

**IN THE MATTER OF AMENDMENT C107 TO THE BANYULE PLANNING SCHEME  
PLANNING PANELS VICTORIA**

**SUBMISSION ON BEHALF OF ECOLINE PTY LTD (PROPONENT)**

<b>Proponent</b>	Ecoline Pty Ltd
<b>Planning Authority</b>	Banyule City Council
<b>Subject Land</b>	Part of the land known as 340-680 The Boulevard, Ivanhoe East (Yarra Flats)
<b>Date of hearing</b>	5-9 July 2021

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**1. INTRODUCTION**

- 1.1 These submissions are made by Treetop Adventures Holdings Pty Ltd on behalf of Ecoline Pty Ltd, as proponent of Amendment C107 to the Banyule Planning Scheme (**Scheme**).
- 1.2 These submissions are accompanied by a package of attachments that will be referred to during the hearing.
- 1.3 The proponent relies on the expert evidence of various witnesses, as previously filed in relation to town planning, ecology, arboriculture and traffic and car parking.

**2. BACKGROUND TO AMENDMENT C107**

- 2.1 Amendment C107 applies to the land known as 340-680 The Boulevard, Ivanhoe East (**Subject Land**).
- 2.2 Amendment C107 has been in the planning pipeline for some time.
- 2.3 The expression of interest which led to the tender process by Parks Victoria was held in 2009. Ecoline was appointed as the selected tenderer in 2010.
- 2.4 This led to the development of a Concept Plan for the Yarra Flats, prepared by Parks Victoria between 2010 and 2013, with associated consultation.

- 2.5 In 2014, Parks Victoria advised Ecoline to secure planning permission. This led to the engagement of Perry Town Planning as the planning consultant for the proposal.
- 2.6 In 2015 Council advised Perry Town Planning to proceed via a planning scheme amendment process. The use of an Incorporated Plan was seen as appropriate having regard to the public consultation that occurred through the development of the Yarra Flats Concept Plan.
- 2.7 In December 2015 Ecoline and Parks Victoria presented to a Council meeting to assess the planning process. The Council subsequently advised that its preference was to pursue a combined planning permit and planning scheme amendment process.
- 2.8 In 2016 delays were encountered as a result of the election process. Melbourne Water also advised that the reception area was to be relocated to 600mm above the flood level.
- 2.9 In April 2017, Melbourne Water advised that it had no objection, subject to conditions requiring amendments to the office design.
- 2.10 In January 2018 draft planning scheme amendment documents were sent to the Council.
- 2.11 In May 2018 documentation was lodged for a combined permit and planning scheme amendment process.
- 2.12 In July 2018 the Council sought further information including an updated arborist report, a heritage report, confirmation of the flora and fauna assessment and other matters.
- 2.13 A revised application was lodged in December 2018, including:
- a revised draft permit with revised conditions in accordance with Council's letter dated 30 June 2018;
  - a native vegetation removal report dated 9 November 2018;
  - a flora and fauna assessment, native vegetation assessment and Land Management Plan prepared by Practical ecology dated December 2018; and
  - an updated Incorporated Document.
- 2.14 In October 2019 the Council resolved to seek authorisation to exhibit Amendment C107.
- 2.15 By letter dated 17 July 2020, the Department of Environment, Land, Water and Planning (**DELWP**) advised that authorisation to prepare Amendment C107 had been granted, but was conditional on the following changes being made:

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.
- 2.16 This resulted in provision of amended planning documents which were subsequently exhibited, including:
- a revised town planning submission dated September 2020; and
  - a revised version of the Incorporated Document, dated September 2020.
- 2.17 Amendment C107 was then placed on exhibition between October to December 2020, following the local government elections.
- 2.18 On 1 March 2021 the Council resolved to refer unresolved submissions to an independent panel.

### 3. PROPOSAL

- 3.1 The town planning submission describes the proposal as follows:

The proposal is described as a tree based adventure park, where participants slide down flying foxes, move from tree to tree on suspension bridges and other challenges within the established tree canopy across the site.

Parks Victoria, the land manager of Yarra Flats Park, has provided consent to Ecoline Pty Ltd to develop part of the park for the unique eco-tourism experience, "TreeTop Adventure Park".

The existing amenities building with toilets and washrooms located outside of the TreeTop Adventure Park, between Car Park 1 and Car Park 2. The toilets are however closed, with the nearest toilets at Banksia Park or Warringal Parklands. The proponent intends to upgrade the existing facilities which will be reopened to the public and utilised by TreeTop Adventure Park visitors.

Parking for 127 cars will be accommodated by way of two existing car parks (Car Park 1 and Car Park 2 – refer to Figure 1 for locations) within easy walking distance of the TreeTop Adventure Park entrance. Both car parking areas are currently closed off to the public and are underutilised. Shuttle bus pick up and drop offs can be

accessed via a loop track at the entrance of the adventure park, catering for a maximum of a 12.5m length coach bus.

The proposal also involves the construction of a site office on higher ground for administration purposes. The site office is identified as an “Administration Area” within Figure 11 below, and will consist of two (2) simple, timber clad shipping containers which will be appropriately anchored to the ground for stability during potential flooding in significant storm events. Pre-development advice has also been issued by Melbourne Water previously on 27 June 2016 with support provided for the site office, subject to conditions [Attachment A] as a mitigating measure to reduce impact from severe flood events.

3.2 The facility is described as follows<sup>1</sup>:

TreeTop Adventure Park offers obstacle course facilities in the tree tops open to a wide range of ages and abilities. It allows participants to have fun while being active in the outdoors, pushing their limits and learning about the environment. TreeTops at Yarra Flats will comprise of 8 courses with a total of 90 challenges. A course is a series of challenges suspended between the trees, with the aim being to complete each challenge in order to move from one platform attached around a tree to the next. The average time for participants to finish the courses is usually around 2 to 3 hours.

Challenges include flying foxes, nets, Tarzan jumps, timber planks that swing as you step from one to the next and many other ingenious apparatus. Each course is customised and designed with graded difficulty so participants can progress safely, at their own pace. They are colour coded according to difficulty and adapted to age groups. When participants finish one course they can move to the next or return in the future to take up the task. This encourages return visitation and, with courses updated on a regular basis, even a guest who has completed all courses will enjoy coming back for more surprises.

- 3.3 The proposed course maps described in the exhibited amendment documents are to be revised in accordance with the amended course ap circulated to the Panel.
- 3.4 At any given time, up to 75 patrons will have access to the course. The right to use the course will be indicated by a tie tag attached to the harness of patrons, which will advise when a session has finished.
- 3.5 The amenities block will be upgraded. As this is outside the site area, the contribution towards upgrade to the amenities block will be enforced as a condition of the lease with Parks Victoria.
- 3.6 The existing car parking area adjacent to the site, which is currently closed off by rock barriers, will also be refurbished in accordance with the terms of the lease.
- 3.7 A revised course map and associated drawings were circulated pursuant to the panel’s directions. These show:
  - relocation of the kiosk closer to the car park, away from the root zone of Tree 1;

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<sup>1</sup> Planning Report, Perry town Planning September 2020, p. 15.

- the deck around Tree1;
  - additional surveyed trees which do not form part of the course;
  - the layout of a proposed pathway between the courses.
- 3.8 Mr. Kern has updated his description of the Management Zones in the revised flora and fauna assessment appended to his witness statement. A copy of the revised Land Management Plan used to calculate offsets is set out in **Annexure A**. The revised flora assessment provides greater clarity of detail as to the relationship between the pathway and the existing trees.
- 3.9 Though Mr. Kern's Land Management Plan assumes a 5m 'loss zone' around the course area, this results in over estimation of the losses associated with the proposal. Canopy vegetation is to be retained, although some pruning will be required. The ground layer is heavily affected by weeds. To a significant extent, natural regeneration and plantings will contribute to an improved vegetation landscape.
- 3.10 No trees are to be removed. The proposal involves removal of dead wood within canopies, some pruning to achieve clearance for cables and decking around trees and clearing of ground level vegetation (where required) to create the pathway shown on the course map plan.
- 3.11 The panel will by now be familiar with the material submitted in support of Amendment C107, which are referred to in the draft Incorporated Document. Amendments to the Council's Day 1 Version of the Incorporated Document are set out in **Annexure C** to these submissions.

#### 4. HISTORY AND EXPERIENCE

- 4.1 Ecoline and its associated brands (Treetops) have developed and operate many similar courses in New South Wales, Tasmania, Western Australia and Victoria.
- 4.2 Experience and operational procedures are addressed in **Annexure B**.

#### 5. RELEVANT DECISIONS

- 5.1 Though treetop adventure courses are a contemporary use of land, this is not the first such proposal to be assessed.
- 5.2 Similar proposals have been approved by VCAT in:
- *Flaster v Yarra Ranges SC* [2009] VCAT 1092 (**Flaster**);
  - *Great Ocean Road Adventure Park Pty Ltd v Surf Coast SC* [2016] VCAT 1185; and
  - *Adventure Forest Pty Ltd v Mornington Peninsula SC* (VCAT Reference P285/2010), which was settled by consent (**Adventure Forest**).
- 5.3 Copies of these decisions and approvals are provided.

- 5.4 Adventure Forest is the popular tree course at Arthur Seat, which is within the Enchanted Maze Garden complex. A copy of the conditions attached to the consent order are provided to assist the Panel.
- 5.5 Andrew Patrick was the arborist engaged to peer review the arboricultural report prepared for the proponent in Adventure Forest. In that case Mr. Patrick peer reviewed the work of Otto Leenstra. A copy of his endorsed peer review is provided to assist the Panel.
- 5.6 In this case:
- the Council has engaged Otto Leenstra to peer review the arboricultural assessment prepared by Russell Kingdom in 2018;
  - Treetops has engaged Mr. Patrick to carry out a peer review of the Russell Kingdom report, on the basis of his experience with similar proposals.
- 5.7 Mr. Patrick's was also engaged in relation to the Belgrave facility approved in Flaster. Mr. Patrick's expert statement indicates his significant experience with similar proposals. The panel may wish to visit the Belgrave facility and the proponent is willing to facilitate such a tour.
- 5.8 The proposal is supported by three arboricultural expert reports.

## **6. REFERRAL AUTHORITIES**

- 6.1 Amendment C107 is supported by relevant referral authorities including the DELWP, Parks Victoria and Melbourne Water.
- 6.2 Melbourne Water notes that the land is flood prone and may be inundated from time to time. Amendments have been proposed to the Incorporated Document to address this issue.
- 6.3 The Incorporated Document will include a flood management plan, which will include requirements for when the use must cease operations. This should be viewed in the context of the governance regime for the Yarra Flats in its entirety, noting that there are boom gates at the entrance, which can be closed during flood periods, or when required in the event of elevated bushfire risk.

## **7. ADEQUACY OF NOTICE**

- 7.1 The proponent notes the Council's assessment of compliance with the notice requirements in the *Planning and Environment Act 1987 (PE Act)*. It notes that this proposal has been on the agenda for some time.
- 7.2 Consultation also occurred in the course of developing the Yarra Flats Concept Plan. The consultation for the Yarra Flats Concept Plan indicates the strong level of support for the proposal by people consulted at the Yarra Flats.

## 8. STRATEGIC JUSTIFICATION

- 8.1 The proponent endorses the submission made on behalf of the City of Banyule in its capacity as planning authority for Amendment C107.
- 8.2 From a functional point of view, Amendment C107:
- is required to avoid the complexities of the ‘by or on behalf test’ given that recent Tribunal decisions have taken a restrictive view of how this test is met;
  - facilitates a development that Parks Victoria could carry out itself, without the need for a planning permit.
- 8.3 It is submitted that the strategic justification for Amendment C107 is illustrated by the following:
- the response to the strategic assessment guidelines outlined in the Explanatory Report exhibited with Amendment C107;
  - the reservation status of the land under the *Crown Land (Reserves) Act 1978 (CLR Act)*, as including recreational purposes;
  - the submissions on behalf of the planning authority;
  - the support of Parks Victoria as the relevant public land manager;
  - policy relating to nature based tourism and the use of land within the Yarra River Corridor; and
  - the expert town planning evidence of Mr Glossop.
- 8.4 As to this, it is significant that there is no contrary town expert planning evidence before the Panel.
- 8.5 The following submissions touch on these themes. But also consider:
- other examples of recreational uses within the Public Conservation and Resource Zone (**PCRZ**);
  - Crown land management classifications; and
  - the need to balance the interests of all Victorians, including children and teenagers, who may not generally participate in panel hearings, but are nonetheless important stakeholders.

### **The need for Amendment C107**

- 8.6 The Explanatory Report for C107 states, relevantly:

#### **Why is the amendment required?**

The planning scheme amendment has been requested by Ecoline Pty Ltd, who have been granted a lease from Parks Victoria to develop and operate a treetop-based adventure facility on the site.

The facility, which seeks to operate on a commercial basis, offers a self-guided high ropes course within the established tree canopy. It will consist of eight courses of differing difficulties. The ropes course and administration office are designed to be temporary and will leave no footprint once removed.

As the treetop adventure park will be managed by a private operator under lease from Parks Victoria and not directly by Parks Victoria itself (the public land manager), this makes the use prohibited under the Public Conservation and Resource Zone that applies to the site. Therefore, a SCO is required in the Banyule Planning Scheme to allow the proposal to occur. The proposal will be subject to the controls contained in the Incorporated Document.

The SCO is preferred over other strategic adjustments, such as rezoning, as it will allow the use to occur, and in time to cease, without affecting the surrounds while having operated in a manner in keeping with the purpose of the zone.

The proposed use is consistent with the purposes of the zone including: “to protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values” and “to provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes”. The tree-based adventure course was proposed in the Yarra Flats Park Concept Plan 2013 that was prepared by Parks Victoria in association with Banyule City Council and Melbourne Water. The preparation of Yarra Flats Concept Plan involved extensive consultation with stakeholders, including members of the community and surrounding residents.

- 8.7 The application of the Specific Controls Overlay is really an implementation mechanism. It should not be seen as a vehicle that may inappropriately undermine the relevant land management objective of public land.

#### **Permissible uses in the PCRZ**

- 8.8 While the use is a nature based tourism and recreational use that provides an educational and interpretive experience of the treed canopy, it is relevant to consider other uses that are allowed within the PCRZ.
- 8.9 A caravan and camping park is a section 1 use, if carried out by or on behalf of the public land manager, or in accordance with an incorporated plan.
- 8.10 A user pays car park could be operated in this zone, without a permit, if conducted by or on behalf of the public land manager.
- 8.11 The extent of ‘activity’ allowed in a coastal reserve as part of a camping and caravan park is significant. Yet, the planning system facilitates them in a responsible manner. In the same vein, this proposal can be facilitated in a responsible manner, while respecting the strategic objectives for this part of the Yarra River corridor.
- 8.12 The proposal is characterised as an Outdoor Recreation Facility. This use is not specifically listed in the Table of Uses in the PCRZ. Innominate uses must be



conducted by or on behalf of a public land manager to remain section 1 uses. If Parks Victoria wanted to, it could operate this facility itself without the need for a permit. The reason C107 is required is because the public land manager is not equipped to deliver a use such as this.

- 8.13 This merely reflects the partnerships approach adopted by government to facilitate the use and development on public land. There is nothing particularly novel about that.
- 8.14 As the Council submission notes, recent decisions have adopted a strict view of the 'by or on behalf of test.
- 8.15 The constraints imposed by the test is illustrated by the decision in *Wertheimer v Bayside CC* [2017] VCAT 726, where a surf life-saving club was found not to meet this test.
- 8.16 Amendment C107 merely removes any doubt that a commercial partnership can be utilised to deliver a recreational asset.

#### **Aligning planning controls with reservation status**

- 8.17 The Council submission notes that the land is reserved under the *Crown Land (Reserves) Act 1978 (CLR Act)* for the purposes of conservation, recreation, leisure, and tourism.<sup>2</sup> The inclusion of recreation within the reservation status is important, in assessing the strategic justification.
- 8.18 Consistent with this reservation, the site is designated as a Recreational Management Zone within the Yarra Valley Parklands Management Plan 2008 (**YVPMP**). This is addressed later in these submissions.
- 8.19 Section 46(2) of the *Planning and Environment Act 1987 (PE Act)* provides, relevantly:
  - (2) If a provision of a planning scheme is expressed or purports to deal with land that has been permanently reserved for any purpose under the Crown Land (Reserves) Act 1978 or any part of that land in a manner which is inconsistent with the purpose of the reservation, the provision does not take effect until the reservation of that land or part is revoked by or pursuant to an Act of Parliament.
- 8.20 If Yarra Flats were permanently reserved for recreational purposes, a provision of a planning scheme would be ineffective, if it sought to preclude its use for that purpose. In the case of land that is temporarily reserved, as is the case here, the PE Act does not preclude the planning scheme from regulating its use and development for other purposes. However, it is fair to ask whether a planning scheme should preclude the use of reserved land for recreation, where the land is reserved for recreational purposes and designated for those purposes within Parks Victoria's Management Plan for the Yarra Valley Parklands.

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<sup>2</sup> Council submission, paragraph 135.1

- 8.21 Amendment C107 is justified, in part, as it facilitates the use and development of land for recreational purposes, consistent with the terms of its reservation under the CLR Act.

**Facilitation of commercial uses on Crown land**

- 8.22 The proponent agrees with the submission of Council that the use of the land by a commercial operator is not a planning issue, but a government policy issue.<sup>3</sup> It is hard to see how, as a matter of principle, such an objection can be sustained, given that public authorities frequently lease or licence the use of public land to deliver services which are in the public interest.

- 8.23 Of course, if the land was to be leased for a shopping centre, that would be completely inappropriate within the PCRZ. But the use here complements the parkland setting and provides for nature based recreation. It has an affinity with the zone.

- 8.24 Uses such as restaurants do exist within the PCRZ as part of a marine development at Mornington Harbour. But the relationship there is complementary.

- 8.25 Similarly, the Coppin jetty at the Sorrento foreshore which is within the PCRZ, forms part of a lease issued to the tenant of the adjoining restaurant. Guests of private functions held at the restaurant can land by boat at the jetty, which provides an immersive nature based experience. The tenant is required to fund refurbishment of the jetty as part of the lease conditions, which included a new landing for use by the public. The upgrade of the 'Coppin' jetty was the subject of a recent decision in: *Nepean Conservation Group Inc. v Mornington Peninsula SC* (Corrected) [2020] VCAT 990. In that case Senior Member Potts said:

24 The implications of this arrangement do not appear to have carried through to the permissions for the development. Under the PPRZ and PCRZ, permits are not required to construct a building or carry out works by or on behalf of a public land manager under a range of acts, including the CLR Act. The lease obligations to maintain the jetty carry through only to remedial works as set out under schedule 4 of that lease. Mr Gibson is not obligated to undertake the extent of the works that he has sought permission for. It is submitted that given the costs of the remedial works, Mr Gibson has elected and the DELWP accepts that the money is better spent on reconstruction to provide for a longer-term benefit.

25 Arguably it might be concluded that the works are to the benefit of, and being carried out on behalf of the public land manager, as the works arise from the lease agreement (made under the CLR Act) to manage the condition of the jetty so as to be available for public use. However, this was not pursued by either the Council or Mr Gibson.

- 8.26 In that case objectors were concerned about a 'davit' structure within the leased jetty, which was to be closed to the public. A davit is a structure that allows small watercraft to be hoisted up and onto the jetty or back into the water. The Tribunal did not uphold that objection:

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<sup>3</sup> Council submission, paragraph 300.

- 78 The NCG asserts that the use of the davit to house a watercraft for the use by Mr Gibson's business is inappropriate and amounts to private use of the public jetty. Mr Gibson's reasons for the davit structure are indeed largely about the use of a watercraft for his business. Other public benefits may arise, as he has indicated, but I do not rely on such benefits in arriving at my conclusion that such a structure or its use warrants its removal from jetty design.
- 79 The public land manager and owner of this structure does not object, albeit on the basis that once Mr Gibson's lease is finished, he must remove the davit. That is an appropriate condition to ensure no other inappropriate private use is made of the structure. However, the fact that Mr Gibson intends to use the davit for his business does not offend the planning scheme. It supports the use of the jetty and his business and other activities that are undertaken along the foreshore by others. That is a reasonable purpose for such a structure. I can find no good planning reason to interfere with this arrangement.

- 8.27 The balance of the jetty was available to the public, but the public were to be excluded from the davit structure. In this case, the davit structure is akin to the airspace within the canopies, where the ropes course will exist.
- 8.28 It is necessary to ask whether there is any material difference between facilitating private marine transport arrangements as part of a public jetty within the PCRZ, and the delivery of a tree based adventure course within a portion of a public park? Both allow greater access to nature based experiences.

