



Town Planning Evidence Statement

Planning Panels Victoria
Amendment C107bany to the Banyule Planning Scheme

Instructed by PE Law
Statement prepared on behalf of Ecoline Pty Ltd
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Date: 25 June 2021



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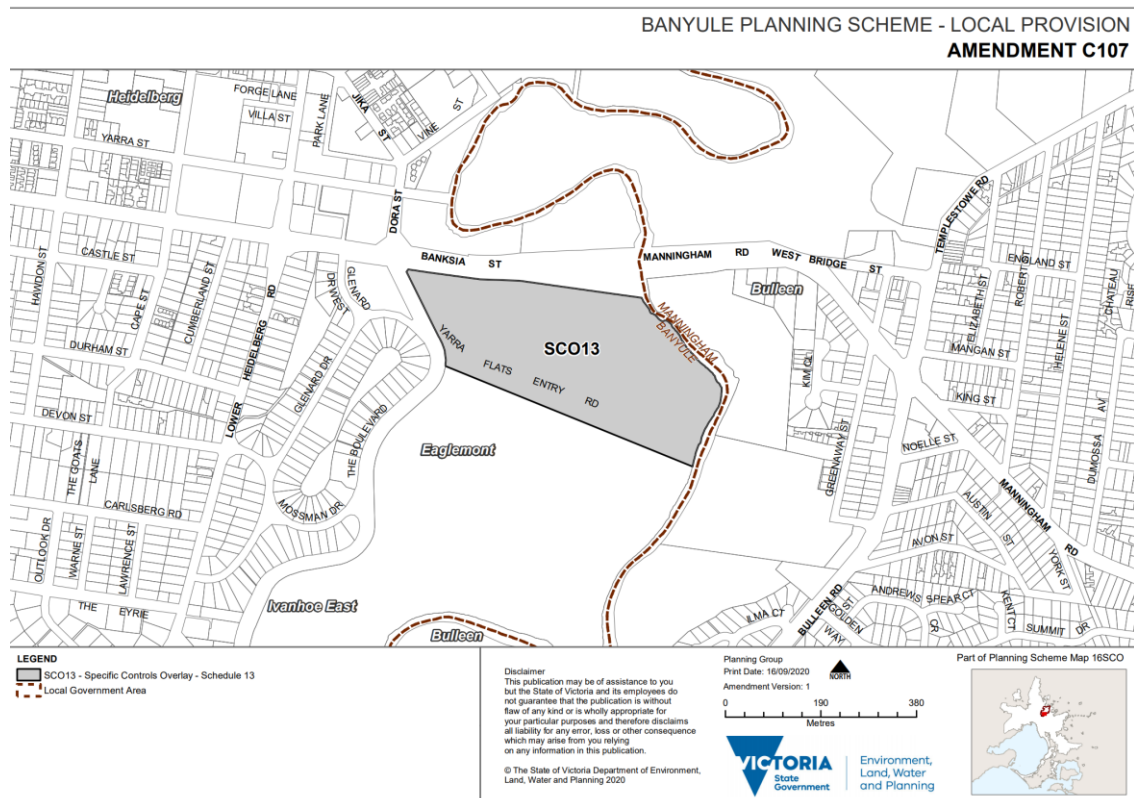


1. INTRODUCTION

1. I received a request from PE Law, acting on behalf of Ecoline Pty Ltd (the 'Proponent'), to prepare a statement of town planning evidence in relation to a proposed Treetop Adventure Park (the 'Project'). The Project is sought to be facilitated through Amendment C107bany (the 'Amendment') to the Banyule Planning Scheme (the 'Planning Scheme').
2. The Proponent proposes to develop the Project on land known as 340-680 The Boulevard, Ivanhoe East ('the 'Project Land') (refer **Appendix A**).
3. To support the Project, various facilities and infrastructure are required to be located within the defined Project Land. An amendment to the Banyule Planning Scheme is required to allow the Project to occur.
4. The Amendment is more fully described in the Council's Part A submission but in summary it seeks to:
 - Apply the Specific Controls Overlay to the Project Land.
 - Insert a new incorporated document titled 'Treetop Adventure Park, 340-680 The Boulevard, Ivanhoe East, September 2020' into the Schedules to Clauses 45.12 and 72.04. This document will facilitate the use and development of the land for an outdoor recreation facility comprising a tree-top ropes based adventure climbing course, comprising of eight courses for participants of different ages and abilities. The Proposal will also comprise a site office, upgrades to existing amenities and provision of 127 car spaces. No large trees or significant areas of vegetation are to be removed to accommodate the Proposal.
 - Amend Planning Scheme Map 16SCO to apply SCO13 to the Project Land.



5. The land affected by the amendment is shown on the map below:



6. The land that is the subject of the Treetop Adventure Park is shown on the image below. The blue line shows the extent of land affected by the planning scheme amendment and the red dotted outline shows the location of the Treetop Activity area.



Figure 1: Land subject to this incorporated document outlined in blue

Source: Page 2 of the Incorporated document

7. I was not involved in the preparation of the Amendment or any of the preceding related matters. I was engaged following the referral of submissions to the Amendment to a Panel.
8. The scope of my engagement, consideration, and professional expertise is limited to town planning matters. I do not comment on other technical aspects of the Amendment, unless directly relevant to my town planning considerations.

My Evidence

9. I have been instructed to review the Project and the Amendment and provide my opinion on its town planning merits. I have further been instructed to consider and address the submissions received as they relate to my area of expertise. My instructions are contained at **Appendix B**.

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10. In preparing this statement, I have:

- Reviewed the exhibited Amendment, including explanatory report;
- Considered relevant aspects of the Banyule Planning Scheme and policy documents related to the Yarra River;
- Considered relevant Practice Notes (including *PPN46: Strategic Assessment Guidelines*);
- Considered relevant Ministerial Directions (including the Ministerial Direction on the Form and Content of Planning Schemes);
- Considered *A Practitioner's Guide to Victorian Planning Schemes Version 1.4, April 2020*;
- Reviewed the 213 submissions received by the planning authority to the Amendment;
- Read the agenda to the relevant Council meeting that considered this Amendment;
- Read the original Expressions of Interest issued by Parks Victoria;
- Been provided with a draft version of the evidence of Mr Kern (ecology) and Mr Hill (traffic); and
- Inspected the Project Land and surrounds.

