PLANNING SCHEME AMENDMENT C176 TO THE YARRA RANGES PLANNING SCHEME

PLANNING PERMIT APPLICATION YR 2018/358

PLANNING HEARING:

SUBJECT LAND: LOT 3 HOLLOWAY ROAD, WONGA PARK

PLANNING PANEL SUBMISSION PART A ON BEHALF OF YARRA RANGES COUNCIL
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1.0 INTRODUCTION

The application is for a combined amendment and permit under Section 96A of the Planning and Environment Act to rezone the site and allow subdivision for residential development, earthworks and removal of vegetation. Approximately one-third of the site is to be rezoned to a Neighbourhood Residential Zone (3.18 hectares) and developed for housing, with the remainder of the site (7.04 hectares) to be rezoned to an Urban Floodway Zone. A forty-eight lot subdivision with an internal road network is proposed.

The proposed Urban Floodway Zone component is to become public open space, with a section to be developed as a Melbourne Water treatment wetland. A substantial section of the area to be rezoned and developed for housing is currently subject to flooding and will require modifications to the floodplain, including filling parts of the site to enable residential development. The proposal involves developing the northern east section for housing and the remaining area will form a linear reserve along Brushy Creek connecting to Pezzimenti Reserve. As well as providing a linear link along Brushy Creek, the open space will also enable the Melbourne Water wetland and an area set aside for retaining existing vegetation.

2.0 BACKGROUND

The subject land is a 10.22 hectare irregularly shaped lot which straddles Brushy Creek on the north east side of Holloway Road in Wonga Park (Refer Attachment 1 – broad context and local context). The application has a long history; and the proposal which forms this amendment request and permit application, has been through a number of iterations:

- In 2005 Council received a request for a planning scheme amendment and concurrent planning permit application to rezone the site and allow a 42 lot residential subdivision covering an area of approximately 4 hectares. At its meeting of 25 July 2006 Council resolved to not support an amendment, due to concerns about loss of vegetation and possible flooding impacts.

- Revised concept plans were submitted for consideration in 2011 and 2013. Both highlighted major concerns in reconciling the often competing objectives of retaining vegetation to meet NVF requirements, clearing vegetation to achieve bushfire safety, and providing suitable quality public open space. Neither of these concepts proceeded to a formal amendment request.

The subject land is a residual portion of a much larger parcel that was previously subdivided to create the residential development on the north east side of the intersection of Holloway Road and Brushy Park Road (immediately to the west of the subject land). The subject land was excluded from that subdivision because it had no direct access to any adjoining roads until the more recent development of the adjoining Chirnside Village estate (Refer Attachment 2 – cadastral plan and aerial).
The site has a direct abuttal to Meadowbank Avenue which is a fully constructed residential street. The site abuts the rear boundary of Oxley College to the east. The southern boundary of the site is formed by the rear of residential properties and a section of undeveloped road reserve that is isolated from Holloway Road by the creek crossing.

Brushy Creek follows a winding path approximately south-east to north-west through the site. Approximately one quarter of the area of the lot in the north-east corner has a fall of 13 metres with an approximately 12% slope. The remainder of the site consists of the essentially flat floodplain of Brushy Creek.

The site includes scattered remnants of ‘Valley Grassy Forest’ vegetation on the elevated slopes north of the floodplain. This area has been largely cleared and repeatedly slashed in the past and the understorey is dominated by weed species. Vegetation in the vicinity of the creek is mostly remnant ‘Swampy Riparian Woodland’, including some thickets of swamp paperbark. This vegetation is significantly degraded by a heavy infestation of rampant weed growth. Land to the south west of the creek has been totally cleared as part of the earthworks associated with previous residential development and it supports a cover of exotic grasses.

### 3.0 THE PROPOSAL

The planning scheme amendment proposes to rezone the site from Rural Living Zone to a combination of Neighbourhood Residential Zone and Urban Floodway Zone. The NRZ covers the proposed residential subdivision, including internal road network, while the UFZ covers the remainder of the site, which will become public open space. It is also proposed to include a Significant Landscape Overlay on the part of the site to be rezoned to NRZ (Refer Attachment 3 – zone and SLO plan).

Planning permit application YR2018/358 is for subdivision, removal of native vegetation and earthworks associated with the creation of a water treatment wetland.

The proposed subdivision would create 48 residential lots ranging in size from 302 square metres to 980 square metres, with an internal road network. Vehicle access to the site is proposed to be provided via Meadowbank Avenue which abuts the northern boundary of the site.

The permit will allow removal of 3.743 hectares of native vegetation from the site, including 8 large trees in patches.

The permit will allow earthworks in association with a water treatment wetland. The proponents have negotiated with Melbourne Water to concurrently develop approximately 7,300 square metres of the floodplain on the south west of the creek bed, as a water quality enhancement wetland. The wetland would be constructed by the proponent and managed by Melbourne Water. This would be in accordance with Melbourne Water’s Brushy Creek Waterway Activity Plan which is part of a wider
water quality enhancement program that is being undertaken throughout the Yarra River catchment. This also involves a formal maintenance agreement with Melbourne Water. The Brushy Creek wetland will be used to reduce nitrogen levels in the outflow from the Yarra Valley Water treatment plant located nearby to the south of the site (Refer Attachment 4 – subdivision plan, landscape plan).

