



Date: 5 July 2021

Amendment C107bany to the Banyule Planning Scheme

Part C Submission on behalf of Banyule City Council (Planning Authority)

Introduction

1. The Amendment seeks to facilitate the use and development of the Land for:
 - 1.1 an outdoor recreation facility, specifically a treetop adventure park;
 - 1.2 removal of native vegetation; and
 - 1.3 display of advertising signage associated with the outdoor recreation facility.

(the **Proposal**).
2. Having provided Council's Part A & Part B, and having read the Proponents submission, we submit that those submissions set out the case for the Amendment and why the Amendment should be recommended largely in its present form but providing for the changes proposed by Council as set out in Council's 'Day 1 Hearing' version of the Incorporated Document, included at Appendix 5 in its Part A/Part B Submission – perhaps with some further fine tuning.
3. This further written submission (which we will call our Part C submission), supplements Council's Part A & Part B submissions, and seeks to accomplish two things:
 - 3.1 by way of summary and recap, sets out what we submit are the key "headlines" of the strategic policy framework; and
 - 3.2 outline Council's response to the evidence as presented in the reports.

Strategic Policy Framework

4. While Council does not intend to duplicate its previous submissions, it is appropriate and important to touch on some of the key strategic policy support for the Amendment in the wake of the circulation of expert witness reports by parties to the hearing.
5. By now, it is clear that the Amendment comprises a legitimate way to permit the use and development of the Subject Land for the Proposal.
6. The Proposal had its genesis in ParksVic's 2009 EOI. It is not new and it is noteworthy that between 2009 and today, there have been several strategic planning exercises that could have, if it was thought appropriate clearly knocked the proposal on the head. That has not occurred.
7. For the duration of the Proposal's existence, there have been a number of strategic plans, frameworks and strategies that have been developed that in one way or another touch on whether directly or indirectly, the proposed use and develop the Subject Land, including:
 - 7.1 *Yarra Flats Concept Plan 2013;*
 - 7.2 *Draft Yarra Strategic Plan;*
 - 7.3 *Draft Bulleen Precinct Land Use Framework Plan;*
 - 7.4 *Nature Based Tourism Strategy 2008-2012;*
 - 7.5 *Victorian Visitor Economy Strategy 2016*
 - 7.6 *Protecting Victoria's Environment - Biodiversity 2037*

- 7.7 *Healthy Parks Healthy People Framework 2020*; and
- 7.8 *Open Space for Everyone, Open Space Strategy for Metropolitan Melbourne*.
8. It is significant that even in the context of all of this strategic planning, Parks Vic lends its full weight to the proposal, as does Melbourne Water, the proposal has been authorised by DELWP and Council is also supportive in principle. It is in that context that we submitted that the proposal has a high level of strategic support. Furthermore, we have submitted that on the more common planning analysis, it will not have any unacceptable amenity impacts and therefore represents orderly planning.
9. Indeed, expert evidence relied upon by the Proponent, and peer reviewed by experts retained by Council, discussed further below, alongside the technical material exhibited with the Amendment, establishes that the Proposal will not have any unacceptable impacts and comprises an acceptable planning outcome.
10. Accordingly we submit that, the Proposal:
- 10.1 actively responds to the existing planning policy
 - 10.2 is consistent with the decision guidelines of what would have been the applicable planning controls ;
 - 10.3 meets the needs and aspirations intended for the acceptable use and development the Yarra Flats Park; and
 - 10.4 avoids and otherwise minimises ecological, planning, traffic and arboricultural impacts.
11. Further, although we have already emphasised the point, if ParksVic sought to undertake this use on its own accord, planning permission would not be required under the zoning provisions and while issues associated with native vegetation and biodiversity would have been relevant, the **use** of the Subject Land would be as of right and not subject to assessment.
12. A key task for the Panel is to assess whether the Proposal would result in any unacceptable impacts on the Subject Land, the nearby residences and the wider precinct . To that end, we now turn to consider the expert evidence being relied on by parties to this hearing.

