

*Yarra River Protection (Wilip-gin Birrarung murron) Act 2017*

**Panel Report**

**Yarra Strategic Plan**

**Part 2 Land Use Framework**

**24 July 2020**

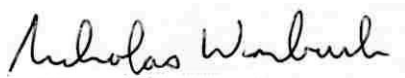
*Yarra River Protection (Wilip-gin Birrarung murron) Act 2017*

Panel Report under section 32(4) of the Act

Yarra Strategic Plan

Part 2 Land Use Framework

24 July 2020



Nick Wimbush, Chair



Deb Butcher, Member



Ian Hamm, Member

# Contents

	Page
<b>1 Introduction and background .....</b>	<b>1</b>
1.1 The Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017 .....	1
1.2 Procedural issues .....	4
1.3 Issues raised in submissions .....	4
1.4 The Panel’s approach .....	5
<b>2 First Peoples and the Yarra Strategic Plan .....</b>	<b>7</b>
2.1 Background .....	7
2.2 Key issues .....	8
2.3 Submissions and evidence .....	8
2.4 Discussion .....	9
2.5 Findings .....	10
2.6 Recommendations .....	10
<b>3 Merits of the Land Use Framework .....</b>	<b>12</b>
3.1 Background .....	12
3.2 Key issues .....	13
3.3 Integration of Parts 1 and 2 of the Yarra Strategic Plan .....	13
3.4 Yarra Strategic Plan and the Land Use Framework - requirements of the Act .....	15
3.5 Use of SMART principles .....	17
3.6 Overall findings and recommendation on merits .....	18
<b>4 The Land Use Framework and the Planning System .....</b>	<b>19</b>
4.1 Background .....	19
4.2 Key issues .....	19
4.3 Role of the Land Use Framework in the Planning System .....	19
4.4 The Land Use Framework as a basis for future planning scheme amendments .....	21
<b>5 Policy and statutory tools .....</b>	<b>27</b>
5.1 Background .....	27
5.2 Key issues .....	27
5.3 Policy and statutory tools to implement the Yarra Strategic Plan .....	27
5.4 Mandatory or discretionary controls .....	30
5.5 Process for future amendments .....	32
5.6 Recommendations .....	34
<b>6 Directions in the Land Use Framework .....</b>	<b>35</b>
6.1 Background .....	35
6.2 Key issues .....	35
6.3 Submissions and evidence .....	35
6.4 Discussion .....	36

6.5	Findings.....	37
6.6	Recommendations.....	38
<b>7</b>	<b>Other issues and submissions.....</b>	<b>39</b>
7.1	Background.....	39
7.2	Implementation.....	39
7.3	Relationship to major projects .....	40
7.4	Significant Places and Areas for Protection .....	41
7.5	Community issues .....	41
7.6	Consultation and engagement .....	42

**Appendix A Terms of Reference**

**Appendix B Submitters**

**Appendix C Parties to the Panel Hearing**

**Appendix D Document list**

## Glossary and abbreviations

the Act	<i>Yarra River Protection (Wilip-gin Birrarung murron) Act 2017</i>
the Plan	Yarra Strategic Plan
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DMF	Decision Making Framework
ESO	Environmental Significance Overlay
Framework	Land Use Framework
Lead Agency	Melbourne Water
MTIA	Major Transport Infrastructure Authority
PPF	Planning Policy Framework
RAP	Registered Aboriginal Party
RPE	Responsible Public Entity
SLO	Significant Landscape Overlay
St Kevin's	St Kevin's College
Yarra CC	Yarra City Council
YCC	Yarra Collaborative Committee
YMAC	Yarra Ministerial Advisory Committee
YVCC	YVCC Property Group Pty Ltd

## Overview

### Project summary

<b>The Project</b>	Yarra Strategic Plan: Part 2 Land Use Framework
<b>Brief description</b>	<p>The Yarra Strategic Plan (the Plan), the first to be prepared under the <i>Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017</i> (the Act), was prepared in 2019 and released for public comment in early 2020. The Plan contains two parts:</p> <ul style="list-style-type: none"> <li>- Part 1: Working Together to Deliver the Community Vision</li> <li>- Part 2: Land Use Framework</li> </ul> <p>Under the Act submissions to Part 2 that can not be accommodated are referred to a Panel for consideration and advice to the Minister for Water. This is the report of that Panel.</p>
<b>Subject land</b>	The Yarra River corridor (generally 1 kilometre either side of the river) from the mouth at Port Phillip Bay upstream to the Upper Yarra Reservoir.
<b>Lead Agency</b>	Melbourne Water
<b>Exhibition of Draft Plan</b>	23 January to 29 March 2020
<b>Submissions</b>	138 submissions on the Yarra Strategic Plan were received of which 81 were determined to be related to the Part 2: Land use Framework and referred to the Panel. Submissions referred to the Panel by Melbourne Water are listed in Appendix B.

### Panel process

<b>The Panel</b>	Nick Wimbush (Chair), Debra Butcher, Ian Hamm
<b>Panel Hearing</b>	Via videoconference on MS Teams, 26, 27 May 2020, and 1, 3, 4, 5 June 2020
<b>Appearances</b>	Shown in Appendix C
<b>Citation</b>	Yarra Strategic Plan Panel [2020] PPV
<b>Date of this Report</b>	24 July 2020

## Executive summary

In 2017 the *Yarra River Protection (Wilip-gin Birrarung murrong) Act* (the Act) was passed by the Victorian Parliament. The Act was very significant in its inclusion of a title and preamble in Aboriginal (Woi wurrung) language. The Act sets out the framework for a new level of engagement and partnership between First Nations peoples in the planning and management for the Yarra River.

The Act also provides for the preparation of a Yarra Strategic Plan (the Plan), a plan to guide the future planning and management of the Yarra River in an integrated manner from the mouth at Williamstown to the Upper Yarra Reservoir.

Melbourne Water, as Lead Agency, coordinated the preparation of the draft Plan, culminating in its exhibition in early 2020. The draft Plan attracted 138 submissions. The submissions raised many issues including:

- the integration between the different parts of the plan
- how it might relate, and translate into, the land use planning system
- whether the natural environment of the Yarra has been sufficiently addressed including billabongs and tributaries
- whether the Plan is resolved to a sufficient extent to allow effective implementation
- specific properties and planning control issues
- the operation and engagement of community groups along the river
- and many others.

Under the Act a Panel was appointed to consider submissions not adopted by Melbourne Water and provide advice to the Minister for Water on those submissions and the Plan.

The Panel held a six day Hearing via video conference (due to COVID-19) in late May and early June 2020 and heard from a number of submitters who elaborated on their views.

In forming its opinions on submissions in this report, the Panel is acutely conscious of the fact that this is the first the Plan prepared under the new legislation and there are extremely high expectations of the Plan itself and what it can achieve through implementation.

This is borne out by the fact that whilst there were many submissions, almost all were supportive of the Plan in principle if not in totality. As required under the Act and the Terms of Reference, the Panel has focussed its attention on the second part of the Plan, the Land Use Framework.

In this area there was significant focus on the planning controls and the planning framework going forward. The Panel has made a number of recommendations which it believes will help ensure a robust integration between the land use planning system and the Plan itself.

Overall the Panel strongly supports the Plan as a ground-breaking initiative and considers that with the changes suggested by Melbourne Water and the recommendations in this report it will provide a sound long term framework for improving the management and condition of the *Birrarung*.

### Recommendations

The Panel makes the following recommendations in relation to the submissions to the Yarra Strategic Plan. The recommendations are largely directed at Melbourne Water; but the Panel

recognises that Melbourne Water is the Lead Agency and their effective implementation will be the responsibility of the Yarra Collaboration Committee and other partners.

The Panel recommends:

- 1. Melbourne Water make the changes to the Yarra Strategic Plan as identified in Document 67 'Proposed Updates for the Yarra Strategic Plan' where they are not inconsistent with recommendations in this report.**
- 2. 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.**
- 3. Melbourne Water, the Wurundjeri and the Bunurong investigate what external support may be available to help facilitate Recommendations 1 and 2, should assistance be needed.**
- 4. The Wurundjeri and the Bunurong undertake assessment of internal capacity and needs to be able to participate fully in the Yarra Strategic Plan finalisation and implementation.**
- 5. Melbourne Water, where possible, should assess and provide resources at its disposal to support the Wurundjeri and Bunurong participation in the Yarra Strategic Plan.**
- 6. Melbourne Water should encourage other participant groups in the Yarra Strategic Plan to engage and work with the Wurundjeri and the Bunurong to ensure that Traditional Owner perspectives are considered in their own deliberations.**
- 7. Melbourne Water, the Wurundjeri and the Bunurong should undertake a bi-annual 'health-check' of their relationship and implement any corrective measures to ensure that the Yarra Strategic Plan progresses and remains focussed on its objectives.**
- 8. Melbourne Water review the Performance Objectives in Part 1 of the Yarra Strategic Plan to ensure, where appropriate, they are effectively addressed in the Part 2 Land Use Framework.**
- 9. Subject to the changes agreed to by Melbourne Water in Document 67 and the recommendations in this report, the Panel considers the Land Use Framework has significant merit and should be finalised within the Yarra Strategic Plan.**
- 10. Melbourne Water should, prior to approval, modify the Land Use Framework to provide for and facilitate future reach-based, precinct or nodal planning to allow for a more fine-grained informing of Planning Scheme Amendments for permanent planning controls including:**
  - a) More clearly defined built form outcomes (for private and public land) based on the specific landscape, vegetation and land use along the river.**
  - b) Areas of environmental significance requiring natural resource planning controls.**
  - c) Areas of heritage significance requiring heritage planning controls.**



- 11. Melbourne Water revise the Land Use Framework to make it clear that the implementation of permanent planning controls will be undertaken with broad consultation.**
- 12. Melbourne Water modify the whole of river directions to:**
  - a) Provide flexibility in the approach to mandatory and discretionary controls**
  - b. Include a new direction to facilitate and guide more detailed precinct planning within reaches to better inform permanent planning controls**
- 13. Melbourne Water modify the individual reach directions as follows:**
  - a) For the Upper and Lower Rural Reaches add in reference to the areas for protection and undertake associated mapping updates in relation to extending the protection area to Yarra Junction**
  - b) For all reaches, clarify what is meant when referring to 'key viewpoints'**
  - c) For all reaches amend reference to mandatory controls to ensure appropriate flexibility is maintained during future planning work**
  - d) For all reaches add in a direction requiring the further precinct work that has been identified by this Panel as being required.**
- 14. Melbourne Water, through the Yarra Collaborative Committee, ensure references to major transport project exemptions in the Yarra Strategic Plan are accurate and legally correct and do not give rise to complications in implementation.**

# 1 Introduction and background

## 1.1 The Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017

### 1.1.1 A significant occurrence

The *Yarra River Protection (Wilip-gin Birrarung-murrong) Act 2017* (the Act) was passed by the Victorian Parliament in 2017.

The Act was the first to be introduced into Parliament in Victoria in both English and an Aboriginal language. The preamble to the Act is reproduced here:

The Yarra River is of great importance to Melbourne and Victoria. It is the intention of the Parliament that the Yarra River is kept alive and healthy for the benefit of future generations.

This Act recognises the intrinsic connection of the traditional owners to the Yarra River and its Country and further recognises them as the custodians of the land and waterway which they call Birrarung.

In the Woi-wurrung language of the traditional owners, *Wilip-gin Birrarung murrong* means "keep the Birrarung alive". The following statement (in the Woi-wurrung language<sup>1</sup> and in English) is from the Woi-wurrung—

*Woiwurrungbaluk ba Birrarung wanganyinu biikpil*

*Yarrayarrapil, manyi biik ba Birrarung, ganbu marram-nganyinu*

*Manyi Birrarung murrondjak, durrung ba murrup warrongguny, ngargunin twarpil*

*Birrarungwa nhanbu wilamnganyinu*

*Nhanbu ngarn.ganhanganyinu manyi Birrarung*

*Bunjil munggany biik, wurru-wurru, warriny ba yaluk, ba ngargunin twarn*

*Biiku kuliny munggany Bunjil*

*Waa marnakith-nganyin*

*Balliyang, barnumbinyu Bundjilal, banyu bagurk munggany*

*Ngarn.gunganyinu nhanbu*

*nyilam biik, nyilam kuliny – balit biik, balit kuliny: balitmanhanganyin manyi biik ba Birrarung. Balitmanhanganyin durrungu ba murrupu,*

*ba nhanbu murrondjak!*

We, the Woi-wurrung, the First People, and the Birrarung, belong to this Country. This Country, and the Birrarung are part of us.

The Birrarung is alive, has a heart, a spirit and is part of our Dreaming. We have lived with and known the Birrarung since the beginning. We will always know the Birrarung.

Bunjil, the great Eagle, the creator spirit, made the land, the sky, the sea, the rivers, flora and fauna, the lore. He made Kulin from the earth. Bunjil gave Waa, the crow, the responsibility of Protector. Bunjil's brother, Palliyang, the Bat, created Bagarook, women, from the water.

Since our beginning it has been known that we have an obligation to keep the Birrarung alive and healthy—for all generations to come.

### 1.1.2 Purposes

The Act has a number of key purposes including, in summary:

- To provide for declaration of the Yarra River and public lands for protection (section 1(a))
- To provide for the development and implementation of the Yarra Strategic Plan (the Plan) as an overarching policy and planning framework (section 1(b))
- To establish the Birrarung Council to advise the Minister on Yarra River land and implementation of the Plan (section 1(c))
- To set out principles for which ‘responsible public entities’ must have regard when exercising powers in relation to Yarra River land (section 1(d))
- To provide the declaration of land as a ‘state significant urban natural entity’ for the Greater Yarra Urban Parklands (section 1(e))
- Other matters.

### 1.1.3 Where does the Act apply

The Act established two main different and important area descriptions as follows.

**Yarra River land** is public land within 500 metres of the bank of the Yarra River. The Act also identifies some specific exclusions from this definition.

**Yarra Strategic Plan study area** includes all land within one kilometre of the Yarra River banks. Again, some land is excluded under the Act.

### 1.1.4 Responsible public entities

The Act at Section 3 identifies a range of ‘responsible public entities’ (RPE) and including statutory authorities who have or may have a role in decision making and management along the river. These are:

- the Secretary of the Department of Environment, Land, Water and Planning (DELWP)
- Melbourne Water
- Parks Victoria
- the Victorian Planning Authority
- the Port Phillip and Westernport Catchment Management Authority
- the Roads Corporation (VicRoads)
- Victorian Rail Track
- committees of management along the Yarra under the *Crown Land (Reserves) Act 1978*
- Banyule City Council
- Boroondara City Council
- Manningham City Council
- Melbourne City Council
- Nillumbik Shire Council
- Stonnington City Council
- Yarra City Council
- Yarra Ranges Shire Council
- Traditional Owner Land Management Board
- any other public entity prescribed to be a responsible public entity.

### 1.1.5 Yarra Protection Principles

Part 2 of the Act provides several principles guiding the protection of the Yarra River under the headings of:

- General principles
- Environmental principles
- Social principles
- Recreational principles
- Cultural principles
- Management principles.