#### **Facilitating nature based tourism on public land**

- 8.29 The Council submission refers to the Nature Based Tourism Strategy at paragraphs 152-155. An extract is quoted which suggests that some investment opportunities are not being released because of some regulatory settings relating to land use planning and public land.
- 8.30 In the past 30 years, nature based tourism has grown in importance. More people now spend time and money on recreational activities that involve professional operators. Obvious examples include gymnasium classes held in public open space, guided walking tours, guided tours for mountain biking or canoeing.
- 8.31 In the context of the Arthurs Seat Gondola, a new gondola was facilitated within the Arthurs Seat National Park after the previous chairlift collapsed. Legislative amendments to the *National Parks Act 1975 (NP Act)* were required to facilitate a new lease.
- 8.32 The Arthurs Seat Gondola is an example that illustrates where there is, from time to time, the need to accommodate sustainable redevelopment of Crown land that is in the interests of Victorians, that may require decision makers to look at existing planning frameworks in a different way. The construction of a modern enclosed gondola was facilitated by legislation, because it was within a national

park setting, where significant restrictions apply. In 2013, the following amended provision was inserted into the *National Parks Act 1975*<sup>4</sup>:

#### **16 Arthurs Seat chairlift licence**

For section 32CA(4) of the Principal Act substitute— "(4) For the purposes of subsection (3)(c), the Minister must ensure that the lease is subject to conditions that prevent or minimise any adverse impact on the park (including its natural, indigenous, historic, cultural, landscape and recreational values) by the development or use of the land that is permitted under the lease."

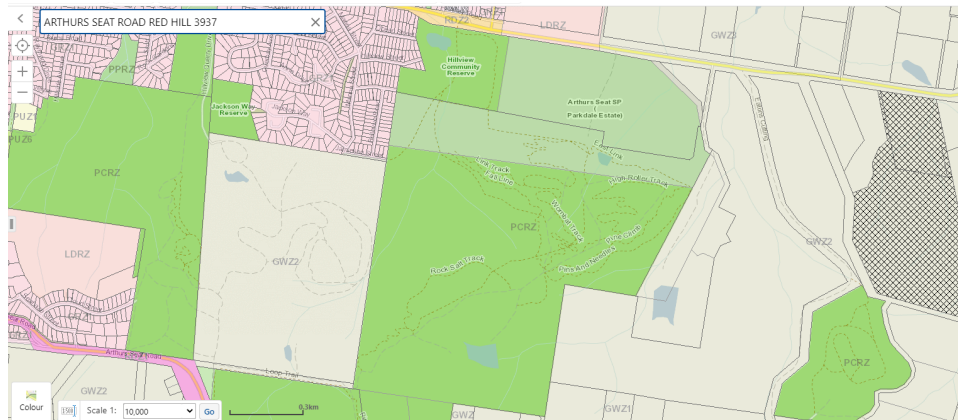
- 8.33 Sections 32CB – 32CD were inserted by the amending legislation, which provided for a public consultation process around the grant of the lease.
- 8.34 This merely reinforces that governance regimes regarding Crown land (including national parks) are dynamic. It is not always a case of locking up Crown land and throwing away the key.
- 8.35 Since the new gondola has been built, a new mountain bike course has been developed directly beneath it. Mountain bikers are now able to use the gondola to get back to the top of the course in much the same way as skiers use chairlifts in Alpine Ski Resorts. They pay for the privilege.
- 8.36 The NP Act does not require amendment to facilitate this proposal, but a planning scheme amendment is required.

#### **Comparable recreation uses within the PCRZ**

- 8.37 The panel is requested to compare this proposal to other recreational uses within Crown land settings. The proposal is, in relative terms, a light touch on the environment, compared with many uses that government facilitate within Crown land settings including, but not limited to:
- ski fields in Alpine National Parks;
  - mountain bike trails within State Parks such as Red Hill;
  - commercial tourism uses permitted along the coastal waters of Port Phillip Bay, within the PCRZ; and
  - four wheel driving and recreational hunting on Crown land.
- 8.38 As can be seen below, the Red Hill South mountain bike course is located on land in the PCRZ.

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<sup>4</sup> See, for example, section 16 of the *National Parks Amendment (Leasing Powers and Other matters) Act 2013 (2013 Amending Act)*.



- 8.39 The website of the Red Hill Riders provides more information in this context (<https://www.redhillriders.com.au/trails/>).
- 8.40 Mountain bike trails are controversial within some sections of the community. There are some conservationists who would prefer that they be excluded from public land. But the government facilities such uses, knowing that there is strong demand for them.
- 8.41 Plenty of other examples can be identified. Including:
- commercial 'marine' uses operating within the PCRZ within the coastal zone of Port Phillip Bay;
  - the Mornington Boat Harbour within the Mornington Coastal Reserve (which includes commercial restaurants and boat storage);
  - surf life savings clubs and skate parks.
- 8.42 To the extent that there are objections to the proposal, as a form of 'active recreation' within Yarra Flats it is submitted that an adventure course should be seen, no differently than a mountain bike course or other forms of approved outdoor recreation that are allowable in the PCRZ.
- 8.43 The environmental impact of this proposal is much less than a caravan and camping park, which generally involve extensive clearing of understorey. If a caravan and camping park can be 'as of right' subject to the approval of an Incorporated Document, then it is not a great leap to find that a treetop adventure facility can be justified, in accordance with the terms of a suitably worded Incorporated Document.
- 8.44 The test for strategic justification recognises that a planning scheme amendment may be needed. As such, it is not necessary to prove the use is entirely consistent with the existing zone.

#### **Statewide Assessment of Public land, VEAC (2017)**

- 8.45 The land management classification system for Crown land is sophisticated and layered. It is arguable that the Victoria Planning Provisions (**VPP**) are not

necessarily adapted to facilitate contemporary nature based recreational uses on public land.

- 8.46 It is fair to observe that these classifications applied by VEAC are more detailed, than the relatively blunt choice between the Public Park and Recreation Zone (**PPRZ**) and the PCRZ. It may be observed that treetop adventure courses are a relatively new use that has emerged over the past ten years, that sits somewhere between passive and active recreation, in the traditional sense.
- 8.47 It is in the interests of orderly planning to align planning controls for Crown land, with the classification of that land within the Crown land reserves system.
- 8.48 In 2017 the Victorian Environment Assessment Council (**VEAC**) published its Statewide Assessment of Public Land. The report includes a range of recommendations for reform of public land management classifications. Recommendations for classification of parks and reserves, and their respective management purposes commences at page 28 of the report.
- 8.49 The recommendations should be noted in their totality. However, the following recommendations are of particular note:
- The revised public land use categories and overlays in table 3.2, which forms part of this recommendation, with their corresponding purposes be incorporated in the relevant legislation, replacing existing purposes (R1).
  - Within 5 years the National Parks Act be expanded to include revised categories of national parks, conservation parks, nature reserves, marine protected areas, and other categories and overlays classified as protected areas, to become the National Parks and Conservation Reserves Act (R5).
  - Within 5 years, a new public land Act be developed to replace the Land Act 1958, the CLRA and the Forests Act 1958 (R6);
  - Standard regulations be developed for groups of public land categories in the revised system, together with amendments to the Crown Land (Reserves) Act that provide a simplified means to revoke any existing regulations when new regulations are made (R8).
  - With the agreement of Traditional Owners and native title holders, parks and reserves with Aboriginal title and/or joint management or co-management arrangements be depicted in public land maps and signage in a way that appropriately recognises the form of ownership and management (R29).

### **Balancing the interests of all Victorians**

- 8.50 Having regard to the objectives of the PE Act, it is clear that planning should balance the interests of all Victorians, including both the present and future generations.
- 8.51 Section 4(1)(f) of the PE Act seeks to ‘facilitate development’ in accordance with paragraphs (a)-(e). Section 4(1)(g) seeks to balance the present and future interests of all Victorians.

8.52 People under the age of 18 don't generally participate in planning processes. They are not generally regarded as owners or occupiers of land entitled to notice. However, it is fair to suggest that mountain bike parks and adventure courses are particularly popular with younger generations.

8.53 The process should balance the interests of those who would be more likely to use the proposal, with those who would prefer that the Yarra Flats be managed as a pristine wildlife refuge, without any interference from humans.

#### **Other elements of strategic justification**

8.54 In addition to the reasons set out above Amendment C107 is justified having regard to:

- the submissions on behalf of the planning authority;
- the support of Parks Victoria as the relevant public land manager;
- the policy relating to nature based tourism and the use of land within the Yarra River Corridor; and
- the expert town planning evidence of Mr Glossop.

8.55 These submissions now turn to the policy questions.

## **9. POLICY ASSESSMENT**

### **Introduction**

9.1 The proponent notes and endorses the policy assessment contained in the submission for the Council.

9.2 It is not intended to duplicate that assessment in these submissions. Rather, these submissions will:

- summarise the key themes arising from the relevant policies and strategies; and
- address aspects of the relevant policies in greater detail; and
- address the draft Yarra Strategic Plan and the draft Bulleen Land Use Framework Plan (**BLUFP**).

### **Themes emerging from policy**

9.3 It is submitted that the applicable policies:

- note that the Yarra Valley Parklands are a valued conservation and recreational asset valued by all sections of the community;
- note the significant use of the Bulleen Precinct for recreational activities;

- do not exclusively reserve the site for conservation purposes to the exclusion of recreational or other purposes. The management plan adopted by parks Victoria designates the site for recreational purposes;
- seek to balance recreational use with environment and cultural values within the Yarra Corridor;
- seek to promote commercial partnerships with Parks Victoria where appropriate; and
- seek to promote the visitor economy and encourage Victorians to get outdoors and lead healthy lifestyles.

9.4 In light of these policy themes, Amendment C107 can be seen as:

- addressing the possibility that the planning controls constrain the potential use of the land in a manner that is inconsistent with purposes for which the land is reserved under the CLR Act;
- responding positively to policy directions that seek to get Victorians off the couch and leading healthy lifestyles;
- diversifying the recreational offering in Metropolitan Melbourne, so that Melburnians do not have to travel beyond the Urban Growth Boundary to access innovative recreational experiences;
- realising land management objectives for weeds and environmental management;
- facilitating innovative and contemporary recreational land use, for which there is clear demand;
- supporting the visitor economy; and
- facilitating opportunities to celebrate indigenous culture, land management and cultural values.

9.5 The proposal represents an opportunity for Melburnians to immerse themselves in nature, within a metropolitan context, rather than simply riding their bikes along the Yarra River. This might inspire some to spend more time outdoors. Young Melburnians, in particular, should be given convenient opportunities to access such facilities by public transport, or active transport modes, rather than being forced to travel outside Metropolitan Melbourne.

9.6 It is common that strategic planning decisions are made with 'commuters' in mind, to achieve the 20 minute city. But the 'sustainable' transport needs of younger Victorians should not be forgotten. There is a regional bike path running through the Yarra Flats. This proposal would represent an exciting destination along that trail. At present the site is crying out for refurbishment and improved passive surveillance.



- 9.7 The policy context should be applied in this case, cognisant that the land is reserved for both conservation and recreational purposes under the CLR Act.

### **The Yarra Valley Parklands Management Plan**

- 9.8 Parks Victoria's submission to the BLUFP Advisory Committee is attached to these submissions. It makes reference to the Yarra Valley Parklands Management Plan, 2008 (YVPMP).
- 9.9 The YVPMP describes the management framework as follows<sup>5</sup>:

#### **Management Framework**

The management of the parklands will be underpinned by a number of guiding principles, which link broadly to Melbourne's Open Space Strategy, Linking People and Spaces, and strategic directions that are specific to the Yarra Valley Parklands.

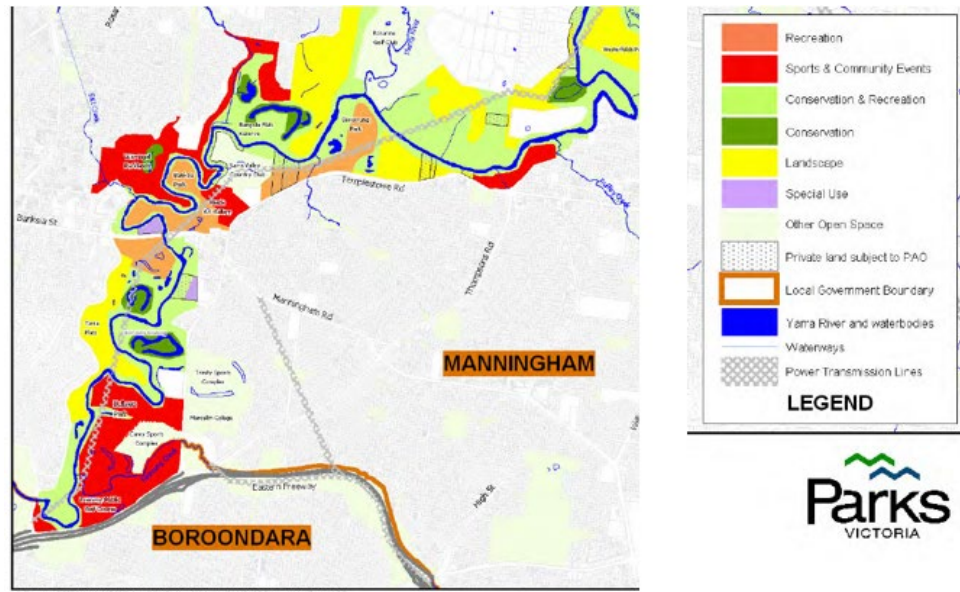
The parklands have been divided into seven management zones. These management zones reinforce the identity of particular areas within the Parklands, and provide a framework to direct decision making and to determine how Parks Victoria and other public agencies will manage the land as well as providing direction for the future management of private land under consideration for possible incorporation into the parklands.

While the park-wide and management zone actions provide guidance on issues that are current or have been anticipated through the planning process, the ongoing management of the parklands will occur within a changing social, political and economic environment. The plan will therefore also be used as a decision making framework to respond to proposals and issues that may arise in the future.

- 9.10 Map 3 as annexed to the YVPMP identifies this part of the Yarra Flats as being within a Management Zone designated for 'Recreation'. By contrast the Bolin Bolin Billabong and the Annulus Billabong are designated in dark green as being managed for 'Conservation' with the light green areas surrounding those assets designated 'Conservation & Recreation'.

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<sup>5</sup> Executive Summary, (p. ii).



9.11 The following description of recreational values appears within the YVMP (p. 5):

Yarra Valley Parklands have established visitor facilities that provide a range of recreational and open space opportunities for visitors. Parks Victoria provides four major visitor sites that cater for large visitor numbers.

Westerfolds is the most developed of these and has the greatest range of visitor settings and facilities. Local councils own and manage large areas of open space within the parklands that are established as active and passive recreation areas. Additional minor visitor sites throughout the parklands cater for small groups and individuals, particularly in areas with environmental and cultural values.

Parks Victoria conducts visitor surveys at a number of parks through the State each year. Visitor surveys were last conducted at Westerfolds in 2004. Some of the key findings of that survey were:

- 67% of people participated in physical activity;
- 53% of people visited the park for a social activity; and
- 34% of people ate or drank at a BBQ or picnic, or at the café.

This profile makes it very clear that Yarra Flats is part of an area which is a recreational focus for park users.

9.12 Further guidance for the Management Zones are provided.

9.13 In relation to the Recreation Management Zone, guidance appears at page 23. The purpose is as follows:

**Purpose**

Provide a wide range of recreation opportunities catering for a large number of visitors in a pleasant semi-natural or developed setting.

9.14 Actions include:

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.

9.15 Within the 'Conservation and Recreation' Management Zones, the following actions are included:

- Investigate utilising natural settings with low conservation value that sustainably allow for emerging nature-based recreation activities.
- Identify and protect sites, places and values of cultural significance to the Wurundjeri.

9.16 The guidance in the YVPMP has clearly influenced the development of the Yarra Flats Concept Plan.

9.17 The proposal is supported by most of the strategic documents that apply to this part of the Yarra River. In summary, the proposal:

- is consistent with the management designation in the YVPMP;
- is supported by the Yarra Flats Concept Plan;
- is consistent with the directions in the draft BLUFP; and
- is compatible with the draft Yarra Strategic Plan.

9.18 The objections which suggest that the site should be managed so as to exclude recreation, are at odds with the management planning framework adopted and applied by Parks Victoria for the past 13 years, and the reservation status of the site.

#### **Policy as described in the Expression of Interest**

9.19 The Expression of Interest for the tender included the following description of the Yarra Flats Site<sup>6</sup>:

Melbourne 2030 designates a number of nearby urban centres as 'a focus for high quality development, activity and living for the whole community'. While existing forecasts of population by 2021 suggest a minimal net population change across the municipalities surrounding Yarra Valley Parklands, new household formation will be encouraged at higher densities in and near activity centres. This may alter recreation demands on Yarra Flats for residents who have limited private open space. It is therefore important to find innovative ways to improve the visitor experience whilst preserving the character and amenity of the

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<sup>6</sup> Parks Victoria Expression of Interest 1267 (2009): Establishment And Operation Of Treebased Eco Adventure Facilities p.10.

parklands. Increasing the visibility and number of appropriate recreational activities will reflect the changing population dynamics of the adjacent activity centre at Heidelberg.

Complementary public policy actions appear in Sustainable Recreation and Tourism on Victoria's Public Land and Linking People + Spaces. Specifically, government seeks to 'enhance the recreational and tourism potential of the Yarra River corridor by completing links to the Main Yarra Trail'. A Tree-based Eco Adventure Facility at the Yarra Flats Site would provide an alternative link in the Heidelberg School Artist Trail, which runs along the Main Yarra Trail. The explanatory signs show how artists of a century ago interpreted the landscape - many of these works are now recognised as National Treasures. Coincidentally, the Heidelberg School Artist Trail also links up at the proposed R.J. Hamer Arboretum and Toolangi Sites.

### **Yarra Flats Concept Plan 2013**

9.20 Paragraphs 194-1999 of the Council submission address the Yarra Flats concept Plan, 2013.

9.21 Of particular note, the submission reflects that 50% of respondents agreed or strongly agreed that a tree based adventure course would benefit the community and 35% said it would be likely or highly likely to increase their use of the park. The Plan states:

*Tree Course - 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. (note that the majority of respondents were older than the average tree course user).*

[our emphasis]

9.22 This may merely reflect the manner in which consultation occurs in different settings.

9.23 This consultation outcome is extremely important and should not be lost on the Panel. Community consultation for Amendment C107 has attracted a different response. Perhaps those riding bikes were intercepted along the trail by the Parks Victoria survey staff. It is doubtful that the submissions to Amendment C107 are as representative of the age demographics of the park users. In fairness the Panel is requested to note the important consultation outcomes for the Yarra Flats Concept Plan to ensure that there is no inadvertent 'age' discrimination.

### **The Bulleen Land Use Framework Plan**

9.24 The BLUFP was referred to an Advisory Committee earlier this year. The Advisory Committee Report was not released at the time of writing these submissions.

9.25 If this report is released during the course of the C107 deliberations, the proponent asks that it be given an opportunity to make further submissions addressing those recommendations.

9.26 Page 11 of the BLUFP states:

Learnings from the Bulleen-Banyule Flats Cultural Values Study have been integrated with this Framework Plan, including:

- Support for returning parklands and ecological connections;
- The need to avoid impacts to identified cultural values and to not disturb areas of cultural significance;
- The desire to establish a cultural place for Wurundjeri Woi-Wurrung people at the Plenty River Confluence.

9.27 In relation to community values, the BLUFP identifies priorities for community use and access improvements, including:

- creating additional connections to the Yarra River, to parklands and natural areas;
- the need for more well designed sporting and recreation opportunities that are accessible to an increasingly diverse community;
- the need to carefully balance community use and access with the protection of the environment.

9.28 Section 3.2 notes that population growth will increase demand for higher-quality and better access to open space and recreation facilities.

9.29 Maps 5a and 5b identify areas designated for expansion of ecological connections on the north side of Banksia Street, but this does not affect the site. These maps designate the site as within the broader 'Parklands.' The BLUFP does not depart from the designation of the site as part of a Recreational Management Zone in the YVPMP.

9.30 This is, unsurprisingly, consistent with the Parks Victoria submission to the Advisory Committee, which reinforces the relevance of the YVPMP.

9.31 Section 16 of these submissions address cultural heritage. A response to the submission lodged for the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (**WWCHAC**) to the BULFP Advisory Committee is addressed under that heading. However, for present purposes, it is noted that that submission indicates a desire to accommodate recreational opportunities within the precinct. That submission adopts a different tone with respect to recreational opportunities than the submission lodged on behalf of the WWCHAC in response to Amendment C107.