11. My evidence is based on the Amendment as it was exhibited.

12. My opinion on the Amendment is in Section 2 of my statement and my conclusion in Section 3 summarises my opinion.





13. In summary, my view is that:

- The Planning Scheme amendment process requires a thorough assessment not only of the suitability of the site for the proposal but the strategic and statutory settings that apply to the land. In my view, that assessment supports the Project.
- The Project can be defined as an ‘Outdoor recreation facility’¹. On a first principles basis, it is appropriate to co-locate this type of activity in an area of public parkland like this. The Yarra Flats park complex is a high order park that is managed by Parks Victoria (the public land manager) and this Project is supported by that entity.
- The activity itself will self-evidently benefit from the park’s treed landscape. However, there also benefits to the park itself, including the surveillance, the maintenance provided by the operator and by way of upgrades to park infrastructure. It is also located in a relatively small part of the park and will have a limited overall impact on the broader parkland network.
- There are submissions that express concerns with a private operator running a facility in a complex of public parklands. In my view, that is not a town planning matter per se, although I note that the land will remain in public ownership and that the operator will be required to conduct the activity according to the requirements of the public land manager.
- These sorts of recreational uses attract people to the park, allow them to experience the naturalistic pleasures of the setting in a new and different way, provide a fitness and leisure activity, provide employment, and attract visitors. At some level, the use will add to the area’s tourism offer. The extent of development is modest as is its footprint.

¹ Defined as ‘Land used for outdoor leisure, recreation, or sport. It does not include an ‘Open sportsground’ or ‘Informal outdoor recreation’. It includes ‘Amusement park’, ‘Golf course’, ‘Golf driving range’, ‘Paintball games facility’ and ‘Zoo’. When looked at in the terms of the definition, it is clear that a high ropes course is a relatively low key activity.





Providing the environmental and traffic engineering impacts of the proposal are acceptable², I consider that the proposal will result in a net community benefit.

- The use of the Special Controls Overlay is an appropriate way to facilitate the approval of the Project. The content of the incorporated plan is generally appropriate.

² I rely on the evidence of Mr Kern in respect of environmental issues, and the traffic engineering evidence of Mr Hill .





2. PLANNING EVIDENCE

Background to the Project and Amendment

14. The Project, or at least the genesis of the Project, has a long history dating back to 2009 when Parks Victoria first sought expressions of interest from commercial operators to develop and operate the Project. Within the Expression of Interest issued by Parks Victoria the Project Land was referred to as the 'Yarra Flats Site' and described as (page 10):


Yarra Flats is an urban 'Metropolitan Park' established on 4 December 2001 and covers pastoral heritage landscapes, natural bushland, wetlands, and includes a number of informal picnic areas. The Site forms part of the greater 'Yarra Valley Parklands' and is situated approximately 10Km from the Melbourne CBD.

15. The opportunity expressed was for a 'tree obstacle course' described as (page 5):

Tree mounted aerial platforms interconnected with wires / ropes / wooden elements... that, wherever possible, incorporate and give consideration to existing facilities and features (trail and path networks, picnic facilities, etc) and parkland layouts. The installations will provide opportunities for exploration by visitors of all mobility and fitness levels.

Trees are to be used only for the purpose of installing / supporting platforms for the Tree-based Eco Adventure Facilities. The height of platforms would depend on the structural capability of the tree and the difficulty of the course. The Facilities may comprise a number of sub-Facilities (including additional 'training courses') at lower heights or varying difficulties.

Design and maintenance regimes will avoid damage to subject trees. Proponents will be required to manage 'tree risk' within a zone around the Tree-based Eco Adventure Facilities so to adequately protect infrastructure. This zone (the "Facility Area") will be based on an area of twice the average tree height at the Site (plus 20%) either side of



the Facility. Adventure facilities should be closed at the Site(s) for a specified period for annual inspection and maintenance and more often as required.

16. The Council Officer report dated 1 March 2021 provides a factual overview of the Project history to-date. From this, I note two relevant points being:

- There are effectively three parties behind Amendment C107bany, being the Proponent, Parks Victoria as the public landowner and manager, and Council. I understand that Parks Victoria chose not to use the Government Land Planning Service to pursue a State-led planning process, hence the Council is the planning authority for the Amendment.
- The Amendment was initially submitted to the Minister for Planning as a s96A application. In authorising the Amendment, the Minister for Planning required the Council to instead utilise the Specific Controls Overlay.

What is the town planning framework in which the Project and Amendment is to be considered?


17. Clause 71.02-3 (Integrated decision making)³ states:

Society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning

³ An operation provision of the Banyule Planning Scheme.






and responsible authorities must prioritise the protection of human life over all other policy considerations.

Planning authorities should identify the potential for regional impacts in their decision making and coordinate strategic planning with their neighbours and other public bodies to achieve sustainable development and effective and efficient use of resources.

18. This is relevant to this matter given the planning policy framework, the role of Parks Victoria (as public land manager) and the scheme's overarching requirement that outcomes should ultimately create a net community benefit and sustainable development. I have prepared my evidence with regard to the expectations and directions of Clause 71.02-3.
19. From a town planning framework perspective, the Amendment is straightforward in that it seeks to apply the Specific Control Overlay (SCO) over an area of land and introduce an Incorporated Document into the Planning Scheme.
20. The proposed land use would be characterised as an 'Outdoor recreation facility' and the Project Land is zoned Public Conservation and Recreation Zone (PCRZ).
21. Under the PCRZ, this land use is prohibited unless conducted by or on behalf of Parks Victoria (among others) under the relevant provisions of an enabling Act. A Practitioner's Guide to Victorian Planning Schemes states with respect to the words 'by or on behalf of' (page 32):


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.

