

Planning and Environment Act 1987

Panel Report

Nillumbik Planning Scheme Amendment C81 Significant Landscape Overlays in the Nillumbik Green Wedge

29 March 2016

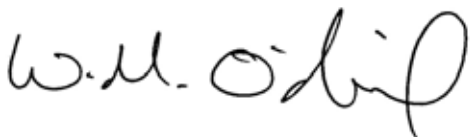
Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Nillumbik Planning Scheme Amendment C81

Significant Landscape Overlays in the Nillumbik Green Wedge

29 March 2016

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William O'Neil, Chair

A handwritten signature in black ink, appearing to read 'John Roney', written in a cursive style.

John Roney, Member

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List of Abbreviations

BMO	Bushfire Management Overlay
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
EPA	Environment Protection Authority
ESO	Environmental Significance Overlay
EVC	Ecological Vegetation Class
GRZ	General Residential Zone
GWMP	Green Wedge Management Plan
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
RGZ	Residential Growth Zone
SLO	Significant Landscape Overlay
SPPF	State Planning Policy Framework
UGB	Urban Growth Boundary
VPP	Victoria Planning Provisions

Overview

Amendment Summary

The Amendment	Nillumbik Planning Scheme Amendment C81
Common Name	Significant Landscape Overlays in the Nillumbik Green Wedge
Subject Site	All land within the Shire of Nillumbik outside the Urban Growth Boundary, excluding the Kinglake National Park.
Planning Authority	Nillumbik Shire Council
Authorisation	The initial Authorisation (NO AO2318) was granted on 16 July 2012. A subsequent Authorisation was conferred on 4 February 2015.
Exhibition	The Amendment was exhibited between 10 April and 29 May 2015.
Submissions	177 submissions were considered by the Panel, including 17 late submissions. It is noted that a number of submissions have been re-numbered and a couple of submission numbers have no corresponding submission. A list of submitters is provided in Appendix A of this report.

Panel Process

The Panel	William O'Neil (Chairperson) and John Roney (Member)
Directions Hearing	The Directions Hearing was held in the Council Chamber at the office of Nillumbik Shire Council on 19 November 2015.
Panel Hearing	The Panel Hearing was held in the Council Chamber at the offices of Nillumbik Shire Council on 1, 3, 5, 8, and 12 February 2016.
Site Inspections	An accompanied site inspection occurred on 2 February 2016.
Appearances	A list of submitters that appeared at the Hearing is provided in Appendix B of this Report.
Date of this Report	29 March 2016

Executive Summary

(i) Summary and Conclusions

Amendment C81 to the Nillumbik Planning Scheme seeks to apply the Significant Landscape Overlay to all land within the Shire of Nillumbik that is outside the Urban Growth Boundary, excluding Kinglake National Park. Specifically, a total of seven new Schedules to the Significant Landscape Overlay are sought to be introduced into the Planning Scheme.

In excess of 170 submissions were received in response to the exhibition of the Amendment.

The Panel has considered all written submissions as well as submissions and evidence presented and tested during the Hearing.

The Panel agrees with Council that the Amendment is soundly based on well researched strategic planning and that Council has completed an extensive and very thorough planning process leading to the preparation of Amendment C81. The Panel commends the Council for a generally sequential and logical planning framework that has led to the preparation of the Amendment.

The Panel accepts the general principle that there are seven broad Character Areas as explained in the Landscape Character Assessment prepared by Planisphere (2009). The Panel agrees with the general methodology and approach adopted by Planisphere. Although the Panel agrees that it is reasonable to conclude that there are seven distinct Landscape Character Areas, the Panel has some concerns regarding the implementation of seven Significant Landscape Overlays at this time. In particular the Panel is concerned that SLO14 - Suburban Rural Landscape Character Area, is an unnecessary duplication of the detailed planning and design guidance already articulated in DDO2 and DPO4.

The Panel considers that inclusion of SLO14 into the Planning Scheme at this time would be confusing to all stakeholders whilst these other planning overlays are in operation. The Panel considers that following the more substantial completion of residential development under the existing overlays (DDO2 and DPO4) then consideration could be given towards removing the current overlays and replacing them with an updated SLO14.

