referenced or included in the Panel's Directions.

293. Accordingly, Council seeks to respond to the remaining matters identified by the Panel as follows.

USE OF PUBLIC LAND BY A COMMERCIAL OPERATOR

What is the issue?

294. Curiously, the theme that received most submissions during the exhibition period was the use of land for a commercial purpose.

Council response

295. Council relies upon its thematic response to submission as outlined in the 1 March 2021 Council Report. In particular, reference is made to the following themes namely:

- # 1 (*Commercial use*),
- 3 (*Retain parkland*)
- 7 (*Parks Victoria*),
- 8 (*Banyule Council*) and
- 20 (Public Conservation and Resource Zone)

296. Furthermore, in its Part A Submission, Council identified key State Government strategies and frameworks that have and continue to foreshadow the need for commercial partnerships to deliver more diverse and varied activities and visitor attractions and investment into infrastructure on public land. This includes the management plan that specifically applies to the Yarra Valley Parklands.

297. We also noted that the draft form of the Yarra Strategic Plan clearly anticipates commercial partnership with regard to action 10.⁹⁷

Form a Yarra River Management Committee to oversee commercial berthing, events and activation, and infrastructure activities in the lower Yarra River

298. We have also noted the local precedent of Amendment C125 to the Nillumbik Planning Scheme which used the same SCO planning control as proposed here to enable a commercial use on public land at Laughing Waters.

299. In addition we have already noted that Amendment VC194 to Victorian planning schemes appears to create other term pathways for commercial use on public land.

300. Accordingly, Council submits that the use of land by a commercial operator is not a planning issue but rather a government policy issue. Like councils, governments cannot deliver all of the services they wish to deliver. Councils do not operate for example, lifesaving clubs or football clubs, they lease council facilities to clubs that then operate the various sporting facilities and in the course of that they make a profit to fund the club. We submit that there is no strategic planning issue associated with the use of public land by a private operator. These considerations are matters for government policy and not for planners.

301. From a practical and operational perspective, the proposed commercial operator will charge a fee for access to the facility but the facility would be open to the general public – much in the same way as Banyule's Ivanhoe Aquatic Centre, located in the the Public Park and Recreation (**PPRZ**) provides, for example, swimming on a user pays basis. The use operates in the tree canopy, does not require the area below it to be fenced in any way and would maintain public access to Yarra Flats Park in much the same way as is available today – with improved land management in and around the immediate vicinity.

302. The use would be in addition to rather than limiting public activities or access through the site. As per the intent of the Parks Victoria EOI, the proposed use aims to take advantage of the site's

⁹⁷ Draft Strategic Plan, page 54.

nature-based attributes. It is considered to be a use that can provide further reason for people to participate in outdoor recreational activities (informal or organised) consistent with the primary purpose of the reservation of land.

- 303. Council submit that a by-product of this type of use will be the added activity and surveillance within this otherwise secluded part of the Yarra Flats and will help to improve the overall level of activity, safety, amenity and attractiveness to the park.
- 304. The toilet facility that is currently run-down and closed would be brought back into use and upgraded in conjunction with the Proponent for the benefit of all park users.
- 305. The Proponent will, through the proposed conditions of the exhibited Incorporated Document, ensure that the condition of the land, including weed management, is significantly improved as part of an active management and rehabilitation program for the site. Presently, Council understand that the limited resources of Parks Victoria within the vast parks network it manages mean that areas that are peripheral to key trails, play grounds, picnic areas and the like cannot be managed intensively. Council further understand that Parks Victoria would reinvest any money from the future lease agreement with the operator into the management of the parks network. The effects and impacts of the proposed buildings and works and the operation of the use are considered later in this submission.

IMPACTS OF THE AMENDMENT

What is the issue?

- 306. Submissions have raised a number of themes that relate to the potential impacts of the Proposal on the Land
- 307. The range of submissions that raised matters relating to the impacts of the proposed use and development were considered by Attachment 1 to the 1 March 2021 Council Report.
- 308. In particular, reference is made to the following themes
 - 308.1.1 Habitat and wildlife;
 - 308.1.2 Vegetation and environment;
 - 308.1.3 Traffic and parking;
 - 308.1.4 Amenity impacts;
 - 308.1.5 Billabongs;
 - 308.1.6 Other existing and future park users, public access, paths;
 - 308.1.7 North East Link Project;
 - 308.1.8 Size of proposed Amendment area;
 - 308.1.9 Safety/risk;
 - 308.1.10 Impacts on River Red Gums;
 - 308.1.11 Planning controls and policy;
 - 308.1.12 Aboriginal cultural heritage; and

308.1.13 Heritage.

309. As can be seen from the Site Plans, including the Amended Site Plans filed and circulated on 17 June 2021, the Proposal comprises buildings and works that are all temporary in nature and the only form of “building” proposed comprises:

309.1 relatively minimal deck structure around the ‘Home Tree’;

309.2 the deck structure proposed to support the two shipping containers which are proposed as portable buildings.