Response to Evidence

13. As an initial observation, it is submitted that the applicant's experts seem to have adopted a balanced approach to their assessment of the proposal. Some of the experts (on the same side) take issue with each other on certain aspects but agree on the bottom line namely that the proposal will not result in unacceptable outcomes.
14. It is clear from the Amendment material before the Panel that the Proposal has sought to avoid and minimise its impacts. The experience of the proponent in conducting this sort of facility means that there will be a learning and knowledge base that is brought to this proposal from the outset rather than 5 years down the track. It is notable that notwithstanding the proposal being somewhat novel as a land use, the experts (specifically the arborists) are experienced in this type of facility. That is a distinct benefit given that impact on trees seems to be one of the key concerns of residents and park users.

Town Planning Evidence - John Glossop

15. Mr Glossop is a town planner and is the only person with planning qualifications giving expert opinion evidence.
16. The summary of his evidence at paragraph 13 is a useful amalgam of the key issues from a town planning perspective.
17. Importantly, we note that Mr Glossop expresses the opinion that:
 - 17.1 a strategic assessment of the Amendment supports the Proposal;
 - 17.2 the location of this type of facility in an area such as a park is appropriate;
 - 17.3 the proposal will enhance the surveillance opportunities of the Yarra Flats Park environs;
 - 17.4 the use of the Subject Land by a commercial operator rather than ParksVic is not a town planning issue; and
 - 17.5 the use of the Special Controls Overlay (**SCO**) is an appropriate way to facilitate the approval of the Proposal.
18. To come to these opinions, Council submits that Mr Glossop has undertaken an appropriate assessment by asking the right question at paragraph 36 of his evidence:
 - Is the Project strategically supported?
 - Is the extent of development acceptable?
 - Is the use of the SCO the appropriate planning scheme tool?
 - Is the Incorporated Document proposed acceptable?
 - Are there any other material town planning matters raised in submissions?
19. Focussing on the development aspects of the proposal we concur with the view that:
 - 19.1 the Proposal involves minimal built form;
 - 19.2 in making use of existing car parking and not having to provide additional car parking that is an advantage;
 - 19.3 the areas of activity are well set away from the public walking track further to the west;
 - 19.4 the activity being located at the northern end of the park is advantageous.
20. In relation to the use of the SCO, Mr Glossop is of the view that its use is appropriate as proposed.
21. In relation to the Incorporated Document itself, Council generally agrees with Mr Glossop's comments at paragraph 86, though not all of them. In particular we note that 6.19 (in relation to music noise) is appropriate and should remain.

Observation in relation to the use of the SCO

- 22. As a digression from the evidence, we make observation in relation to the use of the SCO as distinct from a rezoning and permit application.
- 23. One of the often not touched upon aspects of the SCO is that it is a land use permission that is of a different character to that embodied within a planning permit. A planning permit, once issued, is protected by legislation. It provides lawful existing use rights, it has been found by VCAT to grant “vested rights” and by virtue of the way that the *Planning and Environment Act 1987* (the **Act**) operates, a permit cannot only be revoked in very limited circumstances; basically one would require gross incompetence in the operation of the facility to the extent that a Tribunal considers that the permit should be revoked.¹
- 24. A permission such as the SCO does not grant such rights. The SCO lasts only as long as the planning scheme contains provision. In many respects the use of the land is “*at the Minister’s pleasure*”. It is surprising that this aspect of site specific provisions has never been the subject of commentary.
- 25. In any case, the Panel can at least rest assured that notwithstanding the use commenced pursuant to an SCO, if it was ever thought that the use was inappropriate, its permission could be revoked as easily as it could be granted under for example section 20(4) of the Act.
- 26. We doubt that the circumstances would arise however. The lease from ParksVic is likely to be the first port of call if there was ever a concern that the use was not operating appropriately, that conditions were being breached or that circumstances had changed to such an extent that the use is no longer considered appropriate.
- 27. In that context it is also worth noting that unlike a building, the ropes course is relatively easy to disassemble and remove at the expiry of the lease or a change in the planning controls.
- 28. The point of this is simply to demonstrate that there is little risk in permitting the Proposal from either a *use* or a *development* perspective because the use and development is easily undone if the circumstances were such that it was thought necessary to bring it to an end.