### **The draft Yarra Strategic Plan**

9.32 The submissions of the Council at paragraphs 216-236 are noted and adopted.

9.33 The Community Vision for the Suburban Reach of the Yarra notes a community priority and value to<sup>7</sup>:

“collaborate and provide innovative and immersive experiences with nature by expanding natural river tracks and creating environmental playgrounds along the corridor.”

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<sup>7</sup> Draft Yarra Strategic Plan, p. 98

9.34 This reference can be nothing other than a 'nod' to the Yarra Flats Concept Plan, 2013.

9.35 The future directions for the Yarra River Land should be noted. These seek to accommodate a wide range of visitor experiences:

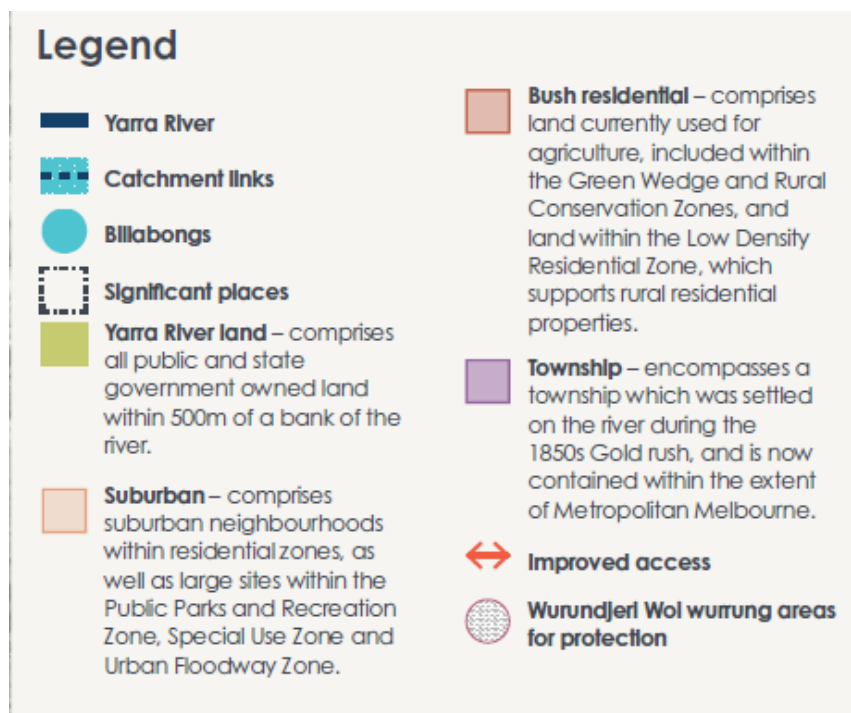
Yarra River land

- 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 murrnong) 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.

9.36 It should be noted that:

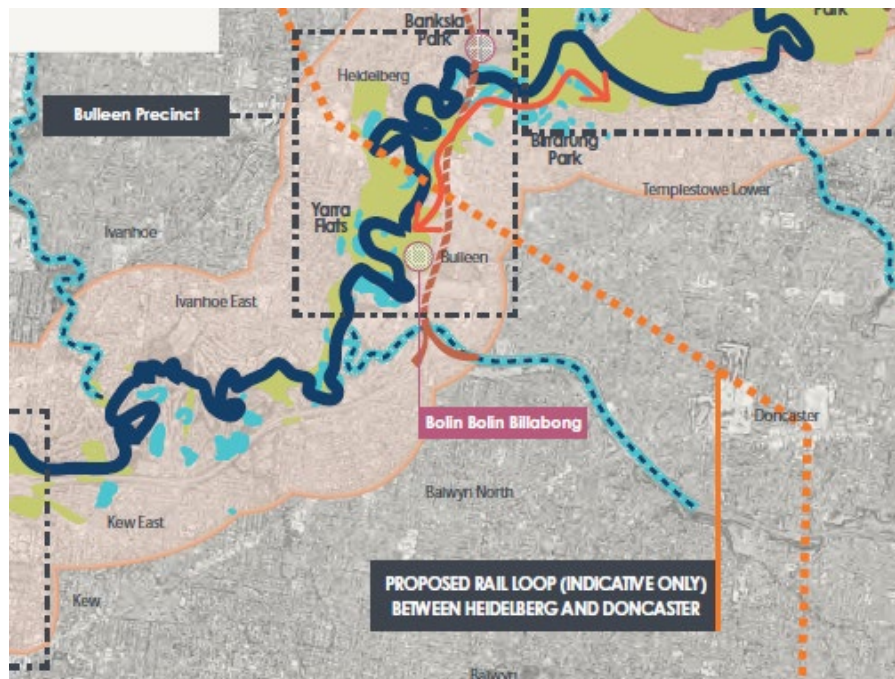
- unlike Bolin Bolin Billabong, the site area is not designated as an 'area for protection' or a special area of cultural heritage significance;<sup>8</sup>
- there are no elements of the draft Yarra Strategic Plan that are said to be binding on a Responsible Public Entity, that warrant refusal of Amendment C107.

9.37 The legend to the Suburban Reach Map at page 10 of the draft Yarra Strategic Plan is as follows:



<sup>8</sup> See section 21 of the YRP Act.

- 9.38 Bolin Bolin Billabong is noted as an “area for protection” for the benefit of the WWCHCAC. However, no such designation applies to Annulus Billabong or the Banksia Billabong.



#### Yarra River Protection (Wilip-Gin Birrarung Murron) Act 2017

- 9.39 The *Yarra River Protection (Wilip-Gin Birrarung Murron) Act 2017 (YRP Act)* is the legislative vehicle that will give effect to the Yarra Strategic Plan, once it is finalised.
- 9.40 Section 21 of the YRP Act sets out the contents of a land use framework plan that is to form part of the Yarra Strategic Plan. Section 21 provides that the land use framework plan must, among other things:
- (b) indicate the broad direction for the future use and development of the Yarra Strategic Plan area; a
- 9.41 The broad directions do not have to be as specific as one may expect to be found in a structure plan or management plan for a particular park or sub-precinct.
- 9.42 The YRP Act identifies the Yarra River Protection Principles at sections 7 -13.
- 9.43 The ‘recreational principles’ are at section 11 and provide:

#### Recreational principles

- (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.

- (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.

- 9.44 Amendment C107 is compatible with the recreational principles. Further, Amendment C107 is compatible with the YRP Act principles generally.
- 9.45 At paragraph 214, the Council has referred to section 63 of the YRP Act, which requires Responsible Public Entities to act consistently with provisions of the Yarra Strategic Plan that are expressed to be binding. The draft Yarra Strategic Plan does not contain any provisions that are expressed to be binding, let alone anything specific or directive in relation to the use and development of this part of the Yarra Flats.

#### **Yarra Strategic Plan Panel Report 2020**

- 9.46 The draft Yarra Strategic Plan was the subject of a panel report in 2020: *Yarra Strategic Plan Panel* (YRPA) [2020] PPV 58<sup>9</sup>. The Panel report reveals that traditional owners had concerns with the draft Strategic Plan. While there is no specific reference to the Yarra Flats in the panel report, there is reference to the Bolin Bolin Billabong.
- 9.47 The following extract from the panel report illustrates the concerns of the WWCHAC:
- The submission also identifies the absence of binding provisions needs to be addressed and included in the Plan going forward and that partnership and resourcing are critical issues to be resolved. The submission notes environmental matters along the Yarra River corridor. Specific mention is made of 'net gain' mentioned in the Act and the Plan not yet having a clear definition.
- In their submission to the Panel, the Wurundjeri representatives spoke about the need to be regarded as level 1 partners, not level 3 stakeholders and expressed a frustration at feeling the relationship with government could be greatly improved.
- 9.48 With respect to the Land Use Framework Plan the Panel recommended, inter alia, that:
- Melbourne Water, as a matter of priority, convene meetings with the Wurundjeri and the Bunurong to discuss and agree on expectations, processes and long-term arrangements for ensuring stability over the lifetime of the Yarra Strategic Plan.
- 9.49 Naturally the Panel was concerned to foster improved relationships moving forward<sup>10</sup>:

The Panel finds that Melbourne Water, the Wurundjeri and the Bunurong have all observed the legislative framework for working together on the Plan and have all

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<sup>9</sup> [http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/PPV/2020/58.html?context=1;query=%22Yarra%20Strategic%20Plan%22;mask\\_path=au/cases/vic/PPV](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/PPV/2020/58.html?context=1;query=%22Yarra%20Strategic%20Plan%22;mask_path=au/cases/vic/PPV)

<sup>10</sup> Yarra Strategic Plan Panel report, p.10.



met their mandated obligations. However, despite goodwill and best efforts, a gap exists between expectation and outcome.

It is clear to the Panel that the necessity of building relationships, having agreed understanding of the parameters for engagement and the mutually understood exchange of expectations were not as deeply considered as they might have been in the establishment phases of the Plan. It is also concluded that the lines of communication between Melbourne Water and the First Nations group may not have adequately dealt with not only subject matter, but also processes and relationship.

- 9.50 In relation to the broad nature of the ‘whole of river directions’ the Panel, at section 6.4, said<sup>11</sup>:

Turning firstly to the ‘whole of river’ directions, the Panel accepts Melbourne Water’s submission that it is appropriate that the directions are high level given the regional approach of the Framework, acknowledging the three distinct scales: whole of river directions; the six land use settings and associated directions for future use and development; and the new areas for protection and significant sites.

- 9.51 This appears to reflect section 21 of the YRP Act. The broad nature of these directions, is also reflected in section 27BA of the *National Parks Act 1975* which provides:

Parks Victoria must have regard to a Yarra Strategic Plan if preparing a management plan in relation to a park that forms part of Yarra River land.

## 10. INTEGRATED DECISION MAKING

- 10.1 As the Panel will be aware, clause 71.02-3 of the Scheme provides:

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

- 10.2 Amendment C107 can be seen as facilitating the changing needs of the community and the emergence of innovative nature based activities in a responsible and sustainable manner, which balances the needs of different generations.

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<sup>11</sup> Yarra Strategic Plan Panel report p. 36.

## 11. ECOLOGY

### The revised flora and fauna report

- 11.1 Mr. Kern has appended an updated flora and fauna assessment to his witness statement. In part this responds to the panel's directions which required greater clarity regarding the extent of vegetation loss.
- 11.2 The updated plan described in **Annexure A** of these submission is taken from Appendix 6 to the revised flora and fauna assessment (June 2016). This plan describes:
- amended Construction Zones arising from the relocation of the kiosk;
  - Fuel Modified Conservation Zones of 10m surrounding the Construction Zone;
  - a Modified Conservation Zone within the main area of the course; and
  - a Bushland Conservation Zone within the balance of the Study Area.
- 11.3 The kiosk is located in an existing cleared area. The construction zone of the deck around tree 1, does not involve removal of the tree.
- 11.4 The Fuel Modified Conservation Zone is described as follows<sup>12</sup>:
- This is the area surrounding the proposed reception area with a buffer of 10m. The purpose of this zone is to provide an area that has reduced bushfire fuel levels but still consists of indigenous vegetation. This also includes a connecting mulched pathway which will provide access to the site.
- 11.5 The Modified Conservation Zone is described as follows:
- This Zone will include remaining areas of HZ1. This is the broader area within the proposed course overlay. The construction in this area will include 8 courses and associated non-invasive platforms around trees (Figure 5). The courses will include a series of flying foxes, rope ladders and high rope challenges linking platforms. There will also be upgrades to existing pathways which will be widened and mulched (Figure 6).
- All other associated features relating within this zone include a connecting mulched pathway that will be linked to Parks Victoria's existing path system.
  - 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.

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<sup>12</sup> Flora and Fauna Assessment, Practical Ecology (June 2016), section 4.1.

11.6 The summary of native vegetation to be removed appears in Table 12 as follows:

Table 12. Summary of native vegetation to be removed

Summary Item	Result
Assessment pathway	Detailed
Total extent	0.414 ha
Extent of past removal	0.000 ha
Extent of proposed removal	0.414 ha
No. of Large Trees proposed to be removed	0
Location category	3

11.7 This is broken down further as follows:

Table 9. Extent of native vegetation loss due to proposed development

Land Management Zone	Habitat Zone	Habitat Zone score	Area of loss (ha)	Extent of loss	% loss
Construction Zone (CZ)	1a	39	0.029	Complete loss of native vegetation as a result of construction. Encompasses proposed decking and reception building envelope allowing a 1m buffer zone	100
Modified Conservation Zone (MCZ) and Fuel Modified Conservation Zone (MCZ) (combined)	1b	39	0.38	Assumes some losses to the canopy through dead wooding, mid and some understorey vegetation for fuel reduction. Considers that 50% of existing score will be lost.	50
Total loss			0.41		

11.8 The revised offset targets are as follows:

Table 13. Offsets required if a permit is granted

Offset type	Offset requirements
Specific offset amount	• 0.168 species of habitat units of habitat for Grey-headed Flying-fox, <i>Pteropus poliocephalus</i>
Large trees	• 0 trees

11.9 Mr. Kern states:

3.4 The actual physical impacts of the proposed self-guided high ropes course would be quite limited. As explained above the ground storey is overwhelmingly invasive weeds and the shrub layer is partially indigenous and partially exotic and only a limited area of this layer would be disturbed by the access to the course and the landing pads at the base of ziplines. There may also be the need to remove lower branches of trees to ensure that there is no access to the course after hours. With the main ropes course infrastructure sensitively attached to the trees there will be a need to clear safe pathways around the tree trunks and through the canopy where required; with a fairly open woodland the removal of tree branches, tall understorey trees and shrubs to create safe access through the canopy should be minimal.

11.10 Importantly, the calculation of losses reflects the constraints of the software applied by DELWP to calculate losses for offsetting purposes. It does not reflect the reality of this use. That system does not account for pruning and management, in the same way as it does for assessment of new buildings, where everything in the way is counted as a loss. The reality here is quite different.

11.11 However, the translation of the 'loss' into a relatively modest offset requirement is reflective of the low site condition, due to the presence of weeds.

11.12 In this regard it is important not to confuse the extent of 'loss' calculated for offset purposes, with the actual impact of the course. As to this, Mr. Kern states:

3.6 The large "rope course activity area" identified in Figure 1 of the Planning report was not used as the basis for the loss of native vegetation because it is not necessary to clear that much native vegetation for the construction of the course. I am not sure why the "rope course activity area" was made arbitrarily rather large, possibly for future flexibility, but I can be certain that the current design and ongoing approach to managing the course will result in minimal physical impact on native vegetation.

3.7 It would seem that there is also confusion in another authority about how much impact there will be on native vegetation if the proposed course is built. In the minutes of the Council meeting from 1 March 2021 Banyule City Council wants to Explores further key issues...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 50% of vegetation.

3.8 Again, there has never been a determination in the ecological assessment process that there would be the ability to remove 50% of vegetation in the rope course activity area as mapped in Figure 1 of the Planning report because the impact of a self-guided high ropes course will be quite minimal in regards to native vegetation loss. The 50% figure comes from the process used to calculate the required biodiversity offsets in the footprint of actual vegetation impacts associated with the course but the native vegetation losses will not ever need to equal 50% of the native vegetation present, either immediately around the course infrastructure or across the larger activity area.

11.13 Mr Kern then goes on to note the constraints of the ENSY model used to calculate offset requirements:

The native vegetation losses are based on the footprint of the actual ropes course plus a small buffer along the lines between the trees to account for the limited removal of understorey, lower tree branches and deadwooding in the canopy so that the immediate area around course components are safe. This is likely an overestimation of the actual loss of habitat values because there will be minimal physical loss of habitat components as a consequence of the construction of the course along lines through the forest canopy and 50% loss of habitat score is the lowest level of loss possible within the ENSYM model used by DELWP to calculate offset requirements.

11.14 The buffer defined along the path of the ropes course, provides flexibility for management of understorey and mid storey vegetation. This buffer is conservative and overstates the extent of actual losses.

#### **DELWP further information request**

11.15 At paragraph 343, the Council submission indicates that items 1b. and 2 of the further information request from DELWP remained outstanding.

- 11.16 In relation to item 1b. the shipping container has been relocated adjacent to the existing car park area, which will avoid and minimise any impacts associated with construction access. The revised flora and fauna assessment includes information on the management zones around the kiosk.
- 11.17 In relation to item 2, Mr. Kern has appended a revised Native Vegetation Removal Report, which resolves the issue of whether offsets are required for modelled habitat for Pink Mountain Correa (they are not). This was modelled habitat only. It is understood that this issue has been resolved to the satisfaction of DELWP.

#### **Contextual assessment**

- 11.18 In the context of the North East Link being developed directly opposite the site, on the eastern side of the river, it is ironic that this proposal would be seen as contentious from an ecological point of view. It is noted that Mr. Lane gave ecological evidence for the proponent before the Inquiry for North East Link. North East Link assessed that up to 52 hectares of native vegetation would be removed.
- 11.19 A degree of fairness and realism is required, when considering this proposal. It does not involve removal of large old trees. It involves some pruning of limbs and dead wood, and revegetation works within a part of the park that is sorely in need of weed management.
- 11.20 The approach to mapping of zones has resulted in a conservatively large offset requirement which appears to be out of proportion to the actual impact.
- 11.21 In terms of vegetation removal, the positive vegetation management attributes of the proposal (e.g. weed management) may well outweigh any negatives associated with pruning of limbs and removal of dead wood.

#### **Avoidance and minimisation of effects**

- 11.22 While a conservative approach has been adopted to identify the offset requirement, Mr. Kern indicates that he is not sure why the polygon was so large.
- 11.23 At the ground level, little is proposed in terms of vegetation removal. The proposal can 'stick to the tracks' so that patrons are not encouraged to leave tracks across expanses of mulch. The only areas to be mulched will be the tracks themselves and areas around the kiosk/reception area.

#### **Adaptability and vegetation impacts**

- 11.24 Section 6.13 of the Council's Day 1 Hearing Version of the Incorporated Document provides:  
  

No additional vegetation (other than that approved by this document or exempt from planning permission under the provisions of the Banyule Planning Scheme) shall be damaged, removed, destroyed or lopped without the further written consent of the Responsible Authority.

- 11.25 This is a useful starting point to provide comfort that the Incorporated Document will not allow *laissez faire* removal of native vegetation, over time, as a result of any need to make changes to the course to adapt to changes in tree condition. However, the proponent hopes to persuade the panel that this wording can be improved, to better balance the needs of the operation, and to avoid unnecessary secondary approvals, where pruning or minor works do not exceed the offset 'credit balance'.
- 11.26 To this end, the panel is asked to treat the offset requirement as a bank of credits that minimises the need to keep going back for further approvals, in the event that foreseeable pruning or minor works are required. While pruning and understorey management may be within the scope of the proposed approval, no trees are proposed to be removed.
- 11.27 In the North East Link, the IAC agreed that offset calculations were a matter for DELWP.<sup>13</sup> Provided that the Incorporated Document requires appropriate accounting for offset balances, periodic pruning activities should be seen as acceptable.
- 11.28 Mr. Kern suggests that this should be fine for minor alterations, but more significant changes to the course may require further approval or even more offsets. The proponent accepts that if the extent of any future change to the course layout went beyond the 'generally in accordance with' test set out in section 5.0 of the Day 1 version of the Incorporated document, the responsible authority would have to refuse to approve the plans.
- 11.29 However, reasonable alterations to the alignment can occur, within the existing framework, as clause 5 expressly contemplates amendments to the plans, subject to the 'generally in accordance with' test.
- 11.30 It is important to note that any impacts to vegetation in the nature of pruning or understorey management will be temporary impacts. Vegetation is not being permanently removed. It will grow back. Other than the Construction Zone, vegetation will be managed as a bush setting, rather than a 'playground setting.' Losses are also offset by weed management and revegetation works throughout the Study Area.
- 11.31 The proposed changes to the Incorporated Document are contained in **Annexure C** to these submissions.

### **ESO1 exemptions**

- 11.32 Clause 3.2 of the ESO1 sets out relevant exemption for
- To the removal, destruction or lopping of exotic vegetation which is less than 5 metres in height and has a trunk circumference of less than 0.5 metres at a height of 1 metre above ground level.
  - To the removal, destruction or lopping of vegetation identified as environmental weed species in Banyule Weed Management Strategy 2006.

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<sup>13</sup> North East Link IAC report, p. 164

- ...
  - To the pruning of vegetation to maintain or improve its health or appearance
  - To the removal, destruction or lopping of dead vegetation, unless the dead vegetation is a habitat tree containing hollows.
  - ...
  - To the removal, destruction or lopping of vegetation carried out in accordance with a management plan prepared to the satisfaction of the responsible authority.
- 11.33 The Incorporated Document is drafted to respect the existence of exemptions, such as those available under ESO1. While section 6.13 already contemplates exemptions, the proponent would not oppose amendments to clarify that:
- permission is required to remove any native tree;
  - permission is required to remove, destroy or lop any tree unless in accordance with:
    - (a) a relevant exemption; or
    - (b) a management plan approved by the Responsible Authority.
- 11.34 The exemptions in ESO1 which allow management in accordance with a management plan approved by the Responsible Authority are clearly appropriate for a use of this type, provided that there is a sufficient bank of offsets allocated to the proposal.
- 11.35 This will provide clarity in the event that minor changes to the course are proposed in future, as the condition of trees changes over time. This will allow native vegetation removal may occur in accordance with a management plan prepared to the satisfaction of the responsible authority, without the need or a further planning scheme amendment.