310. Some of the types of development is depicted as follows:



Figure 1



Figure 2



Figure 3



Figure 4



Figure 5



Figure 6



Figure 7



Figure 8



Figure 9



Figure 10

311. The inherent feature of the proposed use is something that fits in within the bush/forest type environment rather than stands out.
312. Council submits that the current Decision Guidelines within the PCRZ establish the type of consideration that might reasonably apply when considering the effects of the proposed outdoor recreation facility:

Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.
313. In the context of what is proposed as the “development” buildings and works, having regard to the decision guidelines in the PCRZ, it is submitted that it would be difficult to be critical of the built form aspects of the proposal in any way. Indeed, the grant of a permit will result in improvements to existing facilities by improving the rest rooms which are in a fairly dilapidated state.

314. It is to be noted that the public facilities in the area, namely the walking tracks and trails do not pass through the area proposed for the various ropes courses. The trails and tracks pass to the west of the relevant area.
315. The car parking for the facility is not new car parking, which may have been an issue, it is using an existing car parking facility. There is currently a total of 127 spaces on site although the 41 easterly spaces are currently closed. The Traffic Report prepared by One Mile Grid dated 31 May 2016, and exhibited with the Amendment, makes the following observations:
- 315.1 there is ample space for bicycle parking and no further bicycle parking is required given the considerable opportunities for bicycle parking;
 - 315.2 at peak capacity about 29 car parking spaces will be required plus 8 staff car parks (assuming all drive to the site);
 - 315.3 surveys identified a minimum of 67 and 74 spaces available on a Saturday and Sunday respectively;
 - 315.4 the currently closed easterly car park can provide a further 41 spaces; and
 - 315.5 the Land has good access to public transport and bicycle routes.
316. In relation to vegetation removal, noting that there is normally permit trigger under several different heads (all of which are turned off), the Flora and Fauna Assessment prepared by Practical Ecology dated December 2018 (**FF Assessment**), and exhibited with the Amendment, notes:⁹⁸

- Ecoline has advised that no trees will be removed however; vegetation in this zone may be slightly modified to allow for the obstacle course facilities in trees and for the safety of participants. The majority of the remnant vegetation in particular canopy trees will be retained however as outlined in the Arborist report prepared by Advanced Treescape Consulting (Kingdom 2018) some canopy trees will require some remedial work such as crown cleanup and deadwooding. Furthermore it is likely that some understorey trees and medium shrubs that reach the height of the canopy and are also growing densely throughout the site will need to be trimmed to clear an aerial pathway for the apparatus in particular the high rope adventure challenges or flying foxes.



Figure 5. non-invasive built platforms around trees with mulched pathways



Figure 6. Proposed pathways

317. The Native Vegetation Removal Report exhibited with the Amendment confirms that there are no large trees proposed to be removed and, accordingly, it is to be *assumed* that an area of .498 ha of vegetation is to be lost on account of the extent of clearing, crown modification and dead wooding that is required. The offsets for that removal are identified as .184 species units of habitat for the *Grey-Headed Flying Fox* and .204 species units for habitat for *Pink Mountain-correa*.

⁹⁸ FF Assessment at section 4.1.