Traffic Evidence

- 29. Mr Hill of “OneMileGrid” is a traffic engineer and is the only person with traffic engineering qualifications able to express qualified opinions on the traffic or car parking issues.
- 30. The assessment of Mr Hill establishes that there is no traffic engineering basis for concern. In particular:
 - 30.1 current occupancy of the car parking in the vicinity of the project is low leaving a large amount of available spaces (89 vacant spaces at the peak usage time of the available car parking);
 - 30.2 on a statutory assessment, there are many more spaces that are required (37 required with many more than that available);
 - 30.3 the Subject Land enjoys good access to public transport;
 - 30.4 the Subject Land has very good cycling access and ample bike parking;
 - 30.5 loading and unloading is not an issue; and

¹ That is to say, a substantial failure to comply with the conditions of the permit. Refer section 87(1)(b).

30.6 peak traffic movements associated with the proposed use will not affect the intersection of Banksia Street and Dora Street/The Boulevard. Traffic movements can easily be accommodated into the network.

Ecology Mr Kern

- 31. Mr Kern from “Practical Ecology” is a widely recognised expert in ecology.
- 32. Relevant to the issues, Mr Kern clearly appreciates the nature of what is proposed and how it is put together having been able to observe the course construction and rigging of the self-guided high ropes course at Arthurs Seat in 2011.
- 33. We note that Mr Kern thinks that the requirement for a Tree Management and Protection Plan (**TMPP**) is over engineered and not fit for purpose having regard to the nature of the proposed use. His evidence demonstrates the need to have a more finely tuned and bespoke TMPP than the standard approach usually employed. This is an important matter however, we think that it is more a matter that requires more attention to the drafting of the requirement than an issue going to whether the use should establish or not.
- 34. At para 3.4, Mr Kern opines that the actual physical impacts of the Proposal would be quite limited, and in particular, that the current design and ongoing approach to managing the course will result in minimal physical impact on native vegetation.
- 35. We note in particular Mr Kern’s explanation of the 50% removal and how it is a default minimum loss score based on the assessment model used by DELWP. Council accepts that explanation. We also note his frank and useful advice that there should be a mechanism to ensure that the proposed self-guided high ropes course has a limited impact on trees and habitat *over time* (as distinct from prior to commencement or as part of the erection of the rope course). Again, this is a matter that can be incorporated in to the TMPP referenced in the Incorporated Document.
- 36. In relation to impacts on fauna, Mr Kern notes that the use is unlikely to have an impact on the Powerful Owl pair that has been recorded nearby. He refers to his own views on this as well as to literature specific to Melbourne to underscore his opinion.
- 37. On the issue of the likely revamping of the Banksia Street Billabong and the proposition that more migratory birds would use the wetlands Mr Kern does recognise an issue of increased noise and activity from people using the car parking and course. In this regard, Mr Kern expresses the view that the noise and activity will discourage birds from using the habitat in that part of the rewatered Banksia Street Billabong *directly* affected by the course. Mr Kern balances that against the fact that the majority of the new rewatered and constructed wetlands will be distant from the course and would likely be more affected by noise from traffic on Banksia Street more so than from the ropes course.
- 38. Council submits that Mr Kern seems to take a balanced approach to the impacts and comes to the view that the impact will not be unreasonable given the lack of evidence as to the use of the area by mammals and birds in close proximity and the likely future design of the wetlands on the basis of information provided by ParksVic and Melbourne Water.

Mr Patrick – Horticulture and Arboriculture

- 39. Mr Patrick is a qualified and experienced arboriculturist. He is one of 3 arborists to review the proposal and each lend their support to the proposal. Apart from his expertise in relation to trees, he has the advantage of also have a great deal of experience in advising on and reviewing a number of tree adventure courses that have established over the last 10 or so years and moreover was also responsible for undertaking annual safety audits and environmental compliances.