#### **Fauna disturbance**

- 11.36 The North East Link IAC made the following conclusions regarding fauna impacts, which provide useful context for the assessment in this matter:

Due to the extensive reach of the Project boundary, there are many native terrestrial fauna species that utilise the corridors within it. The Yarra River, Koonung Creek, Banyule Flats, Simpson Barracks are all important habitat areas for particular species.

Impacts to the Powerful Owl which is known to frequent the Yarra and Banyule Flats will be minimised by ensuring the Yarra and Banyule Flats are “no-go zones”. However, the Powerful Owl may also traverse the Koonung Creek surrounds and may be impacted due to habitat removal.

Impacts to the Grey-headed Flying fox are predicted to be minimal and the IAC notes that the Proponent clarified at the Hearing that key areas known to be utilised by

this species are identified as “no-go zones”, particularly the Yarra Bend Park Flying-fox camp. Technical Note 8 notes that, although close to the Project boundary, the Grey-headed Flying fox camp is approximately 400 metres from the location of proposed works.<sup>14</sup>

The IAC agrees with the ecological experts that the Project would reduce the opportunity to enhance connectivity for fauna and will further fragment habitat for a number of species, however there was no evidence that this would lead to a decline in any specific species.

The IAC also agrees with DELWP that a Kangaroo Management Plan should be prepared in consultation with it given the relatively confined interfaces between natural and urban areas within the Project boundary, particularly if works are permitted to proceed through Simpson Barracks.

- 11.37 The potential for disturbance of fauna values due to the presence of more human activity is a relevant consideration. However, in assessing this, it is relevant to note that there are existing tracks and open space infrastructure present which encourage human activity within the site.
- 11.38 The key habitat for the Powerful Owl is further north near the Banyule Flats. Having regard to the construction phase of the North East Link, it is submitted that any disturbance will be relatively low.
- 11.39 It cannot be assumed that a use such as this will result on avifauna avoiding the site altogether. The proponent instructs that Powerful Owls have been observed roosting in trees at its other facilities.
- 11.40 Reliance on the Fauna Management Plan is supported by Mr. Kern and is appropriate in this case to manage the construction and operation of the facility.

#### **The ecological expert evidence**

- 11.41 The proponent relies on the evidence of Lincoln Kern as to ecological issues.
- 11.42 Mr. Kern has sought to clarify that the extent of vegetation removal proposed is minimal. By contrast, Mr. Lane’s evidence appears to proceed on a worst case scenario assumption regarding vegetation loss. Mr. Lane is assuming a ‘scorched earth’ approach which fails to minimise losses within the Management Zones.
- 11.43 When reading Mr. Lane’s evidence he appears to infer that the Yarra Flats is to be managed solely for conservation purposes, and that recreational use of the area is not a relevant management purpose. His suggestion that the muddy tracks are difficult to access is an overstatement. These tracks are used regularly by members of the public. There is an informal mountain bike trail through this area, which Mr. Lane has not acknowledged.
- 11.44 He refers to the Yarra River corridor broadly but has not looked at the management regimes that are applied to the Yarra Valley Parklands by Parks Victoria or recognise its reservation status.

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<sup>14</sup> Document 42, Technical Note 8



- 11.45 Mr. Lane has referred to the Middle Yarra Concept Plan but has not considered the actual management plans that apply to the Yarra Flats. He makes no mention of the YVPMP or the Yarra Flats Concept Plan. The tone of this evidence is in stark contrast to evidence supporting the North East Link.

## 12. ARBORICULTURE

### **The peer review evidence**

- 12.1 Three arborists agree that the trees nominated are suitable for the course.
- 12.2 Mr Patrick has identified that Tree 28 is not suitable. This is a small tree that is not critical to the design of the course.
- 12.3 Two trees were identified in the vicinity of Tree 31. Mr. Patrick has noted these. One of the trees is suitable. The other is not. Mr. Patrick will address this in his evidence.
- 12.4 Tree 20 is leaning over the 'Bunyip' Billabong. Mr. Patrick will give evidence that this is not a cause for concern.
- 12.5 While the billabongs are ephemeral, it is expected that the use will be more popular during dry times. Flying over an inundated billabong is merely, part of the immersive experience. It is a valuable recreational experience and a point of difference within the parks network.
- 12.6 Additional trees have been surveyed by Mr. Patrick as part of his peer review. The purpose of doing this was to identify the capacity of the course to adapt to changes in the condition of trees over time.

### **Safety (limb drop risk)**

- 12.7 In *Camberlea v Boroondara CC* (No.1999/9289) the Tribunal said:
48. Having heard the evidence of the two expert arborists - as well as reading the Earl and Beedle reports - I find I prefer Mr. Galbraith's opinion that the prospect of limb drop in properly managed River Red Gums is not so great a risk in a car park context as to warrant the removal of such trees.
- 12.8 Mr. Patrick's opinion is that it is not a significant issue. The tree hazard assessment prepared by Advanced Treescape Consulting has been the subject of two peer reviews. If it were regarded as a material risk, at least one of those arborists would have made an issue of it.
- 12.9 With three arborists all in basic agreement, it is not really necessary to test the arboricultural evidence.
- 12.10 In this case, the panel should follow the approach in other decisions, where the Tribunal has accepted that risk can be managed, subject to permit conditions, and in the knowledge that the proponent will have to carry out a suitable risk management regime.

- 12.11 It is an inherent part of a use of this nature. As Member Liston observed in Flaster:
27. In relation to the direct impacts of the obstacle course on the supporting trees, while, there may need to be some changes to the techniques utilised in other floristic environments, such as those discussed by Mr Patrick in his evidence, I think it highly unlikely that an appropriately designed outcome cannot be achieved. I think it is after all in the interests of the applicant to maintain the health of the trees they use for their purposes.
- 12.12 With respect, the contention as to soil compaction is somewhat speculative. Mr. Patrick is not troubled by it.
- 12.13 None of the peer review experts engaged by the proponent or Council have supported the concern that the tree species is unsuitable.
- 12.14 It is worth putting risk in context. The recent storms that devastated Mount Dandenong did not have any obvious impact on the trees within the Study Area for the ropes course. Perhaps the risk of high winds causing trees to fall is different on top of a mountain than it is in the Yarra River Valley.
- 12.15 The Treetops course in Belgrave did not suffer material damage during that storm. Some of the more exposed locations along the eastern flank of the Dandenong Ranges were severely affected by unusual wind direction, including Kalorama and Mt Dandenong itself.
- 12.16 Where trees exist within a stand, they are understood to have greater protection from storms, compared with exposed trees, or, for example, taller specimens like Mountain Ash, that sit higher than other trees in the canopy.
- 12.17 Red Gums are not towering species like Mountain Ash, but develop thick limbs and root profiles. Within this site, they are reasonably well protected by vegetation in the corridor, from extreme winds.
- 12.18 While there is anecdotal evidence of River Red Gums dropping limbs, is there any empirical evidence that this risk is greater than in other settings where trees are managed? If there is, none has been presented to this panel.
- 12.19 River Red Gums are reportedly the most widespread tree in the Australian landscape. Perhaps these anecdotal reports of limb drop reflect how ubiquitous it is in the Australian landscape.
- 12.20 While limb drop may occur unexpectedly, the risk of sleeping under a tree, cannot be compared with the risk associated with spending a few hours in the trees as a once-off experience. For example, people sleep beneath trees in tents, caravans and houses during thunderstorms and during high winds. That is not the case here. If there is a storm, the course will not be operating.
- 12.21 There is little reason to think that the risk in this context is markedly different from any other adventure course that has been approved and constructed, or that it cannot be managed within acceptable risk tolerances.

- 12.22 There is no evidence before the panel that would suggest that the risk of a limb drop in this setting markedly greater than the risk of a limb falling on a car in a public car park, or within a caravan park setting.

#### **Tree management under the Incorporated document**

- 12.23 The draft Incorporated Document requires a Tree Maintenance and Management Plan.
- 12.24 In this context the trees will be subject to regular arboricultural inspection regime.
- 12.25 The Incorporated Document also includes requirements for a Safety management Plan, which is already a core aspect of the operational practices at these facilities. This is further addressed in **Annexure B**.

### **13. FLOODING AND DRAINAGE**

#### **Banksia Billabong and environmental watering**

- 13.1 The Melbourne Water submission notes that the proposal may be affected by more regular inundation of the billabongs. The Yarra River itself sits some 5-6 m below the ground level of the closest tree forming part of the ropes course. Some of the ephemeral billabongs closer to parts of the course are at higher elevations.
- 13.2 The proposed works to the Banksia Street Billabong have been developed by Melbourne Water, with input from Alluvium Consulting.
- 13.3 The planning for this proposal has occurred with those works in mind and appropriate consultation has occurred with Melbourne Water regarding this. An email received on 12 November 2020 from Andrew Mellor of Melbourne Water states:

As you know, Melbourne Water as part of the Yarra Flats Concept Plan is planning works in the area which involves the construction of a new wetland to treat stormwater from the Banksia Street Drain. It has been identified that this new wetland can also provide alternative water directly to Annulus Billabong and Banksia Street Billabong to improve their wetting and drying cycles and to closely mimic the natural environment. This will likely result in these billabongs being more inundated more often and for longer periods of time. We have just completed a trail watering event at Annulus Billabong using funding from DELWP as part of the Yarra Strategic Plan to investigate and initiate the larger project in the area. See some photos attached. This year we have also had natural overbank flooding of the Banksia Street Billabong which has resulted in the billabong being inundated for the majority of this year.

The next steps for the project include us continuing to work on functional and detailed design plans for the constructed wetland and seeking funding for the successful delivery of the construction works. We anticipate that the timeframe for delivery may be around 24-36 months.

We are very keen to work with you on our project as well as understand how the Tree Tops Adventure Park will be incorporated into the landscape and how the our project and works won't cause any concerns or issues with your proposal but rather

complement each other. As discussed yesterday, I will include you in our stakeholder contact list and will continue to provide updates on our project as it progresses.

13.4 Attached to that email was the following map of the proposed wetlands:

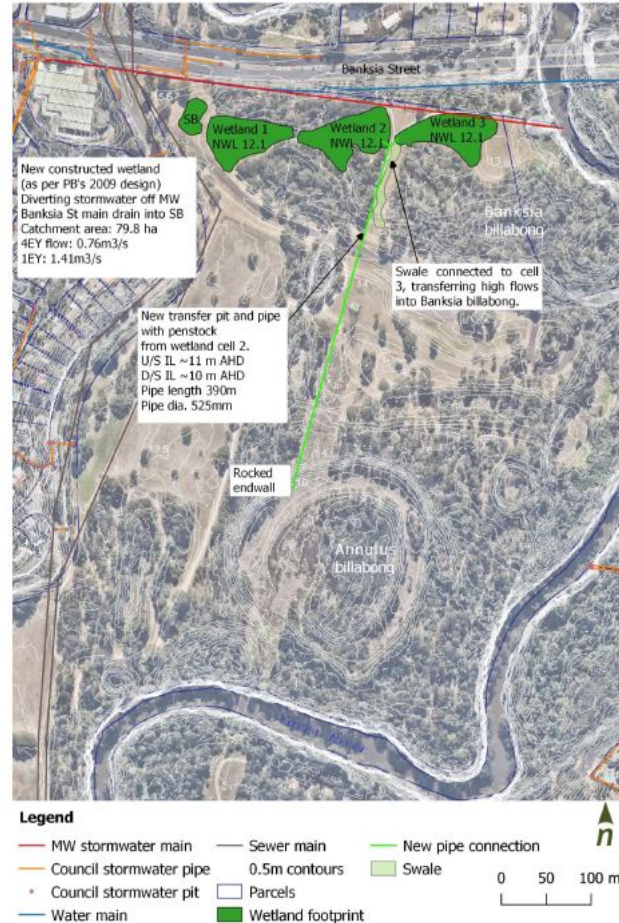


Figure 36. Option 3: Constructed wetland and treated stormwater flows into Annulus and Banksia billabongs

13.5 A key rationale for those works is the management of increased urban runoff as a result of urban development higher in the catchment. The works are not driven solely by the need to replicate the pre-1750 conditions within the Yarra Flats, although increased water availability to the Annulus Billabong is clearly an objective. Urban runoff increases peak flows, it does not replicate natural water cycles, but can provide access to water in dryer periods that help in ensuring that wetlands don't dry-out completely. They are 'stormwater offset works' that are required to compensate for the effects of urban development.

13.6 It can be seen that a transfer pipe is proposed to run in a north-south direction along the alignment of the main bike path to assist in irrigation of Annulus Billabong.

13.7 Amendment C107 is compatible with the works proposed by Melbourne Water and does not intrude on the footprint of the Annulus Billabong.

- 13.8 There is no proper basis to accept the submission that the proposal might be compromised by the increased watering of the Annulus Billabong. While the billabongs are ephemeral, there will be increased frequency of inundation. However, given that a pipe is proposed to convey water to the Annulus Billabong, the possibility that this could divert flows away from billabongs adjoining the ropes course should be recognised. The connection of the Annulus Billabong via a transfer pipe may well have implications for flows of water to other billabongs (directly adjoining the ropes course) that are not named on the project maps.
- 13.9 The presence of water in billabongs will assist with the understanding and interpretive experience fostered by the purposes of the PCRZ. In periods of peak demand during the warmer months, the billabongs directly adjacent to the ropes course will be dry.

#### **14. TRAFFIC AND CAR PARKING**

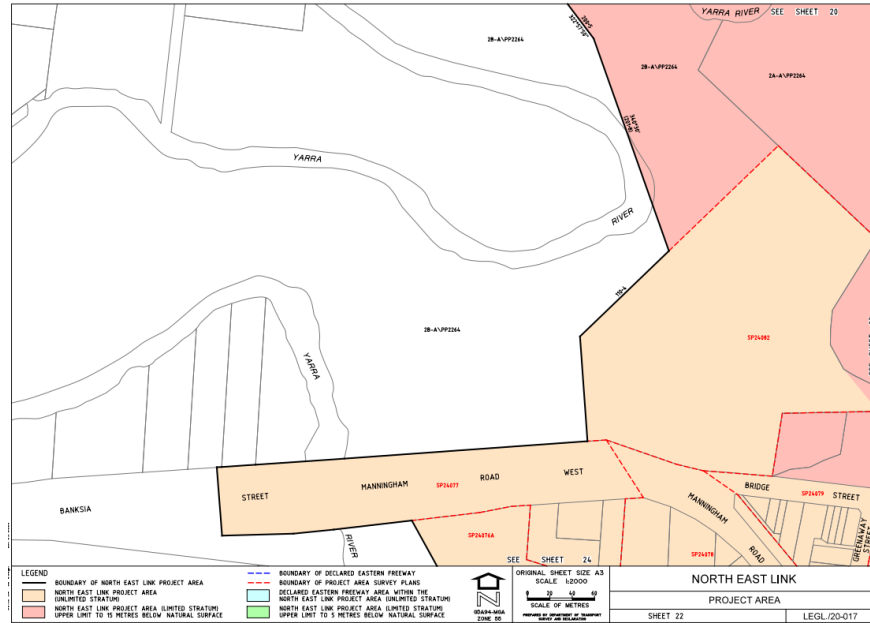
- 14.1 The proponent relies on the evidence of Mr. Hill as to traffic and car parking issues.
- 14.2 The park is a regional facility with infrastructure that requires refurbishment. The proposal will assist in refurbishment of the eastern end of the car park, and the public toilets. These upgrades are necessary, to accommodate population growth and increased demand for this regional asset, regardless of whether Amendment C107 proceeds.
- 14.3 The existing restrictions along the Boulevard regulate access to the residential part of the Boulevard during business hours. The panel will note that this section of the Boulevard is in a very poor condition.
- 14.4 The Day 1 Version of the Incorporated Document requires a Green Travel Plan. The proponent supports this as a suitable vehicle to determine optimal levels of bicycle parking, noting the excellent connections to the Yarra Trail running through Yarra Flats.

#### **15. NORTH EAST LINK AND AMENDMENT C107**

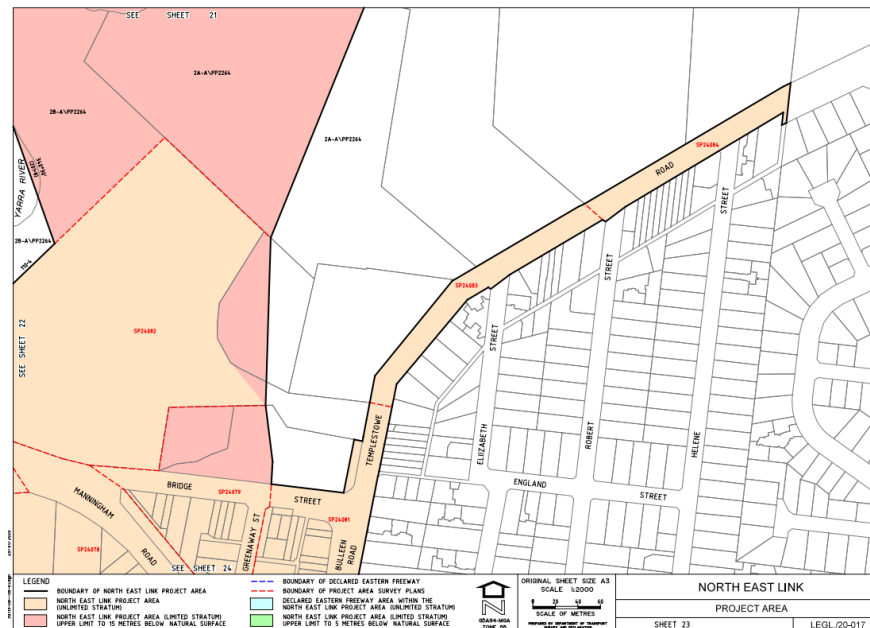
- 15.1 The North East Link Project Area includes land on the eastern side of the Yarra River, and land to the north of Manningham Road and Banksia Street, as shown in the following maps of the project area<sup>15</sup>.

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<sup>15</sup> [https://bigbuild.vic.gov.au/data/assets/pdf\\_file/0014/530024/Plan-Certified-Project-Area-LEGL.20-017.PDF](https://bigbuild.vic.gov.au/data/assets/pdf_file/0014/530024/Plan-Certified-Project-Area-LEGL.20-017.PDF)

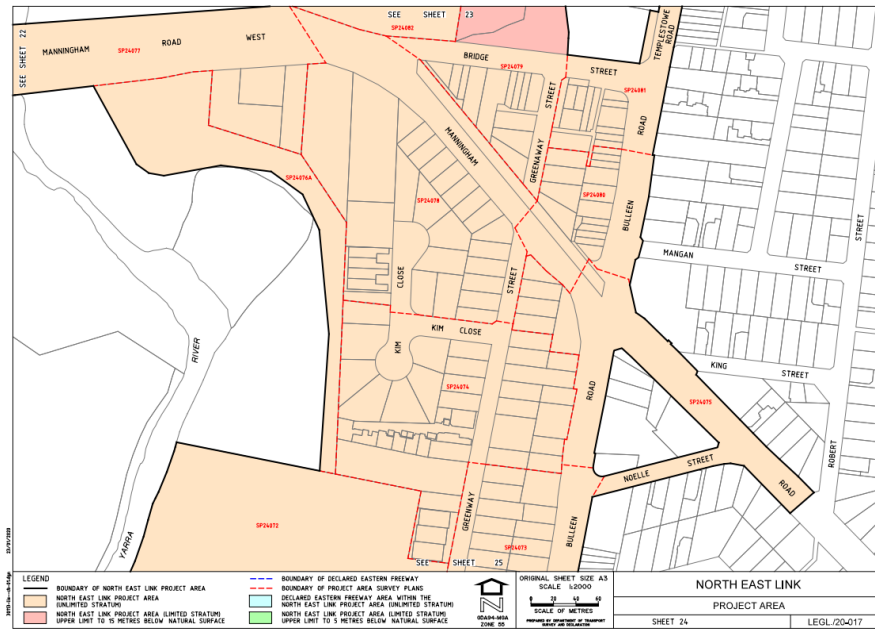


Map Sheet 22



Map Sheet 23





**Map Sheet 24**

15.2 In aerial view, the extent of the Acquisition Overlay can be seen below:



15.3 Apart from significant native vegetation removal required for this project groundwater will be extracted during the lengthy construction period, which will affect the hydrology of the catchment adjacent to the project area.