### 1.1.6 The Yarra Strategic Plan

The Act provides the process and guidance for the preparation of the Plan in Part 4. The Act identifies the purposes of the Plan (at section 16) as to:

- (a) guide the future use and development of the Yarra Strategic Plan area; and
- (b) identify areas for protection within the Yarra Strategic Plan area.

The Act contains detailed provisions on who must prepare the Plan, the consultation required and partners to be engaged. It also specifies content to a high level including (at section 20) that the Plan must:

- (a) give effect to the vision expressed in the long-term community vision document; and
- (b) include a plan for the Yarra Strategic Plan area (a land use framework plan) that—
  - (i) creates the spatial structure for the future use and development of that area; and
  - (ii) identifies areas for protection within that area.

The Act also provides for the designation of a Lead Agency to prepare the plan; in this case Melbourne Water has been designated as Lead Agency.<sup>1</sup>

### 1.1.7 The role of the Panel and Terms of Reference

When prepared, the Plan (Parts 1 and 2) was required to be exhibited for public comment. Under section 24(3)(b) of the Act the Lead Agency must refer any submissions, on *Part 2 (the Land Use Framework (the Framework))*, that it does not adopt, to a Panel.

The Minister for Water appoints the Panel under section 25 of the Act. The operation of the Panel is governed at a high level by the Act; and Terms of Reference<sup>2</sup> co-signed by the Minister for Water and the Minister for Planning on 16 March 2020 and 8 March 2020 respectively.

Under Clause 3 of the Terms of Reference the purpose of the Panel is:

- ... to provide independent advice and consider the submissions referred to it on the draft Yarra Strategic Plan (draft the Plan) Land Use Framework.

The specific outcomes required by the Terms of Reference are at Clause 23:

<sup>1</sup> Melbourne Water made it clear (Part B Submissions, Document 53, para 3) that the document is not a 'Melbourne Water' document or even a 'state' document but is a product of the Yarra Collaboration Committee; a group including the RPE and the Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation.

<sup>2</sup> Shown in Appendix A.

The Panel must produce a written report and recommendations for the Minister for Water, the Minister for Planning and Melbourne Water Corporation providing the following:

- a. An assessment of the merits of the updated Land Use Framework
- b. An assessment of submissions
- c. Recommended final wording for relevant 'directions for future land use and development' in the Land Use Framework
- d. An assessment of whether the updated Land Use Framework provides a sound basis for the preparation of a planning scheme amendment
- e. Advice on particular policy and statutory tools to assist the preparation of a draft planning scheme amendment
- f. Any other relevant matters raised in the course of the Panel Hearing
- g. A list of persons consulted or heard.

Under section 32(4) of the Act the Panel must report its findings and recommendations to the Minister for Water.

## 1.2 Procedural issues

The Panel was appointed on 22 April 2020. A Directions Hearing had been scheduled for 27 April 2020. Due to tightening restrictions related to the Corona Virus Disease 2019 (COVID-19), the Directions Hearing was cancelled. The main Hearing was held by video conference between 26 May and 5 June 2020.

The Panel wishes to thank all participants in the Hearing for their patience and forbearance in facilitating the video conference Hearing.

## 1.3 Issues raised in submissions

In their Part A submission<sup>3</sup> Melbourne Water provided the following breakdown of submissions and issues:

- 138 formal submissions; of which 81 were referred to this Panel as being relevant to the Land Use Framework
- 381 issues raised in submissions of which 173 were referred to the Panel.

Melbourne Water identified consistent themes in submissions that were supported:

- providing further clarity on the implementation of the land use framework
- recommendation for the current interim planning controls (Amendment GC48) becoming permanent and extended to Yarra Ranges
- adjusting the boundary of the Watsons Creek biodiversity corridor
- further alignment with the Yarra River – Bulleen Precinct Land Use Framework Plan
- strengthening the importance of catchment links
- continuation with the five whole-of-river planning directions outlined on page 65.

They also identified consistent themes not supported and referred to the Panel:

- the need for precinct scale assessments within a regional framework
- the need for setbacks from the river corridor, over and above the provisions within the interim planning controls (GC48)
- inclusion of land beyond the Plan area, as defined by the Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017

<sup>3</sup> Document 44.

- assessment of major transport projects, particularly in relation to declared projects within the meaning of the Major Transport Projects Facilitation Act
- provision of new overlays.

A comprehensive table of issues was provided to the Panel listing the 381 identified issues and Melbourne Water's response.<sup>4</sup>

An updated the Plan was not provided to the Hearing in response to submissions; an approach the Panel considers reasonable given the size of the document and the likely extent of changes from this process and submissions. At the Panel's request Melbourne Water provided a table of changes they are proposing to make in response to submissions.<sup>5</sup> The Panel has not included the Table in this report given its size (31 pages) but has the original Document 67 if there is any dispute as to the correct version.

One of the most important observations the Panel can make in relation to submissions, is that whilst there were many comments and requested changes, almost all submitters strongly supported the Plan in concept. There was a complete absence of in-principle opposition; a fact the Panel considers augurs well for the Plan's future.

### 1.3.1 Recommendation

The Panel recommends:

- 1. Melbourne Water make the changes to the Yarra Strategic Plan as identified in Document 67 'Proposed Updates for the Yarra Strategic Plan' where they are not inconsistent with recommendations in this report.**

## 1.4 The Panel's approach

One of the issues at a high level that submitters and the Panel have had to grapple with is the relationship between Part 1 and Part 2 of the Plan, given that the Panel is only considering submissions to Part 2.

Many submissions were on issues which should properly be changes needed or required to Part 1, or issues canvassed in Part 1 which submitters thought should be in Part 2 and vice versa.

The most obvious example is the Part 1 *Collaborative Action for the Next 10 Years* section. Many submissions were critical of the actions as being too generic and not directly translatable into real specific action to improve the Yarra River.

The statutory scheme is clear on the approach. It is not the role of the Panel to consider a broad ranging restructure or rewrite of the Plan.<sup>6</sup> Its focus must be on submissions referred by the Lead Agency said to be relevant to Part 2. To the best of its ability and recognising that there are some grey areas and crossover, the Panel has attempted to constrain its advice to Part 2.

<sup>4</sup> Document 44b.

<sup>5</sup> Document 67.

<sup>6</sup> As the Major Transport Infrastructure Authority (MTIA) note in their submission (Document 64, para 20) the Terms of Reference at clause 19(d) require the Panel to consider the YSP; not just Part 2. The Panel does not consider this is an open invitation to 'review' Part 1.

The Panel has considered the submissions referred to it as well submissions and evidence in the Hearing and background material on the document list.

As Melbourne Water identified, there were many issues raised in submissions. These issues range from small site specific requests to high level strategic issues covering the whole catchment.

The Panel has not attempted to address these issues line by line, recognising that this would be a task requiring many more months than the Panel has available to it to report. Rather, the Panel has sought to group issues into the most significant that have been raised through the process and provide advice to the Minister on those.

This may be disappointing to individuals whose submissions or concerns are not addressed individually in detail, but the Panel considers it a reasonable and pragmatic approach in the circumstances.

This Report deals with the issues under the following headings:

- First Peoples and the Yarra Strategic Plan
- Merits of the Land Use Framework
- The Land Use Framework and the Planning System
- Policy and statutory tools
- Directions in the Land Use Framework
- Other issues and submissions.

## 2 First Peoples and the Yarra Strategic Plan

### 2.1 Background

The region now known as the Yarra River and the Yarra River lands has for many thousands of years been within the lands of East Kulin Nation, specifically with the lands of the Woiwurrung language group. At the time of European contact and settlement, these lands were under the custodianship of the tribal grouping known then, and now, as the Wurundjeri. The Wurundjeri remain, and will continue to be, a clearly identifiable First Nations community that is active in maintaining its cultural, spiritual, social and economic identity in its traditional lands.

The participation of First Nations people in the management of land, particularly public lands, has been an evolving matter since European contact commenced. The first iterations resulted in the exclusion of Aboriginal people from the lands and waters they regarded as home. This exclusion resulted in not only physical separation from lands and waters, but also separation from any decisions on land and water use. The lack of input of knowledge built up over millennia by the custodians resulted in ill-informed decisions, poor practises and inappropriate use of the lands and waters which has led to severe health degradation of the Yarra River environment.

Since 1967, when Australia's Indigenous people were counted in the census, and thus generally accepted to be citizens, progress has been made to reverse the exclusion of First Nations from many aspects of national life, not the least being management of public lands and waters. Specifically, in Victoria, the *Aboriginal Lands Act 1970*, and the Commonwealth *Aboriginal Heritage Act 1984* (Part A II) were the first attempts at First Nation involvement in place-based decision making.

The Victorian *Aboriginal Heritage Act 2006* was the first Act that gave Traditional Custodians a statutory function in land use planning, including private as well as public lands. The purpose of the Act was to give the authority to protect, manage and make decisions on Aboriginal heritage and cultural practice to the people with connections that dated back tens of thousands of years.

The High Court Mabo decision (*Mabo v Queensland (No 2)*) of 1992, had long reaching ramifications for ownership, management and decision making about public lands and water. The subsequent Commonwealth *Native Title Act 1993*, and Victorian *Traditional Owner Settlement Act 2010*, both sought to implement the effects of the High Court decision, which in essence meant that once Aboriginal connection to place was established, the involvement of Aboriginal people in land and water management was non-negotiable.

Since 2000, successive Victorian governments have actively sought to involve and increase Aboriginal people in policy and decision making on many subjects including land and water management. Based on the Victorian Aboriginal Affairs Framework since 2006, this commitment extends beyond core agencies to the wider Victorian Public Sector, such as the water sector.



## 2.2 Key issues

As mentioned above, the Wurundjeri have been the custodians of much of the region now known as the Yarra River and the Yarra River lands for many thousands of years.

The Bunurong have been appointed as the Registered Aboriginal Party (RAP) for lands of the Mornington Peninsula and West Gippsland (see the Victorian Aboriginal Heritage Council website for details). The Bunurong have interests in land and waters that extend as far north as the Yarra River in the Inner-City Reach. The Bunurong remain, and will continue to be, a clearly identifiable First Nations community that is active in maintaining its cultural, spiritual, social and economic identity in its traditional lands.

Under the Victorian *Aboriginal Heritage Act 2006*, the Victorian Aboriginal Heritage Council, in 2008, appointed the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation as the RAP for the area that includes the lands and waters covered by the Yarra Strategic Plan (the Plan), from the Upper Yarra Reservoir to Dights Falls. From this point on to the mouth of the Yarra, the river and lands described as the Inner City Reach in the Plan, are subject to negotiations between the Wurundjeri and the Bunurong Land Council Aboriginal Corporation.

Accordingly, the engagement of both the Wurundjeri and Bunurong First Nations Corporations in the refinement and implementation of the Plan is paramount. Without the engagement at a ‘partnership’ level, the legitimacy of the Plan could be regarded as compromised.

The Panel acknowledges that Melbourne Water has endeavoured throughout the development of the Plan, to the best of its abilities, engage with both First Nations corporations. This is underpinned by the *Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017* (the Act). This, however, does not always result in one or both parties to this engagement being satisfied with its processes and/or outcomes.

## 2.3 Submissions and evidence

In its submission to the Panel, the Wurundjeri outlined the major areas of interest for them, specifically highlighting a desire for the ‘best outcome for the Yarra’. The submission provided the various legislative and agreement provisions that the Wurundjeri Corporation operates within, including the United Nations Declaration of the Rights of Indigenous People and the Victorian Government’s Self Determination Reform Framework.<sup>7</sup>

The submission states that the Wurundjeri were invited ‘late’ to the Yarra Ministerial Advisory Committee (YMAC) and were not initially included on the Yarra Collaboration Committee (YCC). The Wurundjeri state that they provided a chapter in the Birrarung Council’s feedback on the Plan and did not receive feedback for some time, and then anonymously. The submission states that the Wurundjeri were asked to provide feedback in very short timeframes and didn’t have the capacity or resources to do so.

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.

<sup>7</sup> <https://content.vic.gov.au/sites/default/files/2019-09/Self-Determination-Reform-Framework-August-2019.PDF>

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.

The Bunurong Corporation made a late submission which was referred to the Panel by Melbourne Water. The submission states that the Bunurong involvement in the Plan is unclear and that it has felt excluded by the process. The submission states that government agencies have an obligation to consult with all First Nations groups who have an interest in land and waters, in this case the lower reaches of the Yarra River, where RAP status has yet to be resolved by the Aboriginal Heritage Council.

Melbourne Water's submissions spoke of engaging the Wurundjeri, and the reply submission spoke of engaging with the Bunurong and the Boonwurrung Land and Sea Aboriginal Corporation. The Part A submission mentioned the importance of engaging Traditional Owners in the Plan development and implementation, noting this as a requirement of the Act and reflecting broader expectations of the wider community. The Melbourne Water submissions notes the appointment of the Wurundjeri to the Birrarung Council, the YCC and working groups for specific projects.

The Melbourne Water reply submission addressed issues raised in the Wurundjeri and Bunurong submission. Specifically, the matter of engagement and its complexity around the Inner City Reach where no RAP has been appointed. The submission indicated that Melbourne Water were very taken aback at the Wurundjeri stating in their presentation to the Panel that they felt they had not been genuinely engaged, as they had endeavoured to build a mutually respectful relationship. Melbourne Water stated they wish to work with the Wurundjeri to address the issues raised in the Panel hearing.

In relation to the Bunurong, Melbourne Water stated in their reply submission they have kept open lines of communication with the Bunurong and the Boonwurrung regarding the Inner City Reach. Regular updates on the progress of the Plan have been provided as well as the opportunity for input.

## **2.4 Discussion**

The engagement of the First Nations people at the appropriate points throughout the development of plans, projects and programs is a key to success or failure.

The Act and the Plan is a new approach to long term planning and environmental protection and is a Victorian, if not Australian, first. The requirement of First Nation engagement and participation (well beyond the accepted norms of consultation) for a specific purpose is also a precedent for land and water management in Victoria. Additionally, government departments and agencies have separately committed to stronger and more equitable relationships with First Nations communities. In the case of DELWP and agencies such as Melbourne Water, this commitment is generally focussed with the Traditional Owners because of the emphasis on land and water.

Underpinning these has been development of legislation mentioned earlier in this chapter that has, over time, built a body of rights for First Nations people to exercise and be observed by others. It is important to note that Melbourne Water respects these rights and seeks to observe them by adoption rather than compulsion.

The key question that arises often and seems to have arisen in the development of the Plan is not should First Nations be engaged, but how.

The evolution of the participation of First Nations people in decision making as equal partners, and not just as a stakeholder to be consulted, is a vexed one, and is by no means limited to the management of land and waters. Debates and discussions over many issues and over many years have not resolved, as general principle, what are the 'right' structures and 'right' authority distributions between parties.

The factors that contribute to the complexity of this issue are many. The cultural and operational structures and process of First Nations groups may not be well understood by agencies, especially as these structures and processes quite often differ between groups. Equally, departments and agencies of government have different operating methods that can appear 'inconsistent' to externals engaging with them, in this case First Nations people.