40. He was retained by the Proponent to peer review a prior report prepared by Mr Russell Kingdom of Advanced Treescape Consulting dated 31 August 2018, which was lodged in support of the Proposal before the formal commencement of this Amendment process. His report usefully provides a Tree Photos book which identifies tree numbers aligned between a reference plan and photos.
41. Further his report also provides images of similar adventure treetop courses he has been involved in.
42. In relation to some key issues within his area of expertise we note his views as follows:
 - 42.1 The issue of limb drop raised by submitters is not relevant to the site given the relatively young age of the trees on the site and the lack of any evidence of recent or potential major limb loss (apart from T49); and
 - 42.2 The issue of soil compaction is not relevant to the site given the composition of soils, the inaccessibility of much of the site and the deep root systems associated with the larger River Red Gums.

Expert reports for submitters

Joint report of Mr Matthew Daniel and Prof. Owen Richards – Global Urban Forest

43. The expertise of these individuals is set out in Appendix I to their evidence report.
44. Mr Daniels is an arboriculturist with a particular expertise in quantified plant and soil health. Mr Owen Richards is an environmental engineer with qualifications in environmental engineering.
45. Key issues raised in the report relate to:
 - 45.1 risk management
 - 45.2 approach of the “Visual Tree Assessment” methodology as opposed to a “whole of organism” assessment above and below ground;²
 - 45.3 Soil Health Indicators suggest poor soil health conditions at the site leading to disease and tree decline;³
 - 45.4 the subject land is within a “high potential groundwater dependant ecosystem”; and
 - 45.5 having regard to the above, the ecosystem and soil strata is at significant risk of decline (if not already).
46. Consequently, the two experts jointly submit that the Proposal should not proceed until further assessment is undertaken and mitigation solutions developed to rejuvenate the Yarra Flats Park ecosystem. That in turn, they argue, may support the development.
47. The report is extensively a review of the Report by Mr Kingdom of 2018 but due to the timing of its production, is not informed by the subsequent peer review of Otto Leenstra or Mr Patrick who has had extensive experience over many years of this type of facility and *measured* impact on the health of trees.
48. The report adopts a method which due to acknowledge budgetary limitations, uses a single point (Tree 1 – Home Tree) as the point of impact on the basis that this is where the impact would be greatest due to the congregation of participants and what they describe as

² At page 2.

³ Ibid.

“construction” activities. The starting point of the assessment was a Basic Soil health Assessment to compare against the Visual Tree Assessment undertaken by the arborists.

49. The results revealed, somewhat surprisingly given that there has not been any focus of significant activity in the area other than perhaps pedestrians, that soil compaction around Tree 1 was highly elevated⁴ based on 6 samples. On that basis, the experts conclude:⁵

GUF argues there is a major historic and current Soil Health impact on individual trees that require attention. Historic Animal Agriculture, Landfill, The Millennium Drought, general management (Weed/Pathogen), public landuse (high pedestrian access), recent environmental water releases are all contributing factors that have caused poor soil health conditions to combine and develop into detectable measures in Yarra Flats Park in 2021.

50. The major thesis of the report appears to be a view that arboricultural reports, generally speaking, are not appropriate when dealing with ecosystems of trees in a scenario such as this. These experts suggest that a broader approach to the assessment of trees is required; one which looks not only at the above ground but below ground condition of the trees including soil health. This of course is a significant challenge to the orthodox method of tree assessment carried out in many a VCAT, panel and advisory committee proceeding.

51. They argue that the Proposal fails to consider:

1. Fit for purpose design and management of the project and how it relates to health and function status of key individual Living Infrastructure assets (Trees 1 -58, Kingdom, 2018) that support the apparatus for The Project.
2. A detailed assessment of plant and soil health applied science including Environmental Engineer Assessment of the regions water cycle from a historic and augmented perspective, and how that relates to plant and soil health metrics. This is required to determine the most fit for purpose, practicable biophilic design, responsive to the individual environment and geological characteristics, along with future management such as regenerative methods/ protocols and risk abatement to plant and soil health.
3. Acceptable level of Risk regarding current and future health and function status of individual Living Infrastructure assets (Trees 1 – 58, Kingdom, 2018) and potential endemic or developing tree health defects e.g. Pathogen activity.
4. Additional close proximity Tree Health impacts resulting in (tree root plate failure) caused by suspected poor soil health conditions associated with Melbourne Water works to install a billabong. See figure 7,8 and 9.
5. Plan to obtain a pre – works comprehensive baseline of plant and soil health status of individual living infrastructure assets (Trees 1 -58, Kingdom 2018)
6. Plan to optimise tree health and function in the aim of reducing the risk of potential endemic or developing tree health defects.