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

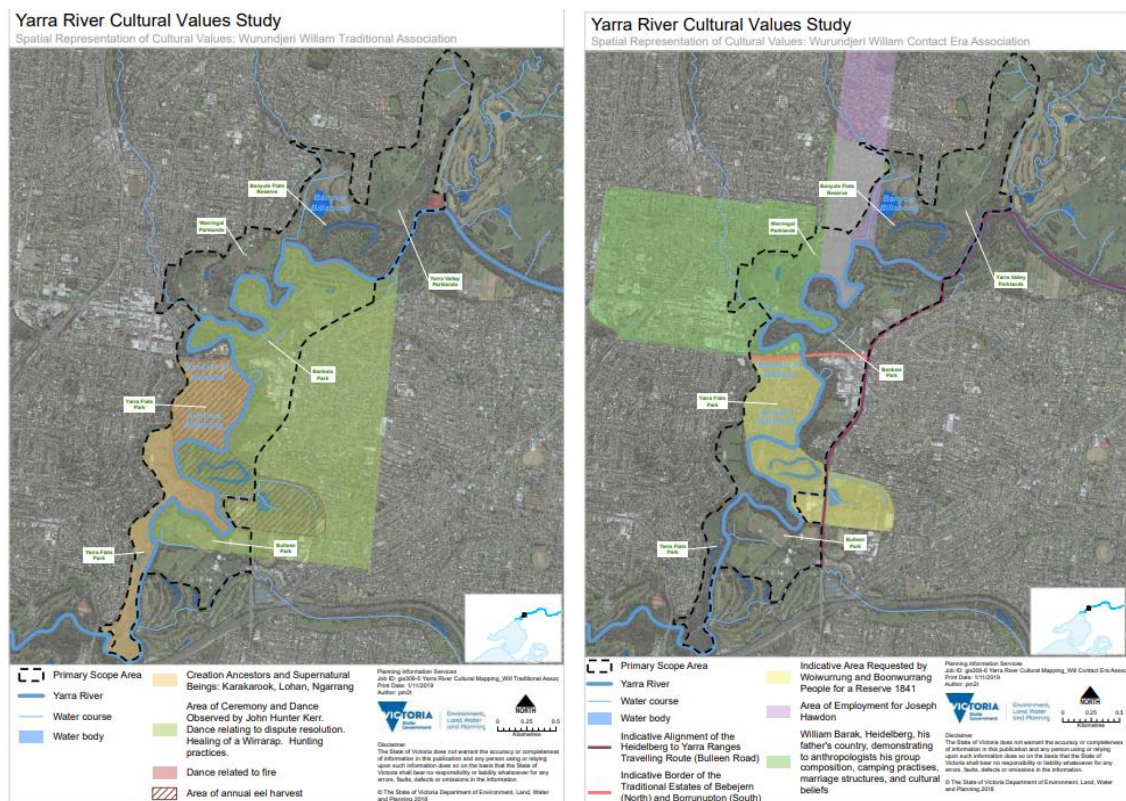


other person or entity having a direct representative interest or relationship with the public land manager.

22. It is ultimately a matter of legal interpretation as to whether the proposal would benefit from the exception in the PCRZ or not. Regardless, the fact is that the Amendment has been prepared and exhibited and is now being considered by the Panel. If the use is prohibited, then the approval of the Amendment would facilitate that use.
23. In any event, I have been asked to undertake a merits review of the Proposal. As part of that, I firstly need to assess whether the land use is acceptable and whether the use of the Project Land for that activity represents an acceptable planning outcome.
24. This 'land use' aspect is the most pertinent from a town planning perspective, but I also note that there is a 'development' component to the Project, which also requires consideration. I consider both matters in my evidence.
25. The Project Land is zoned PCRZ. The Zone Purpose 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.*
26. This Purpose is summarised by *A Practitioner's Guide to Victorian Planning Schemes* as applying to land *where the primary intention is to conserve and protect the natural environment or resources and also allows associated educational activities and resource-based uses* (page 127).

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27. Although this is not an application for planning permit, it is helpful to understand the Zone's Purpose and what matters should be considered in the exercise of discretion under the Zone. The decision guidelines of the PCRZ require a consideration of the following:
- *The Municipal Planning Strategy and the Planning Policy Framework.*
 - *The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.*
 - *Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.*
28. It is relevant, therefore, that the Proposal has the support of Parks Victoria, which is the public land manager.
29. The land is also affected by the following overlay controls:
- Environmental Significance Overlay – Schedules 1 (Yarra River, Plenty River and Darebin Creek) and 4 (Significant Trees and Areas of Vegetation) (ESO1 & ESO4);
 - Heritage Overlay – Schedule 134 (Yarra Flats) (HO134);
 - Land Subject to Inundation Overlay (LSIO); and
 - Significant Landscape Overlay – Schedule 1 (Yarra (Birrarung) River Corridor Environs) (SLO1).
30. The Project Land is also within an Area of Aboriginal Cultural Heritage Sensitivity and is within a Designated Bushfire Prone Area.
31. In relation to these last two designations, I note that an Aboriginal Heritage Due Diligence Report was prepared for the Project, which concluded that a Cultural Heritage Management Plan was not required.

32. I am not qualified to comment on matters of Aboriginal heritage, but in a town planning sense, the legislative protection of Aboriginal heritage is adequate to address and manage any effects of the Project.
33. Consistent with the Project Land's location⁴ within an Area of Aboriginal Cultural Heritage Sensitivity, the preceding *Bulleen-Banyule Flats Cultural Values Study* identifies the area as having cultural values related to 'Creation Ancestors and Supernatural Beings: Karakarook, Lohan, Ngarrang', 'Area of annual eel harvest' and as the 'Indicative Area Requested by Woiwurrung and Boonwurrang People for a Reserve 1841'.




Cultural Values Study Maps (source: Bulleen-Banyule Flats Cultural Values Study)

34. It is not clear to me how much weight should be given to this document in decision making within the town planning system. Given that it is not part of the Banyule Planning Scheme,

⁴ Within the area marked as Yarra Flats Parkland.





I would give it very little weight. I also understand that the Proponent has committed itself to undertaking a voluntary Cultural Heritage Management Plan if the amendment is approved.

35. I am not qualified to comment on matters of bushfire protection, but I do not consider that the Project requires a Bushfire Management Strategy pursuant to Clause 13.02-1S (Bushfire Planning). I understand that approximately 100 persons are expected on-site any one time. In my opinion, given the size of the area 100 persons would not constitute *people congregating in large numbers* given the broader use of the area as public parkland which would attract people to the area.

36. In my opinion, the key town planning questions are therefore:

- Is the Project strategically supported?
- Is the extent of development acceptable?
- Is the use of the SCO the appropriate planning scheme tool?
- Is the Incorporated Document proposed acceptable?
- Are there any other material town planning matters raised in submissions?

Is the Project strategically supported?

What is the relevant strategic background?

37. There are numerous strategic documents that apply to the Yarra River corridor and the public parklands that abut it. Fairly, these can be described as high level policy or strategy and provide (for the most part) strategic background or context to the consideration of this matter. I think it is also fair to say that these documents are not land use or development 'guidelines' per se but rather serve to assist the public land manager and other stakeholders to understand the value of the asset and how it might be managed.



38. Because there are so many policy documents, I have prepared the following table to assist the Panel understand the chronology of these documents, whether they are referred to in the planning scheme and how they are relevant (in my opinion) to the Panel's task.