One of the clear issues for the First Nations corporations engaged in the Plan is resourcing. Mentioned by both the Wurundjeri and the Bunurong, the capacity to participate, from both a technical and availability of people aspect, is a constraint. This is not particular to the Plan project but is an inherent problem for the Traditional Owner sector in Victoria.

To ensure that this engagement is realised to its fullest potential, clarity around expectation and terms of engagement should be resolved as a prerequisite. While the desire to have First Nations meaningfully partnering and participating in decision making is supported by all parties, experience has shown that it is often in the details of 'how, what, who, why and when' that problems can occur.

## 2.5 Findings

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 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.

## 2.6 Recommendations

The Panel recommends:

- 2. 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.**
- 3. Melbourne Water, the Wurundjeri and the Bunurong investigate what external support may be available to help facilitate Recommendations 1 and 2, should assistance be needed.**

- 4. The Wurundjeri and the Bunurong undertake assessment of internal capacity and needs to be able to participate fully in the Yarra Strategic Plan finalisation and implementation.**
- 5. Melbourne Water, where possible, should assess and provide resources at its disposal to support the Wurundjeri and Bunurong participation in the Yarra Strategic Plan.**
- 6. Melbourne Water should encourage other participant groups in the Yarra Strategic Plan to engage and work with the Wurundjeri and the Bunurong to ensure that Traditional Owner perspectives are considered in their own deliberations.**
- 7. Melbourne Water, the Wurundjeri and the Bunurong should undertake a bi-annual 'health-check' of their relationship and implement any corrective measures to ensure that the Yarra Strategic Plan progresses and remains focussed on its objectives.**

## 3 Merits of the Land Use Framework

### 3.1 Background

Clause 23(a) of the Terms of Reference (Terms of Reference) requires the Panel to provide an assessment of the merits of the updated Land Use Framework (the Framework).

The Framework is a requirement of Section 20(1)(b) of the Act. The Section requires that the Plan must include a land use framework plan that *“(i) creates the spatial structure for the future use and development of that area; and (ii) identifies areas for protection within that area”*. Section 20(2) then outlines a series of requirements the Plan must contain or identify.

Section 21 of the Act outlines the matters that the land use framework plan, must address, as follows:

- “(a) include spatial plans for the Yarra Strategic Plan area; and*
- (b) indicate the broad direction for the future use and development of the Yarra Strategic Plan area; and*
- (c) identify areas for protection within the Yarra Strategic Plan area; and*
- (d) recognise and protect Aboriginal tangible and intangible cultural values, and other cultural and heritage values; and*
- (e) identify riparian zones and areas of high environmental or landscape value that must be protected from development; and*
- (f) identify areas for urban revitalisation or renewal; and*
- (g) identify important views and viewsheds that provide a sense of place and connection with Yarra River land from and to surrounding areas; and*
- (h) identify areas for the attraction of commercial activities and services; and*
- (i) identify locations suitable for a wide range of community activities and events; and*
- (j) nominate habitat corridors and ecological values for improvement and the achievement of more resilient biodiversity outcomes, in terms of the following— (i) localised habitat or features within Yarra River land; (ii) the role of Yarra River land in linking or maintaining the health of key habitat areas close to Yarra River land and minimising disruptions of sensitive flora and fauna; and*
- (k) define open space and urban forest networks that will provide for the amenity and recreation needs of local communities; and*
- (l) identify movement and access networks that link people to the Yarra River landscape and its parklands and as part of the larger regional trails network; and*
- (m) incorporate any agreed strategic transport infrastructure including identified current or future river crossings and principal bicycle networks; and*
- (n) identify public authority infrastructure and land management proposals that may affect Yarra River land; and*
- (o) recognise projected climate change impacts, flood risks and bushfire risks.*

The Framework comprises Part 2 of the Plan. How it is integrated with Part 1, and how it responded to the relevant requirements of the Act at Sections 20 and 21 were all matters raised in written submissions and at the Panel Hearing and are all matters that contribute to the consideration of the merits of the Framework.

A range of other matters were also raised in the context of the Framework including the issue of ‘binding’ clauses and the application (or otherwise) of SMART principles (Specific, Measurable, Achievable, Relevant and Time-bound).

It is noted that many of the issues raised by submitters related more broadly to the whole Plan, and not the Framework at Part 2. As outlined at Chapter 1.4, given the Terms of Reference of the Panel, it is primarily matters associated with the Framework that it is required to provide recommendations on.

## 3.2 Key issues

The issues are:

- Whether the Part 2 Land Use Framework is appropriately integrated with Part 1 of the Yarra Strategic Plan.
- Whether the Yarra Strategic Plan and Land Use Framework appropriately address the relevant requirements of Sections 20 and Section 21 of the Act, including the issue of ‘binding’ clauses.
- Whether there is a need for SMART principles to be included in the Yarra Strategic Plan.

## 3.3 Integration of Parts 1 and 2 of the Yarra Strategic Plan

### 3.3.1 Submissions and evidence

A number of submissions raised a concern about the relationship between Parts 1 and 2 of the Plan.

As an example, Mr Reid, giving evidence for Environmental Justice Australia and Yarra Riverkeeper was of the opinion that<sup>8</sup>, whilst the Plan outlines the overarching vision, strategy and governance approach for the Plan area, and the strategic planning framework includes the Framework, the content of the Plan itself is heavily weighted towards management of the Yarra River Lands.

He considered that it would be useful to strengthen the links between the two parts of the Strategy<sup>9</sup> and that in doing so this would assist in addressing “*the high level of generalisation exhibited within the strategy itself*”, noting that some of the performance objectives contained in the Plan contain actions that potentially interact with the planning system.

He considered that without stronger links there would be the potential for land use strategies, investments and decisions made by public entities in relation to the broader Plan study area that could contradict or frustrate those undertaken on Yarra River Land. He gave the example

<sup>8</sup> Document 46, para 61-65.

<sup>9</sup> Mr Reid referred to the Yarra Strategic Plan at times as ‘the Strategy’.

of tensions arising between water quality objectives (under the Plan) and on-going demand for urban intensification and public access to the river (addressed under the Framework).

This view was also supported by Dr Lorimer, also giving evidence for Environmental Justice Australia and Yarra Riverkeeper who noted<sup>10</sup> that there were some ‘spatially specific’ aspects of the Yarra Strategic Plan which were referred to in Part 1, where he considered they would more appropriately be located in Part 2, given the requirements of Section 21(j) of the Act.

The National Trust of Australia (Victoria) also raised concerns about the connection between Parts 1 and 2 and submitted that it requires significant clarification in the final Plan document.

In its Part B submission Melbourne Water provided support in principle in relation to Mr Reid’s comments advising that connections between Parts 1 and 2 would be strengthened, with a particular focus on linkages between Performance Objective 4: Protecting the natural beauty of the Yarra River corridor and the Framework.

### **3.3.2 Discussion**

The Panel agrees that there needs to be a strengthening of connections between Parts 1 and 2 of the Plan. Whilst it supports the suggestion of Melbourne Water in relation to Performance Objective 4, it considers that the issue of water quality as outlined at Performance Objective 1 and its relationship with the Framework should also be explored.

These strengthened connections could be provided in a number of ways but a useful starting point would be to consider the existing ‘Performance Objectives’ outlined in Part 1, and the accompanying statements of intent “*The Yarra Strategic Plan will: ...*” in the context of the ‘Whole of River’ directions and “Directions for Future Land use and Development’ in Part 2.

Once the opportunities for linkages have been determined, Parts 1 and 2 of the Plan should be reviewed to ascertain the most appropriate way for these connections to be identified in the document.

### **3.3.3 Findings**

The Panel finds that there is a need for improved connections between the two parts of the Plan to ensure that the interaction between the performance objectives of Part 1 and the Land Use Framework Plan in Part 2 are strengthened and clearly identified.

### **3.3.4 Recommendation**

The Panel recommends:

- 8. Melbourne Water review the Performance Objectives in Part 1 of the Yarra Strategic Plan to ensure, where appropriate, they are effectively addressed in the Part 2 Land Use Framework.**

---

<sup>10</sup> Document 45, para 10.

### 3.4 Yarra Strategic Plan and the Land Use Framework - requirements of the Act

#### 3.4.1 Submissions and evidence

There were a number of submissions made to the Panel about the Plan more broadly, as well as specifically the Framework, and their consistency, or otherwise, with the relevant requirements of the Act.

Dr Lorimer was of the opinion that an issue with the Framework was not including ‘binding’ clauses which he considered was required by section 20(2) of the Act. He stated <sup>11</sup>that whilst he understood the problems associated with the Plan making commitments where no resources or funding have been allocated *“the countervailing problem is the draft Plan’s lack of firm commitments or clauses that binds anyone to particular actions leaves little impetus for allocating the required resources to achieve intended outcomes”*.

Mr Reid also observed <sup>12</sup>that *“if binding elements are drafted at a very high level, then it will not be difficult for responsible public entities to meet them and thus may compromise effectiveness of the strategy over time”*.

Mr Reid was of the view that in relation to Section 21 of the Act, referring specifically to the Land Use Framework, that *“all of the topics nominated in Section 21 are dealt with in some fashion at a reach level”*<sup>13</sup> but that he considered some of the matters required *“more comprehensive attention at a ‘whole of river level’ to provide an adequate framework to guide both strategic and statutory decision making”*<sup>14</sup>. The particular matters that Mr Reid identified are discussed in Chapter 7.

The Major Transport Infrastructure Authority also made extensive submissions on the binding nature of some elements of the plan; their issues are discussed in Chapter 7.

Yarra City Council (Yarra CC) also considered that the Land Use Framework’s response to some aspects of the Section 21 requirements needed improvement, particularly in relation to habitat corridors and ecological values, locations for community events and activities and the identification of movement and access networks.

Kellehers Australia highlighted that Section 21 is mandatory (*“the Land Use Framework must ...”*) and that whilst many of the Section 21 requirements had been either considered or met, it considered that some matters hadn’t been adequately addressed insofar as they relate to ‘The Inner City Reach’. The areas of concern are discussed at Chapter 4.4. Kellehers Australia submitted that in making its recommendations, the Panel should require a redrafting of the Land Use Framework to address the ‘gaps’ for the Inner City Reach and in doing so ensure clear compliance with Section 21.

Minter Ellison for the YVCC Property Group (YVCC) submitted that the Plan and Framework Plan need to comply with the requirements of the Act, and that those matters which the Act specifies as being applicable only to the Yarra River land, need to be limited to that land and

---

<sup>11</sup> Document 45, para 11

<sup>12</sup> Document 46, para 115

<sup>13</sup> Document 46, para 28.

<sup>14</sup> Document 46, para 29.



that this needs to be clear in the document. Minter Ellison considered that this distinction isn't clear and that the documents need to be redrafted to comply with these requirements stating<sup>15</sup>:

YVCC submits that this is important for private land holdings. The considerations for private land will not be the same as those for public land. The Act has made this distinction and the distinction needs to be made clear:

YVCC submits that loose language has been used in the drafting of the Plan. There are references to Yarra River land, the Yarra Strategic Plan area and the Yarra River corridor. This needs to be tightened up, to make the document accord with the Act.

Melbourne Water's response to these various matters raised by submitters, can be summarised as follows:

- 'Binding' elements - that the Act does not mandate that any part of the Plan must be binding and so accordingly it fulfils the statutory intent of the Act even if there are no binding elements included.
- Compliance with Section 21 requirements of the Act –the requirements have all been met, but that some elements of the response, as raised by Mr Reid, could be provided "*more comprehensive attention at a whole of river level*"<sup>16</sup> (discussed in greater detail in Chapter 4.4).
- YVCC issues - clear distinction and definition of categories of land is appropriately provided in the document, however noted that it might be useful to provide improved clarification that Part 2 of the Plan applies to both the Yarra River land and private land and the way in which the directions have been separated by land use category.

### 3.4.2 Discussion

Turning firstly to the matters raised in relation to Section 20 of the Act and 'binding elements', the Panel agrees that there is no requirement for there to be binding elements in the Plan and acknowledges the difficulty of imposing any binding elements on RPEs where the funding for nominated tasks is unknown.

The Panel acknowledges the concerns of submitters that without binding elements, there is no 'requirement' for funding to be made available and work to be undertaken. Nonetheless, whilst the Panel acknowledges these concerns, it considers that with respect to the issue of binding elements, the requirements of Section 20 have been met. The Panel agrees with Melbourne Water that there is not a 'requirement' to include such elements in the Plan but rather an opportunity to do so. Melbourne Water's advice that binding elements will be addressed by the application of planning controls is an approach that is able to be taken within the parameters of Section 20.

The Panel is, however, of the view that there is a need to include a Decision Making Framework (DMF). Melbourne Water confirmed it was in draft format at the time of the Panel Hearing and will form part of the final approved Plan. The Panel considers it unfortunate that this DMF, was not included as part of the exhibited draft Plan. This is a requirement of Section 20(g) and the Panel considers that if that had been made publicly available as part of the

<sup>15</sup> Document 82, paras 3.4 and 3.5.

<sup>16</sup> Document 93, para 106.

exhibition process it may have provided greater comfort to submitters that concerns about future allocation of resources and actions to be implemented would be addressed.

In terms of the matters raised about compliance, or otherwise, with Section 21 of the Act, the Panel is of the view that, as stated by Mr Reid, *“all of the topics nominated in Section 21 are dealt with in some fashion at a reach level”*.

The Panel agrees with Mr Reid, Yarra CC, Kellehers Australia and the various other submitters that raised this issue, that there are aspects of the matters identified at Section 21 that require further work and investigation – and these matters are discussed further at Chapter 4.4. Subject to the need for this further work to be undertaken being identified in the Framework undertaken the Panel considers that it does meet the relevant requirements of Section 21.

Finally, in relation to the matters raised by YVCC, the Panel considers that the clarifications suggested by Melbourne Water in its response are appropriate and should be included in the updated Plan. However, the Panel agrees with Melbourne Water that the language used in the Plan in relation to the different categories of land is clear.

### 3.4.3 Findings

The Panel finds that the Yarra Strategic Plan and Land Use Framework meet the requirements of Sections 20 and 21 of the Act, subject to the changes identified in this Chapter being made to the Plan (see Melbourne Water commitments in Document 67, for example line 331) and the further work being undertaken as outlined in Chapter 4.4 in relation to the Framework.

## 3.5 Use of SMART principles

### 3.5.1 Submissions and evidence

There were a number of submissions made in relation to the use of SMART principles. Dr Lindsay, for Environmental Justice Australia and Yarra Riverkeeper, submitted that<sup>17</sup>:

Appropriate to its scale, the LUF should be prepared with regard to SMART principles: specific, measurable, achievable, responsive, time-bound'. The current approach is relatively vague, indeterminate and abstract spatially and in terms of obligations. The generalised expression of objectives in the Draft the Plan is unhelpful.