318. It is submitted that the minimal impact on vegetation does not offend any of the relevant considerations in the various environmental and landscape overlays applicable to the Land..
319. In relation to the use of the Land, the hours of use are limited as set out in condition 6.22 of the incorporated plan. The hours are:
- 6.22 Except with the prior written consent of the ~~R~~responsible ~~A~~authority, the use permitted by this document may only operate between the following times:
- a) Between the 25 September and 26 April inclusive, except Christmas Day until 6.00pm;
 - b) On any other day, except Christmas day: 9.00am – 4.30pm daily, or until sunset whichever comes first;
 - c) Notwithstanding parts a) and b) the use must be closed to the public on days of declared Extreme and Code Red fire danger;
 - d) The use must be closed on Christmas Day.
 - e) The hours of operation shall be clearly displayed at the entrance to the site to the satisfaction of the responsible authority:-
- ~~except that E~~emergency maintenance may be undertaken at any time.
320. Given the significant distance between the site and any sensitive uses, it is submitted that the hours of use are appropriate.
321. It is submitted that there is nothing in the proposal which impacts on the cultural significance of the site but this issue will be largely determined by the Cultural Heritage Management Plan (CHMP) process under the relevant legislation. Before the use commences a CHMP may or may not be required.
322. We note that the due diligence assessment reports that a CHMP will not be required. However, there is a statutory process dealing with the determination of that issue that the panel should not concern itself with. Unlike an application for a planning permit, there is no statutory bar to the approval of a planning scheme amendment even where a CHMP is determined to be required.
323. Further, the Arboricultural Report identifies the approach to risk management that is proposed (Part 8.0 page 18). We note that while the exhibited Incorporated Document is silent on the approach to risk management, Council's draft Incorporated Document proposes a site specific Safety Management Plan be required as part of condition 6.2.

Council response - General

324. Council refers to the range of technical background reports that were prepared in support of Amendment C107. Those reports deal with technical matters such as flora and fauna impacts, traffic impacts and risk management.

Buildings and works

325. As for the impacts of buildings and works, Council has already noted and illustrated that the proposal comprises a range of lightweight relocatable and removable structures, best described in the Town Planning Report that was exhibited with the amendment and the Ecoline Information Brochure⁹⁹.
326. This includes a number of attachments for ropes, ladders and platforms required to create the adventure course. A kiosk, to be created from removable shipping containers, would sit above ground via anchor points. No fencing is required that might prevent public access or obscure any views. Further, the Proposal takes advantage of other existing infrastructure, including the access road and redundant car parking area.

⁹⁹ See https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ban-shapingbanyule.files/1016/0281/8990/Amendment_C107_-_Information_Brochure_-_Ecoline.PDF

327. The ropes, ladders and platforms would sit below the tree line and Council consider their overall visual impact would be limited beyond the immediate vicinity. Likewise, the kiosk building is best described as functional and does not appear to be any bigger than is necessary.

328. The LSIO at Clause 44.04 of the Planning Scheme has a range of purposes, but perhaps the most relevant is:

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

329. The LSIO is concerned with safety and flood management rather than the aesthetics of the built form. The floodplain manager, Melbourne Water has provided its conditional support for the proposal with conditions it wants applied to the Incorporated Document (see **Appendix 5**) to address the performance of the building during any flood event but also to require a flood management plan. Council engineers also find no reason to object to the Proposal subject to the appropriate conditions being applied.

330. Tree safety was raised in only a small number of submissions (8) and was considered under theme 15 (River red gums) in Attachment 1 to the 1 March Council Report.

331. Council's response relied on the Arboricultural Report reviewed by Council arborists, and conditions 6.6 – 6.10 in the proposed Incorporated Document to address tree protection and management.

Removal, destruction or lopping of vegetation (including any native vegetation)

What is the issue?

332. It is noted the Incorporated Document as exhibited includes the following condition for Landscaping at 6.3:

Any revegetation and supplementary planting must be with the written consent of the public land manager and be generally in accordance with the Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats TreeTop Adventure Park prepared by Practical Ecology, dated December 2018.

333. This ensures the Council resolution of *'Ensuring that replacement planting and new landscaping is undertaken with indigenous vegetation which is suitable for the local environment'* is addressed as the FF Assessment recommends species from the Ecological Vegetation Class for the area - Floodplain Riparian Woodland.

334. Three matters were recommended to be considered further and these have been referred to the proponent to address in their submission to panel. These relate to:

334.1 confirming approval had been obtained from DEWLP to seek a variation to the existing offset obligations;

334.2 consideration of updated VBA data; and

334.3 implications of the *Flora and Fauna Guarantee Act 2019*.

335. Broadly, although there will be some native vegetation removal associated with the Proposal, the Proposal is regarded as being consistent with all of the objectives

336. Due to the nature of the development and limited clearing of native vegetation within the construction zone it is unlikely that the site will have adverse effects on landscape values, wildlife habitat or corridors or lead to land degradation through soil erosion or loss of water quality.