4.0 CHRONOLOGY OF EVENTS

4.1 COUNCIL RESOLUTION TO PREPARE AMENDMENT

10 April 2018 - Council resolved to prepare and exhibit the amendment. The Council report had identified that the recent introduction of Clause 13.02-1S into the Planning Scheme via Amendment VC140 would affect this amendment, specifically the policy under the sub-heading Settlement Planning:

“Plan to strengthen the resilience of settlements and communities and prioritise protection of human life by:

Not approving any strategic planning document, local planning policy, or planning scheme amendment that will result in the introduction or intensification of development in an area that has, or will on completion have, more than a BAL-12.5 rating under AS 3959-2009.”

Advice was received from the Department of Environment, Land, Water and Planning (DELWP), that Ministerial authorisation would not be granted for the amendment in its submitted form, as the open space was designed to result in adjacent new houses required to be built to a standard of BAL19. DELWP interpreted Clause 13.02 to require subdivisions to be designed such that all new dwellings are required to be built to a standard not higher than BAL12.5, so the area of defendable space would have to be increased. A revised Flora and Fauna Report and plans showing the increased defendable space was provided prior to the authorisation request report to Council.

4.2 MINISTERIAL AUTHORISATION

13 June 2018 - The request for Ministerial authorisation was lodged. Council received notice of further review on 16 July 2018. A request for further information was received on 15 October 2018, following provision of further information on 25 October 2018.

31 October 2018 - Ministerial authorisation was granted. This authorisation was granted subject to some further amendments and corrections.
4.3 EXHIBITION OF AMENDMENT

18 December 2018 - The amendment was placed on exhibition. Individual notice was sent to 352 owners and occupiers of properties in the vicinity (Refer Attachment 5 – map of direct notification and mailing list). Because the site borders the City of Maroondah, Maroondah Council was requested to provide ownership details of 159 owners and occupiers of land deemed close enough to justify notification (Refer Attachment 6 – map of Maroondah direct notification). Notice was sent to the prescribed ministers and authorities. Notice was placed in the Lilydale and Yarra Valley Leader, the Maroondah Leader and the Mountain Views Mail newspapers on 18 December 2018, and in the Government Gazette on 20 December (Refer Attachment 7 – copies of notices). A sign was placed on site where the site boundary abuts Meadowbank Avenue (Refer Attachment 8 – photo of notice on site).

Due to the Christmas/new year holiday period, the exhibition period was extended to 8 February 2019.

4.4 SUBMISSIONS

A total of 51 submissions were received. Of these, 44 stated some degree of objection to the application. Forty-two of these objections were from local residents, including a petition with 334 names on it (this petition was presented to Council at the meeting of 26 February 2019). (Refer Attachment 9 – map of objector locations).

The main concerns raised by objectors were:

- Traffic generation
- Removal of vegetation
- Fire risk
- Lot sizes
- Amenity impacts of new dwellings
- Open space
- Pedestrian safety
- Animal habitat
- Vermin
- Construction impacts
- Construction vehicle movements

Agency Submissions

The two most relevant submissions were from :CFA, which provided advice relevant to the extent of native vegetation removal, and from EPA, which objected due to the site being within the prescribed exclusion zone from a wastewater treatment facility
in accordance with EPA publication 1518 *Recommended Separation Distances for Residual Industrial Air Emissions.*

### 4.5 COUNCIL RESOLUTION TO REQUEST A PANEL

**23 July 2019** - Council resolved to request a panel be appointed by the Minister for Planning and refer submissions to the Panel. Reporting of submissions to Council had been withheld in order to address some substantive issues raised in submissions, particularly in regard to the clearing of vegetation required to achieve defendable space and the issue of potential odour emissions raised by EPA. These matters were considered sufficiently fundamental that it was felt best to withhold them until they had been investigated in further detail. It was eventually determined that reporting to Council should not be further delayed, so submissions were presented to Council on 23 July. The specifics of the issues raised are detailed in Part A of Council’s submission and Council’s response is in Part B of the submission.

### 5.0 STRATEGIC CONTEXT AND ASSESSMENT

#### 5.1 PLANNING AND ENVIRONMENT ACT 1987

Section 4(1) of the Planning and Environment Act 1987 (‘the Act’) sets out the objectives of planning in Victoria. In particular, the Amendment supports the objective at Section 4(1)(c) of the Act, “to secure a pleasant, efficient and safe, living and recreational environment for all Victorians and visitors to Victoria” and the objective of Section 4(1)(g) “to balance the present and future interests of all Victorians”. C176 implements these objectives by facilitating subdivision and development of the site in a way that provides benefit in terms of housing supply, provision of open space and retention of vegetation.

#### 5.2 STATE PLANNING POLICY FRAMEWORK

The strategic basis for the proposed amendment is underpinned by the State and Local Planning Policy Frameworks. In relation to the State Planning Policy Framework (SPPF), the amendment responds as follows:

- The amendment is in accordance with Clause 11 as it will provide for a mix of lot sizes, open space linkages and improvements to the public open space along water ways.

- Localised Planning Statement 11.03-6S - The amendment is consistent with LPS objectives for *Settlement*, as it provides for additional development to support increased densities on land within the Urban Growth Boundary, appropriate to the role of the suburb and taking into account environmental and other development constraints. It is consistent with objectives for Residential Areas,
responding to environmental and landscape considerations and achieving an overall net benefit.