- 15.4 The evidence was that up to 52 hectares of native vegetation would be lost throughout the project corridor. The joint Inquiry and Advisory Committee (IAC) made the following finding<sup>16</sup>:

The IAC does not believe sufficient measures have been taken to avoid and minimise ecological impacts. It acknowledges that the tunnel underneath the Yarra River and Banyule Flats reduces ecological impacts on these areas however this is only one discrete component of the Project.

- 15.5 The ecological implications of Amendment C107 are relatively benign, considered within this context.

- 15.6 In relation to groundwater dependent ecosystems, the IAC said:

The IAC agrees with the Proponent that the rehabilitation program undertaken by Melbourne Water and its partners for the Bolin Bolin Billabong has clear potential to substantially enhance its ecological and environmental values. Melbourne Water confirmed that the Project will not preclude or compromise the implementation of that program.

- 15.7 In the same vein, there is basis to conclude that this proposal will affect the Bolin Bolin Billabong. The Yarra Flats is already a recreational area where people are encouraged to be. The project may bring more people to the area, but the impacts cannot be compared with dewatering of the aquifer to construct a tunnel for a major road.

- 15.8 In terms of air pollution associated with the North East Link, the project will be in tunnel through this part of the project corridor. The interchanges will have ventilation arrangements.

## 16. CULTURAL HERITAGE

### Voluntary CHMP

- 16.1 The proponent was advised that a Cultural Heritage Management Plan (CHMP) was not required. It has since decided to offer to prepare a CHMP on a voluntary basis.

- 16.2 The CHMP should be approved before the project commences but need not be approved before Amendment C107 is approved. In this regard, it is submitted that:

- a planning scheme amendment is not a 'statutory authorisation' for the purposes of the *Aboriginal Heritage Act 2006 (AH Act)*. As such, there is no bar to the approval of C107 before a CHMP is approved;
- the willingness of the proponent to execute a voluntary CHMP is without prejudice to its right to argue that a CHMP is not mandatory;
- whether or not it is found that the land has been subject to significant ground disturbance, it is also necessary to show that the 'activity' will

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<sup>16</sup> North East Link Project (EES) [2019] PPV 57, p 160.



cause significant ground disturbance, for it to constitute a high impact activity (see regulation 46(1)(a)). While there will be minor disturbance of the ground to accommodate the kiosk, this is minor and should not be regarded as 'significant ground disturbance' when a contextual approach is adopted.

- 16.3 The CHMP for the North East Link was approved on 17 February 2020.<sup>17</sup> This occurred after the EES Inquiry and after approvals were granted. In circumstances where the proponent was advised that no CHMP was required, and where the Council referred it to the panel on this basis, this approach is entirely reasonable.
- 16.4 As a voluntary CHMP will be prepared, it will serve as a suitable vehicle for ongoing engagement and dialogue with traditional owners about cultural heritage and the Cultural Values Study.
- 16.5 In the event that the Cultural Heritage Values Study gives rise to any further registered sites, the proponent would need to comply with the AH Act.

#### **Consultation with traditional owners**

- 16.6 A consultation meeting had been scheduled to occur after Amendment C107 was referred to the panel. The proponent was advised that the meeting could not take place.
- 16.7 After a scheduled meeting had been cancelled. The proponent wrote to Ms. Jobling by letter dated 11 June 2021. A copy of that letter is provided with these submissions.
- 16.8 A response to that letter was received on 11 June 2021, which states, among other things:

As previously requested, we are seeking your considered response to the Yarra River Protection (Wilip gin Birrarung murrong) Act and the Corporation's policy response to the Act and Community Vision within your proposal. You have noted "net gain" in the attached correspondence which is indeed an important idea within the Act. Can you clarify specifically how you are defining net gain in the context of this proposal? You have also noted land management opportunities to address exotic weeds and vegetation. This is presumably the current remit of the Local Council, who quite separately to this proposal (or any other), could engage the Corporation's Land Management Team at any time should this be of interest to them.

#### **The objection**

- 16.9 The submission from Ms. Jobling on behalf of the Water Unit of the WWWCHAC expresses several concerns. The proponent's response to the concerns outlined in that submission are as follows:
- a voluntary CHMP has been offered, out of respect for the concerns expressed;

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<sup>17</sup> <https://bigbuild.vic.gov.au/projects/north-east-link-project/planning/state-approvals/key-approval-documents>

- relocation of the proposal out of the river corridor is not supported on the basis that it is consistent with the management directions for the area identified by Parks Victoria and that Amendment C107 is strategically justified;
- the proposal will be consistent with the principles in the YRP Act, including the 'net gain' principle. However, these principles are to be reflected in the Yarra Strategic Plan and its Land Use Framework Plan. The YRP Act does not technically require that these principles be applied outside of, or in addition to that planning framework.
- Section 63 of the YRP Act amends the PE Act to provide that:
 

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.

There are no relevant aspects of the draft Yarra Strategic Plan that would preclude the preparation of Amendment C107 (assuming that the draft becomes the approved plan);

- the Yarra Strategic Plan and the proposed CHMP are the appropriate mechanisms to address the Corporations' policy response to the YRP Act (*Nhanbu narrun ba ngargunin twarn ngargunin*). It is not clear to the proponent how that policy response 'to the YRP Act' is relevant to the assessment of Amendment C107 by the panel. However, further consultation as to this issue can occur as part of the CHMP process.

16.10 The proponent is committed to developing the site in a manner that allows the community to celebrate indigenous cultural values and knowledge, as it has done at other facilities under its control. It sees the CHMP as a suitable vehicle for further engagement and collaboration.

16.11 Ultimately, in a Crown land management context, any future land management agreements within the Yarra River corridor will require input from Parks Victoria and the Crown. Only the Crown is able to execute a land tenure agreement under the *Traditional Owner Settlement Act 2010*. The proponent is willing to facilitate discussions regarding indigenous involvement in land management within the site area, where supported by Parks Victoria.

### **Cultural heritage in the context of the BLUFP**

16.12 The submission for the WWWCHAC to the BLUFP states:

The views of the Elders expressed at the 20th May workshop, for the majority, were concerned with the unknown impacts to the ecological attributes of the study area by new development and installation of active recreation areas. A desire was expressed to restore the environment which would conform, in resemblance, to a traditional landscape prior to non-Indigenous occupation. There are a number of VAHR places within the Bulleen Precinct area, and the Wurundjeri Woiwurrung Elders have confidence that any proposed future land uses will be carried out in accordance with the *Aboriginal Heritage Act 2006*. Yet, the billabongs,

lagoons, swamps and plant and animal species that were utilised by Wurundjeri Woiwurrung people in the past and present are not protected under the definition of cultural heritage in the 2006 Act. Thus, it is the ecological aspects of their cultural heritage that are more vulnerable to impacts from ground disturbing activities.

Sharing this significant landscape with the public is a mutual objective for DELWP and Wurundjeri, whilst maintaining the precincts cultural and ecological integrity.

The cultural landscape within the project area may be irretrievably lost if measures are not put in place to protect cultural and natural assets from development and active recreation areas, or the as yet unknown indirect impacts of these ground disturbing land uses.

16.13 Section 4 of the response to the Draft Framework Plan refers to a number of sites within the corridor that were of particular interest. These included:

- 41-49 Greenaway Street;
- The Bulleen Industrial Precinct;
- 1 Templestowe Road, 22-24 Bridge Street and 42 Bridge Street;
- 7 Templestowe Road (Heide Museum of Modern Art);
- 9-15 Templestowe Road (Yarra Valley Country Club);
- 17-25 Templestowe Road (Sonoco Site);
- 27- 33 Templestowe Road (Crown land);
- 37-59 Templestowe Road (Bulleen Golf Driving Range);
- 165 Templestowe Road (Crown Land under lease, HM. Clause); and
- 199-209 Templestowe Road, 211-219 Templestowe Road.

16.14 In relation to the issue of active recreation the WWWCHAC submission (at page 7) states:

***New Connections and Expansion of New Parklands / Ecological Connections or Potential Active Recreation***

Presently, the Wurundjeri Woi Wurrung Corporation cannot endorse a proposal for a formalised pedestrian path past Bolin Bolin Billabong, or any proposal outside of the Draft Framework Plan for built structures within the parkland at Bolin Bolin Billabong (for example, a Birrarung Meeting Place, as in the Birrarung Cultural Precinct, Maudie Palmer and Eugene Howard, May 2019). The Directors of the Corporation can make an informed position through the CVS about increased public access to Bolin. The Billabong and its associated larger waterbody, the former Bolin lagoon, was a focal point of eel fishing and a place that Wurundjeri Woiwurrung people requested that the Aboriginal Protectorate establish as a permanent reserve for their people in 1840. Despite this request being unfulfilled, Wurundjeri Woiwurrung people maintained their occupation of Bolin lagoon and the Heidelberg - Bulleen area for the following 19 years, living their traditional way of life whilst also

integrating themselves into the local pastoral economy despite attempts by some non-Indigenous settlers to have them permanently removed. Key decisions about their future under the Protectorate were made at Bolin lagoon, and it appears that it may not have been until the establishment of Acheron Station in 1859 that people departed from Bolin lagoon. It has been established that a priority for the Wurundjeri Woi Wurrung Corporation is to rehabilitate the natural ecosystem at Bolin Bolin Billabong to a level of a typical healthy floodplain billabong and to enhance the ecological values. This priority has also been raised through engagement with the North East Link Project. Wurundjeri Woiwurrung Elders request that a decision regarding this portion of the New Connection, from approximately 160 Templestowe Road to 41-49 Greenaway Street, and including any other proposals which may include built structures near Bolin Bolin Billabong, be withheld until such a time that a position is reached.

Wurundjeri Woiwurrung Elders support, in-principal, the return of parkland and ecological connections within the study area. Increased public access through new connections and new access tracks must encourage walking 'through' the precinct and deter people from moving off the formal track and disturbing the surrounding vegetation. Suggestions from the Elders included utilising above ground tracks, railings, and boardwalks. It is anticipated that an aspiration of Wurundjeri Woiwurrung people, as a result of the CVS, will be to identify the relevant land managers and seek to implement collaborative co-management structures, for example, with Parks Victoria, Banyule and Manningham LGAs, and Melbourne Water, to ensure that Wurundjeri Woiwurrung land management is reflected appropriately in this cultural place through traditional burning, weed control and native revegetation.

A co-management model foresees Wurundjeri Woiwurrung peoples long term goal of a Recognition and Settlement Agreement under the *Traditional Owner Settlement Act 2010*, which would enable the Wurundjeri Woiwurrung people to enter into joint management of parkland and negotiate agreements with the Victorian Government about the rights of access to and use of natural resources, title to land and proposed land uses (Crown Land).

- 16.15 There is a strong focus on the Bolin Bolin Billabong within that submission. There is no specific reference to the Yarra Flats or the Banksia Billabong, although there is support for creation of increased public access through new connections in a responsible manner.
- 16.16 This facility will reduce pressure on the Bolin Bolin Billabong. The BLUFP will provide a framework to focus recreational activity in suitable locations, away from the Bolin Bolin Billabong. Amendment C107 may accelerate progress towards a land management agreement under the *Traditional Owner Settlement Act 2010*, given the vegetation management needs within this part of Yarra Flats.

## 17. RESPONSE TO DIRECTION 6

17.1 The proponent has attempted to respond to Direction 6 as follows:

- By providing revised mapping of the course area and relocated kiosk;
- Through provision of an updated flora and fauna assessment that better describes the related management zones, allowing for a better

understanding of how different areas within the study area are to be managed;

- 17.2 The ropes course may need to change from time to time to address changes in the condition of native vegetation, or recommendations arising from inspection and review by consulting arborists. This is the subject of Mr. Kern's evidence. Minor changes can occur within the existing offset targets.
- 17.3 Changes to the layout of the course can occur within the parameters of the 'generally in accordance with test' established by clause 5 of the Incorporated Document. The framework would allow management of vegetation (including pruning, removal of dead wood, but would not allow removal of trees, subject to the availability of existing exemptions within the Banyule Planning Scheme.
- 17.4 The Bunyip hole is located adjacent to Tree 20 as shown on the course map. This can be seen clearly in the maps appended to Mr. Kern's revised flora and fauna assessment, which show the contours and the trees.

## **18. HERITAGE OVERLAY**

- 18.1 Mr. Glossop's evidence refers to the Heritage Overlay affecting the Yarra Flats. He cites the statement of significance. Mr. Patrick's evidence is that there are no scar trees identified within the Study Area.

## **19. CHANGES TO THE INCORPORATED DOCUMENT**

- 19.1 The proponents suggested changes to the Day 1 Version of the Incorporate Document are set out in **Annexure C**.
- 19.2 These will be addressed during the evidence and during oral submissions.
- 19.3 The changes proposed are generally for clarity or ease of administration purposes. The changes also include the requirement for a voluntary CHMP as referred to in the Council submission, although this could be required as a term of the lease, in the panel preferred.

## **20. CONCLUSION**

- 20.1 For the foregoing reasons it is respectfully submitted that the Panel should recommend that Amendment C107 be approved, subject to the changes to the Incorporated Document described in Annexure C.
- 20.2 This concludes the written submissions for the proponent.

**LIST OF ANNEXURES**

**ANNEXURE A**

**Land Management Plan  
Extracted from Updated flora and fauna assessment**

**ANNEXURE B**

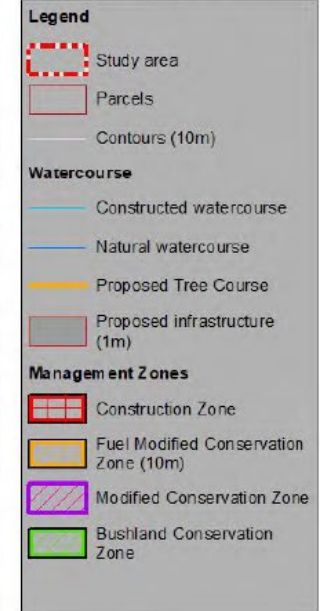
**Operational statement**

**ANNEXURE C**

**Revised Day 1 Incorporated Document**



**Map 8. Land Management Pla**  
TreeTops Adventure Park,  
Yarra Flats, Ivanhoe East



**Details**  
Date: 21/06/2021  
Aerial photography from  
NearMap (02/05/2021).  
Base map data Copyright © The State of Victoria



Scale 1:999



(Page size A3)

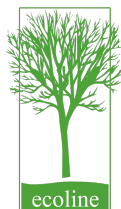
**Disclaimer**

Practical Ecology bears no responsibility for the accuracy and completeness of this information and any actions or actions taken on the basis of the map. While information appears accurate at publication, nature and circumstances are constantly changing.

## **ANNEXURE B**

### **Operational Management Practices**





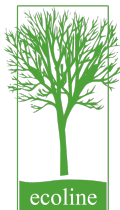
## OPERATIONAL MANAGEMENT PRACTICES

Ecoline Pty Ltd began in 2008 with one park on the Central Coast of NSW, since then we have expanded, developing the brand of TreeTops along the way to identify our safe, exciting adventures in the trees. TreeTops now operates a range of experiences across 4 states. The business has grown out of our love for the natural environment, with the intention of helping more people to experience, enjoy and value the Australian forests.

### OPERATIONAL EXPERTISE

We own and operate the following facilities working with many government agencies to provide fantastic adventures. All of our products are custom-made to best adapt to individual sites and target markets. The company and its staff are proud to have a limited impact on the environment and on neighbours.

NAME/ LOCATION	OPENING DATE	NAME OF CUSTOMER /LANDHOLDER	WORK INVOLVED
<b>TREETOPS CENTRAL COAST</b> <b>Ourimbah State Forest</b> 1 Red Hill Rd, Wyong Creek NSW 2259  <a href="https://www.treetops.com.au/locations/central-coast">https://www.treetops.com.au/locations/central-coast</a>	9 December 2008 Updated Feb 2011   Updated September 2013, April 2014, November 2014   Updated April 2014 - October 2015  Updated March 2017  Updated April 2019	<b>Forestry Corporation of NSW</b>	TreeTop Adventure Park. 8 tree obstacle rope courses including four 3–9-year old's' course with a continuous belay system. 115 challenges.   TreeHut -The first suspended conference room in Australia. TreeTop Crazy Rider - 2 rollercoaster zip lines, including the longest in the world at 1km.   Updated children courses, green, blue and red courses.  <b>TreeTop Vertical Challenges – vertical climbing courses taking participants up a giant Eucalypt.</b>  TreeTop Net World Australia's first suspended netpark. Spaces to jump and roll, to play with inflatable toys and then slide down slides or hide in tree houses; for people of all ages.
<b>TREETOPS NEWCASTLE</b> <b>Blue Gum Hills Regional Park</b> Minmi Rd, Minmi NSW 2259  <a href="https://www.treetops.com.au/locations/newcastle">https://www.treetops.com.au/locations/newcastle</a>	12 December 2009   Updated February 2015   Updated July 2017	<b>NSW National Parks &amp; Wildlife Service</b>	TreeTop Adventure Park. 7 tree obstacle rope courses including two 3–9-year olds' course with a continuous belay system. 90 challenges.   Improved children's courses including a new course   New Green and Blue courses with new challenges to take the park to a total of 107 challenges.
<b>TREES ADVENTURE GLEN HARROW PARK BELGRAVE</b>  2 Cole Ave Belgrave 3160 VIC  <a href="https://treesadventure.com.au/park/glen-harrow-park/">https://treesadventure.com.au/park/glen-harrow-park/</a>	4 <sup>th</sup> April 2010	<b>Private Landowner -</b>	High Ropes Courses x9, 100 challenges, Vertical Challenges x6
NAME/ LOCATION	OPENING DATE	NAME OF CUSTOMER /LANDHOLDER	WORK INVOLVED



<b>TREES ADVENTURE SHOALHAVEN PARK NOWRA</b>  23 Rock Hill Rd, North Nowra 2541 NSW  <a href="https://treesadventure.com.au/park/nowra-shoalhaven-park/">https://treesadventure.com.au/park/nowra-shoalhaven-park/</a>	1st February 2012	Private Landowner	High Ropes Course 6 tree obstacle rope courses 70 challenges, 13 Flying Foxes
<b>TREETOPS WESTERN SYDNEY</b>  <b>Plough &amp; Harrow Park,</b> Elizabeth Drive, Abbotsbury NSW 2176  <a href="https://www.treetops.com.au/locations/westernsydney">https://www.treetops.com.au/locations/westernsydney</a>	September 2012  June 2013  Updated 2015  Updated 2018	Western Sydney Parkland Trust	TreeTop Adventure Park 8 tree obstacle rope courses including three 3–10-year olds' course with a continuous belay system. 109 challenges.  TreeTop Safari -Canopy Tour 11 crossings including a 360m flying fox.  Improved children's courses.  Removal of canopy tour to accommodate design and construction of TreeTop Crazy Rider Xpress. 500m long roller coaster zipline.
<b>TREES ADVENTURE GROSE RIVER PARK YARRAMUNDI</b>  200 Springwood Rd Yarramundi 2753 NSW  <a href="https://treesadventure.com.au/park/grose-river-park/">https://treesadventure.com.au/park/grose-river-park/</a>	22 <sup>nd</sup> June 2013	Private Landowner	High rope adventure courses x10, 80 challenges, 15 flying foxes
<b>WildRopes</b> Taronga Zoo, Bradley Head Rd, Mosman NSW  <a href="https://taronga.org.au/sydney-zoo/wild-ropes">https://taronga.org.au/sydney-zoo/wild-ropes</a>	December 2014  Updated May 2017	Taronga Conservation Society	4 pole-based obstacle rope courses with a continuous belay system. 72 challenges.  Updated existing challenges for Adult/Junior courses. Design and construction 2 Children's courses with 20 challenges.
<b>TREES ADVENTURE LANE POOLE PARK</b>  Lane Poole Reserve Dwellingup WA  <a href="https://treesadventure.com.au/park/lane-poole-park/">https://treesadventure.com.au/park/lane-poole-park/</a>	3 <sup>rd</sup> September 2015	WA National Park – Conservation & Land Management Executive Body	High Rope Adventure Courses x 9, 80 Challenges, 23 Flying Foxes
<b>HOLLYBANK WILDERNESS ADVENTURES</b>  Hollybank Reserve, Underwood TAS  <a href="https://treesadventure.com.au/park/hollybank-wilderness-adventures/">https://treesadventure.com.au/park/hollybank-wilderness-adventures/</a>	2 <sup>nd</sup> September 2015	FORESTRY TASMANIA	High Rope Adventure Courses x 7, 80 Challenges, 12 Flying Foxes  Zipline Tour, Segway Tour
<b>TREES ADVENTURE YEODENE PARK</b>  70 Possum Ridge Rd Yeodene VIC 3249  <a href="https://treesadventure.com.au/park/yeodene-park/">https://treesadventure.com.au/park/yeodene-park/</a>	1 <sup>st</sup> January 2016	Private Landowner	High Rope Adventure Courses x 8, 80 Challenges, 24 Flying Foxes

NAME/ LOCATION	OPENING DATE	NAME OF CUSTOMER /LANDHOLDER	WORK INVOLVED
<b>TREETOPS SYDNEY, THE HILLS</b> <b>Cumberland State Forest</b> 95 Castle Hill Rd, West Pennant Hills, NSW 2125  <a href="https://www.treetops.com.au/locations/sydney-the-hills">https://www.treetops.com.au/locations/sydney-the-hills</a>	December 2016	Forestry Corporation of NSW	TreeTop Adventure Park 9 tree obstacle rope courses including four 3–10-year olds' course with a continuous belay system. 126 challenges.
<b>TREETOPS COFFS</b> <b>Sealy Lookout, Orara East State Forest</b> Sealy Lookout Drive Coffs Harbour NSW 2450  <a href="https://www.treetops.com.au/locations/coffsharbour">https://www.treetops.com.au/locations/coffsharbour</a>	June 2018	Forestry Corporation of NSW	9 tree obstacle rope courses including four 3–10-year olds' course with a continuous belay system. 92 challenges.
<b>TREES ADVENTURE YANCHEP NATIONAL PARK</b>  Ghost House Rd Yanchep WA 6035 <a href="https://treesadventure.com.au/park/yanchep-park/">https://treesadventure.com.au/park/yanchep-park/</a>	1 <sup>st</sup> August 2018	WA National Park – Conservation & Land Management Executive Body	High Rope Adventure Courses x 7, 70 Challenges, 16 Flying Foxes



Figure 1 Opening fun TreeTops Coffs Harbour

Our motivation remains the same as it was on day one, we are passionate about providing safe and challenging adventures in nature with a wow factor. We believe strongly that drawing people of all ages into nature to have fun adventures in the trees, helps them to connect with themselves, with each other and with the natural environment.