The Panel considers that Amendment C81 will not impact on the potential to rezone land or vary the Urban Growth Boundary in the future. Any future changes to the zoning of land or changes to the Urban Growth Boundary would be subject to a separate planning process. The Panel also concludes that no financial compensation is appropriate for any land owners affected by Amendment C81.

Having noted the above the Panel's overarching conclusions are as follows.

In relation to Planning Policy the Panel concludes that:

- the Amendment is generally supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.
- the protection of the Green Wedge landscape via the preparation of Significant Landscape Overlay controls in the Nillumbik Planning Scheme has a sound strategic basis.
- Amendment C81 has not been transformed following its exhibition.

- Amendment C81 does not increase the risk of bushfire within the Nillumbik Green Wedge.

In relation to the proposed application of seven SLO Schedules the Panel concludes that:

- it is appropriate to apply SLO8, SLO9, SLO10, SLO11, SLO12 and SLO13 to land as identified in Amendment C81.
- it is inappropriate to apply SLO14 via Amendment C81

In relation to the content of the SLO Schedules the Panel concludes that:

- it is appropriate to further strengthen the consideration of bushfire by making minor modifications to each of the Statements of nature and key elements of landscape, including the Future character statement. Additional Landscape character objectives to be achieved and additional Decision Guidelines to all Schedules, are also considered appropriate.
- the Statement of nature and key elements of landscape, the Future character statements, and the Landscape objectives are generally appropriate subject to minor changes.
- the vegetation, earthworks and public land permit exemptions within the Schedules are appropriate.
- modifications to a number of the permit exemption provisions within the proposed schedules is warranted including:
 - the wording of the introduction to the permit exemptions within the Schedules should be reformatted to make them clearer to the reader;
 - the proposed threshold building height of 7 metres is too restrictive and should be replaced with 8 metres;
 - the colours and materials exemption should be removed;
 - the inclusion of threshold restrictions limiting the use of barbed wire should be removed;
 - the inclusion of detailed fence design descriptions should be removed; and
 - specifying an increase in the threshold fencing height from 1.2 to 1.4 metres is supported.
- the revised wording proposed by Council with respect to the permit application requirements is supported.
- the Decision Guidelines are generally appropriate subject to minor changes.

In relation to the 'Design Guidelines' documents the Panel concludes that:

- the 'Design Guidelines' documents as exhibited concurrently with the exhibition of Amendment C81 are not consistent with the proposed Schedules to the SLO.
- the concept of having some form of Design Guidelines to assist permit applicants understand the Significant Landscape Overlay planning controls is supported.
- the specific details of the content of the Design Guidelines are beyond the scope of the Panel to resolve, however Council is encouraged to continue the process of refining the Design Guidelines along the lines recommended by Glossop Town Planning. This should result in a less prescriptive and more performance based document that provides more flexibility in design outcomes.
- the Design Guidelines need to be substantially rewritten.

- the Design Guideline documents need not, and in this instance should not, be included as reference documents.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends:

Nillumbik Planning Scheme Amendment C81 be adopted as exhibited subject to the following changes:

1. **Delete Significant Landscape Overlay Schedule 14 from the Amendment.**
2. **Amend each of the Significant Landscape Overlay Schedules as reflected in the Panel's preferred version of the Schedules contained in Appendix D.**
3. **Amend the extent of Significant Landscape Overlay 9 on Map No 4SLO following further consultation with DELWP to accurately reflect the extent of the Kinglake National Park.**
4. **Amend Clause 6.0 of each of the proposed Significant Landscape Overlay Schedules by deleting reference to the 'Design Guideline' document as follows:**
 - a) **Delete '*Open Pastures Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 8.**
 - b) **Delete '*Rolling Valleys Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 9.**
 - c) **Delete '*Undulating Agricultural Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 10.**
 - d) **Delete '*Bushy Slopes Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 11.**
 - e) **Delete '*Agricultural Uplands Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 12.**
 - f) **Delete '*River Interface Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 13.**
 - g) **Delete '*Suburban Rural Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 14.**

This recommendation is reflected in the drafting of the Panel's preferred version of each Schedule as presented in Appendix D.