Document	Date	Status in the Planning Scheme	Relevant (yes / no)
Middle Yarra River Concept Plan, Melbourne Parks and Waterways.	1993	Background document at Clause 21.03, Clause 22.06 and Clause 42.03.	Yes, although dated, provides recommendations in respect of the Yarra Flats Parkland and addresses issues of 'Recreation and Tourism'.
Linking People and Spaces: A Strategy for Melbourne's Open Space Network	2002	Policy document at Clause 19.02-6R.	Yes, because it informed the Expression of Interest Process that led to this proposal.
Yarra Valley Parklands Management Plan	2008	Reference document at Clause 21.05 and Clause 21.09 of the Planning Scheme.	Yes, in that it provides for Parks Victoria to 'investigate the feasibility of allowing adventure and intensive recreation





			activities in appropriate management zones in the parklands'. See Section 5.2.
Tourism Investment Guidelines, - Your Guide Tourism Investment in Victoria, Tourism Victoria	2008	Policy document at Clause 17.04-1S.	Yes, in that the document facilitates tourism based activities and is relevant to the question of land use.
Yarra Flats Concept Plan.	2013	Prepared by Parks Victoria in association with Banyule City Council and Melbourne Water.	Not referenced in the Planning Scheme or adopted by the Council but included three proposals for the northern section of Yarra Flats that includes a tree based eco-adventure course at the subject site.
Healthy Waterways Strategy, Melbourne Water	2013 (now dated 2018). The 2018 version is said to build on the 2018 version.	Reference document at Clause 12.03-1S	Relevant at a high level and focusses the health of the major catchments in



			the Port Phillip and Westernport region.
Middle Yarra River Corridor Study – Recommendations Report, Department of Environment, Land, Water and Planning	2016	Policy document at Clause 12.03-1R.	Yes, because it refers to the precinct in which the Amendment area sits. Discusses the management of public land within the Willsmere Park to Finns Reserve Suspension Bridge precinct.
Yarra River Action Plan	2016	Not referenced in the Planning Scheme.	Provides an understanding on what will be done to ensure the reiver's long term protection.
Plan Melbourne 2017-2050: Metropolitan Planning Strategy, Department of Environment, Land, Water and Planning	2017	Policy document at Clause 11.01-1S of the Planning Scheme.	Yes, provides high level strategic direction on the Yarra River corridor and the parks that flank it.
Deliver Yarra Flats Concepts Plan	2020	Not referenced in the planning scheme	Yes, because it specifically





			<p>mentions the Ecoline tree based eco adventure course within the northern part of the park.</p> <p>The Concept plan seeks to explain how the Yarra Flats Concept Plan will be delivered. Proposes to water the Annulus Billabong and the Banksia Street Billabong using natural flow, complete a detailed design for wetland construction and billabong watering option and obtaining a voluntary CHMP.</p>
Draft Yarra Strategic Plan	Released for public comment on 23 January 2020.	Not referenced in the Planning Scheme. When finalised, the Plan will be given weight through Section 4AA of the Planning and Environment Act 1987.	<p>Limited relevance given that it is still a draft document.</p> <p>Describes the land as 'Yarra River Land' . includes the land in the Suburban Reach</p>





		Will ultimately be included in some fashion in the Victoria Planning Provisions.	part of the river. That designation is discussed later in my evidence.
Yarra River - Bulleen Precinct Land Use Framework Plan (draft), Department of Environment, Land, Water and Planning.	2020.	No status yet	Limited relevance given its draft status. The amendment land is included in the plan. provides little direction on the Yarra Flats. The document talks about there being opportunities to activate open space and the public realm and the benefits that this will bring.
Bulleen-Banyule Flats Cultural Values Study Summary Report	2020	Status is unclear. Not part of the Planning Scheme.	Identifies the area's cultural values and its significance to the Wurundjeri Woiwurrung people.

40. I discuss the applicability and relevance of these documents in more detail below.





What do these documents say about the site and the proposal?

41. As previously mentioned, the genesis of the Project began with an Expression of Interest being issued by Parks Victoria in September 2009. I understand that the precursor to this was the *Linking People + Spaces* strategy prepared by Parks Victoria in 2002. This remains a relevant policy document as per Clause 19.02-6R (Open space – Metropolitan Melbourne).
42. In addition to Clause 19.02-6R and the *Linking People + Spaces* strategy, the Banyule Planning Scheme also contains several other clauses and associated policy documents relevant to this matter and the question of ‘use’ in particular:
 - Clause 11.01-1S (Settlement) including *Plan Melbourne 2017-2050: Metropolitan Planning Strategy, Department of Environment, Land, Water and Planning, 2017*.
 - Clause 12.03-1S (River corridors, waterways, lakes and wetlands) including *Healthy Waterways Strategy, Melbourne Water 2013*.
 - Clause 12.03-1R (Yarra River protection) including *Middle Yarra River Corridor Study – Recommendations Report, Department of Environment, Land, Water and Planning, 2016*.
 - Clause 12.05-1S (Environmentally sensitive areas).
 - Clause 19.02-6S (Open space).
43. Clauses 17.04-1S (Facilitating tourism) and 17.04-1R (Tourism in Metropolitan Melbourne) and the associated *Tourism Investment Guidelines, - Your Guide Tourism Investment in Victoria, Tourism Victoria, 2008*, can also be said to be relevant to the question of ‘land use’.
44. From a settlement and Clause 11.01-1S perspective, *Plan Melbourne* has as Policy 4.1.4 *Protect and enhance the metropolitan water’s edge parklands* and states (page 81):





As Melbourne's population grows, it will be vital to protect and enhance Melbourne's major water's edge parklands... Stronger planning controls will also be put in place to protect water's edge parklands from intrusion and encroachment of development that impacts on open space and diminishes their natural landscape setting.

45. This notion of stronger planning controls is borne out principally through Clauses 12.03-1S and 12.03-1R. Clause 12.03-1S is the broader of the two clause and has an objective to *protect and enhance the river corridors, waterways, lakes and wetlands*. The associated strategies refer to ensuring development is compatible and in the only direct reference to the protection of the Yarra River, refers to it in part as a 'significant economic' asset.
46. The *2013 Healthy Waterways Strategy* is now replaced by a 2018 version. The document applies to the 5 catchments that make up the Port Phillip and Westernport region. The strategy provides a single framework for addressing community expectations and the obligations for waterway management and builds on a long term regional vision for waterway health⁵. Other than at a high strategic level, it provides little specific assistance to decision makers on amendments of this scale.
47. Clause 12.03-1R is focused entirely on the Yarra River and has an objective to *maintain and enhance the natural landscape character of the Yarra River corridor*. A relevant corresponding strategy is to plan for the *river and its environs as a recreation and tourism resource*.
48. The associated *Middle Yarra River Corridor Study* is principally concerned with new built form as opposed to land use. It does state the following with respect to managing public land within the Willsmere Park to Finns Reserve Suspension Bridge precinct which takes in the Project Land:

⁵ Page 4.





Strategies for managing public land in this sub-area:

- *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.*

49. Clause 12.05-1S has an objective to protect and conserve environmentally sensitive areas with the corresponding strategy including to protect environmentally sensitive areas with significant recreational value from development that would diminish their environmental conservation or recreational values.