## OUR MISSION

The mission of our business is to develop exciting projects, work toward the protection of the environment; participate in the community's well being and foster educational experiences of the natural environment and cultural heritage.



Figure 2 Trees Adventure Glen Harrow Park, Belgrave

The operation of our parks is informed by the following values:

*We are exciting, safe and unique*

*We are champions of healthy outdoor activities*

*We care for the bush, natural environment and community*

*We educate visitors about the environment, cultural heritage and sustainability*

Since starting we have worked hard to establish our business as the leaders in the development of the tree based adventure industry in Australia. Over the past 13 years we have built adventure courses for ourselves and other operators in Australia, Europe and Asia under vastly differing circumstances.

We have developed reliable and safe procedures for the design, construction and operation of our products and parks with risk management at the top of our priorities. We would never knowingly place anyone at risk in one of our parks.

We created our own online booking system in order to effectively manage participant numbers at a time when the tourism industry was still heavily reliant on phone bookings. We invested in the development of our own training manual specific to our industry in order to ensure our team members have received the most comprehensive training relevant to their experience, job description and location.



Figure 3 Trees Adventure ShoalHaven Park Nowra

None of our projects are established as a 'set and forget' or 'one size fits all' facility. Each of our parks is as unique as the site that it inhabits. We adapt our challenges according to the trees, to the landscape and to the conditions identified through the planning process by expert consultants and landowners. Our intention is to integrate with the landscape not to be an imposition and we aim to achieve this by:

- designing the courses to follow the clearest line through the trees without the removal of any trees,
- minimal impact on undergrowth,
- using existing pathways
- blending with the colours of the forest and
- designing the challenges to encourage the free passage of wildlife.

We do not fence off the area beneath any of the courses unless it has been acknowledged as desirable by the land manager and ecologist for the protection of a species of flora or fauna. This means that any member of the general public can still have walking access to the site. Our courses cannot be accessed outside of operating hours and the use of recycled shipping containers for storage protects our equipment.



Figure 4 TreeTops Sydney The Hills



Figure 5 Nowra combining rocks & tree adventures

We pride ourselves in ongoing research and development to create new adventure experiences, to refine our challenges for returning visitors to explore and to stay on top of the latest developments in technology for participant safety.

All of our documents are part of a living system that is regularly revised and updated in order to stay relevant. The independent experts that we hire are selected for their skills and knowledge so that we can rely on the information they provide. At the core of all the work we do is safety of our team, participants and the environment. Without an exemplary safety record and demonstrated best practice in care of all aspects of the forests, we would not be able to work with organisations such National Parks NSW, Parks Victoria, YMCA Victoria, Taronga Conservation Society and Forests NSW. It is because our own values align so closely with these different organisations across different states, that we have their support.



All our adventures are open to a wide range of visitors with a focus on providing accessible adventures for people with special needs. Some of our activities have been specifically designed to be fully accessible like the YMCA courses at Camp Manyung on the Mornington Peninsula or our award-winning zip line TreeTop Crazy Rider on the Central Coast of NSW. Some of our adventures in NSW are open for children from 1 years old and all our adventures encourage people to work together to overcome the various challenges on offer.



*Figure 6 Red Course at TreeTops Western Sydney*

## **DEVELOPMENT OF THE YARRA FLATS TREETOPS PROPOSAL**

This project was initiated by Parks Victoria in 2009 to allow visitors to form a ‘connection to nature’ whilst protecting the natural values of the site as stated in their call for expressions of interest. Ecoline was the selected proponent for the Yarra Flats project because of our commitment to the environmental values of the site and our safety record. We have worked with Parks Victoria since then to develop the project and navigate the planning process. The journey of this project has taken considerably longer than we had anticipated for an assortment of reasons, but it has remained our intention to create an outdoor adventure that the community could enjoy for the benefits of their physical & mental health.

Our vision for Yarra Flats has always been to create a sustainable adventure activity in the tree tops, for people from the age of 3 and beyond to enjoy. We offer an exciting and fun activity for participants to experience nature whilst having no long-term impact on the forest, without the use of power to generate their activity and minimising the inherent risks of high rope adventures through the use of the latest technology in reliable PPE. We provide various levels of physical activities for children and adults to get involved with and because it is presented as a fun challenge, we can attract people who may otherwise be reticent to exercise or spend time in nature. We get people off the couch and outside! These soft adventures provide physical activities for people:

- to develop proprioception- their sense of moving their body within space.
- to utilise their five senses in extraordinary conditions.
- to experience a sense of balance and gravity whilst suspended in the trees.

- to move and be active.
- to confront ideas of ability and skill, to build self-confidence, and to feel the exhilaration of overcoming a challenge; all very important for mental health.
- to bond with family, friends or teammates to enjoy a better understanding of the natural environment and cultural connection to country through time spent in the trees as well as interpretive signage and education programs.

## COURSE DESIGN

The elements of our facilities have a light touch on the land and are fully removable. The courses and challenges are designed to allow for the movement of wildlife and do not prevent the general public from accessing the site.

In 2019, as part of the ongoing eco certification process that we started in 2010, some of our parks were audited by EcoTourism Australia and the response we received began with:

*“WOW!!! Tree Tops is an exemplary example of a business not only completely in tune with nature, but with a deep and thorough understanding of its customer base, its marketing and its business structure, and is supported by an incredibly dedicated and highly trained team with an environmental, conservation, and customer service ethic second to none. All documentation plans are extremely comprehensive with Business, Marketing and Environmental Plans developed to a very high standard.”*

EcoTourism Australia Certification Audit Report 22/02/2019

We have designed facilities for forests in regional areas as well as urban areas such as TreeTops Sydney The Hills in Cumberland State Forest, TreeTops Western Sydney within Abbotsbury - part of Sydney's most heavily populated Western suburbs and a new site planned for St Ives with the Ku-ring-gai Council. These sites are very popular especially with families who do not have the means to travel easily out of Sydney to regional areas. In this way the parks play an important role in connecting people living in the city with the natural environment.

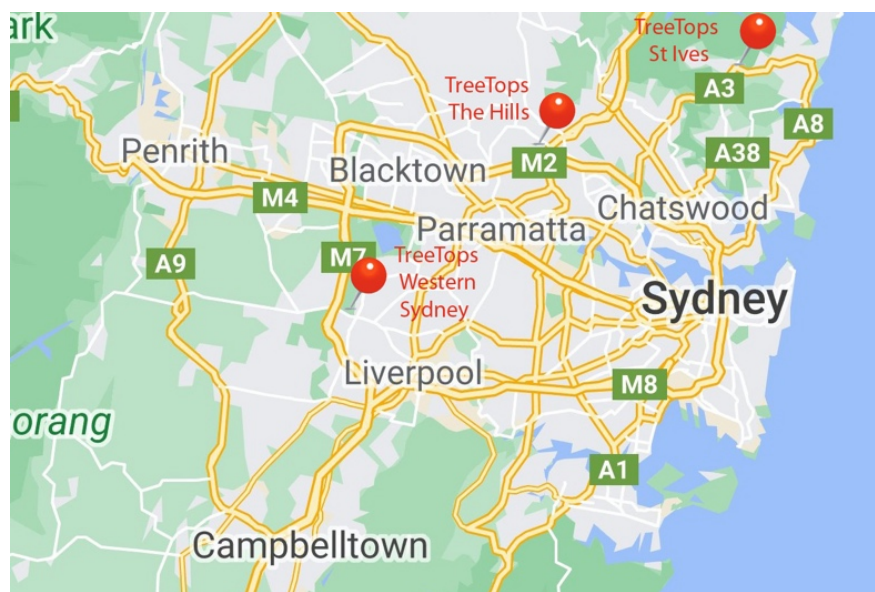


Figure 7 Locations of TreeTops within urban settings

We have established similar adventure courses in protected ecosystems like the Cumberland Plain Woodland in Western Sydney, in coastal rainforest in Coffs Harbour, on Bunya pines in Sydney, and large Blue Gum forests. For all projects we commission specialised consultants, including ecologists and arborists so that we can rely on their professional recommendations for each site. Our intention is always to work within the recommendations of these professionals and ensure the ongoing health of the site as the trees are the stars of the business.

At the outset of each project, we work with the independent arborist and ecologist to assess the site and to create a management plan that will protect the natural values of the forest. We look to improve what we can through the removal of rubbish, a bush regeneration strategy with a focus on weed eradication and indigenous species reintroduction. We work with the local land managers to monitor and record the movement of wildlife through our sites as well as the appearance of flora as the area regenerates after weed removal.



*Figure 8 A local visiting the office at TreeTops Coffs*

The construction of the Yarra Flats facility will be very low impact with challenges and platforms to be constructed off site and battery powered hand tools used to mount the platforms around the trees. In addition, the proposed office will comprise two containers to be transported to the site. The siting of the office close to the road means that no truck will need to leave the road to locate the containers. No heavy machinery will be used to construct the facility.

The proposed specifications for the platforms in the the trees and set up methodology have been refined over more than a decade of design and construction on trees of all types throughout the world. The specifications comply with all relevant construction standards and have been certified by a construction engineer.

The equipment is built around the trees without any drilling or nailing. Logs are clamped around the tree and decking mounted on the logs. Measures are employed to ensure that as the tree grows the logs and cables surrounding the trees are slowly released to allow tree growth without any restriction.

All proposed equipment used for the establishment of the courses is non invasive and fully removable.

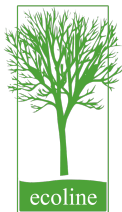
All trees are inspected before construction commences with a tree management plan devised for the construction of the courses and the ongoing monitoring of trees. Once all aspects of the courses are in place the arborist and engineer will inspect the courses before opening. The trees and courses will then be inspected annually or after a significant weather event.

As part of our work we will be refurbishing the public toilets on site that are currently locked to all members of the public. These toilets will be open to the public during operating hours. The degraded surface of the carpark and road area leading to the site will also be repaired.

### **BANKSIA ST BILLABONG**

As a component of the Healthy Waterways Strategy from Melbourne Water, the construction of a new wetland to treat stormwater from the Banksia Street Drain is planned. This new wetland will also provide alternative water directly to Annulus Billabong and Banksia Street Billabong to improve





their wetting and drying cycles and to closely mimic the natural environment. This will likely result in these billabongs being inundated more often and for longer periods of time.

Conversations with the project manager from Melbourne Water suggest that this project and TreeTops will complement each other. All participants will be in the tree tops above the Banksia St Billabong not at ground level and therefore given a unique opportunity to view the water in the landscape. There will be opportunities to contribute to this project with interpretive signage and in general, the exposure of participants to this project will encourage broader community understanding of the importance of these waterways in the context of a healthy Yarra River system.

## **COURSE ADAPTATION**

With the daily and weekly inspections of all courses and challenges our team members are alert to identify potential risks and the tree management plan for the site will support these inspections. The inspections are also undertaken in an appropriate timeframe after heavy winds or flood events with the arborist required to attend. Advice is taken from the arborist on the suitability of trees for the continued use in the courses, if the arborist identifies that a tree is no longer suitable for use as part of the course for health or safety reasons, we close off the course immediately until the required work can be undertaken.

This requires the designer and arborist to work together to locate the most suitable tree or trees within the lease area to divert the course onto. Such trees would be in the vicinity of the existing course and not impacting on any trees containing hollows. Parks Victoria would be advised of the need for such work and the ultimate changes to the courses would be approved by them. Once this work is complete the changes are inspected by the engineer and arborist.

## **OPERATIONAL MANAGEMENT**

### **BOOKINGS**

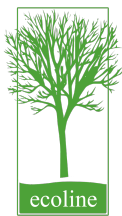
We offer self-guided high-rope courses, that involve climbing through challenging obstacles such as rope-ladders, wobbly bridges, tunnels and cargo-nets all interspersed with flying-foxes (zip-lines). The courses are separated into two sections;

- Children's courses designed for children 3-9 years of age and,
- Adult's/Junior's courses made up of 4 courses, which increase in height, difficulty and duration as participant's progress through the levels.

We limit the number of people on the courses at any time via the online booking system. Without a booking people are not able to climb.

Junior and Adults generally take 2 -3 hours to complete all the courses. Children have 2 hours from time of booking, which includes time to put on equipment, be briefed by a team member and enjoy the courses. Once participants have completed their adventure, they go back to the reception area where a team member collects their PPE before farewelling them.

The courses are monitored from the ground by our team members. Signage on the Children's courses reminds caregivers that they are required to actively monitor the children under their responsibility at all times. This also encourages people to stay engaged with Children as they move their way through the challenges, giving them support and encouragement.



All the action takes place in the trees, anyone can wander on the existing paths under the courses. Signage is placed along all paths to remind people to not leave the designated pathways.

## OPERATING PROCEDURES

Each park is operated under the guidance of our Standard Operating Procedures (**SOP**) and Site Specific Safety Management Plan (**SSMP**). All independent assessments of the site from relevant specialists and the requirements from Melbourne Water and Banyule Council (as reflected in the proposed Incorporated Document) will inform the guidelines particular to the site set out in the SOP and SSMP.

Once the planning process is complete and approvals are in place we ensure that the SOP and SSMP are updated for the site, adhering to the requirements of the planning process and the landowner. Employment opportunities arising from this project will be for 2 full time positions and up to 6 casual positions for team members. All operational team members for the site are trained with these documents. Our Construction team are briefed on the contents of the SSMP and Safe Work Method Statement for Construction before they commence any work as are all contractors coming to the site for the carpark and toilet refurbishment.

The operation of the park is directed by the recommendations contained within the SSMP and SOP. The risks that are identified by the arborist, and ecologist are used to create the Tree Management Plan as well as the Environmental Management Plan. The Environmental Management Plan covers design, construction and operation aspects which respect the natural environment. This document also outlines responsibilities and timeframes relevant to each environmental consideration.

The Tree Management Plan sets out the best practice for protecting the health and viability of all trees used in the courses. It also identifies any potential concerns to be monitored after specific weather events or indicators that need to be noted and brought to the attention of a qualified arborist.

Closure of the park may be required in response to an unfolding emergency or perceived risk such as Extreme Fire Danger warning issued or Flood Warnings declared. The Flood Management Plan approved by Melbourne Water will set out the trigger point for flood evacuation, the protective actions to be undertaken and the post flood actions. These details are fed into the Risk Assessment & Safe Work Method Statement for the site.

The key elements of the SOP and the SSMP are summarised as follows:

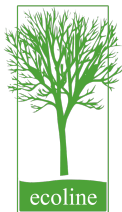
1. The high rope adventures are by nature a high risk activity. In order to minimise the risks the **SOP** ensures that Team Members at each site all have access to relevant information to operate the site and provide safe supervision and training of customers. The SOPs specify the minimum requirements for the operation, Team Members competencies, supervision levels, maintenance and testing for park activities. Team Members must have undergone all relevant training and assessment for their level of competency to keep knowledge current and relevant.
  - Safety- legislation and codes of practice applicable to the activity, details of insurance, waiver forms, PPE to be used, Course inspections & timetable, Maintenance log, SSMP, Risk Assessment & Safe Work Method statement, Emergency Management, Incident reporting

- Procedures - delivery procedures, safety briefing for children, safety briefing for Juniors and Adults, Activity operation, Course supervision, Post activity & Pack up, Closing park, Customer service, Online booking, Payment, Banking, events, terms& conditions, feedback management
- Team Member Management – HR, Training & Personal Development, Workers Compensation, First Sight Sheets, Incident forms
- Environment – Environmental Management Plan, Arborist Report, Tree Management Plan if applicable
- Partners – permits for site, Partnership Policy
- Quality Management – Quality Policy, Quality objectives

## 2. SSMP

The SSMP is used to communicate our safety requirements in operating the Park with TreeTop Management, Land Owners and all TreeTops Personnel. The SSMP can be broken down into the following sections in terms of the areas that it covers and documents it contains. This demonstrates where the documents that are required for planning approval are actually utilised.

<b>1.RISK MANAGEMENT</b>  Addressed during design, construction and operational phases, including emergency hazard identification and detailed throughout various documents, including: Risk Assessment – Design & Construction Safe Work Method Statement – Design & Construction TreeTops Continuity Plan Risk Assessment Risk Assessment & Safe Work Method Statement – Operation Risk Assessment – First Aid Emergency Hazard Identification & Risk Management Register	<b>2.RESPONSIBILITIES</b>  Recorded throughout various documents in use, including: Quality Management System Manual Work Health and Safety Manual: Roles & Responsibilities Training Manual
<b>3.SAFE WORK METHOD STATEMENTS</b>  Show risks and control measures associated with TreeTops activities for staff and participants such as: Safe Work Method Statement for Design and Construction Risk Assessment & Safe Work Method Statement for Operational Park	<b>4. WORK HEALTH &amp; SAFETY TRAINING</b>  Involves stringent internal training and competency assessments for Instructors and detailed training and assessment for visitors by competently trained Instructors. Training of the safety controls feature in the following documentation: Manuals Work Health & Safety Manual Training Manual - identifies training needs and training & assessment of Instructors; and lists training rules for the induction, training & assessment of park visitors
<b>5.SITE SAFETY RULES</b>  Visitor safety rules are explained before participation during safety briefing and practice course and on various signs erected around grounds. Site safety rules are displayed on signage, communicated through briefing and detailed throughout various documents, including: SOP Training Manual Waiver Forms	<b>6.INCIDENT MANAGEMENT</b>  Can include the need to contact a supplier through to accident reporting and notifications to authorities. This includes: Hazardous Chemical Register (includes MSDS/SDS Sheets) Accident/Incident/Injury/Near Miss/ Environmental damage register Unauthorised access log Rescue Log Corrective & Preventive Action Register
<b>7. EMERGENCY MANAGEMENT</b>  Includes preparedness for severe weather events, rescue of injured person from height, including first aid, evacuation of Park and high wire rope activities due to severe weather, flood threat or bushfire. First Aid Procedures Emergency Management Plan- includes emergency roles & responsibilities Bushfire Emergency & evacuation Plan (when required) Flood Management Plan Maintenance Management Plan – Operation	<b>8.COURSE &amp; EQUIPMENT INSPECTION &amp; MAINTENANCE</b>  The inspection & maintenance of courses & personal protective equipment are of utmost importance in our Work Health & Safety Management System. These documents include: Inspection & Test Plan Course Inspection Procedure (Levels 1, 2 and 3) Equipment Log and PPE Procedure Tree Management Plan Internal Audit Schedule Maintenance Management Plan – grounds & building



Our Management Systems are “living” systems and are in a continual process of evolution.