The lack of application of SMART design principles to construction of performance objectives in the Plan is a constraint on design and targeting of the LUF, including design of well-calibrated planning responses and assessment of how land use decisions in the Plan Area will impact on achievement of performance objectives.

This view in relation to the need for SMART principles was also raised in submissions by the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, the Town and Country Planning Association and Mr Leeson, as well as a number of other submitters that either presented to the Panel or relied on written submissions made during the period of public exhibition.

Expressing a similar concern, Mr Thexton of Riparian Australia<sup>18</sup> submitted that there were no quantifiable or measurable elements to the performance objectives and that the performance objectives act more as 'themes' than strategic objectives.

<sup>17</sup> Document 56, para 59 and 60.

<sup>18</sup> Document 78.

Several submitters, when critiquing the performance objectives of the Plan and the lack of SMART principles, also referred favourably to Melbourne Water's Healthy Waterways Strategy, using it as an example of the approach that should be taken for the Plan.

In response to these concerns Melbourne Water highlighted that issues and concerns relating to the performance objectives, along with the matters raised about SMART principles, are outside the scope of the Framework and sit within Part 1 of the Plan. Accordingly, it submitted that the consideration of such matters is outside the Terms of Reference for this Panel.

### **3.5.2 Discussion**

The Panel acknowledges the submissions raised by the various parties in relation to the issue of SMART principles and the nature of the performance objectives in Part 1 of the Plan. However, the Panel agrees with Melbourne Water that these issues are principally associated with Part 1 and so are outside the scope of its Terms of Reference in terms of providing any detailed commentary or guidance on the issues raised.

Nonetheless, the Panel is of the view that it would be helpful for Melbourne Water to further consider these issues as it moves forward in finalising the draft Plan to ensure that Part 1 is robust and fit for purpose.

### **3.5.3 Findings**

The Panel finds that the specific matters raised in relation to SMART principles and the performance objectives of the Plan sit outside the Terms of Reference for this Panel. However, the Panel encourages Melbourne Water to consider the matters raised when finalising the draft Plan.

## **3.6 Overall findings and recommendation on merits**

As outlined at the start of this Chapter, Clause 23(a) of the Terms of Reference requires the Panel to advise the Minister's on the merits of the Land Use Framework. Whilst there are a number of suggestions for changes in this report, the Panel want to be clear, the Land Use Framework is a significant piece of work which forms a sound basis for the finalisation of the Plan and future planning and implementation work to come.

The Panel recommends:

- 9. Subject to the changes agreed to by Melbourne Water in Document 67 and the recommendations in this report, the Panel considers the Land Use Framework has significant merit and should be finalised within the Yarra Strategic Plan.**

## 4 The Land Use Framework and the Planning System

### 4.1 Background

Clause 23(d) of the Terms of Reference requires the Panel to provide “*an assessment of whether the updated Land Use Framework provides a sound basis for the preparation of a planning scheme amendment*”.

The Plan was exhibited as a standalone document with no accompanying Planning Scheme amendment. There is reference in the Framework at Part 2 of the Plan to the way in which the Framework will be applied, stating at page 64 that once it is finalised, Clause 12.03-1R ‘Yarra River Protection’ will be updated and that it will be included as either a Reference or Incorporated Document in the Planning Policy Framework (PPF) of the relevant planning schemes. In addition, the Framework identifies that it will:

- be used in the planning system to provide regional planning policy and strategic direction for all land within the Yarra Strategic Plan area;
- require that changes to a planning scheme (amendments) or a proposed development (permits) must consider the Yarra Strategic Plan and be consistent with its strategic objectives.

There was much discussion in the Hearing, including evidence and submissions, about what this actually means from an implementation perspective, whether it is appropriate for the Framework to be used in the manner proposed by Melbourne Water and what the nature of any subsequent amendment to implement the Framework would be.

### 4.2 Key issues

The issues are:

- What future role the Land Use Framework is expected to play in the planning system as part of any future planning scheme amendment
- Whether the Land Use Framework in its current form fulfils that role (or roles) and forms a sound basis for the preparation of any future planning scheme amendment.

### 4.3 Role of the Land Use Framework in the Planning System

#### 4.3.1 Submissions and evidence

Melbourne Water advised in its Part A submission<sup>19</sup> that the Plan provides a regional framework for land use planning and decision-making on both public and freehold private land at a local level. Melbourne Water stated that to deliver on the intent of the Act, while also reflecting the unique characteristics of the Yarra River, the land use framework provides direction at a whole-of-river scale and within each of the four reaches.

Various submitters questioned whether the Framework was ‘fit for purpose’ if it is intended to form the strategic support for future planning scheme amendments of which the content/form was unknown.

---

<sup>19</sup> Document 44.

For example, Ms Jordan noted in her statement of evidence<sup>20</sup> on behalf of St Kevin's College (St Kevin's) that no clear guidance is provided in the Framework in terms of what future policies and controls will be developed to align with and achieve the performance objectives outlined in the document and how they might be applied to private land in particular. She was of the view that the Plan in its current form required more detailed analysis to support any future amendment relating to built form outcomes, if indeed that is how the document is intended to be used.

Mr Biles, also giving evidence for St Kevin's, had a similar view<sup>21</sup> stating that the Framework is not suitably detailed or based in enough analysis to provide a useful guide to planning decisions about future planning controls such as zones or overlays.

Similarly, Minter Ellison, on behalf of YVCC<sup>22</sup>, as well as a number of other submitters, considered that the Plan and Framework do not include the detail to inform the making of planning controls.

These various observations highlight the uncertainty from some submitters about what role the Framework is intended to have in the planning system, due to a lack of clarity about what is intended in relation to future planning scheme amendments.

Melbourne Water sought to provide clarity around this issue in its response to questions from the Panel about the form of proposed future amendments. Melbourne Water advised that it had developed a 'road map' for the YCC members to further clarify this issue which it also provided to the Panel and all parties<sup>23</sup>. The 'road map' stated that the Plan would be given effect in a staged manner with the first stages comprising:

- Stage A: giving initial effect to the Plan – summarised as updating Clause 12.03-1R and including the Plan as a reference document with proposed timing following approval of the Plan and with the potential for this to happen in conjunction with a Planning Scheme Amendment that also addresses Stage B; and
- Stage B: Permanent implementation of GC48 interim controls – summarised as refining and introducing permanent controls between Richmond and Warrandyte, noting the existing interim controls sunset on 31 January 2021 and that this work could be delivered in conjunction with Stage A if timing allows.

Future stages were then also identified including: Stage C extension of the planning controls upstream; Stage D riparian and biodiversity values; Stage E Heritage; and Stage F Landscape design and native planting.

### 4.3.2 Discussion

The Panel considers that Melbourne Water has sought to provide clarity in both the Framework itself, and in the response to questions from the Panel, that the Framework is intended to support both a policy focussed future amendment, as well as an amendment that seeks to make permanent (with potential refinements) the interim planning controls introduced by Amendment GC48.

---

<sup>20</sup> Document 48, para 63.

<sup>21</sup> Document 49, para 21

<sup>22</sup> Document 82.

<sup>23</sup> Document 66.

The Panel notes that as there is no specific discussion in any of the documentation about further strategic work being undertaken/prepared to support these two initial amendments. It appears that Melbourne Water considers the existing body of work that has been undertaken leading up to and including the Plan, provides appropriate strategic support.

It would also appear that Melbourne Water intends that the Land Use Framework Plan will form the basis of additional amendments, Stages C to F, but in conjunction with additional strategic work to be undertaken. Although there was no detailed discussion about what this additional work would involve, the 'road map' referred to "*discrete state-local government project to be undertaken as part of the Plan implementation. Planning Scheme implementation, including any state-led amendment to be considered by the YCC*".

The Panel considers that some angst and confusion over the role of the Framework in the context of the planning system could have been avoided if either a) clearer information was provided by Melbourne Water about the anticipated timing and form of future amendments as part of the exhibition of the Plan or b) draft amendment documentation was placed on public exhibition in conjunction with the draft Plan.

### 4.3.3 Findings

The Panel finds that there are two key, initial, 'roles' that the Framework is intended to fulfil and that is supporting a policy related planning scheme amendment, as well as an amendment to introduce permanent built form controls to replace the interim planning controls introduced by Amendment GC48.

The Framework is also intended to be used in support of later amendment stages C) to F), as outlined by Melbourne Water in the 'road map' document, but in conjunction with additional work to be undertaken.

Whether the Framework in its current form provides a sound basis for these amendments is addressed in the following section.

## 4.4 The Land Use Framework as a basis for future planning scheme amendments

### 4.4.1 Submissions and evidence

Yarra CC in its submission to the Panel<sup>24</sup> submitted that further work needed to be done in relation to the Framework to include more localised plans, as follows:

13. The draft LUF starts to provide a sense of the spatial settings and priorities along the whole of the Yarra River. It is however high level. Council suggests that there is merit in considering the future development of more localised plans that capture the finer details of the strategic land use, development, infrastructure and environmental outcomes. This could occur by individual local governments or by reaches. For example, a new master plan for Yarra Bend Park would provide a more integrated and holistic consideration of the proposals in the draft the Plan as well as providing greater clarity to land managers.
14. In order to make the Yarra River a central part of land use planning and decision making the Plan needs to be brought into effect using the policies and controls in planning schemes. Council supports the planning proposals specified in the 'whole

<sup>24</sup> Document 52, paras 13-15

of river directions' outlined in the draft the Plan, including the Plan becoming a reference document in planning schemes. This is considered a key priority that needs to occur in a timely way.

15. Council is wanting to know more details about the proposals, such as what "updating" Clause 12.03-1R Yarra River Protection of the Planning Policy Framework will involve and what is intended by "refining" the existing interim controls. It appears the form and content of any amendment will occur after the final the Plan is adopted and will have to be considered by Council at that time.

Yarra CC then identified a series matters it considered needed further investigation for both the inner city and suburban reaches.

Mr Reid, had a similar view to Yarra CC in relation to further work, stating that the Framework should be supplemented by a Regional Framework Plan that provides clearer strategic direction. In relation to this issue he suggested that a "*nodal or precinct-based approach*"<sup>25</sup> could be taken which addresses omissions that he identified in the Land Use Framework Plan as including:

- Intensive urban area with frontage to the river (eg Melbourne CBD, Docklands, activity centres)
- Urban and township area adjacent to Yarra River land, some of which may have active interfaces
- Sections of Yarra River Land where recreation, movement and access are a priority
- Protected areas of Yarra River Land where cultural heritage, biodiversity or habitat corridor functions are a priority
- Risk Management associated with climate change, bushfire and flooding.

He suggested that such an approach should form the basis for the Framework and "*cascade from regional, to reach, to local planning frameworks*". He also suggested that an audit should be undertaken of zones along the river to ensure they align with and support the Framework.

In cross examination by Ms Sharp, for St Kevin's, Mr Reid agreed that institutional land uses, such as St Kevin's, could be an example where further analysis is appropriate as part of a more detailed nodal or precinct based approach within a new Regional Framework Plan.

Melbourne Water, in response to Mr Reid's evidence, submitted that the Land Use Framework Plan was designed to provide a regional framework for land use planning and decision making and that it achieves this by providing direction at a whole-of-river scale and within each of the four reaches.

Thus, the need for a nodal or precinct-based approach as identified by Mr Reid was not supported at this stage of the process, or an audit of all zones, although the importance of precinct plans such as the Yarra River – Bulleen Precinct Land Use Framework Plan and their relationship with the Yarra Strategic Plan was acknowledged and discussed. In addition, Melbourne Water also accepted that a further review for accuracy of some elements of the Plan raised by Mr Reid, including areas for revitalisation and climate change issues, would be appropriate.

As previously noted, Mr Biles and Ms Jordan were also both critical of the level of detail and analysis in the Framework and both opined that the Framework did not provide adequate support for a planning scheme amendment that is seeking to implement mandatory built form

---

<sup>25</sup> Document 46, para 105.

planning controls. Mr Gobbo, for St Kevin's, in providing an overview of the views of St Kevin's and its experts, submitted<sup>26</sup> that *"the LUF falls well short of providing a sound basis for the preparation of a planning scheme amendment"*.

Other submitters critical of the detail in the Framework in terms of it providing a sound basis for the preparation of a planning scheme amendment included Kellehers Australia, stating in their submission<sup>27</sup> that:

17. The LUF, in its current form, would amount to poor planning policy, as the detail planning scheme amendments which follow it will either be likely to ignore important requirements of the Act or only find direction by going beyond the LUF into its supporting document. This is a poor policy outcome for such a highly significant place and can be addressed relatively simply now by requiring Melbourne Water to include more detailed LUF for each district using existing supporting material.

Kellehers Australia also identified a series of matters that it considered needed further analysis/ investigation in relation to the inner city reach including: areas for protection, Aboriginal cultural and heritage sites, environmental and landscape values, urban renewal areas, commercial attractions, community activities, habitat corridors, open space and urban forest network, access pathways and impacts of climate change.

#### 4.4.2 Discussion

The Panel considers that the issue of whether the Land Use Framework provides a sound basis for future planning scheme amendments needs to be considered in the context of the three different 'types' or 'stages' of amendments that are contemplated by Melbourne Water's 'road map':

- Stage A: giving initial effect to the Plan
- Stage B: Permanent implementation of GC48 interim controls
- Future stages: C extension of the planning controls upstream; D riparian and biodiversity values; E Heritage and F Landscape design and native planting.

##### (i) Stage A: giving initial effect to the Yarra Strategic Plan

Turning initially to Stage A, the Panel notes that the two key elements of this first amendment, as proposed by Melbourne Water, comprise amending Clause 12.03-1R and in doing so including the Plan as a Reference Document.

The Panel notes the extensive work that has been undertaken to prepare the Framework, and the significant body of work that sits behind it. Whilst there was much criticism of the level of detail included in the Framework, the Panel considers that it offers valuable high level policy guidance for the Plan area, subject to the range of refinements as recommended in this report.

The Panel also notes the various 'hats' that the Framework wears – in terms of being a document that must meet the requirements of the Act but that must also be able to be translated into the planning system.

<sup>26</sup> Document 71, para 54

<sup>27</sup> Document 90.



The Panel considers that the Framework, subject to the changes being made as outlined in this report, is appropriate for inclusion as a Reference Document in the planning scheme and provides an appropriate foundation for the preparation of an amended Clause 12.03-1R.

The Panel again notes that it would have been preferable for an amended Clause 12.03-1R to be exhibited alongside the draft Plan. The language used in a Policy can easily change how that policy is to be applied (for example 'should' versus 'must') and the Panel understands the concerns of submitters about the potential inability to comment on any proposed changes to Clause 12.03-1R. This issue is discussed further in Chapter 5.

**(ii) Stage B: Permanent implementation of GC48 interim controls**

Turning to Stage B, the Panel notes this was the subject of much discussion at the Hearing and the form of any future amendment and the process for its approval was clearly a major concern to a number of submitters.

In short, the Panel agrees with the various submitters who were of the view that the Framework in its current form is not sufficiently detailed to support the implementation of permanent controls.