50. Clause 19.02-6S has an objective to establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community. Related strategies include:

- *Maintain public accessibility on public land immediately adjoining waterways and coasts.*
- *Ensure public access is not prevented by developments along stream banks and foreshores.*
- *Plan open space areas for multiple uses, such as community gardens, sports and recreation, active transport routes, wildlife corridors and flood storage basins.*

51. Clause 19-02-6R has an objective to *strengthen the integrated metropolitan open space network*. Related strategies include:

- *Ensure major open space corridors are protected and enhanced.*



- 
- *Protect the metropolitan water's edge parklands from intrusion and encroachment of development that impacts on open space and their natural landscape setting.*

52. The associated *Linking People + Spaces* strategy contains a number of relevant statements to this matter and question of use including:

- *Economic benefits of open space (page 7): Many industries also derive a benefit, either directly or indirectly, from urban parks and gardens. These include tourism, education, health, transport, and the sport and recreation industries. Economic benefits can be direct, from fees and charges for use of a park or for services provided in the park. They may also be activity based, such as increasing the income accrued by neighbouring businesses, or indirect, such as increasing land values of neighbouring properties.*
- *Urban open space principles (page 8): Buildings and other infrastructure can be used to facilitate people's enjoyment and use of open space. It is nonetheless important to ensure that their provision is consistent with the management objectives of the park and subject to appropriate Planning Scheme processes...*

Appropriate zoning of open space is integral to its long-term security and Public Park and Recreation Zone or Public Conservation and Resource Zone are the most applicable zonings for parkland purposes. The zoning should be consistent with relevant management plans and objectives for the land, whereby conservation zoning is applied in order to protect areas of high conservation value in which development of visitor facilities is limited...

When proposals arise to change the land use of parkland, a decision should be made only once the proposal has been exposed to public scrutiny through processes under the Planning and Environment Act 1987. If a change in land use or in the nature of occupation is to occur that will result in a reduction of open space, the overall network of open space should be protected by way of addition of replacement parkland of equal or greater size and quality.



53. The *Tourism Investment Guidelines, - Your Guide Tourism Investment in Victoria, Tourism Victoria, 2008* are relevant in this regard including a section related to tourism development on public land. In relation to such development, it is stated:

There is however a wide range of services that may be conducted by the private sector on public land... These activities may only be seasonal and may generally require minimal built infrastructure investment.


54. These *Tourism Investment Guidelines* go on to provide six principles for the provision of tourism and recreation use of public land being:

- *The activity accords with the objectives of the relevant reservation legislation and related management plans and policies.*
- *The activity is consistent with the National Ecologically Sustainable Development objectives and principles.*
- *Meets demonstrated need and is dependent on the natural and cultural values of the area.*
- *Risk levels are appropriate and manageable.*
- *Community access is not unreasonably restricted.*
- *Net public benefit is provided in the sort and long term.*

55. At a local level, the Banyule Planning Scheme expresses similar sentiments regarding the importance of the Yarra River and its environs as reflected through the Municipal Strategic Statement. A relevant policy document referred to in the Local Planning Policy Framework (LPPF) is the *Yarra Valley Parklands Management Plan 2008*. This document is a reference document in the LPPF⁶. At page 13, the Plan says:

⁶ See Clauses 21.01 and 21.09.





The parklands provide appropriate recreational access to the Yarra River, open spaces and bushland areas for individuals and groups. There are different types of recreation experiences in varied settings along the river corridor. The diversity of settings enables visitors the opportunity to enjoy both pastoral and indigenous landscapes.

56. At page 16, the plan sets out a series of Strategic Directions. One strategic direction says this:

New visitor facilities and services provided through commercial arrangements may be considered where a public benefit can be demonstrated and the proposal is consistent with the purpose of the Crown land reservation and the planning scheme and is compatible with the role of the parklands.

57. To my reading, this direction provides a basis upon which to conclude that at least some level of services and facilities in the park will be provided via a commercial arrangement and that this outcome has been contemplated for some time.
58. From the above, my summary of relevant planning policy guidance is that this policy recognises the importance of the Yarra River from an environmental and recreational perspective to the city. I consider policies contemplate the introduction of limited, nature based recreational related development occurring. In my view, it is a question of whether this location and this land use is an acceptable one.
59. I consider the location to be an acceptable one for the Project. I note within metropolitan Melbourne the only other treetop courses that I am aware of are either located on the Mornington Peninsula or in the Dandenong Ranges. There are none that I am aware of which are more centrally located. There is a small high ropes challenge course which is located at Riverside Golf and Tennis Centre, which has similarities to that proposed.
60. Beyond being a central location, this particular location has a number of positive aspects which I consider favourable including:

- Existing adequate on-site car parking is available, meaning that no new vehicle access or car parking is required.
- The generally parallel shared trail is set back from the river at this location and would be well set back from the Project Land.
- The existing walking path which does run generally along the banks of the river would be unimpeded with the Project occurring between this path and the car park.
- A high density of canopy trees providing not only the necessary 'ingredients' for the Project but also mitigating any visual impact when seen from further afield.

61. I am equally comfortable that this land use is acceptable for the following reasons:

- The Project involves minimal built form predominantly consisting of timber decks within treetops connected by wires/ ropes. The roofed administration area is relatively small at approximately 100 square metres with the maximum roof height at 4.4 metres above natural ground level being well below that of the surrounding treetop canopy.
- The Project takes advantage of an existing natural resource in a sustainable manner.
- The Project provides for an outdoor recreational experience not easily otherwise experienced.

62. I also note that the passing of the *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017* (the Yarra River Act) has resulted in Part 3AAA being inserted into the *Planning and Environment Act 1987* which states:

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.



63. The Act prescribes how a long-term Community Vision and the Yarra Strategic Plan, which will give effect to the vision, are to be developed. The Yarra Strategic Plan will also give effect to Wurundjeri Woi-wurrung peoples place based policy response to the Act. 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 entity⁷.
64. It is beyond my expertise to comment on the relevance or applicability of this Act. There is likely to be an intersection with this Act and the *Planning and Environment Act* when the Yarra Strategic plan is finalised. I understand that that the final version of that plan is yet to be adopted.
65. Part 2 of the Yarra River Act contains a set of Yarra Protection Principles under the sub-headings 'General', 'Environmental', 'Social', 'Recreational', 'Cultural' and 'Management'⁸. Relevant recreational principles are:

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.

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.

66. The Yarra River Act foreshadows the creation of a Yarra Strategic Plan. The purpose of the Plan is to:


Guide the future use and development of the Yarra Strategic Plan area; and

Identify areas for protection within the Yarra Strategic Plan area.

⁷ <https://www.water.vic.gov.au/waterways-and-catchments/protecting-the-yarra/yarra-river-protection-act>

⁸ See Sections 8-13 at part 2.