- Clause 12 - The amendment will contribute to the key objectives of this Clause by providing improved floodplain functioning; enhanced water quality; protection and enhancement of biodiversity values; creation of active and passive recreational opportunities; improved appearance of a current degraded landscape for the benefit of the local community and future residents of the subdivision;

- The proposed amendment achieves the objectives of Clause 12 which seek to preserve biodiversity and environmental values, plants and trees considered to be established or significant will generally be retained on the site. The amendment involves vegetation management to protect the residential subdivision from bushfire risk and the relevant native vegetation offsets have been calculated which takes into account the subdivision area and vegetation management into account. Further, the subdivision will provide for a residential development that is well-designed and creates connections between future residents and the site features, including view lines, creek habitats and native vegetation.

- In response to Clause 13.03, the proposed amendment would zone the land subject to flooding as Urban Floodway Zone, thereby preventing inappropriate future development within the Brushy Creek catchment. Fire risk is addressed by the open space being proportioned/managed to achieve a BAL for the residential properties of 12.5. The proposal is outside the Bushfire Management Overlay.

- The amendment is consistent with the purpose of Clause 15, which seeks to ensure that all new land use and development appropriately responds to its landscape, valued built form and cultural context. The logical zoning for this site is Neighbourhood Residential Zone (Schedule 1) and Urban Floodway Zone due to the site’s location within an existing residential area and its environmental characteristics. Additionally, the amendment will facilitate the orderly development of urban areas. The proposal will assist to consolidate an existing urban area through subdivision of a site within the Urban Growth Boundary.

The subdivision is consistent with Clause 15, creating a safe and attractive place with a range of lot sizes. It confines itself to the north-east corner of the site, leaving extensive open space, including recreation space, and enhanced native habitat.

- The location of the proposed residential zone near existing services including public transport and other linkages is consistent with Clause 18.

- This proposed subdivision provides adequate infrastructure provision for the site with good access and integration with the surrounding road and bus network complying with the directions of Clause 19.
The proposal is consistent with the following clauses of the Local Planning Policy Framework:

- Clause 21.01 identifies the Upper Yarra Valley and Regional Strategy Plan 1996 (Regional Strategy Plan). The Strategy requires protection of vegetation and preservation of environmental values. This is discussed further in the following section.
- Clause 21.04-1, which supports infill in sustainable locations.
- Clause 21.05 – although the site is some distance from the Chirnside Park activity centre, it will contribute to the overall vibrance and cohesiveness of the centre through additional local patronage, and provide for additional housing at densities and lot sizes other than those currently available.
- Clause 21.08 which seeks to ensure that subdivision responds to existing physical, environmental and visual characteristics of the site and surrounding area.

The proposed Planning Scheme Amendment responds to these clauses by creating new infill development within an established residential area while balancing environmental considerations. The area proposed to be rezoned to Neighbourhood Residential Zone was identified by considering the onsite native vegetation and seeking to retain the majority of it.

The majority of the site is to be rezoned to Urban Floodway Zone which will assist to preserve the remaining native vegetation from further residential development. A flora and fauna assessment has also established the appropriate native vegetation offsets associated with the subdivision. For these reasons, it is considered that the proposed rezoning supports the relevant clauses of the Local Planning Policy Framework.

The Upper Yarra Valley and Dandenong Ranges Authority (established under the Upper Yarra Valley and Dandenong Ranges Authority Act 1976) prepared the Regional Strategy Plan to enable increased protection for the special features and character of the region.

Section 46 F of the Planning and Environment Act 1987 requires the Yarra Ranges Planning Scheme to be consistent with the relevant Regional Strategy Plan. The Act states:

*Despite anything to the contrary in this Act, an amendment to a planning scheme must not be approved under section 35 or 35B in relation to the*
region if the amendment is inconsistent with the approved regional strategy plan.

The Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan (RSP) was approved in 1982. It is referenced in the MSS at Clause 21.01-1 and Particular Provision Clause 51.03 of the Yarra Ranges Planning Scheme.

The subject site is in a Landscape Living Buffer Policy Area (LLB) under the Regional Strategy Plan, which makes it a rural rather than township area, and the proposed subdivision is nominally inconsistent with the RSP. An amendment to the RSP will be required. However, the site is within the Urban Growth Boundary (one of a few locations where the RSP and UGB do not align) and it is considered that the UGB is a more accurate representation of the real nature of the land and its strategic future (Refer Attachment 10 – map showing RSP boundaries and UGB).

There are nearby residential properties in Amley Court and Brushy Park Road which are also in the LLB Policy Area, and the boundaries of this policy area are completely unrelated to the boundaries of these properties. It is considered that circumstances have overtaken the LLB policy area and rendered it effectively obsolete, and that it would be appropriate for the RSP to be amended to replace the LLB with the Township Policy Area which applies in the abutting residential areas.

The site is mostly surrounded by Neighbourhood Residential Zone and it is therefore considered that the proposed amendment will not undermine the overall objectives of the Regional Strategy Plan (RSP).