because the application has relied exclusively on the orthodox “Visual Tree Assessment”.

Report of Prof. Robert White

52. Mr White conducted soil testing and expresses an opinion that the tendency of the soil to compact and adversely affect tree growth would be exacerbated if there was much traffic over the site when the soil was wet.
53. The matters raised in both reports are technical and are matters that ultimately the applicant’s arborist will need to respond to. Below, we note that Council has already submitted an earlier version of the Global Urban Forest report to its own peer review expert, Mr Leenstra, to ascertain whether there was anything that Council should be concerned with.

⁴ At page 5.

⁵ Ibid.

54. In that context, the Panel will have the benefit of an arborist (giving evidence) that has travelled alongside tree rope courses for the past ten years. It also has the benefit of Council's peer review (by Mr Leenstra) of a prior report which also expressed views as to the appropriateness of Visual Tree Assessment methodology and soil structures.

55. We will comment more on the expert evidence in our closing after testing the evidence.

Report of Brett Lane

56. Mr Lane is an experienced expert in ecology, and has been engaged by David Gentle and Save Yarra Flats Park Inc. to assess:

56.1 the ecological attributes and values of the Subject Land and the Yarra Flats Parklands more broadly;

56.2 the impacts of the Proposal on the Subject Land; and

56.3 the appropriateness of any impacts in relation to strategic directions and protections for the Yarra River corridor.

57. Mr Lane assesses that the Proposal will result in the removal of around 'half a hectare of native vegetation,' and, additionally, disturb the area more broadly. Accordingly, it is Mr Lane's opinion that:⁶

57.1 the Proposal 'comprises the achievement of a positive outcome for biodiversity in the Yarra Flats Park';

57.2 the section of the Yarra Flats Park intended to be used and developed for the Proposal comprises an older, and therefore more unique and rare, habitat;

57.3 it has not been established that the Proposal will adequately avoid and minimise impacts upon habitat and populations of significant fauna species likely to visit the Subject Land;

57.4 ongoing disturbance of the Subject Land will continue to impact upon biodiversity so long as the Proposal is undertaken; and

57.5 because the Proposal ultimately comprises an inappropriate use and development of the Subject Land, ParksVic should consider alternative locations for the Proposal that:

57.5.1 contain less significant biodiversity values; and

57.5.2 achieve positive outcomes in respect of the Planning Scheme and broader strategic policy material.

58. Notably, Mr Lane considers that the material exhibited with the Amendment, namely those technical reports considering ecological and arboricultural impacts of the Proposal, has not adequately considered and accounted for the particular value of the Subject Land. In this respect, he opines that the impacts of the Proposal are more pronounced where the particular biodiversity values of the Subject Land are properly characterised.

59. Council's position on Mr Lane's conclusions in the context of this Amendment is a matter to consider as part of expert evidence, and in Council's 'Part D' closing submission.

⁶ Expert Evidence Report of Brett Lane, page 19.

Peer Review

60. Faced with matters that raise issues of scientific or technical expertise as part of the proposal, Council sought expert peer review of a number of the reports that were provided with the application. Council sought peer reviews from:

- 60.1 Otto Leenstra of Otto Leenstra & Associates, in respect of arboriculture; and
- 60.2 Shannon LeBel of Ecology & Heritage Partners, in respect of ecology.

61. Council has circulated these three peer review reports given that they are expert in nature even though Council not propose to call the authors. They should be given appropriate weight albeit in recognition that the experts are not called to present their reports or be cross examined.