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67. A draft Yarra Strategic Plan has been prepared by Melbourne Water as the lead agency and has been through a Planning Panel process but is yet to be finalised. Performance objective 3 of the draft Yarra Strategic Plan is entitled ‘Quality parklands for a growing population’ and indicates in part that the Yarra Strategic Plan will:

Ensure park infrastructure and services are contemporary, inclusive, and provide multiple benefits.

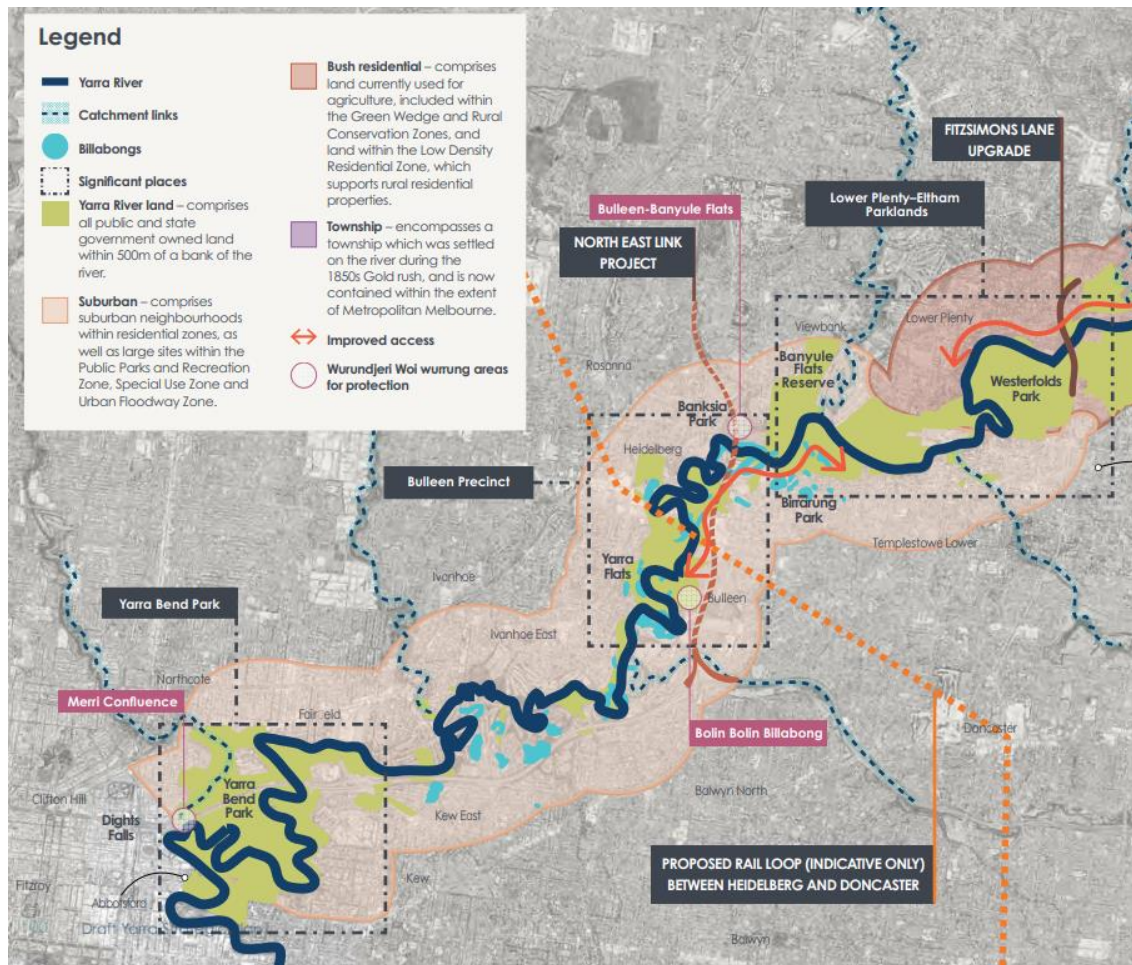
68. The Project Land is located within the ‘Suburban Reach’ portion of the Yarra River. The directions for future land use and development on Yarra River land such as the Project Land are:

- *Ensure the existing landscape corridor along the Yarra River is protected and reinforced as a vital habitat link and place of refuge.*
- *Design visitor facilities and boat launch sites to be sensitively incorporated into their natural surrounds.*
- *Apply Yarra Protection Principles, set out in the Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017, to all development on Yarra River land.*
- *Ensure a coordinated approach to landscaping, wayfinding and the provision of visitor facilities to encourage people to view the Yarra River as one living entity. • Maintain diverse park landscapes to connect people to the variety of past uses and enable a wide range of visitor experiences.*

69. The Project Land falls within the ‘Bulleen Precinct’ of the draft Yarra Strategic Plan and identifies the Yarra Flats as an area for future projects and investment consisting of:

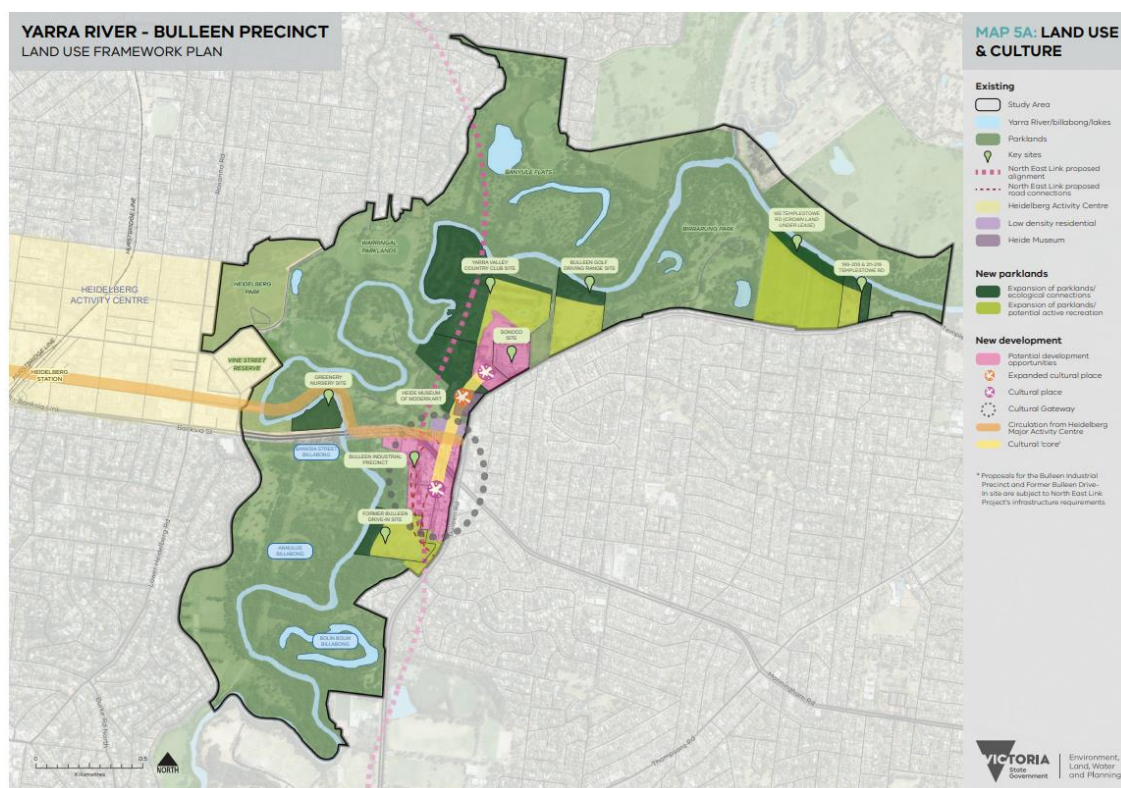
- *Protection of environmental and cultural values of the Yarra Flats and improved visitor facilities for the Heidelberg Artists’ Trail.*