The RSP maps will need to be amended in order to allow this amendment to proceed. The authorisation letter of 31 October 2018 noted the need for an amendment to the RSP in order to progress the planning scheme amendment. Of note, the Department previously consented to such an amendment, advising in 2005 that it had prepared amendment 117 to the RSP in response to the original planning scheme amendment request. As this planning scheme amendment did not proceed, RSP amendment 117 did not take place (Amendment 117 is listed in the table at Schedule 8 of the RSP Register of amendments to the Regional Strategy Plan, but no Gazettal or approval date is listed. Significantly, the sub-heading to Schedule 8 reads “Including Amending Regional Strategy Plans prepared but not yet approved”) (Refer Attachment 11 – extract of RSP).

6.0 IDENTIFICATION OF THE ISSUES RAISED IN SUBMISSIONS

6.1 TRAFFIC IMPACTS

The proposed development would have a single point of vehicle access, connecting to the existing local road network at the point where Meadowbank Avenue becomes Regency Rise, i.e. Meadowbank Avenue to the east and Regency Rise to the west. Regency Rise extends to the west of the proposed access point and curves north to
connect with Black Springs Road, a driving distance of approximately 900 metres. Meadowbank Avenue extends to the east of the access point approximately 300 metres to where it connects with Billanook Way, which extends a further approximately 850 metres to the east where it connects with Kimberley Drive.

The amendment request was accompanied by a traffic report prepared by consultants Grogan. The report included the following measured traffic flows:

<table>
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<th>Location</th>
<th>Vehicles per day</th>
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<tbody>
<tr>
<td>Regency Rise at Black Springs Road</td>
<td>1404</td>
</tr>
<tr>
<td>Yarraridge Drive at Black Springs Road</td>
<td>918</td>
</tr>
<tr>
<td>Billanook Way near Sunnyridge Court</td>
<td>2812</td>
</tr>
<tr>
<td>Meadowbank Avenue near the proposed access point</td>
<td>314</td>
</tr>
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Although no specific count for Regency Rise near the proposed access point is provided, it can be derived from the report’s forecasts. The report forecasts a daily flow generated by the proposed development of 480vpd of which 30% (144vpd) is expected to use Regency Rise. The report expects this 144vpd to raise total flow in Regency Rise to 360vpd, which would indicate an existing flow of 216vpd.

This analysis was provided in the Traffic and Transport Report by Cardno dated 1 June 2016 and lodged with the amendment request. The report advised that it was an update of a 2009 report that had been prepared as part of a previous amendment request. However, in neither report were the dates of the traffic surveys confirmed, and it was discovered late in the process that the surveyed existing traffic measurements in the 2016 report were the same as those in the 2009 report, i.e. the measurements used for these calculations were at least seven years old at the time of the report. Council expressed concern with the reliability of this data and asked the proponent to provide updated traffic survey data. Council also arranged its own traffic survey.

The proponent provided updated traffic survey data, obtained by Traffix consultants through 7-day tube counts undertaken from Saturday 12th October, 2019 to Friday 18th October, 2019 and undertaken during the gazetted school term for Victorian schools. However, the proponent subsequently requested this report be withdrawn due to suspected errors. A revised report based on two-day counts obtained on 29 and 30 October was submitted on 31 October.

Council obtained traffic survey data from 7-day tube counts between 17 October and 28 October 2019. These counts were in approximately the same locations as the 2009 Cardno survey, and are considered reliably comparable.

The comparison of average daily vehicle movements between the 2009 Cardno survey, the 2-day 2019 Traffix survey and the 2019 Council survey is as follows:
The meanings and implications of these survey results will be discussed in Part B of Council’s submission.

Comparisons of existing and forecast traffic volumes are as follows:

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<th>Location</th>
<th>Current vehicles/day</th>
<th>Forecast vehicles/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regency Rise at Black Springs Road</td>
<td>1404</td>
<td>1548</td>
</tr>
<tr>
<td>Yarraridge Drive at Black Springs Road</td>
<td>918</td>
<td>-</td>
</tr>
<tr>
<td>Billanook Way near Sunnyridge Court</td>
<td>2812</td>
<td>3148</td>
</tr>
<tr>
<td>Meadowbank Avenue near the proposed access point</td>
<td>314</td>
<td>650</td>
</tr>
</tbody>
</table>

These forecasts are based on a conservative estimate of 10 vehicle movements per dwelling per day. The surveys carried out for the traffic report observed a rate of 7.45 movements per dwelling per day, and Council’s 2019 survey suggests an average of 8.8 movements per dwelling per day. It is forecast that approximately 70% of vehicles exiting the proposed subdivision will travel to the east along Meadowbank Avenue and into Billanook Way, while 30% will travel west into Regency Rise and then north to connect with Black Springs Road (with similar proportions for inbound traffic). This would equate to an increase to 323 vehicles per day in Regency Rise and to 564 vehicles per day in Meadowbank Avenue. Traffic in Billanook Way would rise to 3062 per day.

Updating these forecasts based on the 2019 surveys is difficult, as these surveys suggest some traffic entering Billanook Way from Meadowbank Avenue would continue east along Billanook Way to Kimberley Drive, and some would choose to go north along Yarraridge Drive to Black Springs Road. These implications are addressed further in Part B of Council’s submission.