Mr Leenstra – Arboriculture

62. Mr Leenstra’s report was a peer review of the Arboricultural and Tree Health and Hazard assessment prepared by Russell Kingdom. Like Mr Patrick, it is relevant to note that Mr Leenstra is also retained by a number of high rope and tree climbing adventure operates in Victoria. Accordingly, his report draws from experience associated with those facilities.

63. Mr Leenstra had the benefit of reviewing an earlier copy of the report from Global Urban Forest which has been critical of the methodology adopted by the arborists. In that regard Mr Leenstra notes as follows:⁷

An eleventh hour report provided for comment prepared by Global Urban Forest is centered on the conditions that the trees are currently facing, in terms of soil compaction, potential for windthrow and a critique on the Visual Tree Assessment process and Hazard Assessment. There is no doubt that the identified growing conditions of compaction prevail in the subject 58 trees and the wider Yarra Flats Park. The oldest trees in this area are up to an estimated 300 years old and their ability to withstand these conditions is simply testimony to the resilience of the trees. It is my view that the success of The Proposal is that the two key Australian Standards are adopted and adhered to. They are AS4970-2009 *The Protection of Trees on Development Sites* and AS4373-2007 *The Pruning of Amenity and Ornamental Trees*. These standards are particularly designed to manage tree health and viability. The Practical Ecology report presents environmental weed control and revegetation and landscape recommendations based on the Zones including Conservation Zones that they identify. All these documents add relevance to the potential success of The Proposal.

64. And further:⁸

7.0.1 Hazard Assessment and Risk Management

An eleventh hour report prepared by Global Urban Forest attempts to cast doubt on the validity of the VTA and in particular the Hazard Rating system allotted to each tree. Their expertise was dependent on presenting a scientific assessment of the soil structure associated with the trees and the impact of soil structure as a precursor to tree failure and health. There evidence of a canker in tree #1 is a simplistic attempt to discredit the whole Hazard Assessment process adopted in the Arborist Report without any supporting structural assessment. Cankers are often superficial and are more likely to impact smaller narrower diameter limbs where the percentage impact to structure is higher leading to failure. The photograph shows a degree of compartmentalisation of this defect. The Arborist Report has used the Matheny and Clark method of determining a hazard rating. That is Failure potential plus size of part (branch) plus target rating. This method is an effective determinate and thought process to deliver a relative risk rating. Part 8 has some commentary of a risk management process and points to a flow chart in Appendix 9 that is unfortunately blank.

65. In a more detailed rebuttal of the concerns expressed by Global Urban Forest, Mr Leenstra notes the following:⁹

⁷ At PDF page 7.

⁸ At PDF page 12.

⁹ At PDF page 13.

As the World renowned Arborist Claus Mattheck so eloquently put it

There will never be an absolutely stable tree! -A natural failure rate among completely healthy trees is the price paid for the energy saving lightweight structures of Nature. The demand for the absolutely safe tree is therefore contrary to the logic of the laws of nature.....(Claus Mattheck/ Helge Breloer 1998. The Body Language of Trees).

Indeed the *Body Language of Trees* presents a detailed analysis of tree failure which is based on a number of factors. Windthrow tree failure is more likely to occur in cleared or partially cleared areas where the effects of wind are more pronounced and unpredictable. Visual Tree Assessment and the ability to recognise potential failure, is included in the Visual Tree Assessment methodology used by every qualified Consultant Arborist (Certificate 5 or above). The VTA conducted in the Arborist report does consider all the relevant issues, such as basal and root structure, current lean, root zone restriction and other health and structure indicators.

The examples of windthrow presented in the Global Urban Forest report are not from the area where the Proposal is planned, where the overall woodland canopy is intact.

My assessment of the proposed site as detailed in the Executive Summary is of an intact River Red Gum woodland in terms of the canopy trees. With no evidence of major catastrophic limb failure or indeed tree failure. Any evidence of these sort of events are limited to trees around the perimeter where the impact of wind damage is more likely. The notion that the River Red Gum is a limb dropper is largely false. The instance of failure in all Eucalyptus species and trees in general is based on the health and inherent structure of the tree. Trees do not have an immune system, but instead create chemical barriers and physical barriers through growth to contain the spread of disease, a process called Compartmentalization. The River Red Gum is considered to be a good compartmentaliser of disease. The predictors of failure are identified in the Arborist Report. The potential for failure and the seriousness of such an event is the number based on the Matheny and Clark Method previously discussed.