The Panel considers that further work needs to be done, adopting a nodal or precinct-based approach as suggested by Mr Reid and others, that 'drills down' further into each reach and undertakes a more detailed analysis of the land systems and land uses along the river, within the area affected by the Plan.

The Panel notes that all of the experts that appeared at the Panel, as well as many of the submitters, had suggestions about what further work needed to be carried out in relation to the Plan.

However, focussing on what work needs to be done to support a future amendment to implement permanent controls, the Panel considers the matters identified by Mr Reid<sup>28</sup> are a good starting point. This additional work could be addressed on a reach basis and prepared as an addendum to the Plan.

In making this recommendation, the Panel is cognisant of the extensive work that has been undertaken to date in preparing the Plan and is also aware of the time and cost that could be involved in undertaking further pieces of strategic work.

The Panel is not suggesting a lot by lot analysis needs to be undertaken along the length of the Plan area or, indeed, an audit of all zones as suggested by Mr Reid. However, further strategic analysis needs to be undertaken to enable a better understanding of the existing environmental and topographical conditions and the land uses that extend along the river, including consideration of existing built form, to then inform the preparation of permanent controls as foreshadowed by Amendment GC48.

Guidance on the information that might be required for this further work was provided, amongst other places, in Ms Jordan's evidence, where she said what is needed is:<sup>29</sup>

- Clearer definition in terms of what built form outcomes are sought for private land adjacent to the River environs. Importantly, how these built form outcomes may be

<sup>28</sup> Document 46, para 105.

<sup>29</sup> Document 48, para 89.

appropriately be varied, depending on the unique characteristics of each site and landscape character.

- Detailed consideration of the topography of the River bank and the varied geological formations, differentiating between areas of public land and private land. Careful analysis of each allotment of land adjacent to the Yarra River must be undertaken, including recognition of the land use and built form conditions. This analysis will demonstrate that private land situated adjacent to the River bank is highly varied and requires a suite of controls to manage the extent to which any or existing or new built form may be visible from within the public realm and to what degree this level of visibility is acceptable.
- Consideration as to what the most sensitive and important viewing points of land that is positioned along the River bank and appropriate justification for these viewing locations. For instance, should the viewing points be from the River bank itself even when public access is not possible? And what distance away from a defined property is the viewing point no longer considered to be “of influence”. Importantly this analysis should also consider whether these view lines can be appropriately respected through a range of design measures and not just building setbacks and building heights.

It is noted that as a result of this further work, there may also be further changes required to Clause 12.03-1R (if an earlier Stage 1 amendment is undertaken) if the additional work warrants changes to the policy guidance.

The interim controls can be extended if there is concern about a ‘planning gap’ between the expiry of the current controls and the development of new, more nuanced ones.

### **(iii) Stages C to F: Future amendments**

Similar to the reasons outlined in relation to the Stage B amendments, the Panel considers that additional strategic work will also need to be undertaken to support the additional future amendments.

This need has already been contemplated by Melbourne Water as these future amendments are all referred to as requiring a *“discrete state-local government project to be undertaken as part of the Plan implementation, including any state led amendment to be considered by the YCC”* and in Melbourne Water’s response to the Panel’s questions about future planning scheme amendment processes, the need to ensure that an *“appropriate amount of strategic and technical work has been undertaken”* was identified in relation to these later stages.

### **4.4.3 Findings**

The Panel finds that the Framework provides a sound basis for the preparation of an amendment to implement changes to Clause 12.03-1R and to include the Plan as a reference document, subject to additional consultation being undertaken over the wording changes proposed to Clause 12.03-1R (discussed further in Chapter 5).

However, the Panel finds that further work is required to be undertaken for the Framework to provide a sound basis for any future amendment associated with the permanent implementation of the GC48 interim controls and other future amendments associated with Stages C to F of Melbourne Water and DELWP’s ‘road map’.

This further work could be done on a reach by reach basis and should take a precinct based approach to the land to which the Plan applies.

Importantly, given the timing of the Plan preparation, the Panel does not consider this reach-based planning needs to be undertaken within the Framework. However, the Framework needs to recognise and sanction the preparation of that more detailed planning, which in turn will inform future amendments.

#### **4.4.4 Recommendations**

The Panel recommends:

- 10. Melbourne Water should, prior to approval, modify the Land Use Framework to provide for and facilitate future reach-based, precinct or nodal planning to allow for a more fine-grained informing of Planning Scheme Amendments for permanent planning controls including:**
  - a) More clearly defined built form outcomes (for private and public land) based on the specific landscape, vegetation and land use along the river.**
  - b) Areas of environmental significance requiring natural resource planning controls.**
  - c) Areas of heritage significance requiring heritage planning controls.**

## 5 Policy and statutory tools

### 5.1 Background

Clause 23(e) of the Terms of Reference requires the Panel to provide “*advice on particular policy and statutory tools to assist the preparation of a draft planning scheme amendment*”.

There was much discussion at the Panel Hearing about what consultation should be undertaken in relation to future amendments and what form those amendments should take. The nature of the proposed permanent implementation of Amendment GC48 controls was also discussed by a number of experts and submitters as was the potential for ‘new’ controls to be used in place of, or alongside, the Amendment GC48 interim planning controls.

### 5.2 Key issues

The issues are:

- What policy and statutory tools should be used to assist future planning scheme amendments?
- Should the future statutory controls be mandatory or discretionary?
- What process should be followed for future planning scheme amendments to implement the Yarra Strategic Plan?

### 5.3 Policy and statutory tools to implement the Yarra Strategic Plan

#### 5.3.1 Submissions and evidence

Mr Reid’s evidence to the Panel in relation to policy and statutory tools was that the Framework should include additional measures to reinforce governance set out in the Act and the Plan and could include:

- Clause 12.03-1R to be elaborated on and strengthened (with specific changes recommended);
- Creation of a new Yarra River (Birrarung) Strategy Overlay;
- Introduction of a new regional Yarra River (Birrarung) Strategy Clause;
- Introducing new determining or recommending referral authority requirements in the Planning Scheme for particular application types.

In relation to the policy changes, Mr Reid recommended <sup>30</sup>ways in which Clause 12.03-1R should be amended as part of any future amendment as:

- Defining the Yarra Strategic Plan area so that the extent of application of the provision is unambiguous;
- Incorporating the overarching performance objectives for the river;
- Outlining high level strategic directions and actions for the entire river corridor;
- Describing the strategic priorities for the reaches, as sub-regional planning units;
- Identifying the Draft Plan (including the LUF) as a reference document to guide strategic decisions;
- Requiring that all planning scheme amendments address the Yarra River Protection Principles outlined at Section 8-12 of the Act, particularly the reference to a ‘net gain

<sup>30</sup> Document 46, para 125.

for the environment' for actions and policies that have an environmental impact on Yarra River land.

Mr Reid also recommended that when considering the extension of the GC48 overlay controls upstream from Warrandyte, consideration should be given as to whether the Environmental Significance Overlay (ESO) would be a more appropriate tool than the Design and Development Overlay (DDO) to apply to private land, given the DDO was prepared primarily to address land use and development pressure in the inner urban and suburban reaches.

Melbourne Water accepted many of Mr Reid's recommendations in relation to Clause 12.03-1R stating<sup>31</sup> that many of his suggestions "*are likely to be included when that clause is revised by DELWP*".

Melbourne Water didn't agree with all Mr Reid's other changes advising that<sup>32</sup> "*unless found otherwise, through this investigation, creation of a new planning overlay would be of limited assistance in a Statewide system that is already complex*" and noted that the "*Panel's advice on particular policy and statutory tools will provide guidance to this process*". However, Melbourne Water did agree that consideration could be given to the application of the ESO upstream of Warrandyte.

In questioning from the Panel, Mr Reid confirmed that in suggesting a new overlay, this was proposed as being in addition to the existing overlays that are already in place via the interim controls.

The views of Mr Reid were supported in submission by Dr Lindsay, stating that<sup>33</sup> a new particular provision and schedule applying to the Land Use Strategy, in a manner similar to the Upper Yarra Valley and Dandenong Ranges Regional Strategy, which he considered was well established and understood and functions appropriately in conjunction with other planning controls, was supported.

In comparison, Mr Gobbo submitted for St Kevin's that<sup>34</sup>:

With regard to particular policy and statutory tools to assist in the preparation of a draft planning scheme amendment, the College submits that the statutory tools in the VPPs are appropriate, such as Environmental Significance Overlay, Significant Landscape Overlay and Design and Development Overlays. The question is not whether the tools are available but more whether the work to justify the use of the tools and the manner in which the tools may be utilised has been done.

Ms Jordan addressed the issue of planning controls with more of a focus on the content of the current controls, and the mandatory versus discretionary issue, rather than in the context of whether the use of the DDO and Significant Landscape Overlay (SLO) (ignoring content) was appropriate. However, in questioning by the Panel Ms Jordan was asked about Mr Reid's suggestion in relation to consideration of other planning 'tools' and advised that she thought the concept of an overlay that specifically addressed the Yarra River was worth considering.

The Panel sought clarity during the course of the Hearing on what Melbourne Water expected from the Panel in relation to advice pursuant to this particular clause in the Terms of Reference. Melbourne Water advised<sup>35</sup> that it did not envisage that the Panel would provide

<sup>31</sup> Document 93, para 48.

<sup>32</sup> Document 53, para 83.

<sup>33</sup> Document 56, para 212.

<sup>34</sup> Document 71, para 63.

<sup>35</sup> Document 66, paras 30-31.

detailed assessment of particular provisions used in the interim controls but rather provide advice on ways in which to bring together the work that has been undertaken in a way “*that is effective, efficient and reduces any potential duplication*”.

### 5.3.2 Discussion

In relation to the changes that might be required to Clause 12.03-1R, the Panel considers that Mr Reid’s suggestions are appropriate for further consideration, as also acknowledged by Melbourne Water. In particular the Panel considers that providing definition in the clause about the area to which it applies is important.

Turning to the issue of statutory tools, the Panel considers that in undertaking a future review of the GC48 controls, it makes sense to consider whether there are any tools that are better suited to implement the desired strategic outcomes. Having said that, it is difficult to provide definitive guidance on appropriate controls, when some of the supporting strategic work has not yet been done – referring to the Panel’s considerations in Chapter 4. Accordingly, any discussion about future controls needs to be high level.

Notwithstanding the above, the Panel is not convinced that a ‘new’ form of control as suggested by Mr Reid, either a new Yarra River (Birrarung) Strategy overlay or a control similar in nature to the Yarra Ranges Planning Scheme Clause 51.03 - is warranted, unless it can be clearly established that the controls used to date are inappropriate or haven’t worked.

The Panel notes that whilst evidence was put to it about some of the **requirements** of the current controls being inappropriate (ie the DDO height and setback requirements), the suggestion that the use of the DDO and SLO ‘tools’ is inappropriate was not clearly articulated.

The Panel makes the observation that when considering what zone and overlay controls to apply to land, ‘tailor made’ controls (ie the Special Use Zone, or the Specific Controls Overlay) are only intended to be used where the standard Victoria Planning Provisions tools won’t suffice.

In this instance the Panel isn’t convinced that an alternative control is necessary in addition to the use of the DDO and SLO (and, potentially the ESO for the area beyond Warrandyte). However, this will depend, in part, upon the outcomes of the further work to be undertaken and the strategic environmental, land use and development outcomes identified by that work. It will also depend upon whether further changes are proposed in policy as part of the implementation of this further work.

The Panel is conscious of the Smart Planning Program and the on-going need to avoid a ‘layering’ of controls where one control would do.

The Panel also does not believe sufficient justification has been put to it to support the addition of new determining or recommending referral authorities. In addition, even if such a case had been clearly mounted, it considers this is a matter of detail, beyond the scope of its current considerations. Nonetheless, such a proposition could well be considered as part of the Stage B amendment if the relevant Councils and referral authorities consider such a review is warranted.

### 5.3.3 Findings

The Panels finds that there is unlikely to be a need for a ‘new’ overlay or Strategy clause to be created to implement the Plan, once the further work that the Panel has recommended has

been undertaken. In this regard the Panel notes that the option of also including policy changes as part of any Stage B amendment is appropriate and one that could be used effectively in conjunction with the application of updated overlay controls.

The Panel considers there is merit in exploring the application of the ESO to the area upstream of Warrandyte as recommended by Mr Reid.

## 5.4 Mandatory or discretionary controls

### 5.4.1 Submissions and evidence

Multiple submissions were put to the Panel arguing both for and against the application of mandatory controls to land within the Yarra Strategic Plan area, as per the current DDO that applies.

Many submitters were keen to see the overlay controls introduced by Amendment GC48 made permanent, including the mandatory elements relating to heights and setbacks. For example, Dr Lindsay submitted<sup>36</sup> that:

In our submission, controls in the form set out under the GC48 reforms are essential to the maintenance of the 'naturalistic' and 'green space' corridor in the urban reaches and to control further alienation of that space from the public domain. To dilute the current prescriptions contained in those controls will invariably lead to greater incursion into this corridor by built form and development to the detriment of public interest values in the river corridor.

This issue was also of concern to a number of the community groups that made submissions, including the Friends of Glenfern Green Wedge which argued strongly for the retention of the Amendment GC48 controls in their current prescriptive form.

Other submitters, including Mr Gobbo for St Kevin's in submission, Ms Jordan and Mr Biles in evidence and Minter Ellison for YVCC in submission, expressed significant concerns with regard to the continued application of mandatory controls. Using St Kevin's as an example, Ms Jordan stated<sup>37</sup> that:

The potential for permanent planning controls to be introduced which will include consistent mandatory building height and setback controls will not allow for the variation in land form along the River as already evidenced by the interim Design and Development Overlay affecting St Kevin's College campuses.

A more appropriate approach moving forward would be to develop clear, performance based policy objectives that can respond to the significant variation in physical and landscape conditions of privately held land adjacent to the River and thereby allow for an appropriate balance to be achieved.

Minter Ellison offered a similar view to Ms Jordan, stating in its conclusion<sup>38</sup> that "*any proposed future planning scheme controls should be performance based, not mandatory*".

As a result of these concerns Mr Gobbo submitted that wording in the first dot point in the 'whole of river directions' contained in the Framework<sup>39</sup> should be changed to remove reference to prescribing mandatory controls, suggesting two alternative wording options. An

<sup>36</sup> Document 56, para 128.

<sup>37</sup> Document 48, para 93.

<sup>38</sup> Document 82, para 6.4 d).

<sup>39</sup> Page 65.

additional change was also requested to refer to institutional uses such as St Kevin's in the directions.

One submitter, the Yarra Link Project, whilst not objecting to the to the application of mandatory controls per se, identified a number of ways in which the current controls limit its ability to utilise its land for conservation purposes.

It was submitted by Melbourne Water that recommendations regarding the form and content of the permanent planning controls are outside the scope of matters the Panel has been asked to consider. Accordingly, Melbourne Water objected to the submissions made requesting changes to the mandatory provisions as part of any future amendment and rejected the submission by Mr Gobbo to change to the wording of the 'whole of river directions'.

#### **5.4.2 Discussion**

The Panel notes Melbourne Water's submission about the form and content of the future permanent controls being outside the Panel's Terms of Reference and accepts that interpretation.