Meadowbank Avenue east of the site has a carriageway width of 7.5 metres with on-street parking on both sides. Where cars are parked on both sides in the same location, carriageway width would be reduced to 3.5 metres. The presence of rollover kerb allows vehicles to be parked partly or even entirely on the verge, so in
many cases of on-street parking the effective unimpeded carriageway width is greater than 3.5 metres. Clause 56 deems this an Access Street – Level 2 with a nominal capacity of up to 3000 vehicles per day (Refer Attachment 12 – Meadowbank Ave aerial and ground photo).

Regency Rise west of the site has a narrower carriageway width of 6.5 metres, with unrestricted on-street parking on both sides. Vehicles parked entirely on carriageway on both sides could potentially reduce unimpeded carriageway width to approximately 2.5 metres. Regency Rise has full rollover kerb on both sides. Council aerial photography, updated annually for the past eight years, provides a visual timeline which demonstrates that the majority of cars observed parked on-street along this stretch of road are parked entirely on the verge, with a smaller number parked approximately half on verge and half on carriageway. This suggests that, in practice, impeded carriageway can be expected to be approximately 1 metre on each side, with an unimpeded carriageway width of approximately 4.5 metres (Refer Attachment 13 – Regency Rise aerial and ground photo).

Billanook Way west of Old Melbourne Road has a carriageway width of 8 metres, which is reduced to 7.5 metres between Old Melbourne Road and Kimberley Drive, with parking allowed on both sides. Forecasts provided by the proponent suggest that vehicle movements post-development will exceed the 3000 vehicles per day upper range stipulated for an Access Street Level 2, and 2019 survey data indicates current traffic is already at this level (Refer Attachment 14 – Billanook Way aerial and ground photo).

However, the capacity ranges in Clause 56.06 are simple two-way straight-line movements that do not factor in intersections or other such impacts on traffic flow, and there is a lack of clear direction as to how Council should assess the consequences of a traffic level in excess of that allowed for in 56.06.

### 6.1.1 USE OF HOLLOWAY ROAD FOR PERMANENT ACCESS

A number of submitters suggested that vehicle access to the site should be via Holloway Road rather than Meadowbank Avenue/Regency Rise. There are a number of factors arguing against such an arrangement:

- A roadway would cut through and disrupt an area of open space which would benefit from being left as a contiguous space providing uninterrupted movement for people and animals;

- Such a road would need to traverse a floodway, which Melbourne Water has indicated it is unlikely to approve. Melbourne Water has indicated their willingness to allow a temporary creek crossing for construction purposes, but not for a permanent connection. Any bridge to carry such a road might have a constricting impact on passage of floodwater and could cause flooding impacts;
• A connection from the southern boundary of the property to Holloway Road would need to traverse land owned by Vic Roads for the purpose of the future northern arterial road. Vic Roads has indicated that they will consider a license arrangement allowing temporary use of the land for vehicle access to the site during construction, but would not approve ongoing use for this purpose post-construction.

6.1.2 VIC ROADS SUBMISSION

Vic Roads is the owner of land immediately abutting the southern boundary of the site. The land is part of a reserve set aside for a proposed arterial road. There is no vehicle access connection to a Vic Roads road proposed as part of this development, and Vic Roads is responding in its capacity as a property owner rather than a traffic manager.

Vic Roads’ response is relevant due to conditions 44(d) and 82 of the draft planning permit, which require that during construction of the subdivision, all construction vehicles use on Holloway Road for access to the site, and not use Meadowbank Avenue or Regency Rise. This will require passage over Vic Roads’ land, which separates the site from Holloway Road.

Apart from Vic Roads’ written submission, discussions were held with Kugan Kuganessan, Senior Statutory Referral Engineer. As noted above, Vic Roads would not be prepared to consent to a permanent, ongoing vehicle connection across this land connecting the site to Holloway Road. Any arterial road constructed in this reserve will be required to confine its intersections to significant arterial roads only – small local roads will not be able to connect to it. However, a temporary connection over the vacant land can be arranged by license.

6.2 REMOVAL OF NATIVE VEGETATION

A Flora and Fauna Report was provided by the proponent. Its assessment can be summarised as follows:

• 16 identified habitat zones
• 3 identified vegetation classes:
  - Creekline Herb-rich Woodland (EVC164)
  - Swampy Riparian Woodland (EVC83)
  - Valley Grassy Forrest (EVC47)
• 4 scattered trees
• 139 identified plant species, of which 61 (44%) are indigenous
• 1 listed species under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) with identified potential to occur: Round-leaf Pomaderris.
• 3 identified fauna habitats:
  • Native treed vegetation;
  • Cleared paddocks;
  • Aquatic and riparian vegetation
• Five EPBC listed migratory bird species with potential to occur:
  o Clamorous (Australian) Reed Warbler
  o Fork-tailed Swift
  o Rufous Fantail
  o Satin Flycatcher
  o White-throated Needletail
• Two EPBC listed mammals with potential to occur:
  o Common Bent-wing Bat
  o Grey-headed Flying Fox
• Removal of 3.353 hectares (1.258 habitat hectares) of remnant native vegetation.
• Required offsets of 1.190 general biodiversity equivalence units (BEUs) with a minimum strategic biodiversity score of 0.496 within the Port Phillip and Westernport Catchment Management Authority or Yarra Ranges Shire.