66. In relation to the hydrological issues raised by Global Urban Forest, Mr Leenstra stays within his own area of expertise and notes:¹⁰

its ability to wash soil from around the trees. My research on the matter of potential flooding of this part of the Yarra is out of my field of expertise. A Hydrologist or Melbourne Water would need to conduct a Flood Risk assessment to determine the Likelihood and Consequence of such an event. (Reference 2010 *Melbourne Water Flood Risk Assessment: How flood impacts are assessed in the Port Phillip and Westernport region*). From an Arboricultural perspective, the River Red Gum has the ability to withstand these events and a Tree Top Adventure Facility in the canopy of the trees is unlikely to be impacted. Construction at ground level must consider the floor levels and the advice of Melbourne Water in terms of building construction to mitigating these natural occurrences. Arboriculturally and from an ecological perspective, the control of environmental weeds and the introduction of the missing shrub and other understorey layers will assist in the reduction of water velocity in a Flood event. The implementation of the Land Management Report which is part of the Practical Ecology No Net Loss and Flora and Fauna assessment goes a long way in addressing the absence of these necessary vegetation layers. The examples of tree failure of trees in the Global Urban Forest assessment links examples of what appear to be from revegetation or revegetation/regeneration sites with the subject trees to the north. The condition of these trees and the failure of the root plate is multi-factorial and to draw a conclusion that the trees in the subject area will meet a similar fate is unlikely based on current evidence. There is an absence of windthrow and limb shed trees in the proposed site, where the canopy trees are in fair to good condition. The potential for windthrow is heightened near the perimeter of areas and on single trees with the absence of protection of surrounding trees. If soil health is a concern, then there is nothing to prevent this issue to be addressed through the betterment of the health of the trees as the Land Management Plan in Practical Ecology's No Net Loss and Flora and Fauna reports recommends. The insertion of cables and tree top courses in my experience actually contributes to the stability of trees. Cabling and the insertion of branch support hardware has been adopted by Arborists for decades to assist in maintaining and stabilising suspicious branch attachment. The Royal Botanic Gardens in Melbourne has a number of examples of these techniques.

67. We submit that the issue raised by the submitters through Global Urban Forest needs to be put into a planning perspective because this is a planning exercise. The issue of risk management which seems to be at the heart of their concerns is one which the Proponent first and foremost needs to be most mindful of more than anyone given they are putting their reputation on the line. The carrying of risk is one that is accompanied by very severe consequences in the event of a major failure of a tree. The various management plans proposed by the conditions and the approach to risk management is not something that has been left to chance. The combined experience of Mr Leenstra and Mr Patrick demonstrate that the operator and other operators take a very comprehensive approach to the issue through the employment of recognised experts to continually monitor the health and structure of vegetation. No doubt, organisations like Workcover play a similar role in a different statutory framework.

68. Accordingly, based on the expert evidence, we submit that there is nothing which arises in relation to tree safety or management that suggests that the Proposal should not proceed.

¹⁰ At PDF page 16.

What may be necessary, if anything, is a closer look at the Incorporated Document and particularly the separate conditions relating to tree and land management.