All of the documents that combine to form the SOP and SSMP are relevant for the individual Park Management and Team Members for that site as well as the Operations Manager, Construction & Maintenance Manager & personnel, Safety Manager and the executive management of the business. These procedures, forms and manuals enable us to document, control, communicate and measure the safe delivery of our adventures.

The Operations Manager is responsible for the training and assessment of all team members. Our training manual is a comprehensive document that ensures all team members are well versed in the requirements for the safe operation of the site. In brief it covers the following:

- Induction, Environment and Site Safety
- Customer Service and Engagement
- Personal Protection Equipment
- Lessons/Safety Briefings/Tours & Activity Set Up/Pack Up
- Participant Assistance – including rescues
- Office Skills
- Inspections and Basic Maintenance

Team members must be assessed and deemed competent in the procedures for each section relevant to the position that they hold. Operations are routinely assessed by the Operations Manager and other management visiting site as well as feedback gathered through Survey Monkey from customers and team members. Each park is managed against a set of KPI which include safety management and environmental management items.

Annually a report is created for the landowner which includes statistics regarding incidents and near misses, the annual arborist report, annual engineer inspection report, proof of insurance, evidence of environmental management for the site such as bush regeneration and special events or interpretive signage that has been updated.

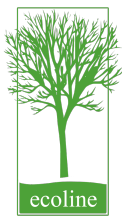
## **OUR SAFETY RECORD**

Offering thrilling adventures is core to our business however the safety, health and welfare of people and the environment is the benchmark in all aspects of our business.

While aiming for the maximum thrilling experience, we control the risks through:

- Design, construction and maintenance of the unique adventure facilities;
- Use of the best safety and protective equipment;
- Comprehensive training and assessment of our team;
- Strict compliance to safety controls by all, workers and visitors, who venture on the activities.

We have introduced continuous belay systems at our parks to reduce the risk of double disconnection on any of the courses. A belay system is the safety system that keeps participants connected to the safety line whilst off the ground. A continuous belay means that from the time a participant hooks on at the start of the course until they are back on the ground, it is impossible for them to disconnect without the use of a special tool carried by our team members. This is the highest level of safety possible with a belay system.



Our technical equipment is monitored and maintained with a rigorous inspection procedure followed at each of our sites. All course elements are inspected throughout the week with 2 different levels of inspections every week. These inspections take into consideration any special requirements of the site such as the monitoring of trees.

Another innovation to our safety system is the installation of wireless weather stations. Our risk assessment contains rules for the safe operation of the park, and when these conditions are no longer met (for example extreme fire risk or flood risk for this particular site), the Manager can temporarily close the activity.

TreeTops aims to provide a safe, recreational environment and promote community awareness of work health and safety issues in relation to using our facilities. Continuous improvement in developing our Management Systems and compliance to legislative requirements are ongoing features of our business planning.

We operate in compliance with WHS legislation changes that came in force in January 2012 - Work Health & Safety Act 2011 and Model Work Health and Safety Regulation 2015 and model Codes of Practice.

We are committed to establishing measurable objectives and targets to ensure continued improvement aimed at elimination of work and activity related injury and illness.

Consultation and innovation within the organisation is encouraged to assist in developing our safety systems. As a result, we developed our own Training and Assessment Manual for the safety of our customers and our instructors.

We are proud to say over 1,500,000 people have enjoyed our parks without any major incidents.

An Emergency Management Plan is created for each site and all TreeTops staff working on site are trained for best response in the event of an emergency.

TreeTops maintains all insurances required and obtainable. In particular Public and Product Liability for up to \$20 million, Workers Compensation and Business (including content).

All of the operation processes we use have originated out of the Quality Management System developed over the years by Ecoline and certified by ISO9001:2016 since 2017.

## **SAFETY STANDARDS**

The applicable standards that we follow for Construction & Safety are AS2316.2.1-2016 and for Operations we follow AS2316.2.2-2016 as well as EN 15567-1-2015/A12020 and EN 15567-2-2015.

Personal Protective Equipment (PPE) and course components (ropes, belay pulleys, etc.) are inspected and maintained as per manufacturer's instructions, and are purchased to meet relevant standards.

Independent experts are engaged to undertake thorough inspections of different elements of the facility.

- A Level 5 Arborist inspects all trees used in the courses annually and following significant weather event including flood event,
- Qualified riggers inspect the courses annually,
- Any structures built are inspected to meet the Building Code of Australia following WHS Legislation, Australian Standards and industry specific specifications.

## **RISK MANAGEMENT**

Safety Risk Management is addressed during the design, construction, operational phases, including emergency hazard identification.

Safety Risk Management processes are detailed throughout various documents, including: -

- First Aid Risk Assessment
- Continuity Plan Risk Assessment
- Emergency Hazard Identification & Risk Management Register
- Risk Assessment & Safe Work Method Statement - Construction of TreeTops YF
- Risk Assessment & Safe Work Method Statement–Operation of TreeTops YF
- Risk Assessment – Corporate Special Activities
- Hazard Identification & Risk Management Form
- Emergency Management Plan- incl. flood management plan
- Environmental Management Plan
- Tree Management Plan
- Rescue Procedure
- First Aid Procedure

At Yarra Flats with the likelihood that the Banksia St Billabong will hold water, we identify this as a potential risk for the site. To mitigate the risks we would consider the following control measures

1. Clear, adequate signage at the entrance and near the Billabong to warn people especially parents to be vigilant with young children
2. Team members monitoring the area near the Billabong
3. Temporary fencing to close off the area of the Billabong whilst the park is open if required
4. Team member 1<sup>st</sup> aid/cpr maintained

Safe Work Method Statements show risks and control measures associated with Construction, TreeTop activities for Staff and Participating visitors and are developed specific to each park.

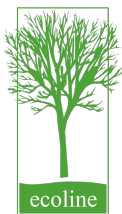
## **SAFETY IN OPERATION**

Should a customer require assistance whilst on a course the team members patrolling the ground below are quick to be on hand for help. Only rescue trained team members can perform rescues or evacuations from the courses, the park is always staffed by a qualified team member. Most of the time, team members will be able to verbally assist so that the customer can continue their journey on the course until the exit. In some cases, the customer will need to be lowered from the course by a team member who would then escort the rescued participant back to the office and parking area.

First aid will be provided at the site of the incident or at the office. Team members are required to hold a first aid certificate. There is always at least one qualified first aid person on site.

If medical assistance is required, the safety procedure will be followed to ensure assistance is prompt and appropriate.

As all of our parks are located in bushland we can encounter snakes especially in the warmer months. We provide signage along the paths to remind people to watch out for any snakes and to not make



any attempt to touch them. We prefer to leave the snakes alone as it is their natural habitat. Team members will notify people if a snake has been sighted on a path and may choose to close that path off temporarily. We have never had any participant or team member bitten by a snake at one of our parks but each park does carry adequate 1<sup>st</sup> Aid equipment to respond to snake bite.

In case of an emergency, team members evacuate the courses efficiently and promptly. Emergency exits are set at suitable locations on each course and signage is installed to locate the emergency meet points. This is done to coordinate with Park Victoria's predetermined safety points as set out in their Emergency Management Plan for the site. Evacuation drills are performed as necessary to ensure all team members are familiar with relevant steps to be taken and roles/responsibilities.

## PPE

Specific safety equipment must be worn on all of the courses. The TreeTops attachment systems have proven reliable over a decade of experience and use advanced technologies developed by related activities such as rock climbing and abseiling. Each participant needs special equipment before starting the rope courses. Juniors must be 10 years of age and at least 1.4 metres tall.

Many people with special needs are able to enjoy an adventure appropriate to their capabilities because thanks to the safety harness and continuous belay courses they are attached to the safety line of the course from start to finish.

Children from 3 to 9	Adults and juniors
Q a full body harness	Q a full body harness
Q a lanyard	Q a lanyard
Q an EcoTrack trolley	Q a Coudou trolley
Q a helmet	Q a helmet

Despite their safety harnesses customers will not be permitted to start until they have received full safety training from an instructor. Once Juniors and Adults have demonstrated on the practice course that they are safe to go, they are allowed to continue around the courses independently. Instructors patrol on the ground and will monitor people throughout their visit. Our team members are required to have a current first aid certificate and every team has people specifically trained to rescue people from the courses if required.

Site Safety Rules are displayed on signage at the park, communicated through preparation and training of all participants, included in our website information and detailed throughout various documents such as the waiver form signed by participants before they begin.

Work, Health & Safety Training involves stringent internal training and competency assessments for Team Members and detailed training and assessment for visitors by competently trained Team Members. Training of the safety controls feature in the following documentation: -

- ~ Work Health & Safety Manual
- ~ TreeTops Training Manual - identifies training needs; used for the training & assessment of Team Members; and lists training rules for the induction, training & assessment of Park Visitors
- ~ Human Resources Manual



An accident/incident/Injury/Near Miss register is maintained at each park. Each entry is followed up by the Park Manager, reviewing the need for any corrective action.

## SECURITY

After hours we remove the access to all of the courses. With one platform the starting point for all courses it is easier to remove access ladders and ropes which are then secured in the shipping containers. The shipping containers containing personal protective equipment and all other equipment are securely locked.

If there is a breach overnight the team members have procedures to inspect all courses and any equipment that may have been impacted before participants enter the courses. At Yarra Flats the toilets will be locked at the close of operations each day to remove the opportunity for the anti-social behaviour currently occurring onsite.

Any security breaches of the site are registered, with Parks Victoria notified and police contacted if there has been significant damage to property. We have found that the presence of our team members 7 days a week significantly reduces the incidence of anti-social behaviour such as graffiti or rubbish dumping at all sites.

## TREE RISK AND HAZARD MANAGEMENT

Arboricultural expertise is an important aspect of our operations. It is common for the original arboricultural assessment to be the subject of a peer review. In this case the Council has also provided its own peer review.

The sites used for our courses are selected by the arborist and designer working together. The detailed assessment of the qualified Level 5 arborist will determine if a site is suitable for a high rope adventure course. The comprehensive report completed by the arborist identifies every tree suitable for our purpose as well as potential risks, trees not to be used, limbs to be removed, and a plan of management particular to the site. From this report a Tree Management Plan is produced if specifically required for the site.

The Tree Management Plan aims to manage the long term health of the trees involved in the courses and in the immediate area of the facility, it sets out the management regime for the trees on the site and any mitigation measures to be adopted during construction and for the operation of the facility.

An arborist is retained to inspect the course annually, and as required after severe weather events or if a potential risk has been identified during routine inspections. After each inspection the arborist supplies a report to identify work carried out, hazards identified and corrective actions to be followed. The Management team ensure this work is followed up by Maintenance and when needed the First Site sheet for the Team Members will include notes regarding the outcome of the inspection and actions to be taken.

The site manager will inspect the course daily/weekly/monthly as follows:

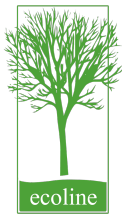
### Level 1 daily before any public use

- Inspection of courses is carried out from the ground



*Figure 9 Access from the platform around the home tree is prevented by removing ladders*





- Follow the lifeline from start to finish of course
- Check for damage caused by fallen branches or other causes
- Check heights of lifeline
- Check the condition of the tree brackets
- Check for anything out of the ordinary
- Report any issue to Manager
- Recorded online - Results of all inspections are logged on online software called “Park Up Keep” (PUK) as well as any issues e.g. fallen branches.

**Level 2** at least twice per week prior to public use, more frequently after heavy rain, high wind or thunderstorm

- Inspection is carried out from each course
- Confirm nothing is out of the ordinary as per inspection level 1
- Check presence of heated shrink cap on each cable termination
- Check platform movement
- Check the condition of the tree bracket
- Check for cable abnormal slack
- Report any issue to Manager
- Recorded on online software PUK

**Level 3** – this is conducted by the Maintenance Manager

- Inspection is carried out from the course
- Inspection performed 6 monthly by competent person with Rigger’s qualifications (Maintenance Manager)
- Recorded on online software PUK

Using the PUK software means our management team are able to stay informed of what is happening at each park and what requires attention, this allows us to stay on top of scheduling the maintenance requirements for all sites.

The history of other facilities indicates that the incidence of limb failure or injuries is low. Across all of our parks, some that have been operating now for 14 years, we have no more than 3 incidents of branches falling unexpectedly during construction or when the park has been open and never have we had a branch land on any person or vehicle. The Arborist annual report for a site always includes a risk assessment of dangerous limbs. When pruning is not possible , we brace the branches to mitigate risk.



*Figure 10 Bracing a branch to mitigate risk of falling*

Like many other outdoor recreational pursuits, its appeal is influenced by the weather. Peak periods tend to occur during the warmer months. Treetops courses do/do not operate during periods of high wind or storms for obvious reasons. But the demand for the use is lower during wet or windy weather.

## **BENEFITS**

We are confident that this project will bring more families to the site in line with Parks Victoria's Healthy Parks, Healthy People strategy. Government policy increasingly recognises the importance of play and time spent in natural environments for the health and well-being of the community. We all know that young people need options that inspire them to get outdoors and off devices.

TreeTops has been able to bring close to a million children and youth into the bush for a healthy adventure. Once they have enjoyed it, they are more likely to want to return, protect and value the natural environment. The word of mouth and repeat visitation figures combined for our parks sits around 80% of all visitors.

We operate in locations that have previously been impacted by antisocial activities and, in every case, the land manager has reported positive improvements after we have begun managing the site. We know from experience that our presence assists with passive surveillance of open space areas which helps to ensure the area is safe and that anti social behaviour, vandalism and littering is deterred. This encourages other uses of the area to flourish. We will continue to work in cooperation with Parks Victoria, Melbourne Water and Banyule Council to ensure we create an amazing destination for people to connect with nature in a safe way. The Melbourne Water scheme to bring water back into the Banksia St Billabong on a more consistent basis will provide us with more opportunities to share information about the intermittent water bodies of Australia and where they fit in the environment.

## CULTURAL HERITAGE

Looking ahead, we are committed to develop an ongoing professional relationship with the Wurundjeri – Woirung Aboriginal Corporation in order to create the most appropriate opportunities and experiences for their cultural heritage to be shared with visitors to the site. We believe the potential exists for other opportunities such as joint land management to control the infestation of weeds on the ground.

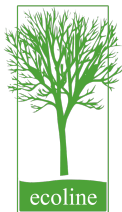
TreeTops received advice that a Cultural Heritage Management Plan (CHMP) was not required by the *Aboriginal Heritage Regulations 2018*. Despite this TreeTops has indicated its willingness to voluntarily prepare a CHMP. Through this process, there will be ongoing dialogue as to how indigenous cultural values can be integrated and celebrated as part of the operation and the surrounding area. Subject to discussions with Parks Victoria and DELWP, (who will administer the lease arrangement), there are opportunities to facilitate indigenous land management practices, cultural activities, ceremonial practices, cultural education and tourism within the Yarra Flats area.

We understand that as the land is Crown land, the *Traditional Owner Settlement Act 2010* applies in Victoria. In that context, engagement regarding indigenous land management issues within the Yarra River corridor will involve engagement between Parks Victoria as the public land manager and the Crown as the landowner. For our part we are keen to facilitate the active involvement of traditional owners in the management of the site and its immediate surrounds.

We have experience working with traditional owners of other sites such as with the Darkinjung people for our sensory trail on the Central Coast of NSW or the Gumbaynggirr community in the region of Coffs Harbour. We have developed interpretive material at numerous parks with the co-operation of traditional owners through the provision of artwork and information.



Figure 11 Smoking ceremony performed at the opening of TreeTops Coffs



## CONCLUSION

We are confident that our presence at Yarra Flats will assist with the regeneration of native vegetation and will help celebrate indigenous culture, by providing a focal point for renewal of the Yarra Flats in way that is compatible with indigenous land management and cultural practices. The proposal will also support opportunities in tourism which will enhance the local economy and community, by encouraging healthy, fun outdoor recreational activities.

We appreciate the unique qualities of this location and the values it holds for many. Our experience at other sites demonstrates, that we are adept in creating exciting adventures with respect for the environment and for the shared benefit of all sectors of the community that value this important open space asset.

## **ANNEXURE C**

### **Proponent revisions to Day 1 Incorporated Document**

~~Banyule City Council~~ [Proponent amendments to the Council's — Day 1 Hearing Version](#)

**BANYULE PLANNING SCHEME  
Incorporated Document**

[Day 1 Hearing version \(proponent edits 30.6.21\)](#)

**Treetop Adventure Park  
340-680 The Boulevard, Ivanhoe East  
September 2020**

This document is an Incorporated Document in the Banyule Planning Scheme pursuant to  
Section 6(2)(j) of the *Planning and Environment Act 1987*



## **1.0 INTRODUCTION**

This document is an Incorporated Document in the Schedules to 45.12 and 72.04 of the Banyule Planning Scheme (the scheme).

The land identified in Clause 3.0 of this document may be used and developed in accordance with the specific controls contained in Clauses 5.0 and 6.0 of this Document.

The provisions of this document prevail over any contrary or inconsistent provision in the scheme.

## **2.0 PURPOSE**

The purpose of this document 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.

## **3.0 ADDRESS OF THE LAND**

This document applies to part of the land within the Yarra Flats Park, 340 to 680 The Boulevard, Ivanhoe East, which is affected by Specific Controls Overlay 13 (SCO13) ~~as shown on Planning Scheme Map 16SCO~~ and which is more particularly identified as Subject Site in Figure 1 below.

The land is described as:

- The eastern portion of Crown Allotment 2E within the Parish of Keelbundora, created by instrument MI121222X, in Crown Diagram CD048476M; and
- The north-eastern portion of Crown Allotment 2H within the Parish of Keelbundora, created by instrument MI121225R, in Crown Diagram CD048477K.



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

#### **4.0 EXEMPTION FROM PLANNING SCHEME PROVISIONS**

Despite any provision to the contrary or any inconsistent provision in the scheme, no planning permit is required for, and no planning provision in the scheme operates to prohibit, restrict or regulate the use and development for the purposes of the development allowed by this document.

#### **5.0 WHAT THIS DOCUMENT ALLOWS**

This incorporated document allows for the area identified as Treetop Activity Area to be used and developed for development of an outdoor recreation facility (treetop adventure park), removal of native vegetation and display of advertising signage and for access, car parking and signage associated with the permitted use and development to occur within the broader area identified as Subject Site, generally in accordance with the following 'Incorporated Plans' and Clause 6.0 of this document.

The 'Incorporated Plans' include any matter identified in Clause 6.0 as Incorporated Plans and includes the following:

- Treetop Adventure Park Site Plan dated 15 June 2021 Version 10 as shown in Figure 2
- Site Plan ~~and Administration Offices Office Plans~~, prepared by Josh Clarke Ecoline Pty Ltd dated 15 June 2021 (Amendment C Revision 2) ~~September 2020~~
- Elevations prepared by Josh Clarke dated 15 June 2021 (Amendment C Revision 2). ##Accurate Plan References to be provided and confirmed.
- Flora and Fauna Assessment, Native Vegetation Impact Assessment ~~No-Net Loss Analysis~~ and Land Management Plan, Yarra Flats TreeTop Adventure Park prepared by Practical Ecology, dated 21 June 2021 ~~December 2018~~.
- Arboricultural Tree Health and Hazard Assessment, TreeTop Adventure Park, Yarra Flats ~~Arboriculturist's Report and Tree Management Plan~~ prepared by Advanced Treescape Consulting, dated 31 August 2018 with addendum dated 25 February 2019
- TreeTop Adventure Park Ivanhoe, Transport Impact Assessment by One Mile Grid dated 31 May 2016
- Preliminary Signage Strategy TreeTops at Yarra Flats by Treetops dated June 2017

and including any amendment of the plans that may be approved by the Responsible Authority from time to time under the clauses of this document. Once approved, these plans will be the endorsed plans.



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2



2

Figure 2: Treetop Adventure Park Site Plan

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**6.0 THE FOLLOWING CONDITIONS APPLY TO THIS DOCUMENT:**

**General**

6.1 The development as shown on the 'Incorporated Plans' must not be altered or modified except with the written consent of the Public Land Manager and the Responsible Authority.

6.16.2 Unless otherwise agreed in writing by the Responsible Authority, the use and development allowed by this document must not commence until:

- (a) The Tree Management & Protection Plan as required by Condition 6.76 is approved by the Responsible Authority.
- (b) The tree protection measures required by Condition 6.1140 are installed to the satisfaction of the Public Land Manager and the Responsible Authority.
- (c) The Construction Management Plan as required by Condition 6.2926 is approved by the Responsible Authority.
- (d) A separate application, direct to Melbourne Water, is made for any new or modified storm water connection to Melbourne Water's drains or watercourses as required by Condition 6.37.