In its submitted form, the proposal was assessed as removing 3.353 hectares of native vegetation. However, following the introduction of revised State Planning Policy Framework, Clause 13.02 *Bushfire* in December 2017, it was concluded that additional vegetation would have to be cleared to achieve the defendable space of 57 metres from the building envelopes in order to meet the BAL12.5 requirement specified in Clause 13.02. As a result, a revised Flora and Fauna Report was submitted identifying removal of 3.743 hectares of vegetation. Following an on-site meeting with CFA, it was resolved that a defendable space of 48 metres was appropriate for the land to the immediate west and south-west of the proposed subdivision, but that the 57 metre defendable space should be retained to the south. This would result in a slightly reduced vegetation clearance of approximately 3.5 hectares.

The original submitted application proposed to achieve the required offset of 1.19 general biodiversity equivalence units (BEUs) entirely on-site through replanting and improvement of existing vegetation. Council looked favourably on this outcome due to the overall improvement in quality of vegetation on the site. However, it was always recognised as a difficult outcome to achieve due to the tight site constraints. The revised Flora and Fauna report acknowledged that the additional offsets
required for the exhibited proposal could not be met entirely on-site and off-site offsets would be required.

The exhibited draft planning permit prescribed a mix of on-site and off-site offsets. Part of the offset would be provided by ongoing maintenance of existing retained vegetation on the site, which is nominally the proponent’s responsibility. However, the vegetation is located on land to become public open space and ultimately Council’s responsibility. Although an unusual and not ideal arrangement, it was accepted due to the benefit seen in the retention and restoration of the large area of native vegetation. Accordingly, Condition 16 of the exhibited draft planning permit specified a contribution of $200,000 from the proponent for Council to maintain the offset.

Subsequent discussions over clearing vegetation to achieve defendable space highlighted the inherent complications in such an arrangement, since Council maintenance obligations might not always be of the standard required for maintaining a vegetation offset, and led to the conclusion that it would be unviable over the longer term. As a consequence, it was resolved to specify that all required vegetation offsets must be achieved off-site. Council’s position is that conditions 13 and 15 of the permit, specifying the requirements for the offset and offset plan, should be re-worded accordingly and condition 16 deleted. The requirement that the existing retained vegetation be weeded and restored should be retained.

6.2.1 DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING SUBMISSION

Department of Environment, Land, Water and Planning (DELWP) objected to the application due to loss of native vegetation, in particular the failure to maintain a 30 metre corridor of native vegetation on either side of the existing creek, in accordance with the provisions of Clause 14.02-1S Water of the planning scheme.

DELWP’s submission was, along with other submissions, referred to the proponent. On 25 March 2019 the proponent advised in an email that they had provided requested material to DELWP and were in discussions with the Department. In an email dated 18 April 2019 the proponent advised that there had been further discussions with the department leading to a satisfactory resolution of most issues.

Regardless of any further discussions between the department and the proponent, there has been no subsequent written submission from DELWP, and Council’s response is based on DELWP’s original submission dated 14 February.

6.3 FIRE RISK

The site is in a designated Bushfire-prone Area, and new dwellings will require an assessment of Bushfire Attack Level (BAL). State planning policy in Clause 13.02 states that amendments allowing intensification of residential development will not be approved unless the BAL of the subject area is no greater than 12.5. The exhibited plan showed a defendable space (the area cleared of vegetation) of 57 metres from
the building envelopes shown on the subdivision plan. Following on-site discussions, CFA advised that a defendable space of 48 metres would be appropriate for the area to the west and south-west of the proposed subdivision, but that the defendable space to the south of the subdivision should remain at 57 metres. This defendable space will become Council-owned public open space and be maintained as a public park.

6.3.1 CFA SUBMISSION

CFA’s submission referred to the exhibited subdivision plan, which confined its detail largely to the proposed road and lot layout, which included a marked 20 metre wide ‘maintenance buffer’ from the edge of the road reserve extending into the open space. In fact, it is the exhibited landscape plan that shows the area cleared for defendable space, including a line demarcating the space required to achieve a BAL of 12.5 on the proposed lots. This was clarified in further discussions, including an on-site meeting on 22 May 2019. From these discussions and subsequent correspondence the following was resolved:

- Mitigating factors affecting fire behaviour make it reasonable to treat the land to the east of the subdivision as ‘flat’ under Table 1 to Clause 53.02, which equates to a defendable space from ‘Forest’ vegetation of 48 metres. To the south of the subdivision, a downslope of 0 to 5% to the ‘Forest’ vegetation means that a 57 metre defendable space should be retained;
- There is conflict between managing the vegetated creekline and achieving defendable space. There may be a need to establish a defined vegetated creek corridor and measure the required defendable space from that. This could impact on some lots’ building envelopes.
- Future vegetation in the south-west sector near the proposed wetland must not result in an increase in fire risk to residents in Glen Park Drive.

6.4 POTENTIAL ODOUR IMPACT

EPA has objected on the basis that the most of the proposed subdivision would fall within the prescribed exclusion from the nearby Brushy Creek Wastewater Treatment Plant, located to the immediate south-east of the site, as determined by EPA Publication 1518 Recommended Separation Distances for Industrial Residual Air Emissions. For a facility the size and capacity of the Brushy Creek plant (catchment population 60,000), the prescribed distance is 391 metres from the boundary of the treatment plant site. Approximately three quarters of the proposed subdivision area would fall within this zone (Refer Attachment 15 – map showing treatment plant location and separation distance).
The proponent has provided an odour risk assessment by GHD which supports a reduction in the required separation distance to 209 metres, which would not affect the proposed subdivision.