337. Furthermore, although some areas of vegetation will require some remedial work such as crown cleanup and deadwooding, this will be minor and Council submits that it will not have any adverse effects on significant natural habitat and environmental qualities.
338. In order to minimise any potential impacts of the Proposal upon fauna, Council submits that the requirement to prepare a FMP is included in the suggested changes to the Incorporated Document Day 1 Hearing version.

Native Vegetation – Further Information Request

339. Notification of the Amendment was sent to the Department of Environment, Land, Water and Planning on 29 October 2020.
340. On the 18 January 2021, DELWP requested further information under section 55(2) of the P&E Act, to fully consider the application to remove, lop or destroy native vegetation under clause 52.17 of the Planning Scheme, including:
1. Information about the native vegetation to be removed, including:
 - a) The defensible space requirements around the proposed administration building, as described in the 'Flora and Fauna Assessment, Native Vegetation Impact Assessment, Land Management Plan, Yarra Flats Tree Top Adventure Park Ivanhoe East' (Practical Ecology, December 2018) must be fully accounted for in the Native vegetation removal report (NVRP) for the Fuel Modified Zone (FMZ), including requirements for tree canopy separation and vegetation management within 10 metres of a building. The FMZ is currently accounted for as 50% loss (understorey only).
 - b) A description of the proposed access for the shipping container onto the site and any associated vegetation impacts. Any native vegetation impacts for the access must be accounted for in the NVRP.
 2. Offset targets in section 6.3 of the report 'Flora and Fauna Assessment, Native Vegetation Impact Assessment, Land Management Plan, Yarra Flats Tree Top Adventure Park Ivanhoe East' (Practical Ecology, December 2018) describes and provides supporting evidence of an error with the modelled habitat on site for Pink Mountain-Correa, *Correa lawrenceana* var. *cordifolia*.
341. DELWP's request was referred to Proponent on the 18 January 2021.
342. Subsequent to discussion between Council and the Department it was determined that item 1a of the request does not need to be met as provided below:
- As discussed I confirm that the review of Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan - Yarra Flats Tree Top Adventure Park, Ivanhoe East (Practical Ecology, 2018) and Native Vegetation Removal Report needs not to meet our requirement referred in item 1(a) of our request. However, the remaining item 1 (b) and 2 should be considered in accounting loss of native vegetation and offset requirement.
343. Council notes the Proponent is still required to address items 1b & 2 which are outstanding at the time of this submission.

Cultural Heritage

344. In reviewing aboriginal cultural heritage issues, Council considers the most primary matters are those with regards to the relevant statutory processes as determined by the Planning Scheme and *Aboriginal Heritage Act 2006 (AH Act)*.

345. The AH Act together with the *Aboriginal Heritage Regulations 2018 (AH Regulations)* provide for the protection and management of Victoria's Aboriginal heritage.
346. This is reinforced in clause 15.03-2S of the Planning Scheme which includes the strategy to '*ensure that permit approvals align with the recommendations of any relevant Cultural Heritage Management Plan approved under the Aboriginal Heritage Act 2006*'.
347. Section 7 of the AH Regulations requires a cultural heritage management plan (CHMP) for an activity if –
- (a) all or part of the activity area for the activity is an area of cultural heritage sensitivity; and
 - (b) all or part of the activity is a high impact activity.
348. Areas of 'cultural heritage sensitivity' and 'high impact activity' are defined within the AH Regulations and are considered with regard to significant ground disturbance.
349. As the proposal originally intended for a combined 96a planning permit and planning scheme amendment, Council requested a CHMP or appropriate justification of significant ground disturbance having occurred to be provided by the proponent as part of the suite of planning reports prepared to support the application.
350. The Aboriginal Heritage Due Diligence Report prepared by Heritage Insight in 2018, and exhibited with the Amendment, concluded:¹⁰⁰
- It is the opinion of Heritage Insight that a CHMP is NOT required for this activity, as the activity area has demonstrably undergone significant ground disturbance as defined in the Aboriginal Heritage Regulations 2018.
351. As the question of whether a CHMP is required remains somewhat unclear, Council considers that it would be nonetheless prudent to address this doubt by requiring a CHMP. Council has included the requirement for a CHMP as a suggested change to the Incorporated Document Day 1 Hearing version.
352. The measures discussed above outline how Council has followed the statutory planning process as required by the AH Act together with the AH Regulations.
353. As described in its Part A submission, Council has sought to engage with the WWCHAC in its consideration of the Amendment and as part of this hearing.
354. Council considers the points above address the aboriginal cultural heritage concerns relevant to the planning scheme amendment process. With regards to other concerns raised in the submission from the WWCHAC, Council advises:
- 354.1 it understands that the Bulleen CVS has not been formally registered on the Victorian Aboriginal Heritage Register as an Aboriginal Cultural Place. Thus, it was not considered when the Aboriginal Heritage Due Diligence Report was prepared as part of the statutory planning process;
 - 354.2 nonetheless, the important significance of the area to the Wurundjeri Woi-wurrung people is clear from the Bulleen CVS and this would be recognised in a CHMP prepared by the proponent and approved by the WWCHAC for the Proposal;
 - 354.3 the approach taken to consider Aboriginal heritage in the Planning Scheme amendment process is consistent with the requirements of the AH Act and the YRP Act;