70. Of some relevance, I note that the indicative alignment of the suburban rail loop is marked as running beneath the Project Land. The Proposal is relevantly not located in an area identified for protection in the draft Yarra Strategic Plan.



Suburban Reach Extract (source: Draft Yarra Strategic Plan)

71. A draft Yarra River – Bulleen Precinct Land Use Framework Plan has been prepared. This draft Framework Plan has been the subject of an Advisory Committee, whose report has not yet been made public.



Yarra River – Bulleen Precinct Land Use Framework Plan (source: Consultation Draft, August 2020)

72. The draft Framework Plan contains no specific reference to the Project. The Project Land is devoid of any annotation and simply referred to as parklands.
73. The absence of any reference to the Project within either the draft *Yarra Strategic Plan* or the draft *Yarra River – Bulleen Precinct Land Use Framework Plan* is not determinative. Given that both documents are high level strategic documents, I would not expect them to mention a project of this size.
74. In summary, I do not consider there to be any significant, negative aspects associated with the proposal and instead consider that there will be several positive benefits. In my opinion, when the totality of planning policy is considered, the proposal achieves a net community benefit as sought by Clause 71.02-3.





Is the extent of development acceptable?

75. I have previously indicated that the extent of development associated with the Project is relatively minimal. I have also previously identified the relevant planning scheme overlays which are associated with the Project Land. I provide the following brief comments in relation to each of these overlays and the development extent:

- ESO1 – ESO1 is principally concerned with matters of flora and fauna, and I understand the Panel will be provided with separate flora and fauna evidence.
- ESO4 – ESO4 is principally concerned with significant trees, and I understand the Panel will be provided with separate arboriculture evidence.
- HO134 – HO134 relates to the Yarra Flats. The Statement of Significance says that the:

Yarra Flats, comprising 85 hectares of woodland, wetland and riparian habitats, is of significance. It includes scar trees, remnants of the gardens of nearby estates, and bluestone water diversion channels which are the remnants of Chinese market gardens in the area.

I am not a qualified heritage expert, but from a town planning perspective consider that this proposal is not at odds with these values.

- LSIO – I understand that Melbourne Water as the relevant floodplain management authority has supported the Project subject to the conditions which I understand have either been incorporated into the Project or the Proponent will meet.
- SLO1 – SLO1 is principally concerned with the parklands themselves as well as the vegetation within. For the reasons I have previously set out, I am comfortable that the use of the Project Land is appropriate.

76. I am comfortable that from a town planning perspective, the extent of buildings and works proposed is acceptable and will not impact on the identified values of the Yarra River and its environs.





Is the use of the SCO the appropriate planning scheme tool?

77. The Minister for Planning required the Council to use the SCO as opposed to progressing the matter through a s96A application.

78. The SCO has as a Purpose to:

Apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances.

79. A Practitioner's Guide to Victorian Planning Schemes indicates that there are three methods of dealing with site specific proposals or requirements in a planning scheme being:


- Application of the Special Use Zone (SUZ),
- Use of the s96a combined application process, or
- Application of the Specific Controls Overlay.

80. In my view, the Minister for Planning is correct to require the use of the SCO as opposed to the s96a process or indeed the SUZ. The application of the SUZ would diminish the underlying importance of the land as public land and I do not think it would be appropriate in this matter. Similarly, the use of the s96a pathway I also consider inappropriate for the same reason that it would need to result in a change in the underlying zoning.

81. As I understand it, it was originally sought for the Banyule Planning Scheme to be amended at (then) Clause 52.03 to facilitate the Project, however, the gazettal of Amendment VC148 and the creation of the SCO in effect superseded this pathway.

Is the Incorporated Document proposed acceptable?

82. The exhibited incorporated document contains a Purpose which is to 'allow the use and development of the land described in Clause 3.0 of this document for an outdoor recreation facility (treetop adventure park), removal of native vegetation and display of advertising



signage, generally in accordance with the plans approved under Clause 5.0 of this document and subject to Clause 6.0 of this document’.

83. It properly describes the location of the land (at Clause 3.0) and then provides an exemption from the need for a planning permit and other matters at Clause 4.0. Clause 6.0 essentially sets out the equivalent of a set of planning permit conditions.
84. The conditions at Clause 6.0 are comprehensive in nature and provide for an expansive list of requirements including specifying that the incorporated document will expire in the event that a lease agreement with the public land manager ceases.
85. I am satisfied that the incorporated document generally provides an appropriate list of requirements to allow the Proposal to be developed and operated in accordance with the requirements of the relevant land managers and other government agencies.
86. In relation to Clause 6.0 and the conditions, I make the following comments:
- Condition 6.2 – This condition requires a separate drainage application to be made to Melbourne Water in accordance with Condition 6.33. Neither condition, however, requires the *approval* of this separate drainage application. Condition 6.27 addresses this in part, however, I consider it would be better to require the approval of this application through Condition 6.2. I suggest this condition be revised to read:

The separate application made direct to Melbourne Water for any new or modified storm water connection to Melbourne Water’s drains or watercourses as required by Condition 6.33 is approved.
 - Condition 6.3 – The word ‘undertaken’ appears to be missing and this condition should be revised to read:

Any revegetation and supplementary planting undertaken must be...
 - Condition 6.4 – I suggest the word ‘works’ needs to be included to provide more context to the ‘landscaping’ to be undertaken. I suggest this condition should be revised to read:



All landscaping works must be...

- Condition 6.5 – I suggest that any landscaping works must also be maintained to the satisfaction of the public land manager consistent with Condition 6.3. I suggest this condition should be revised to read:

Landscape works must be maintained to the satisfaction of the public land manager and the responsible authority...