Notwithstanding that view, the Panel acknowledges that mandatory controls are favoured by many submitters due to the significance of the Yarra River and the certainty they can provide. However, the Panel also notes that where mandatory controls are to be applied, they need to be based on sound strategic planning. Accordingly, the Panel considers that whether future controls should be discretionary, or mandatory will be guided by the further work that needs to be undertaken in relation to the Plan at a precinct level. Therefore, even if this consideration was within the Panel's Terms of Reference it would not be in a position to make a recommendation on this issue at this point in time.

Keeping this in mind, the Panel considers that it is not appropriate for a specific approach to future controls to be 'locked in' at this stage in the implementation process of the Plan. For this reason, in relation to the wording of the first dot point in the 'whole of river directions', whilst the Panel does not support the specific word changes proposed by Mr Gobbo, the Panel does consider that there should be flexibility provided in the wording, in terms of the nature of the future controls.

#### **5.4.3 Findings**

The Panel finds that it is outside its Terms of Reference to make a recommendation in relation to the application of future planning controls and whether they should be mandatory or discretionary. Such a determination will only become evident once the further strategic work is undertaken at a precinct level as recommended by this Panel and the finding of that work considered as part of a future planning scheme amendment process.

For this reason, the Panel also finds that the Framework should not 'lock in' the need for mandatory controls when referring to the implementation of the permanent controls but provide flexibility in the language to enable consideration of a range of options.



## 5.5 Process for future amendments

### 5.5.1 Submissions and evidence

In its Part A submission Melbourne Water<sup>40</sup> outlined the process for future amendments. The process was also discussed in Chapter 4.3.1 and includes, in summary:

- A State led planning scheme amendment will be used to implement the Plan and Framework including consultation with Councils and the YCC.
- An initial amendment will be undertaken to revise Clause 12.03-1-R (Yarra River Protection) in the PPF.
- The refinement and introduction of permanent design and development and landscape management controls with targeted consultation with Councils.

Melbourne Water submitted the process will be led by DELWP in partnership with RPEs. In response to Panel questions, Melbourne Water provided a document from DELWP<sup>41</sup> which provided more information on the amendment processes going forward.

In relation to the issue of ‘targeted consultation’ DELPW advised that:<sup>42</sup>

At this point in time, no decision has been made as to whether there will be broader public involvement in the finalisation of these products and whether the Minister will exercise powers under ss 20(4) and (5) [*Panel note: of the Planning and Environment Act 1987*].

Mr Gobbo for St Kevin’s stated that any review of the interim controls must be open to all affected parties, not just statutory authorities. Minter Ellison for YVCC agreed with this view stating:<sup>43</sup>

YVCC submits that if there are to be new planning controls applying to private land there should be a separate planning scheme amendment process. The consultation for the Plan was not sufficient to cover consultation for a planning scheme amendment for private land. Some private landowners may not have participated in the YSP process. All private landowners need to be consulted by means which make it clear that new controls are being considered. Therefore, for example it is submitted that if there is to be the consideration of permanent controls based on the interim controls introduced by GC48, a separate consultation process is required. Melbourne Water’s Part A submission (par 169) refers to targeted consultation with councils occurring after approval of the Plan in relation to the operation of the existing interim controls and their refinement. This is supported, provided consultation with affected land owners also occurs.

Yarra CC sought the opportunity to be consulted on future amendments, as did Kellehers Australia which submitted that further Panel Hearings should be held once further work is undertaken for specific precincts to ensure the Framework for those areas is thoroughly assessed. Similarly, Banyule City Council sought opportunity for both Council and the community to make a submission on any future amendment that seeks to implement the Framework.

Mr Reid didn’t discuss consultation to any great extent in his statement of evidence however in cross-examination by Ms Sharp he agreed that there should be public scrutiny of future controls particularly where controls are proposed to be permanent. When asked about

<sup>40</sup> Document 44, para 167-169.

<sup>41</sup> Document 66.

<sup>42</sup> Document 66, para 17.

<sup>43</sup> Document 82, para 5.7.

whether the consultation process that was undertaken for the Yarra Strategic Plan provided opportunity to comment on the GC48 interim controls, he observed that it hadn't been targeted as a review of those controls; and that further review of the controls and strategic sites is needed before finalisation.

### 5.5.2 Discussion

The Panel can understand the concerns of submitters in relation to future processes and the intent in relation to the future consultation. There was no firm commitment made in relation to either the Stage A (policy amendment) or Stage B (making permanent the interim controls amendment) with Melbourne Water advising that no decision had been made yet about public involvement.

The Panel considers that for the Stage A policy amendment there should be some further consultation in relation to the proposed changes to policy at Clause 12.03-1R. This could be in the form of targeted consultation with RPEs, noting that in any case further changes may eventually be required to Clause 12.03-1R as part of the further work to be undertaken in support of the implementation of permanent controls.

To review and implement permanent controls such as those in GC48 or the Stage B amendment, the Panel considers broader consultation with landowners and stakeholders is required. This consultation should be based around the additional strategic precinct planning work which will fill in a level of detail between the Framework and site specific controls.

Typically, interim controls are introduced to prevent development that may be seen as inconsistent with future planning for an area while the type and form of permanent controls are developed. Broad consultation around the permanent controls is a critical part of the interim/permanent approach in planning in Victoria. The Panel considers such an approach is also essential along the Yarra.

The interim controls expire in February 2021. These could be extended and progressively lifted as the additional strategic precinct work (addressed in Chapter 4) is undertaken and permanent controls introduced through the Stage B amendment(s).

In relation to the amendments for Stages C to F, the Panel expects that 'normal' amendment processes should also apply, to ensure transparency in the further assessment work and its application in the Planning Scheme.

### 5.5.3 Findings

The Panel finds that there should be targeted consultation prior to the implementation of changes to policy at Clause 12.03-1R.

For the review and implementation of GC48 as permanent controls, the Panel considers this amendment process should include opportunities for broad consultation as per the usual planning scheme amendment process<sup>44</sup> and should be undertaken in conjunction with the further precinct-based work recommended in Chapter 4.

This could be done as a series of projects over time with the interim controls maintained and progressively removed as the more detailed work is completed.

---

<sup>44</sup> Or a process with similar levels of scrutiny such as the draft planning scheme amendment and Advisory Committee process.

Other future amendments forming part of the implementation (Stages C to F) should also be the subject of a usual amendment process.

## **5.6 Recommendations**

The Panel recommends:

- 11. Melbourne Water revise the Land Use Framework to make it clear that the implementation of permanent planning controls will be undertaken with broad consultation.**

## 6 Directions in the Land Use Framework

### 6.1 Background

Clause 23(c) of the Terms of Reference requires the Panel to provide “*recommended final wording for relevant ‘directions for future land use and development’ in the Land Use Framework*”.

In the Terms of Reference, this requirement precedes the matters addressed in the last two chapters. However, the Panel is of the view that the final wording for the ‘directions for future land and development’ needs to be considered in the context of the previous recommendations about further work, and so takes these previous recommendations into account in this chapter.

### 6.2 Key issues

The key issue is whether changes are required to the ‘directions for future land use and development’ which are included for each of the four reaches in the Framework. It is noted that these objectives sit beneath the ‘whole of river’ objectives included at Page 65 of the Plan.

### 6.3 Submissions and evidence

In relation to the ‘whole of river’ directions, a number of submissions indicated concerns with the approach taken to these directions.

Mr Reid provided a broad critique of all the ‘directions’, stating in evidence:<sup>45</sup>

113. On the face of it, many of the directions appear to represent business as usual for the responsible public entities. Aside from the new governance structure and the collation of actions in a single document, there is nothing in the land use plan appears likely to drive a step change in the management of the strategy study area towards the achievement of the community vision.
114. The directions of the LUF are insufficiently specific to give clear direction on how the plan will lead to an improvement in key community aspirations around environmental conditions, water quality and indigenous involvement in waterway management.

This critique was supported by Dr Lindsay. In relation to the rural reaches in particular, Dr Lindsay submitted that whilst the two organisations supported many of the actions and directions identified for the ‘rural reaches’, they remained too generalised and too limited given the time horizon and aspirations of the Plan and/or failed to have proper and full regard to the purpose of the Act. Dr Lindsay also made some suggested wording changes to the directions to address some of these concerns.<sup>46</sup>

In response to these criticisms by Dr Lindsay and Mr Reid, Melbourne Water reiterated that the directions that are outlined are purposefully high level to allow further investigation into the most appropriate mechanism for implementation. Melbourne Water did not support the wording changes suggested by Dr Lindsay.

<sup>45</sup> Document 46, paras 113-114.

<sup>46</sup> Document 56, para 239.

Dr Lindsay also made submissions in relation to the proposed extension of new planning controls upstream from Warrandyte to the Yarra Ranges – which is included as a ‘whole of river’ planning direction. Dr Lindsay supported the extension of the controls, submitting that they should be devised and applied as far as the Upper Yarra Reservoir and that appropriate planning controls need to be applied to all ‘areas for protection’. Dr Lorimer also stated in evidence<sup>47</sup> that whilst he was confused by how the ‘areas for protection’ were defined, that he considers the areas for protection should be extended upstream of Everard Park, or at least as far as the most upstream billabongs at Yarra Junction.

Melbourne Water was supportive of a further extension of the areas for protection stating in its Part B submission that:<sup>48</sup>

... The new area for protection, proposed for Yering to Tarrawarra (page 90-91) will be extended upstream to Yarra Junction in response to community support.

Mr Gobbo for St Kevin’s submitted that the ‘whole of river’ directions should be amended to address the concerns raised about mandatory controls (as already discussed in Chapter 5). In relation to the individual reaches, Mr Gobbo also submitted that in relation to the urban land uses in the Inner City Reach, the two St Kevin’s campuses should be specifically identified in the directions and provided suggested wording as follows:

Recognise important institutions, such as St Kevin’s Glendalough and Heyington Campuses, and facilitate the future development of the campuses subject to consideration of the landscape, aesthetic and ecological impact on the Yarra River and environs.

Melbourne Water did not support Mr Gobbo’s suggested wording changes for the ‘whole of river’ directions or the proposed change to the Inner City Reach directions.

## 6.4 Discussion

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.

However, whilst the Panel accepts that it is appropriate that the directions are high level, the Panel considers that some changes should be made to the directions themselves. As flagged in the last chapter, the Panel does not consider that it is appropriate that the first of the ‘whole of river’ directions refers to the application of mandatory maximum building heights and minimum development setbacks prior to the further work being done to ascertain the nature of the refined controls that are to be applied.

Whilst it may ultimately be that mandatory controls are considered necessary and appropriate, the work to support that position has not yet been carried out, as discussed in Chapter 5. Accordingly, the Panel considers that the ‘whole of river’ first direction should be amended to delete the ‘requirement’ for mandatory controls and to instead provide opportunity for exploration of both mandatory and discretionary controls. This change should

<sup>47</sup> Document 45, paras 77-79.

<sup>48</sup> Document 53, para 94.

also be made in the discussion associated with each individual reach in the section ‘In the next 10 years’.

For the second ‘whole of river’ direction, the Panel agrees with the proposed preparation of new planning controls extending upstream from Warrandyte. The suggested extension of the ‘areas for protection’ into the Upper Rural Reach is also supported, and the Panel considers that Dr Lorimer’s suggestion to extend these area (as a minimum) to the most upstream billabongs, at Yarra Junction, and as supported by Melbourne Water, is appropriate. Accordingly, these additional areas for protection should be identified in the Framework.

The Panel is also of the view that the ‘whole of river’ directions should include a new direction which identifies the need for further work to be done on a reach by reach basis, requiring a precinct based approach to the land to which the Plan applies, as identified in Chapter 4. If the Plan is to be implemented via planning scheme amendment(s) broadly in its current form then it needs to identify the further work to be undertaken and provide some guidance of what it required.

The Panel doesn’t support the proposed changes by Dr Lindsay to the wording of the Framework directions however considers that the recommendations made by this Panel, combined with the changes agreed to by Melbourne Water, will resolve some of the matters Dr Lindsay sought to address.

However, the Panel considers that for each of the reaches there are some changes that should be made to reflect the findings of this report and to respond to issues raised in submissions. Some of these changes are reach specific, whilst others are fairly consistent across each of the reaches. These are in addition to the changes already identified and agreed to by Melbourne Water as identified in Document 67 ‘Proposed Updates for the Yarra Strategic Plan’. The Panel’s suggested changes can be summarised as follows:

- for the Upper and Lower Rural Reaches add in reference to the areas for protection and undertake associated mapping updates as discussed above
- for all reaches, consider clarifying what is meant when referring to ‘key view points’ for example, dot point 3 under Yarra River Land which states “*Ensure that new public buildings and infrastructure are designed to complement the Yarra River’s natural environment. Siting should avoid encroaching on key view points*”. This reference is made in a number of the directions within each reach
- for all reaches amend reference to mandatory controls as identified previously
- for all reaches add in a direction requiring the further precinct work that has been identified as being required by this Panel.

## 6.5 Findings

The ‘whole of river’ and individual reach directions are generally appropriate. The Panel has made some recommendations for changes and there are others included in the list of suggested changes by Melbourne Water in Document 67.

## 6.6 Recommendations

In relation to 'whole of river' directions, the Panel recommends:

**12. Melbourne Water modify the whole of river directions to:**

- a) Provide flexibility in the approach to mandatory and discretionary controls
- b) Include a new direction to facilitate and guide more detailed precinct planning within reaches to better inform permanent planning controls.

In relation to individual reaches, the Panel recommends:

**13. Melbourne Water modify the individual reach directions as follows:**

- a) For the Upper and Lower Rural Reaches add in reference to the areas for protection and undertake associated mapping updates in relation to extending the protection area to Yarra Junction
- b) For all reaches, clarify what is meant when referring to 'key viewpoints'
- c) For all reaches amend reference to mandatory controls to ensure appropriate flexibility is maintained during future planning work
- d) For all reaches add in a direction requiring the further precinct work that has been identified by this Panel as being required.

## 7 Other issues and submissions

### 7.1 Background

There were a number of matters raised in submissions that sit within the broader remit of Clause 23(f) of the Terms of Reference which the Panel considers are of relevance and should be commented on. These matters are addressed in this chapter.

### 7.2 Implementation

#### 7.2.1 The issue

The Panel addresses the planning implementation associated with the Framework in Chapter 3.

Another issue raised was whether the Plan provides a suitable level of detail to enable effective implementation of particular actions.

#### 7.2.2 Evidence and submissions

Some submissions were critical of the fact that detailed actions, timing and funding was not included with the draft Plan; leading to uncertainty in implementation and effectiveness after approval.

For example, Dr Lorimer in evidence for the Yarra River Keepers suggested that making commitments when there is no funding is understandable, but the lack of commitment also means that there is no imperative to find the funding.

He further submitted that in his experience longer term worthy recommendations for investigation are often passed over for funding for short term, 'more publicly conspicuous' projects with lesser long term outcomes. His evidence was that the Plan should at least contain some indication of timing and priority for funding.