Mr LeBel – Ecology

69. Council filed and circulated the ‘Peer Review of Ecological Reports’ for the Amendment prepared by Mr LeBel, dated 8 June 2021.
70. Mr LeBel’s report was a peer review of:
- 70.1 Flora and Fauna Assessment, Native Vegetation Impact Assessment and Land Management Plan, Yarra Flats Tree Top Adventure Park;¹¹
 - 70.2 Native Vegetation Removal Report;¹²
 - 70.3 Biodiversity Impact & Offset Requirements Report;¹³ and,
 - 70.4 relevant sections of the exhibited Incorporated Document.
71. Mr LeBel has extensive experience in undertaking ecological investigations and studies as part of assessments of development and industry proposals. As such, he is adequately equipped to consider the myriad of overlapping ecological considerations required to be considered in assessing the Proposal.
72. In his report, Mr LeBel confirms his broad agreement with a number of matters raised in the FF Assessment:
- 72.1 the Proposal adequately addresses most of the necessary requirements under the *Detailed Assessment Pathway* in Clause 52.17 of the Scheme;¹⁴
 - 72.2 the proposed offset meets the threshold contained in the *Guidelines for the Removal, Destruction or Lopping of Native Vegetation (Guidelines)*;¹⁵
 - 72.3 impacts upon significant species, namely the Powerful Owl and Grey-headed Flying Fox, have been adequately assessed and are acceptable, subject to further ‘interrogation’ of more recent Victorian Biodiversity Atlas (**VBA**) data to ensure newly listed species are properly considered;¹⁶
 - 72.4 the field and desktop assessment methods employed are appropriate;¹⁷
 - 72.5 removal of native vegetation has been correctly calculated;¹⁸ and
 - 72.6 its assessment of the implications of the Proposal relevant, and its response, to legislation and planning controls appears to be sound, although it is recommended that the Proposal be assessed against the *Flora and Fauna Guarantee Act 2019*.¹⁹
73. Council agrees that the matters raised in the FF Assessment adequately address any foreseeable impacts of the Proposal on flora and fauna in the Subject Land.

¹¹ Prepared by Practical Ecology, December 2018.

¹² November 2018.

¹³ July 2016.

¹⁴ At [3.1.1].

¹⁵ Department of Environment, Land, Water and Planning, December 2007.

¹⁶ At [3.1.3.1].

¹⁷ At [3.1.3.2].

¹⁸ At [3.1.3.3].

¹⁹ At [3.1.3.4].

74. Mr LeBel recommends that, if variation to the existing offset requirements is being sought for the Proposal, the approval of the Secretary to DELWP for that variation must be confirmed, otherwise a full offset obligation would apply.
75. Further, we submit that we concur with Mr LeBel's assessment of:
- 75.1 the Native Vegetation Removal Report;
 - 75.2 Biodiversity Impact and Offset Requirements Report;
 - 75.3 Council's Report tabled and considered at its Ordinary Meeting on 1 March 2021;
76. Mr LeBel goes on to recommend changes to the exhibited Incorporated Document, including:
- 76.1 inclusion of a condition requiring the preparation and implementation of a Fauna Management Plan (**FMP**), including requirements for ongoing monitoring of locally and nationally significant species; and
 - 76.2 amendments to the Land Management to strengthen habitat and revegetation management measure, as well as provisions requiring ongoing monitoring of significant fauna.
77. We note that Council's 'Day 1 Hearing version' of the Incorporated Document²⁰ requires the preparation and implementation of a Fauna Management Plan consistent with Mr LeBel's recommendation.
78. We submit that Mr LeBel's recommendations are reasonable and would support their implementation in the event the Panel determines that they be incorporated into the Amendment material.

Conclusion

79. This is a proposal which at its heart relies on an environment like the environment presented by the Subject Land. A nature based recreational experience needs to occur in a relatively natural type of environment. The subject land presents as an appropriate site given its locational attributes close to infrastructure, walking tracks, public transport, and car parking.
80. The Subject Land is at the periphery of the Yarra Flats adjacent to the Category 1 Road Zone of Banksia Street.
81. It is adjacent to a major pedestrian recreational trail but removed from interfering with the trail.
82. Importantly, there is a stand of trees which on the basis of arborist evidence is capable of sustaining the activities. All of these circumstances come together to make the site a suitable location. The policy context is complex but it is clear that the proposal has been envisaged for some years. The support of the public land manager is critical and noting that the floodplain manager also supports the proposal suggests that there is little to be critical of in relation to the proposal.
83. This completes Council's Part C submission.

²⁰ Appendix 5 of Council's Part A & Part B Submission.



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2 July 2021