¹⁰⁰ Aboriginal Heritage Due Diligence Report, page 1.

354.4 Council endeavours to always work within the all relevant legislative and policy frameworks and looks forward to the adoption of the Strategic Plan to guide planning for the Yarra River in the future; and

354.5 Council welcomes discussions with the WWCHAC to achieve mutually beneficial outcomes in the future.

355. This concludes the Part B Submission for Council.

ATTACHMENT A – CHRONOLOGY OF EVENTS

The following table is provided in two parts. The first part outlines the history relating to planning that has occurred in respect of Yarra Flats. The second part is the chronology of the planning scheme amendment process.

Evolution of the TreeTops Proposal for Yarra Flats

Date	Event
November 2008	Yarra Valley Parklands Management Plan prepared by Parks Victoria identifies the northern section of Yarra Flats Park as an area for recreation and to investigate innovative ways to improve the visitor experience at Yarra Flats.
September 2009	Parks Victoria issue an Expression of Interest (EOI 1267) for the <i>Establishment and operation of tree-based eco adventure facilities</i> at five locations including the northern section of Yarra Flats Park.
26 April – 31 May 2012	Community consultation on the draft Yarra Flats Concept Plan including a community information day on Sunday 29 April 2012. The concept plan included a Tree-based Eco Adventure Course at the site.
2013	Following community consultation, a revised Yarra Flats Concept Plan was prepared by Parks Victoria in association with Banyule Council and Melbourne Water.

Chronology of Amendment.

Date	Event
2014	Preliminary discussions between Council officers and planning consultants acting on behalf of Ecoline
2014-2018	Ongoing discussions between the proponent and various organisations including Melbourne Water, Parks Victoria, DELWP and Council
May 2018	Application submitted by Perry Town Planning on behalf of Ecoline Pty Ltd.
June 2018 – March 2019	Additional or updated documents were provided in response to Council's request for further information.
7 October 2019	At its ordinary meeting Council resolved to request authorisation for Amendment C107 to the Banyule Planning Scheme to allow for a combined Planning Scheme Amendment and Planning Permit for the use and development of land at 340-680 The Boulevard, Ivanhoe East as an outdoor recreation facility, pursuant to S96A of the <i>Planning and Environment Act 1987</i>
25 November 2019	Council sought authorisation from the Minister for Planning to prepare and exhibit the combined Planning Scheme Amendment and Planning Permit
20 July 2020	Authorisation received from the Minister for Planning subject to conditions to remove the planning permit from the Amendment and include all the relevant permit conditions into the Incorporated Document - which forms part of the planning scheme amendment.
10 August 2020	Council sought exemption from Ministerial Direction No 15, section 4(1) to prepare and give notice of an amendment within 40 business days after authorisation.

	Exemption to Ministerial Direction No 15, section 4(1) was granted on the same day.
29 October 2020 – 10 December 2020	Exhibition of Amendment, 214 submissions received
16 December 2020	Council sought exemption from Ministerial Direction No 15, section 4(3) to request the appointment of a Panel within 40 business days of the closing date for submissions.
17 December 2020	Exemption to Ministerial Direction No 15, section 4(3) was granted.
10 December 2020 – 1 March 2021	Three late submissions received (total of 217 submissions)
25 February 2021	Council held a video conference meeting to provide submitters with the opportunity to be heard before Council but outside the Council meeting.
1 March 2021	At its ordinary meeting Council considered submissions and resolved to refer submissions to a Planning Panel, including all three (3) late submissions.
5 March 2021	Council formally requested a Planning Panel be appointed
10 May 2021	Directions hearing for the Amendment held via video conference
5 July 2021	Panel Hearing scheduled to commence.