The Panel notes the submissions of Melbourne Water in relation to broader implementation in their Part A submission.<sup>49</sup> This envisages a short term 12 month interim plan and a rolling three year implementation plan to better align with Council funding cycles and RPE budgeting. A Monitoring, Evaluation, Reporting and Improvement (MERI) framework is also proposed.

#### 7.2.3 Discussion

While the Panel is not specifically required to endorse a particular approach, it is satisfied that the approach suggested by Melbourne Water is reasonable. If RPEs (including Councils) were required to make 'hard' funding and implementation commitments in the Plan itself, in the Panel's experience the commitments may well be underwhelming given the planning that needs to go into funding.

The Panel does have some sympathy for Dr Lorimer's 'chicken and egg' analogy. However, given this is the first Plan, the Panel overall is of the view that the Plan should be finalised and then implementation and refinement will improve over time.

---

<sup>49</sup> Document 44, para 158-161



## 7.2.4 Findings

The Panel finds that, subject to the planning implementation discussion in Chapter 4, the approach taken to implementation and delivery in the Plan is acceptable.

## 7.3 Relationship to major projects

### 7.3.1 The issue

The issue is the relationship between the Plan and major project planning in the area of the Plan.

### 7.3.2 Submissions

The Major Transport Infrastructure Authority (MTIA) made extensive submissions during exhibition and in the Hearing.<sup>50</sup> The submissions by Ms Porter for the MTIA covered a range of issues including accuracy of the Plan in reflecting major project planning exemptions; whether the Plan will contain bindings elements or whether binding outcomes will be delivered elsewhere (such as through the Victoria Planning Provisions); the role of the Decision Making Framework is yet to be developed; and review and implementation of the Plan.

Other submitters also submitted on major projects. For example, Ms Giovas from the Friends of Banyule submitted<sup>51</sup> that the Plan needs to contain strategies to make up for the significant loss of vegetation from the North East Link Project (NELP).

Yarra CC submitted that there remains an inherent conflict between Theme 2 relating to ecological integrity and major project exemptions.<sup>52</sup>

In closing Ms Foley for Melbourne Water responded to the matters raised by the MTIA. Melbourne Water in response to the wording suggested by the MTIA indicated that the wording may be acceptable<sup>53</sup> but will require the approval of Transport for Victoria as the RPE. In addition, it also submitted that the final Plan will require the endorsement of the Minister for Transport<sup>54</sup> under the Act (section 36(1)) so there are existing statutory pathways for ensuring MTIA concerns are addressed.

### 7.3.3 Discussion

There are distinct statutory schemes set up for the Plan and major transport projects that at times will intersect. The Panel does not think it can usefully suggest changes to the Framework in this area as a result of submissions; nor does it think it should when state transport interests are already represented on the YCC and have particular statutory powers and responsibilities under the Act.

If there are legal inaccuracies or complications in the Plan in relation to the operation of major transport project exemptions, then they should be corrected. This however the Panel considers this is a task that should be undertaken in finalising the Plan through the YCC.

---

<sup>50</sup> Document 64.

<sup>51</sup> Document 80.

<sup>52</sup> Document 52, para 11, noting this comment is in relation to Part 1 of the YSP.

<sup>53</sup> Document 93, para 64.

<sup>54</sup> Who is ultimately responsible for the MTIA and Transport for Victoria through the Department of Transport.

For other concerns expressed by submitters the different needs in terms of natural area planning and other community needs, including transport, will need to be balanced. The Panel considers there is a statutory framework in place to manage these interactions and it is beyond the scope of this Panel to comment on those.

### **7.3.4 Findings and recommendations**

The Panel finds the wording in the Plan relating to major transport project exemptions should be reviewed by the YCC and advice sought from Transport for Victoria as to the need and acceptability of such changes.

The Panel recommends:

- 14. Melbourne Water, through the Yarra Collaborative Committee, ensure references to major transport project exemptions in the Yarra Strategic Plan are accurate and legally correct and do not give rise to complications in implementation.**

## **7.4 Significant Places and Areas for Protection**

### **7.4.1 Background**

The concept of significant places and areas for protection are important in the Plan. Several submitters suggested new places and areas for inclusion in the Plan or that they be better listed and articulated for clarity.

Environmental Justice Australia and the Yarra Riverkeeper identified this as an important issue and provided several suggestions for inclusions. As discussed in Chapter 6, Dr Lorimer in evidence was critical of the approach to areas of protection in the Upper Yarra Reaches for billabongs. He also suggested that the area around the Spadonis Nature Conservation Reserve in the Lower Rural Reach be expanded.

Dr Lorimer was also critical of the approach to tributaries and habit corridors, suggesting there did not seem to be much logic in the approach to these areas and their inclusion (or not) as Areas for Protection.

In response to these and other submissions around the issue, Melbourne Water have proposed several inclusions and wording changes in the Plan to address them. These are included in the Melbourne Water response in Document 67.

### **7.4.2 Discussion and findings**

In response to submissions, Melbourne Water is proposing, in the Panel's view, several reasonable and supported changes to Significant Places and Areas for Protection, if not all the proposals put forward by submitters. These areas and places will over time no doubt be expanded and reviewed during Plan implementation and when the Plan itself is reviewed in future.

## **7.5 Community issues**

The Panel wished to acknowledge the input of all the submitters to the Plan, and particularly those the Panel has had regard to in forming its view in preparing this report. Many submissions go to a level of detail that it has been difficult for the Panel to engage with for

such a large strategic project, but clearly demonstrated the level of passion and commitment to the Yarra.

Particular examples that spring to mind include the many 'Friends' groups who presented to the Panel. The Friends of the Yarra Valley Parks provided a detailed submission on their work in the Murundaka/Montpelier Precinct; and clearly articulated their pride in the project, but also highlighted some of the institutional barriers they have had to climb to achieve their results on the ground.

This group is mentioned purely as an example of the interest and hope that the community is placing on the Plan as a guide, facilitating the way forward for the integrated management of the Yarra. The Panel views the work and input of these Community groups essential to achieving the Plan's Vision.

## **7.6 Consultation and engagement**

Consultation and engagement with First Nations people is considered in Chapter 2 of this report, and consultation around future planning controls is dealt with in detail in Chapter 5. A small number of submissions criticised recent community engagement around the preparation of the Plan. The Panel has reviewed, the Melbourne Water and community submissions, and considers such criticism unfair.<sup>55</sup> The Plan has clearly grown out of an intensive and long community engagement process, arguably the most comprehensive the Panel has seen. The Panel understands that future engagement during implementation will be critical to the Plan's success.

---

<sup>55</sup> The engagement process is outlined in Document 94: Consultation and Engagement Summary June 2020.

## Appendix A Terms of Reference

### Terms of Reference

#### Yarra Strategic Plan Panel

Version: February 2020 - Version1

The Yarra Strategic Plan Panel is appointed pursuant to Part 4 of the *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017* (the Act) to generally fulfil the requirements of sections 25-34 of the Act.

#### Name

The Panel is to be known as the 'Yarra Strategic Plan Panel'.

1. The Panel is to have members with the following skills:
  - a. Strategic and statutory planning
  - b. Environment, water and biodiversity
  - c. Historic and Aboriginal cultural heritage
2. The Panel is to comprise not more than three members, one of which will be the Chair

#### Purpose

3. The purpose of the Panel is to provide independent advice and consider the submissions referred to it on the draft Yarra Strategic Plan (draft YSP) Land Use Framework.
4. The advice and recommendations of the Panel are to be provided jointly to the Minister for Water, the Minister for Planning and Melbourne Water Corporation (as the lead agency for developing the draft Yarra Strategic Plan).

#### Background

##### Draft Yarra Strategic Plan

5. The draft YSP was released for public comment on 23 January 2020. It aims to give effect to a long-term community vision for the Yarra River and, once completed, will provide an integrated river corridor plan to enable the collaborative management of the river and its parklands across public agencies.
6. The draft YSP:
  - Contains four performance objectives to deliver the community vision
  - Identifies immediate actions for the river which enable long-term collaborative management between agencies and Traditional Owners
  - Includes a Land Use Framework to place the river at the centre of land use planning, which will be translated into planning schemes upon the YSP's finalisation.
7. The draft YSP has been prepared through a collaborative governance approach by the Yarra Collaboration Committee (YCC). The YCC comprises representatives from the organisations who care for and manage the Yarra River and its lands:
  - Banyule City Council
  - Boroondara City Council
  - Department of Environment, Land, Water and Planning
  - Department of Transport (incorporating VicRoads)
  - Manningham City Council
  - Melbourne City Council
  - Melbourne Water



Environment,  
Land, Water  
and Planning

- Nillumbik Shire Council
- Parks Victoria
- Port Phillip and Westernport Catchment Management Authority
- Stonnington City Council
- Victorian Planning Authority
- VicTrack
- Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation
- Yarra City Council
- Yarra Ranges Shire Council.

#### Land Use Framework

8. The draft YSP includes a Land Use Framework at Part 2 as the spatial representation of how progress on the four performance objectives and the Yarra River 50 Year Community Vision will be achieved over the next 10 years.
9. The Land Use Framework provides broad directions for land use and development to protect the Yarra River corridor and its significant values, responding to the requirements of sections 20 and 21 of the Act.
10. The Land Use Framework complements the other projects and actions that will be delivered through the final YSP, including those outlined in Part 1 of the draft YSP.
11. Following approval of the final YSP, the Land Use Framework will be given effect in planning policy and relevant planning schemes.
12. A planning scheme amendment to implement the Land Use Framework will not be prepared until the YSP is finalised.

#### **Method**

13. The Panel must consider all submissions referred to it by Melbourne Water Corporation, as the lead agency.
14. The Panel must carry out a public hearing and notify submitters of relevant information relating to the public hearing process.
15. The Panel must give any person who made a public submission referred to it a reasonable opportunity to be heard.
16. The Panel must also give a reasonable opportunity to be heard to:
  - any responsible public entity
  - the lead agency
  - any person that the lead agency or the Minister for Water directs the Panel to hear.
17. The Panel may apply to the Minister for Water to vary its Terms in any way it sees fit prior to submission of its report and recommendations.
18. As far as is practical within the confines of the Act, the Panel is to operate similarly to a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
19. The Panel may inform itself in anyway it sees fit, but must consider:
  - a. The *Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017*
  - b. Yarra River 50 year Community Vision
  - c. Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation water policy *Nhanbu narrun ba ngargunin twarn Birrarung (Ancient Spirit and Lore of the Yarra)*
  - d. The draft YSP.

20. The Panel is not expected to carry out any additional public notification or referral, but may do so if it considers it to be appropriate.
21. The Panel may limit the time of parties appearing before it.
22. The Panel may prohibit or regulate cross-examination.

### Outcomes

23. The Panel must produce a written report and recommendations for the Minister for Water, the Minister for Planning and Melbourne Water Corporation providing the following:
  - a. an assessment of the merits of the updated Land Use Framework
  - b. an assessment of submissions
  - c. recommended final wording for relevant 'directions for future land use and development' in the Land Use Framework
  - d. an assessment of whether the updated Land Use Framework provides a sound basis for the preparation of a planning scheme amendment
  - e. advice on particular policy and statutory tools to assist the preparation of a draft planning scheme amendment
  - f. any other relevant matters raised in the course of the Panel hearing
  - g. a list of persons consulted or heard.

### Timing


24. The Panel is to hold a directions hearing no later than two weeks after the referral of the updated Land Use Framework and submissions by the lead agency to the Panel.
25. The Panel is to commence public hearings as soon as practical thereafter.
26. The Panel is required to submit its report in writing as soon as practicable but no later than 30 business days after the completion of hearings.
27. Following the completion of the report the Panel may deliver an oral briefing to Department staff, and/or the Minister.

### Fee

28. The fee for the Panel will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
29. The costs of the Panel will be met by Melbourne Water Corporation as the lead agency.



Hon Lisa Neville MP  
Minister for Water  
16/3/20



Hon Richard Wynne MP  
Minister for Planning  
8/3/20

## Appendix B Submitters

Panel note: For completeness this list contains all submitters. Some submissions were not referred to the Panel, others were part referred.

First Name	Last Name	Organisation (if applicable)
Ben	Tate	Water Technology
Helen	Boak	
David	Jarm	
Clem	Newton-Brown	Whitemark Property and Planning
Clem	Newton-Brown	Skyportz
Frank	Pierce	
Ryan	Chan	
Tom	Mielnik	Port of Melbourne Operations
Clive	Edington	
Ian	Penrose	
Nicola	Dawes	
James	Hickey	
Leigh	Northwood	Nillumbik Shire Council
Peter	Gibbs	
Judith	Smale	
John	Pope	
Jackie	Watts	Melbourne Maritime Heritage Network
Laura	Schutz	
Christine	Henry	Bend of Islands Conservation Association
Maureen	Bond	Healesville Environment Watch Incorporated (HEWI)
Matthew	Calleja	
Brian	Seymour	
Tony	Smith	
Ian	Thomas	RMIT
David	Goodwin	
Fae	Ballingall	Banyule City Council
Peter	Greenberg	Yarra Riverkeeper Association member
Russell	Conway	Metropolitan Angling Association Inc
Anne	Paul	Plenty River Forum
Frank	Pierce	

First Name	Last Name	Organisation (if applicable)
Andrew	Guthrie	Yarra Valley Country Club c/- Ratio Consultants Pty Ltd
Jonathan	Law	Yarra Riverkeeper Association
Vivienne	Halat	
Bill	Lord	
Ian	Wong	
Anna	Borthwick	PLAN A on behalf of Yarra Link Project
Stephen	Curtain	Yarra Riverkeeper Association
Rita	Chandra	Yarra Valley Water
Martha	Delfas	Australian Institute of Landscape Architects
Andrew	Day	Manningham City Council
Joy	Dahl	
Rebecca	Nelson	Melbourne Law School, University of Melbourne
Bruce	Lindsay	Environmental Justice Australia/Yarra Riverkeeper Association
James	Deane	
Warwick	Leeson OAM	
April	Seymore	Port Phillip EcoCentre
Carlota	Quinlan	Eltham Community Action Group
Christine	Henry	
Heather	Smith	
John	Forrester	Werribee River Association
Peter	Hill	Town and Country Planning Association
Gerard	Mathews	
Horst (Oz)	Kayak	Australasian Association of Walking Activity Groups
Don	Stokes	
Graeme	Hamilton	Darebin Creek Management Committee
Angela	Armstrong	
Paula	Keogh	
Sue	Dyet	Friends of the Diamond Creek (Eltham Lower Park)
Daphne	Hards	Warringal Conservation Society
Peter	Sang	
Valerie	Polley	
Evelyn	Feller	
Michelle	Giovas	Friends of Banyule