6.5 LOT SIZES

The largest proposed lot is 980 square metres and the smallest is 302 square metres. Most of the lots are between 400 and 600 square metres. These lot sizes are typical of contemporary subdivision, and represent an ongoing trend to reduced lot sizes which commenced in the early 1990s. The Chirnside Village subdivision is itself a representative of this trend, being among the first in Yarra Ranges which saw a break away from the 860 square metre standard found in 1970s and 1980s subdivision to a variety of lot sizes with an average size smaller than 860 square metres.

The proposed lots meet the requirements of Clause 56 (Res Code subdivision) that lots of between 300 and 500 square metres have a building envelope capable of containing a 10 metre by 15 metre rectangle. Although a number of lots are larger than 500 square metres and are not obliged by Clause 56 to include a building envelope, building envelopes are shown on all lots.

It should be noted that proposed changes required to achieve fire safety will require modifications to the building envelopes of proposed lots 19 and 20, such that they would not be able to achieve a 10 metre by 15 metre rectangle. This is addressed in Part B of this submission.

6.6 IMPACT OF NEW DWELLINGS ON AMENITY

The application is for subdivision, not development, and there is no opportunity to assess building design details. New residential lots will abut the rear of existing residential lots on Regency Rise, which is a common arrangement and not in itself unreasonable. Dwellings will be confined within building envelopes prescribing setbacks from rear boundaries. All new dwellings will have to meet Res Code requirements to minimise detrimental impact.

6.7 OPEN SPACE

The site is currently privately owned and is not legally accessible for recreation. The proposal will create new public open space. Of the total site area of 10.22 hectares, 3.19 hectares will be developed for residential subdivision, 2.69 hectares will be developed for a Melbourne Water treatment wetland and flood area, and approximately 4.34 hectares will become Council-managed public open space. Some of this open space will contain retained vegetation and some will be available for general parkland open space. The public open space will also allow expansion of the trail network along Brushy Creek.
6.8  FLOODING IMPACTS

Most of the site is floodplain and subject to flooding, and as such is covered by a Land Subject to Inundation Overlay. The proposal includes placement of 5,500 cubic metres of fill within the floodplain area to increase the size of the area available for residential development. Melbourne Water has maintained a long-standing requirement that a development involving earthworks within a floodplain must ensure that there is no net loss of flood storage capacity – if fill is to be placed on site such that it would take up area which would be occupied by flood water, there must be commensurate excavation of the site to provide the same amount of space for flood water as taken by the fill.

The plans submitted with the application show an area of land surrounding the proposed water treatment wetland excavated to achieve a capacity of 5,500 cubic metres. This excavation land is approximately 13,200 square metres in area (Refer Attachment 16 – engineering plan).

6.9 PEDESTRIAN SAFETY

The proposed new road network will have footpaths connecting to the existing footpaths on Meadowbank Avenue and Regency Rise. The existing road networks in the area have pedestrian paths that separate vehicle and foot traffic. While a new footpath will be created connecting to the existing network, the existing network itself will not change.

There is an issue with traffic levels in Billanook Way near Kimberley Drive, where there is concern about the capacity of the road to accommodate the forecast traffic. Impacts on pedestrian safety in this area should be considered.

6.10 ANIMAL HABITAT

Impact on fauna is assessed in the submitted Flora and Fauna Report, which advised that no threatened species are reported on the site and existing species will be minimally affected. The water treatment wetland will provide improved water bird habitat.

6.11 VERMIN

There is potential for vermin to inhabit the site and it is possible that vermin displacement during construction could be noticed on neighbouring properties. This is outside of the scope of the planning system to address.

6.12 CONSTRUCTION IMPACTS

It is recognised that construction can have detrimental impacts such as noise and dust. Some amenity impacts are considered unavoidable for the limited period of construction and they can be minimised as far as possible by ensuring works are
undertaken in accordance with a construction management plan, which will be required as part of the planning permit.

### 6.13 CONSTRUCTION VEHICLE MOVEMENTS

It is recognised that construction vehicles are inherently larger and noisier than conventional cars, and their movements along residential streets will undoubtedly have an impact on amenity, traffic flow and traffic safety.

Conditions 44(d) and 82 on the draft planning permit conditions require all construction vehicles during the development phase to access the site from a temporary access off Holloway Road rather than via Meadowbank Avenue. Although no formal objections have been lodged with Council, we have been made aware of concerns from occupants of land abutting Holloway Road concerned about the impacts of this traffic.

It is recognised that, throughout the metropolitan area, development and redevelopment sites require regular movements of large construction vehicles that cause some degree of detriment due to size, noise and fumes. In this case, the existence of two options for vehicle access, physically and geographically quite separate and distinct from one another, provides an opportunity to compare them.

### 6.14 INDIGENOUS CULTURE

A Cultural Heritage Management Plan has been prepared and identifies minimal presence of indigenous heritage. The plan has been approved by the Wurundjeri Tribe Land & Compensation Cultural Heritage Council. A condition on the planning permit requires adherence to this plan.