- I note that Mr Kern expresses some concerns about the requirements of Condition 6.6., which requires a Tree Management and Protection Plan.
- Condition 6.10 – The preamble to this condition does not read clearly and the reference to demolition should be deleted. I suggest it be amended to read:

Unless otherwise agreed in writing by the Responsible Authority, prior to the commencement of works on the site, a Tree Protection Zone (TPZ) must be established around all trees outlined in the endorsed Tree Health and Hazard Arboricultural Report prepared by Advanced Treescape Consulting, dated 31 August 2018 and TMPP approved under Condition 6.6. At least 14 days prior to the commencement of works a 'Statement of Compliance' (from a suitably qualified project arborist) must be provided to the satisfaction of the Responsible Authority including photographic evidence of compliance with the requirements of Condition 6.10(d). This correspondence must be sent to enquiries@banyule.vic.gov.au. Once TPZs have been installed to the satisfaction of the Responsible Authority the TPZs must be maintained until the conclusion of works to the satisfaction of the Responsible Authority, and must meet the following requirements:

- Condition 6.14 – This is a 'standard' amenity style condition more commonly suited to commercial or industrial developments. I do not consider it to be needed for the Project.
- Condition 6.16 – I understand there will be no outdoor lighting proposed and this condition is not needed.

- Condition 6.18 – Similar to my comments with respect to Condition 6.14, I do not consider this condition to be necessary for the Project.
- Condition 6.19 – Similar to my comments with respect to Condition 6.16, I understand there to be no music noise or similar proposed and this condition can be deleted.
- Condition 6.20 – I note in part b) that a commencement time is listed, but a commencement time is not listed in relation to part a). I suggest part a) should also be provided with a commencement time and consider 9am to be reasonable.
- Condition 6.21 – Given the environment within which the Project is located, I do not consider that line marking is appropriate given this is more typically a 'urban' as opposed to 'rural' requirement.
- Conditions 6.23 and 6.24 – I suggest these two conditions could be combined into one condition to simply read:

The sign(s) permitted by this document must not be illuminated in any manner except with the prior written consent of the Responsible Authority and public land manager.

87. Finally, the provision of notes at Clause 8.0 within an Incorporated Document is not appropriate and these should be deleted.

Are there any other material town planning matters raised in submissions?

88. Having read through the submissions received to the Project, the vast majority opposed to the Project are concerned with the commercialization/ loss of public land. Submissions opposing the Project also raised issue with impact on flora and fauna, existing vegetation and traffic impacts. Those particular matters are outside of my expertise and are covered by other evidence. Alternatively, submissions in support of the project primarily highlighted the introduction of a new facility within the area which would be positive for families.





89. I agree that the 'use' question is the predominant question. I, however, do not agree with opposing submissions that the use of the Project Land is inappropriate for the reasons I have set out.



CONCLUSION

90. My conclusions are summarised below:

- The proposed use of the Project Land is acceptable from a planning policy context perspective. There is clear policy support for the sustainable development of land which extends to public land. Policy recognises that there are opportunities on public land for recreational/ tourist developments which have minimal impact.
- The extent of buildings and works is equally acceptable having regard to the minimal scale of buildings and works, their minimal size and their minimal impact on the broader landscape.
- The Amendment is strategically justified and the use of the SCO to facilitate the Project is appropriate.
- The content of the Incorporated document is acceptable subject to my recommendations.

91. I consider that the Project and Amendment will help deliver a net community benefit and promote sustainable development for existing and future Victorians. The Amendment is appropriate and should be supported.

92. I have made all inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.



John Glossop MPIA
Director
Glossop Town Planning Pty Ltd
25 June 2021





REQUIREMENTS UNDER PPV'S GUIDE TO EXPERT EVIDENCE

93. This statement is prepared by John Glossop, Glossop Town Planning Pty Ltd, Level 5, 111 Cecil Street, South Melbourne. I am the Director of the firm. The firm has been in business since 1997.
94. I have a Bachelor of Arts (Urban Studies) Hons. I have been engaged in the following positions and roles in my career as a planner including:
- Former planner with the Shire of Newham and Woodend (prior to its amalgamation with the Macedon Ranges Shire).
 - Strategic and Social Planning Manager, Shire of Melton until 1997.
 - Sessional member, Planning Panels Victoria between 1997-2012.
 - Member of the ResCode Advisory Committee 2000.
95. I have sat as Chairman or member on a number of planning scheme amendments, dealing with a broad range of issues from high-rise housing in Williamstown, the redevelopment of Pentridge Prison and the application of flooding overlays in the Mornington Peninsula Shire.
96. I was a sessional lecturer and tutor in strategic, statutory planning and urban studies at Victoria University of Technology (1996-99) and lecturer in statutory planning Latrobe University Bendigo (2000- 02). I am currently a sessional lecturer in Statutory Planning and Environment at the Royal Melbourne Institute of Technology University.
97. I have considerable experience in statutory and strategic planning and new format planning schemes. My expertise to make this statement is based on a combination of my experience working in metropolitan Melbourne and regional Victoria, an understanding of the site and my experience as a planner in both the private and public sectors.
98. I have been instructed by PE Law, on behalf of Ecoline Pty Ltd, to provide an opinion on the town planning merits of the Project and Amendment c107bany. My office was not involved





in the preparation of Amendment C107bany or any preceding related matters. I was engaged following the Directions Hearing.

99. I have relied on the documents referred to in the introduction section of my statement.

100. There were no tests undertaken in the preparation of this statement.

101. I was assisted in this statement by Hew Gerrard, Senior Associate of my office.





APPENDIX A: POLICY CONTEXT

Planning Policy Framework

102. Within the Planning Policy Framework (the “PPF”), the following policies are considered particularly relevant to this matter:


- Clause 11.01 ‘Victoria’.
- Clause 12.03 ‘Water bodies and wetlands’.
- Clause 12.05 ‘Significant environments and landscapes’.
- Clause 13.03 ‘Floodplains’.
- Clause 15.03 ‘Heritage’.
- Clause 17.04 ‘Tourism’
- Clause 19.02-6S ‘Open space’
- Clause 19.02-6R ‘Open space – Metropolitan Melbourne’

103. I have considered each of these clauses in the preparation of my evidence. My assessment of the relevant parts of these clauses is provided at Section 2 of this statement.

Local Planning Policy Framework

104. The following clauses within the Local Planning Policy Framework (the “LPPF”) are particularly relevant to this matter:

- Clause 21.01 ‘Municipal profile’
- Clause 21.02 ‘Vision and strategic framework’
- Clause 21.03 ‘Cultural heritage’

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- Clause 21.04 'Land use'
 - Clause 21.05 'Natural environment'
 - Clause 21.09 'Reference documents'.

105. I have considered each of these clauses in the preparation of my evidence. My assessment of the relevant parts of these clauses is provided at Section 2 of this statement.