First Name	Last Name	Organisation (if applicable)
Jeremy	Loftus-Hills	
Gwen	Stephen	
Jennifer	Johnstone	
Kane	O'Donnell	
David	Carey	
Leonie	Kelleher	Kellehers Australia Pty Ltd
Marianne	Richards	
Kaye	Oddie	
Norman	Camm	
David	Davenport	
Graeme	George	Earthcare Permaculture, Permaculture Yarra Valley, Mount Toolebewong Landcare
Maureen	Koegel	
Sarah	Patterson	
David	Redfearn	
Sue	Bendel	Friends of Leadbeater's Possum Inc
Johanna	Selleck	Friends of the Glenfern Green Wedge Incorporated
Eugene	Howard	Residency Projects
Sue	Bendel	Wildlife Carers for Protection of Habitat
Tim	Curmi	Native Fish Australia (Vic)
Jenny	Rickards	
Ian	Hundley	
Nina	Earl	
Janet	Bolitho	Port Places
Anna	Ridgway	Abbotsford Riverbankers
Tamara	Brezzi	St Kevin's College c/- Norton Rose Fulbright
Jane	Toner	Biomimicry Australia
Edward	Thexton	Riparian Australia Pty Ltd
Qian	Li	
James	Graham	
Stuart	Hughes	Parks Victoria
Fiona	Currie	Alphington Paper Mill Action Group Incorporated
Patrick	O'Shaughnessy	
Timothy	Bracher	

First Name	Last Name	Organisation (if applicable)
Ross	Brewer	Offshore & Specialist Ships Australia Ltd
Michael	O'Brien	Melbourne Maritime Heritage Network
Kirsty	Richards	Yarra Riverkeeper Association
Prue	Gordon	
Helen	Corney	
Bruce	Sims	Yarra Riverkeeper Association member
Kerrie and John	Boyle	
Christopher	Balmford	
Felicity	Watson	National Trust of Australia (Victoria)
Sally	Walker	
Warwick	Leeson	Yarra Riverkeeper Association
Felicity	Watson	Yarra Pools
Julie	Martindale	Bend of Islands Conservation Association
Robert	Veerman	
Armando	Aragon	Werribee River Association
Megan	Wallens	
Graeme	Jameson	
Christine	McFetridge	Yarra Riverkeeper Association member
Cecilia	Reibl	Trust for Nature
Rachel	Fensham	
Andrew	Kelly	
Lynn	Frankes	
Nada	Cunningham	
Maria	Kayak	
Sue	Ormerod	
Ann	Rennie	Committee of Friends of Eltham Lower Park Incorporated
Pamela	Hipwell	
Leonie	Kelleher	Kellehers Pty Ltd on behalf of Santa Lucia Pty Ltd
Kate	Berg	City of Melbourne
Andrew	Lucas	Friends of the Yarra Valley Parks
Susan	Price	City of Stonnington
Mark	Trovato	Mirvac
Noel	Treacy	Major Transport Infrastructure Authority

<b>First Name</b>	<b>Last Name</b>	<b>Organisation (if applicable)</b>
Geoff	Ward	Development Victoria
David	Walmsley	Yarra City Council
Dan	Turnbull	Bunurong Land Council Aboriginal Corporation

## Appendix C Parties to the Panel Hearing

In order of appearance.

Submitter	Represented by
Melbourne Water Corporation	Marita Foley SC instructed by Charlotte Beresford of Melbourne Water
Wurundjeri Woi wurrung Cultural Heritage Aboriginal	Karmen Jobling and Jordan Smith
Yarra City Council	David Walmsley
Environmental Justice Australia and Yarra Riverkeeper Association	Dr Bruce Lindsay of Environmental Justice Australia calling the following expert evidence: <ul style="list-style-type: none"> <li>- Graeme Lorimer in Ecology/Biodiversity</li> <li>- James Reid in Planning</li> </ul>
Major Transport Infrastructure Authority (MTIA)	Emily Porter of Counsel
Australian Institute of Landscape Architects (AILA)	Dr Meredith Dobbie and Ms Jen Lynch
The National Trust of Australia (Victoria)	Elise Dowd
Offshore & Specialist Ships Australia Ltd.	Ross Brewer
Town and Country Planning Association	Marianne Richards and Peter Hill
Marianne Richard	
St Kevin's College	Jeremy Gobbo QC and Jane Sharp of Counsel instructed by Norton Rose Fulbright Australia calling the following expert evidence: <ul style="list-style-type: none"> <li>- Sophie Jordan in Planning</li> <li>- Tim Biles in Urban Design</li> </ul>
Friends of Banyule	Michelle Giovas
Riparian Australia Pty Ltd	Edward Thexton
YVCC Property Group Pty Ltd	Amanda Johns of Minter Ellison
James Deane	
Frank Pierce	
Kellehers Australia	Hubert Algie
Friends of the Yarra Valley Parks	Andrew Lucas and Clive Edington
Friends of the Glenfern Green Wedge Incorporated	Johanna Selleck
Friends of Eltham Lower Park Incorporated	Ann Rennie

---

Warwick Leeson OAM

---

Yarra Link Project

Frank Giorlando and Rowan Turnham

---

## Appendix D Document list

No.	Date	Description	On behalf of
1	27/03/2020	Draft Yarra Strategic Plan – version 7 (Word and PDF versions)	Steven Elliott, on behalf of Department of Environment, Land, Water and Planning (DELWP)
1a	25/05/2020	Draft Yarra Strategic Plan (Word and PDF versions)	Charlotte Beresford, Melbourne Water
2	“	Overview - Draft Yarra Strategic Plan	Steven Elliott, on behalf of Department of Environment, Land, Water and Planning (DELWP)
3	“	Yarra River 50 Year Community Vision	“
4	“	Nhanbu narrun ba ngargunin twarn Birrarung (Ancient Spirit and Lore of the Yarra) - Wurundjeri Water Policy	“
5	8/04/20	Letter to submitters outlining Panel process	Harry Matheas, Planning Panels Victoria
6	20/04/20	Letter from Melbourne Water to Panel – referral of submissions	Charlotte Beresford, Melbourne Water
7	“	Formal Submissions Register	“
8	“	Submission Referral Report – Part 2	“
9	21/04/20	Letter from Melbourne Water - Request for additional organisations to be heard	Victoria Penko, Melbourne Water
10	4/05/20	Letter from Panel to including Panel Directions, Distribution List, Hearing Timetable and revised Privacy Collection Notice	Nick Wimbush, Chair
11	7/05/2020	Letter from St Kevin’s College requesting changes to timetable and Video Conference hearing platform - 7 May 2020	Tamara Brezzi, Norton Rose Fulbright on behalf of St Kevin’s College
12	11/05/2020	Letter from Panel to Parties - Distribution list (v2) and Timetable (v2) - 11 May 2020	Nick Wimbush, Chair
13	12/05/2020	Email from Melbourne Water to Parties - Relevant Background Documents - 12 05 2020	Charlotte Beresford, Melbourne Water
14	“	Demographic Study - Yarra Strategic Plan	“
15	“	Draft Cultural Heritage Scoping Study	“
16	“	Draft Economic Benefit of the Yarra River	“
17	“	Draft Land Use Framework Gap Analysis	“
18	“	Draft Yarra River Social Research Projects	“

No.	Date	Description	On behalf of
19	“	Identifying the key gaps and opportunities for future protection of areas	“
20	“	Yarra River Protection Planning Controls - Amendment GC48	“
21	“	Central Region Sustainable Water Strategy Review October 2018	“
22	“	Guidelines for Assessing the Impact of Climate Change on Water Supplies in Victoria	“
23	“	Healthy Waterways Strategy 2018	“
24	“	Healthy Waterways Strategy - co designed Yarra Catchment program	“
25	“	Improving Stormwater Management Advisory Committee Report	“
26	“	Lower Yarra Corridor Study 2015	“
27	“	Middle Yarra Corridor Study 2015	“
28	“	Making the Yarra River Planning Controls Permanent February 2020	“
29	“	Managing the Environmental Impacts of Domestic Wastewater	“
30	“	Murray Lower Darling Rivers Indigenous Nations (MLDRIN) - Echuca Declaration 2007	“
31	“	Progress Report for the Yarra Strategic Plan October 2018	“
32	“	Protecting Victoria’s Environment -Biodiversity 2037	“
33	“	State of the Yarra and its Parklands	“
34	“	Victorian Cycling Strategy 2018-2028	“
35	“	Yarra River Action Plan 2017	“
36	“	Yarra River Bulleen Precinct Land Use Framework Plan 2019 draft	“
37	“	Yarra Strategic Directions Statement 2018	“
38	“	Yarra Strategic Plan Map Book September 2018	“
39	“	Living Melbourne Strategy	“
40	“	Plan Melbourne 2017-2050 Strategy	“
41	“	Water for Victoria - Water Plan Strategy	“
42	18/05/2020	Letter from Panel to Parties - Distribution list (v3) and Timetable (v3)	Nick Wimbush, Chair

No.	Date	Description	On behalf of
43	18/05/2020	Email from Melbourne Water to parties attaching Part A submission	Charlotte Beresford, Melbourne Water
44	“	Yarra Strategic Plan Panel - Part A submission	“
44a	“	Part A - Attachment A - Statewide Appointed Registered Aboriginal Parties	“
44b	“	Part A - Attachment B - Response to submissions to the land use framework	“
45	18/05/2020	Environmental Justice Australia and Yarra Riverkeeper Association - Expert Evidence - Graeme Lorimer - Ecology Biodiversity	Dr Bruce Lindsay on behalf of Environmental Justice Australia and Yarra Riverkeeper Association
45a	“	Environmental Justice Australia and Yarra Riverkeeper Association - Expert Evidence - Graeme Lorimer - CV	“
46	“	Environmental Justice Australia and Yarra River - Expert Evidence - James Reid - Planning	“
46a	“	Environmental Justice Australia and Yarra Riverkeeper Association - James Reid CV	“
47	18/05/2020	Letter from St Kevin’s to Parties serving expert reports - 18 May 2020	Jamie Truong, Norton Rose Fulbright on behalf of St Kevin’s College
48	“	St Kevin’s - Expert Evidence - Sophie Jordan - Planning	“
49	“	St Kevin’s - Expert Evidence - Tim Biles - Urban Design	“
50	22/05/2020	Letter from Panel to Parties - Timetable (v4)	Nick Wimbush, Chair
51	25/05/2020	Letter from Panel to Parties - Distribution list (v4) Timetable (v5)	“
52	25/05/2020	Yarra City Council Panel submission	David Walmsley, Yarra City Council
53	26/05/2020	Melbourne Water Part B submission	Marita Foley on behalf of Melbourne Water
54	26/5/2020	Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation – PowerPoint presentation	Karmen Jobling and Jordan Smith, Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation
55	26/05/2020	Environmental Justice Australia and Yarra Riverkeeper Association - Outline of submissions	Dr Bruce Lindsay on behalf of Environmental Justice Australia and Yarra Riverkeeper Association



No.	Date	Description	On behalf of
56	“	Environmental Justice Australia and Yarra Riverkeeper Association - Submissions	“
57	26/05/2020	Environmental Justice Australia and Yarra Riverkeeper Association – Dr Graeme Lorimer comments on Mr Biles Statement of evidence	“
58	“	Environmental Justice Australia and Yarra Riverkeeper Association – Dr Graeme Lorimer - mapping to accompany expert evidence	“
59	“	Melbourne Water – summary of differences between draft and consultation versions of the Yarra Strategic Plan	Victoria Penko, Melbourne Water
60	28/05/2020	Letter from Panel to Parties - Hearing Timetable (v6)	Nick Wimbush, Chair
61	29/05/2020	Letter from Panel to Parties - Hearing Timetable (v7)	“
62	1/06/2020	Marianne Richards submission	Marianne Richards
63	1/06/2020	Town and Country Planning Association (TCPA) submission	Marianne Richards and Peter Hill on behalf of TCPA
64	1/06/2020	Major Transport Infrastructure Authority submission	Emily Porter on behalf of MTIA
65	1/06/2020	National Trust of Australia (Victoria) submission	Eloise Down on behalf of National Trust of Australia (Victoria)
66	1/06/2020	Response to questions asked by the Panel from DELWP	Charlotte Beresford, Melbourne Water
67	“	Proposed updates to the Yarra Strategic Plan from Melbourne Water	“
68	1/06/2020	Australian Institute of Landscape Architects (ALIA) PowerPoint presentation	Meredith Dobbie and Jen Lynch on behalf of AILA
69	“	Australian Institute of Landscape Architects (ALIA) presentation notes	“
70	1/06/2020	Letter from Panel to parties – Distribution List (v5)	Nick Wimbush, Chair
71	2/06/2020	St Kevin’s - Submissions - Yarra Strategic Plan Panel	Jamie Truong, Norton Rose Fulbright on behalf of St Kevin’s College
72	“	St Kevin’s - Tim Biles - presentation - 3 June 2020	“
73	3/6/2020	Clause 12.03-1R Yarra River Protection	Dr Bruce Lindsay on behalf of Environmental Justice Australia and Yarra Riverkeeper Association

No.	Date	Description	On behalf of
74	“	Clause 14.02-13 Catchment Planning and Management	“
75	“	Page 45 of the Lower Yarra River Corridor Study Recommendations Report November 2016	“
76	3/06/2020	Letter from Panel to Parties - Hearing Timetable (v8)	Nick Wimbush, Chair
77	3/6/2020	Practice Note 59: Role of Mandatory Provisions in the Planning System, September 2018	Dr Bruce Lindsay on behalf of Environmental Justice Australia and Yarra Riverkeeper Association
78	4/6/2020	Riparian Australia PowerPoint presentation	Ed Thexton, Riparian Australia Pty Ltd
79	“	Public Health letter in relation to walking and cycling	“
80	4/06/2020	Friends of Banyule submission	Michelle Giovas on behalf of Friends of Banyule
81	4/06/2020	Frank Pierce submission	Frank Pierce
82	4/06/2020	YVCC Property Group Pty Ltd submission	Amanda Johns, Minter Ellison on behalf of YVCC Property Group Pty Ltd
83	“	YVCC Property Group Pty Ltd – Attachments to submission	“
84	4/06/2020	Letter from Panel to Parties - Hearing Timetable (v9)	Nick Wimbush, Chair
85	4/06/2020	The Plan speaking notes from James Deane	James Deane
86	4/06/2020	Bunurong Land Council Aboriginal Corporation Submission	Dr Sean Sexton, Bunurong Land Council
87	4/06/2020	Friends of Eltham Lower Park submission - 05 06 2020	Ann Rennie, Friends of Eltham Lower Park
88	5/6/2020	Friends of the Glenfern Wedge Incorporated submission	Johanna Selleck on behalf of Friends of Glenfern Wedge Inc
89	5/6/2020	Warwick Leeson OAM submission	Warwick Leeson
90	5/06/2020	Kellehers Australia submission	Hubert Algie, Kellehers Australia
91	5/06/2020	Friends of the Yarra Valley Parks PowerPoint presentation	Andrew Lucas and Clive Edington on behalf of Friends of the Yarra Valley Parks
92	5/06/2020	Yarra Link Project submission	Frank Giorlando
93	5/06/2020	Melbourne Water Closing submission	Marita Foley, on behalf of Melbourne Water

No.	Date	Description	On behalf of
94	“	Yarra Strategic Plan Consolidated Engagement Summary Report June 2020	“

---