A late submission by *Environmental Justice Australia* on behalf of the Chirnside Park Residents Action Group objected on the grounds of loss of Aboriginal ‘scarred trees’. The submission did not include evidence of the existence of such trees on the site.

### 7.0 REVISIONS TO THE AMENDMENT AND DRAFT PLANNING PERMIT

#### 7.1 NEIGHBOURHOOD RESIDENTIAL ZONE

During exhibition an oversight was picked up in the preparation of the amendment documents. The exhibited amendment proposed to rezone the residential subdivision part of the site to Neighbourhood Residential Zone Schedule 1. NRZ1 is *Incremental residential areas: Mooroolbark, Chirnside Park, Kilsyth and Lilydale*, which is the zone applied to the surrounding residential areas. In its basic principles, it is reasonable to apply this to the proposed subdivision. However, NRZ1 as currently applied, contains a requirement for a planning permit for a single dwelling on a lot of less than 500 square metres, which would mean separate planning approvals (permits) for most of the new lots in the proposed subdivision.
A 500m² permit trigger is an appropriate tool for conventional residential areas where the typical lot size is approximately 860m². The permit trigger is applied to exceptional circumstances. A lot of 500m² in such an environment is close to half the size of a standard lot — in other words, it is the effective equivalent of a dual-occupancy scale of development, and it would be fair and reasonable to apply a permit requirement as would be the case with dual occupancy or other medium density development.

It would not be fair and reasonable to impose a permit requirement for 500m² lots where lots of this size are the rule rather than the exception. Should the combined amendment and permit process determine that the proposed smaller lot sizes are acceptable, there is no strategic justification for requiring the dwellings in the proposed subdivision to obtain a separate planning permit. It is simply an unnecessary duplication and burden on all parties.

It is proposed to apply the Neighbourhood Residential Zone Schedule 4 which removes the 500m² permit trigger and replaces it with the standard 300m² trigger. This is an existing schedule in the Yarra Ranges Planning Scheme applied to the redevelopment of the former Chirnside Park golf course, Cloverlea subdivision. The proposed Holloway Road subdivision is comparable with the Cloverlea subdivision. It is on an undeveloped and vegetated site with a varying slope and interface to existing abutting dwellings. As such it is considered a suitable control to apply to the proposed subdivision. The 500m² permit trigger in the NRZ1 was inadvertently missed in the preparation of the amendment, and it is considered that NRZ4 would be a more suitable zoning which provides for the default permit trigger of 300m² under the NRZ. It should be noted that Schedule 4 to the NRZ currently refers specifically to the Cloverlea subdivision. It will be necessary to amend the name in the schedule so that it references Lot 3 Holloway Road too.

**7.2 SIGNIFICANT LANDSCAPE OVERLAY**

The amendment proposes to apply Significant Landscape Overlay 23, which is consistent with the wider Chirnside Park residential area and the main metropolitan areas and towns. It has been noted that this overlay’s *Statement of nature and key elements of landscape* only references Chirnside Park but not Wonga Park.

To apply properly to the subject site, the overlay Schedule should state that it applies to Wonga Park. Schedule 23 to the SLO should be amended accordingly.

These proposed changes to NRZ4 and SLO23 are not substantive changes to the exhibited controls. They would simply clarify the land to which these controls would apply, without changing the controls themselves. As such it would be reasonable to request that the panel recommend the Minister approve these changes a part of any approval of the whole amendment.

**7.3 REVISIONS TO DRAFT PLANNING PERMIT**
It is proposed to revise the draft planning permit to amend several conditions, as well as delete some others. Attachment 17 is a table listing every affected permit condition by number, with the proposed change/s and purpose for the change (Refer Attachment 17 – table of proposed changes to planning permit).

While some of the proposed changes seek to improve function and legibility by re-formatting existing conditions to place them in a different and more suitable location in the permit, most of the changes are to some degree substantive, and are to achieve the following:

- Fundamentally change the meaning and outcome
- Revise outcomes following discussions with the relevant authority
- Require additional detailed information
- Clarify outcomes shown in documents
- Clarify the condition meaning
- Clarify the permit start and end times
- Tie the subdivision outcome more explicitly to the wetland outcome
- Clarify Melbourne Water's role as occupant/manager

In addition, it is proposed to delete some permit conditions, for the following reasons:

- No longer required due to revision of other permit conditions
- Unnecessary duplication
- Re-assessed and now considered unnecessary

(Refer Attachment 18 – revised draft planning permit_track changes)

### 8.0 CONCLUSION

This concludes Part A of Council’s submission. A detailed response to the issues raised is presented in Part B of Council’s submission.

**ATTACHMENTS:**

1. Broad and local context
2. Cadastral and aerial plans
3. Zone and overlay maps
4. Subdivision plan and landscape plan
5. Map of Yarra Ranges direct notification
6. Map of Maroondah direct notification
7. Copies of notices
8. Sign on site
9. Location of submitters
10. Regional Strategy Plan boundaries and Urban Growth Boundary
11. Extract of RSP amendment list
12. Meadowbank Avenue aerial and ground view
13. Regency Rise aerial and ground view
14. Billanook Way aerial and ground view
15. Separation distance from wastewater treatment plant
16. Engineering plan showing cut and fill
17. Table of proposed changes to the draft planning permit
18. Revised draft planning permit (track changes)