(e) A flood management plan for the Treetop Activity Area has been prepared to the satisfaction of Melbourne Water as required by Condition 6.35

(f) A cut and fill plan must be submitted and approved as per Condition 6.38

(g) An agreement entered into with Melbourne Water and Parks Victoria as per condition 6.41

(h) A Fauna Management Plan has been prepared to the satisfaction of the ~~responsible authority~~ Responsible Authority as required by condition 6.6

(i) A Green Travel Plan has been prepared to the satisfaction of the ~~responsible authority~~ Responsible Authority as required by condition 6.24

(j) A Site Specific Safety Management Plan for operation of the Treetop Activity Area to address risk management, customer training and team member training for safety, environmental impact minimization, and emergency management to the satisfaction of the ~~r~~Responsible ~~a~~Authority and Parks Victoria.

(h) a Cultural Heritage Management Plan has been approved for the activity in accordance with the Aboriginal Heritage Act 2006.

**Commented [BM1]:** As addressed in Annexure B to the submission, this is already a core part of the operations.

**Commented [BM2]:** The proponent agrees to execute a CHMP on a voluntary basis.

**Landscaping and restoration plan**

6.26.3 No environmental weeds as identified in "Banyule Weed Management Strategy 2006" and the "Yarra River Frontage Weed Action Plan 2007" shall be planted on the site or allowed to invade the site and the site must be managed and

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~~maintained to exclude weeds. 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, No Net Loss Analysis and Land Management Plan, Yarra Flats TreeTop Adventure Park prepared by Practical Ecology, dated December 2018.~~

**Commented [BM3]:** New words taken from Environmental Weeds condition

**Commented [BM4]:** Deleted words are addressed in condition 6.4

~~6.36.4~~ All landscaping, revegetation and supplementary planting must be with the consent of the public land manager and be generally in accordance with measures recommended in the Arboricultural Tree Health and Hazard Assessment, TreeTop Adventure Park, Yarra Flats~~Arboriculturalist's Report and Tree Management Plan~~ prepared by Advanced Treescape Consulting, dated 25 February 2019 and with the Flora and Fauna Assessment, Native Vegetation Impact Assessment~~No Net Loss Analysis~~ and Land Management Plan, Yarra Flats TreeTop Adventure Park prepared by Practical Ecology, dated 21 June 2021~~December 2018~~.

~~6.46.5~~ Landscaping must be maintained to the satisfaction of the ~~responsible authority~~Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

**Fauna Management Plan**

~~6.6~~ A Fauna Management Plan (FMP) to the satisfaction of the ~~public land manager must be submitted to, and approved in writing by, the~~ ~~responsible authority~~Responsible Authority. The FMP must address the requirement for ongoing monitoring of the site by both significant and locally occurring fauna, as well as measures to mitigate impacts to individuals/populations should these species occur.

**Tree Management & Protection Plan**

~~6.56.7~~ A Tree Management & Protection Plan (TMPP) to the satisfaction of the public land manager~~responsible authority~~, must be submitted to, and approved in writing by, the ~~responsible authority~~Responsible Authority. The TMPP must be prepared by a suitably qualified and experienced arborist in relation to the management and maintenance of all retained trees within the subject site. When approved, the plan will be endorsed and will form part of the incorporated plans for this document.

~~6.66.8~~ The TMPP must include (but not be limited to):

- (a) The design modifications and particular construction/assembly techniques set out in the Arborist Report authored by Russell Kingdom 31/08/2018;
- (b) A tree protection plan drawn to scale;
- (c) All tree protection zones (TPZ) and structural root zones (SRZ) to be indicated on the plan;
- (d) The types of footings used within TPZs:-
- (e) Details of how root systems of the trees to be impacted will be managed. This must detail any initial non-destructive trenching (if required) and pruning of any roots required to be undertaken by the suitably qualified project arborist;
- (f) Canopy impacts to trees on or adjoining the subject site must be determined.

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- (g) All initial remedial pruning works that are required to be performed, to enable clearance from the proposed Buildings and Works (including any temporary scaffolding requirements).
- (h) Details of the pruning must reference Australian Standard AS4373:2007 Pruning of Amenity Trees, and must be restricted to the removal of no greater than 15% of the total live canopy of individual trees unless otherwise agreed in writing by the Responsible Authority;
- (i) Supervision timetable and certification (sign off sheet) of tree management activities undertaken by the suitably qualified project arborist to the satisfaction of the ~~responsible authority~~ Responsible Authority;
- (j) All TPZ areas and areas where ground protection systems will be used;
- (k) All services to be located within the TPZs and a notation to state that all services will either be located outside the TPZ or bored under the TPZ;
- (l) A management regime for all trees during the preparation, construction and post-construction phases of the development. Matters to be addressed, as appropriate
  - (i) the location/design of tree protection fencing
  - (ii) mulching/ watering requirements
  - (iii) requirements regarding any suitable excavation
  - (iv) weed removal/control measures
  - (v) ongoing maintenance regime of apparatus attached to trees
  - (vi) Emergency works/response procedure

**6-76.9** The approved TMPP must be implemented to the satisfaction of the ~~responsible authority~~ Responsible Authority. Written confirmation from a suitably qualified project arborist that the tree management works undertaken are satisfactory and are in accordance with the approved TMPP must be submitted to the ~~responsible authority~~ Responsible Authority, to its satisfaction.

**Works**

**6-86.10** All buildings and works for the construction of the development (as shown on the endorsed plans) must not alter the existing ground level or topography of the land.

**Tree Protection / Landscaping**

Tree Protection Zone

**6-96.11** Unless otherwise agreed in writing by the Responsible Authority, prior to the commencement of works (including demolition) on the site 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. At least 14 days prior to the commencement of works a 'Statement of Compliance' (from a suitably qualified project arborist) which must include photographic evidence of requirements 6.10(d). This correspondence must be sent to enquiries@banyule.vic.gov.au. Once installed to the satisfaction below the TPZ must be maintained until the conclusion of works to the satisfaction of the Responsible Authority, and must meet the following requirements:

- (a) Extent

**Commented [BM5]:** The need for TPZs for all trees is a matter for evidence. Works should be excluded from the Bushland Conservation Zone as described in the revised Flora and Fauna Assessment, Practical Ecology June 2021. However, the need for TPZs throughout the course will be addressed during the hearing.

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TPZs shall be provided in all locations as shown on the endorsed Tree Management and Protection Plan ~~arborist report~~ to the extent of the calculated TPZ where it occurs within the subject site.

Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorised person only during approved construction within the TPZ and must be restored in accordance with the above requirements at all other times.

(b) Management of works

- (i) A suitably qualified project arborist must supervise any activity within the calculated TPZ of a retained tree on the subject site. In addition, the arborist must ensure that approved buildings and works do not have an adverse impact on the health or stability of trees #1 to #58 as identified in the Tree Health and Hazard Arboricultural Report prepared by Advanced Treescape Consulting, dated 31 August 2018.
- (ii) A suitably qualified project arborist must be present during any ~~the~~ excavation works within the TPZ of Tree #25 as identified in the Tree Health and Hazard Arboricultural Report prepared by Advanced Treescape Consulting, dated 31 August 2018. Any exposed roots must be carefully and cleanly cut (pruned) with tree root pruning equipment e.g. sharp handsaw, secateurs, pruners or specialised root pruning equipment, in accordance with Australian Standard AS4373-2007 Pruning of Amenity Trees.
- (iii) A suitably qualified project arborist must ensure that any root severance or buildings and works within the TPZs or SRZs of retained trees does not adversely impact the health and or stability of the trees now or into the future.

(c) Weed control

Any weeds located within the TPZ are to be removed and the area managed in accordance with the endorsed TMPP and Landscape and Restoration Plan ~~mulched with 100mm of composted coarse grade woodchips, to the satisfaction of the Responsible Authority.~~

(d) Fencing

- (i) Protective fencing must consist of chain wire mesh panels held in place with concrete feet. Fencing must comply with Australian Standard AS 4687-2007 *Temporary fencing and hoardings*.
- (ii) The fences must not be removed or relocated without the prior consent of the Responsible Authority.
- (iii) Canopy and limb protection must be provided in accordance with the guidelines detailed in *AS4970-2009 Protection of Trees on Development Sites*.

(e) Signage

Fixed signs are to be provided on all visible sides of the Tree Protection Fencing, stating "Tree Protection Zone – No entry without permission from Banyule City Council".

(f) Ground Protection

**Commented [BM6]:** This may duplicate the TMPP requirements. Opportunities for consolidation should be considered.

**Commented [BM7]:** Page 17 of that report refers to the deck for the office. The kiosk has been relocated.

**Commented [BM8]:** These words may operate inconsistently with the TMPP or the landscape and restoration plan.

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Ground protection in the form of rumble boards strapped over mulch or aggregate must be utilised where the TPZ of trees adjoining the subject site occurs outside the fenced area detailed in Condition (a)(ii).

(g) Access to TPZ

- (i) No persons, vehicles or machinery are to enter the TPZ except with the consent of the Responsible Authority;
- (ii) No fuel, oil dumps or chemicals are allowed to be used or stored within the TPZ and the servicing and re-fuelling of equipment and vehicles must be carried out away from the root zones;
- (iii) No storage of material, equipment or temporary building is to take place within the TPZ;
- (iv) Nothing whatsoever, including temporary services wires, nails, screws or any other fixing device, is to be attached to any tree.

NOTE:

Requests for consent of the Responsible Authority (Banyule City Council) pursuant to this condition should be directed to Council's Arborist – Development Planning on 9457 9808. Consent for the conduct of further works within TPZs, where granted, may be subject to conditions to ensure the ongoing health and stability of the subject tree/s.

Vegetation removal

~~6.10~~ 6.12 Any native vegetation removal approved by this document must be in accordance with the Flora and Fauna Assessment, Native Vegetation Impact Assessment ~~No Net Loss Analysis~~ and Land Management Plan, Yarra Flats TreeTop Adventure Park prepared by Practical Ecology, dated 21 June 2021 ~~December 2018~~.

~~6.11~~ 6.13 No additional native vegetation (other than that approved by this document or exempt from planning permission under the provisions of the Banyule Planning Scheme) shall be damaged, removed, destroyed or lopped without the further written consent of the Responsible Authority.

Pruning to Australian Standards

~~6.12~~ 6.14 All tree pruning is to be carried out by a trained and competent arborist who has a thorough knowledge of tree physiology and pruning methods. Pruning must be carried out in accordance with Australian Standard AS4373 *Pruning of Amenity Trees*. Tree pruning is to be restricted to the removal of no greater than 15% of the total live canopy of each individual tree.

Extent of Pruning

6.15 Pruning of trees is to be restricted to the removal of deadwood and minor weight reduction, unless in accordance with a management plan approved by the Responsible Authority.

Amenity

~~6.13~~ 6.16 The use or development allowed by this document must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality by reason of the processes carried on; the transportation of materials, goods or

**Commented [BM9]:** This wording is consistent with the terms of ESO1 that allow for as of right vegetation removal in accordance with an approved Management Plan.

**Commented [BM10]:** These additional words ensure that this condition is not at odds with 6.12 and 6.13



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commodities to or from the subject land; the appearance of any buildings, works or materials; the emission of noise, artificial light, vibration, or otherwise.

~~6.14~~6.17 The ~~Subject Site~~subject land must be kept neat and tidy at all times and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality.

~~6.15~~6.18 Outdoor lighting must be designed, baffled and located to the satisfaction of the ~~responsible authority~~Responsible Authority such that no direct light is emitted outside the boundaries of the subject land.

~~6.16~~6.19 All rubbish bins must have self-closing lids and/or be designed to withstand the effects of wind and access by birds, vermin and foxes.

~~6.17~~6.20 In respect of commerce, industry and trade development and/or use, noise emissions from the subject land must comply with State Environment Protection Policy (Control of Noise from Commerce Industry and Trade) No. N-1. In all other cases noise emissions from the subject land must comply with Environmental Protection (Residential Noise) Regulations 1997 and/or Environmental Protection Authority Noise Control Guidelines TG 302/92, whichever is deemed to be appropriate by the Responsible Authority.

~~6.18~~6.21 Sound amplification equipment or loud speakers must not be used in outside areas. Any music noise must comply with SEPP No. N-2 (Control of Music Noise from Public Premises) to the satisfaction of the ~~responsible authority~~Responsible Authority.

#### **Hours of Operation**

- ~~6.19~~6.22 Except with the prior written consent of the Responsible Authority, the use allowed by this document may only operate between the following times:
- Between the 25 September and 26 April inclusive, except Christmas Day until 6.00pm;
  - On any other day, except Christmas day: 9.00am – 4.30pm daily
  - Notwithstanding parts a) and b) the use must be closed to the public on days of declared Extreme and Code Red fire danger;
  - The use must not operate on Christmas Day.
  - The hours of operation shall be clearly displayed at the entrance to the site to the satisfaction of the ~~responsible authority~~Responsible Authority -  
except that Emergency maintenance may be undertaken at any time.

#### **Car Parking / Access**

~~6.20~~6.23 Areas set aside for the parking and movement of vehicles must be line marked, sealed and used in accordance with the TreeTop Adventure Park Ivanhoe, Transport Impact Assessment prepared by One Mile Grid dated 31 May 2016 and must be made available for such use and not be used for any other purpose during hours of operation.

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6.24 A Green Travel Plan to the satisfaction of the ~~responsible authority~~ Responsible Authority, must be submitted to, and approved in writing by, the ~~responsible authority~~ Responsible Authority. The Green Travel Plan must demonstrate how the business will encourage the use of sustainable transport by visitors and staff. This should include the use of Public Transport and cycling routes to and from the Subject Site.

**Signage**

6.24 6.25 The location and details of the sign(s) and sign structure(s) must be generally in accordance with the signage shown on the Preliminary Signage Strategy TreeTops at Yarra Flats by Treetops dated June 2017.

6.22 6.26 Flashing or intermittent lighting must not be used in the sign(s) permitted by this document.

6.23 6.27 The sign(s) permitted by this document must not be floodlit or illuminated by external lights except with the prior written consent of the Responsible Authority.

6.24 6.28 The sign(s) permitted by this document must be maintained in good condition to the satisfaction of the Responsible Authority.

**Construction Management Plan**

6.25 6.29 Unless otherwise approved in writing by the Responsible Authority, before the development starts, a construction management plan (three copies), to the satisfaction of the ~~responsible authority~~ Responsible Authority, must be submitted to and approved by the ~~responsible authority~~ Responsible Authority. When approved, the plan will be endorsed and will then form part of the incorporated plans for this document. The plan must address the following matters:

- a) measures to minimise the impact of construction vehicles arriving at, queuing, and departing from the land;
- b) measures to accommodate the private vehicles of workers/ tradespersons;
- c) a prohibition of non-native animals such as dogs on the site;
- d) details of the location of all construction equipment and facilities, including delivery points, storerooms, toilets, temporary offices and workers' facilities;
- e) measures to minimise the generation and dispersal of dust;
- f) measures to avoid or minimise impacts to native vegetation and fauna habitat;
- g) measures to avoid or minimise soil disturbance;
- h) details of a 24 hour hotline for access to a contact person or project manager accountable for the project and compliance with the CMP;
- i) arrangements for waste collection and other services to be provided during construction;
- j) measures to ensure that during construction, vehicles, machinery and equipment, and construction materials including fill brought to the site are free of weeds and pathogens to prevent the introduction and spread of weeds and pathogens, in particular Cinnamon Fungus (*Phytophthora cinnamomi*).



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~~6.26~~6.30 Before any road and drainage works associated with the development start, detailed construction plans to the satisfaction of the ~~responsible authority~~Responsible Authority must be submitted to and approved by the ~~responsible authority~~Responsible Authority. When approved, the plans will be endorsed and will then form part of the document. The plans must be drawn to scale with dimensions and three copies must be provided. All works constructed or carried out must be in accordance with those plans.

**Barbeques and fireplaces**

~~6.27~~6.31 No barbeques or fireplaces are to be installed and used ~~at the land~~ in association with the permitted outdoor recreation facility.

**Environmental Weeds**

~~6.28~~6.32 No environmental weeds as identified in "Banyule Weed Management Strategy 2006" and the "Yarra River Frontage Weed Action Plan 2007" shall be planted on the site or allowed to invade the site and the site must be managed and maintained to exclude weeds.

**Transmission Line**

~~6.33~~ Any proposed development including roads, earthworks or landscaping within 60 metres of the Transmission line must be referred to AusNet Transmission Group for approval prior to the commencement of any works on site.

**Commented [BM11]:** See amendments to landscaping condition to give effect to this. This condition can be consolidated as part of the Landscape and Restoration Plan

**Commented [BM12]:** The transmission line is outside the Site. The document does not authorise works near the transmission line.

**Completion of External Ropes Course**

~~6.29~~6.34 Before the use starts, or by such later date as is approved by the ~~responsible authority~~Responsible Authority in writing, the external ropes course, including all stations and ancillary structures and connecting pathways, as shown on the endorsed plans, must be completed to the satisfaction of the ~~responsible authority~~Responsible Authority.

**Melbourne Water Conditions**

~~6.30~~6.35 Prior to the endorsement of plans, a flood management plan must be submitted to the ~~responsible authority~~Responsible Authority and Melbourne Water addressing Melbourne Water's conditions. The plan must be submitted with the assumption that the proposed outdoor recreation facility will be located indefinitely or unless otherwise required to be removed or abandoned.

~~6.34~~6.36 The two new shipping containers used for administration must be anchored to the ground to the satisfaction of the Responsible Authority and Melbourne Water so as to avoid being washed away by flood water in large storm event. The shipping containers must only be used for the temporary storage of equipment necessary for the functioning of the ropes course, noting that they will be subject to frequent and significant inundation from the Yarra River.

~~6.32~~6.37 Prior to the commencement of works, a separate application, direct to Melbourne Water, must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses. Prior to accepting an application, evidence must be provided demonstrating that the ~~responsible~~

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~~authority~~ Responsible Authority considers that it is not feasible to connect to the local drainage system.

~~6.33~~ 6.38 Any earthworks must be done such that the volume of cutting within the floodplain is equivalent or greater than the volume of filling (i.e. balance cut and fill). Prior to the commencement of works, all reports, computations and assessments required by Melbourne Water must be submitted to the satisfaction of Melbourne Water for approval.

~~6.34~~ 6.39 Any new fencing or gates within the flood-affected area must be open style (50%) of construction up to 600mm above the flood level or timber paling, to allow for the conveyance of overland flow.

~~6.35~~ 6.40 Any external decking or stairs within the flood-affected area must be constructed with unenclosed foundations (i.e. treads and stringers only, no risers on the stairs), and remain open underneath into the future, to allow for the passage of overland flows.

6.41 Prior to the commencement of works, an agreement must be entered into with Melbourne Water and Parks Victoria to provide for the following:

- a) Disclosure of the likely future inundation to the ropes course area. Agreement on the management regime of the ropes course/billabong area including the timing, frequency and notice period regarding Melbourne Water's release of flow into the billabongs;
- b) Agreement on access arrangements for the billabong areas; and
- c) The shipping containers must only be used for the temporary storage of equipment and administration as reasonably necessary for the functioning of the ropes course.

## **7.0 EXPIRY OF PROVISIONS**

7.1 This Incorporated Document will expire if any of the following circumstances apply:

- a) The development is not started within two years of the date of gazettal of the approval of Amendment C107bany.
- b) The development is not completed within four years of the date of gazettal of the approval of Amendment C107bany.
- c) ~~Any~~ The lease agreement with the public land manager, Parks Victoria ceases to apply, following the completion of development.
- d) The expiry dates may be extended by consent of the Responsible Authority if a request is made in writing before these controls expire, or within 6 months afterwards.

**Commented [BM13]:** There is no lease at this point in time. If C107 was gazetted before the lease is executed, the document would immediately cease to apply, without these words. It would be acceptable to simply state – if the use is discontinued for two years.

## **8.0 NOTES**

### **8.1 Memorandum of Consent for Works**

Council's Construction Department must supervise all works undertaken on Council assets within private property, Council Reserves, easements, drainage reserves and/or road reserves, including connection of the internal drainage

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system to the existing Council assets. Prior to the commencement of any works, an application must be made and a permit received for:

- A "Memorandum of Consent for Works" for any works within the road reserve; and/or
- A "Drainage Connection Permit" for any works other than within a road reserve.

**8.2 Building Permit Required**

A Building Permit must be obtained prior to the commencement of any works associated with the proposed development.

**8.3 Asset Inspection Fee**

Prior to the commencement of building works on site in accordance with Local Law 1, a non-refundable Asset Inspection Fee is payable to Council for the inspection of existing Council assets. For further information in relation to this process and the relevant fee please contact Council's Construction Department on 9490 4222.

**8.4 Building Site Code of Practice**

All construction works must comply with the requirements of the 'Building Site Code of Practice – Banyule City Council'. A copy of the Code is available on the Banyule City Council website or at Council Service Centres.

**End of Document**