Secondary recommendation of the Panel

5. **Should the Panel's recommendation to delete Significant Landscape Overlay Schedule 14 from the Amendment not be accepted the Panel recommends replacing the exhibited version of Significant Landscape Overlay Schedule 14 with the Panel version contained in Appendix D of this report.**

1 Introduction

1.1 The proposal

(i) The subject area

The Amendment applies to the land shown in Figure 1.

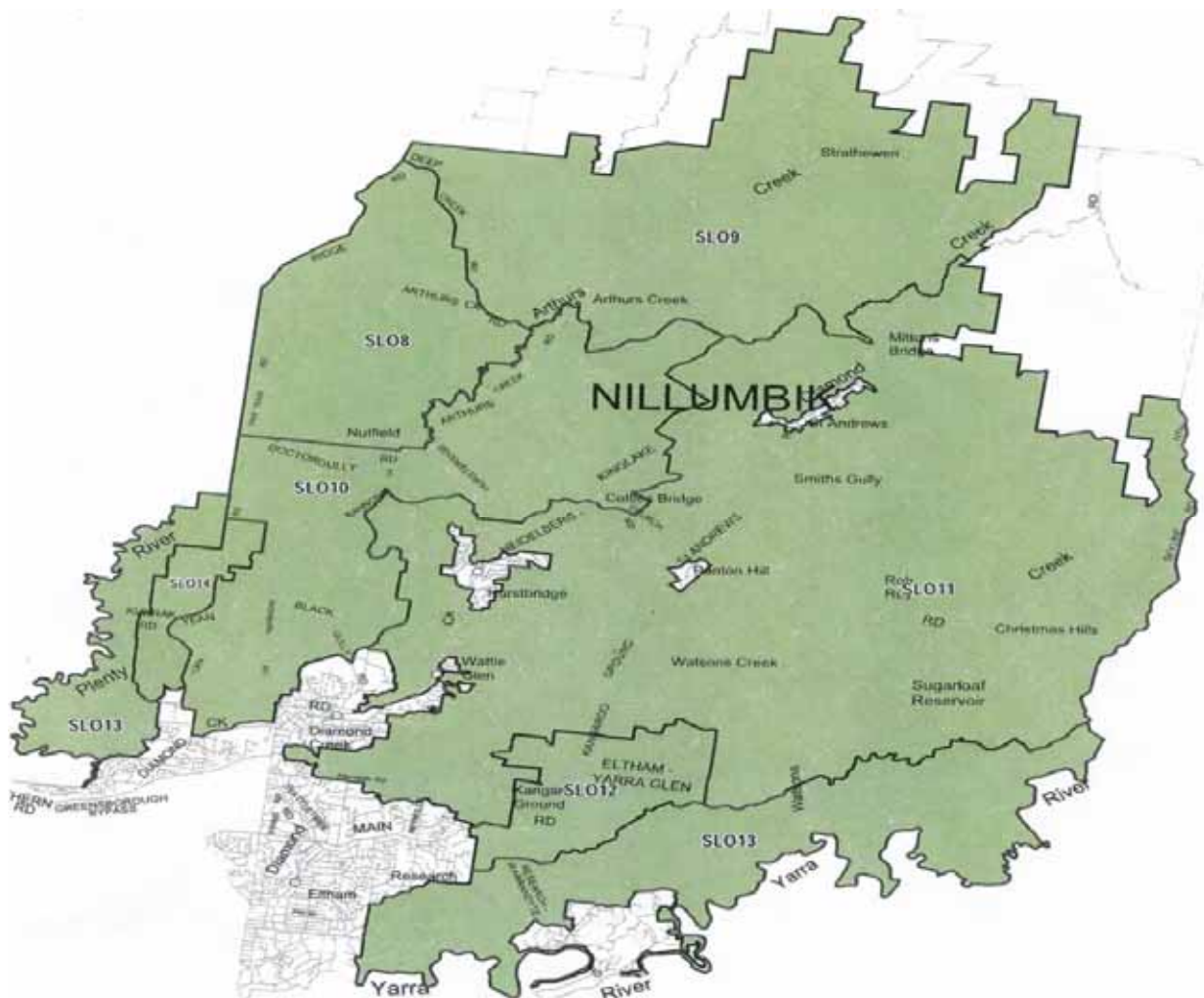


Figure 1 Proposed Significant Landscape Character Areas

(ii) Amendment Description

The Amendment seeks to apply the Significant Landscape Overlay to all land within the Shire of Nillumbik that is outside the Urban Growth Boundary, excluding Kinglake National Park as shown in Figure 1. Specifically, a total of seven new Schedules to the Significant Landscape Overlay are sought to be introduced, including:

- Significant Landscape Overlay 8 – Open Pastures Landscape Character Area
- Significant Landscape Overlay 9 – Rolling Valleys Landscape Character Area
- Significant Landscape Overlay 10 – Undulating Agricultural Character Area

- Significant Landscape Overlay 11 – Bushy Slopes Landscape Character Area
- Significant Landscape Overlay 12 – Agricultural Uplands Landscape Character Area
- Significant Landscape Overlay 13 – River Interface Landscape Character Area
- Significant Landscape Overlay 14 – Suburban Rural Landscape Character Area.

The Amendment also makes administrative changes to the Municipal Strategic Statement and seeks to correct a minor mapping error.

(iii) Purpose of the Amendment

The purpose of the Amendment is to introduce controls into the Nillumbik Planning Scheme to protect the landscape character of the Shire’s rural landscapes within the Nillumbik Green Wedge, consistent with the findings of the *Shire of Nillumbik Landscape Character Assessment, 2009* and the *Green Wedge Management Plan 2010-2025*.

1.2 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Planning Context
- Is the strategic basis for Amendment C81 sound?
- Has Amendment C81 been transformed since the exhibition of the Amendment?
- Is there a need for seven new Schedules to the Significant Landscape Overlay?
- Does Amendment C81 increase the risk of bushfire within the Nillumbik Green Wedge?
- Are the proposed Schedules to the Significant Landscape Overlays appropriate?
 - Are the statements of nature and key elements of landscape appropriate?
 - Are the landscape character objectives to be achieved appropriate?
 - Are the vegetation permit exemptions appropriate?
 - Are the permit exemptions to construct or carry out works for an alteration or extension to an existing dwelling or building used for agriculture or a new building used for agriculture appropriate?
 - Are the permit exemptions for fences appropriate?
 - Are the permit exemptions for earthworks appropriate?
 - Are the permit exemptions for public land appropriate?
 - Are the application requirements appropriate?
 - Are the decision guidelines appropriate?
- Are the ‘Design Guidelines’ appropriate?
 - Are the Design Guidelines consistent with the proposed SLO Schedules?
 - Are the Design Guidelines too prescriptive?
 - Should the Design Guidelines be amended?
 - Should the Design Guidelines be included as Reference Documents?
- Will Amendment C81 impact on the potential to rezone land or vary the Urban Growth Boundary in the future?

- Will Amendment C81 create an unreasonable administrative burden on residents and Council?
- Other Proposed Changes.

2 Planning Context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and as part of its Part A submission to the Hearing.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) Planning and Environment Act, 1987

Section 4 of the *Planning and Environment Act 1987* states the objectives for planning in Victoria:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;*
- (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;*
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;*
- (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;*
- (e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;*
- (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);and*
- (g) to balance the present and future interests of all Victorians.*

Section 12B of the Act states:

- (1) A planning authority which is a municipal council must review its planning scheme at least once in every 3 years after the commencement of section 5 of the Planning and Environment (General Amendment) Act 2004.*

Council submitted that the Amendment is consistent with the objectives of planning in Victoria and that it forms part of Council's program of ongoing review of its planning scheme. Further, Council submitted that:

the amendment ensures that significant landscapes within the Shire are protected for the benefit of current and future generations.

The Panel generally agrees.

(ii) Plan Melbourne (2014) and Plan-Melbourne Refresh (2015)

Council highlighted that in 2014 the State Government released its metropolitan planning strategy, Plan Melbourne, which is the core planning framework guiding Melbourne's development and Council's planning decisions and local strategies. Of relevance to Amendment C81, Council noted the following:

'There are many things that we can do to enhance the beauty and liveability of Melbourne's urban areas, as well as its green wedges and environmentally diverse peri-urban regions. Locking in an urban boundary is crucial. This will also secure the future use of green wedges and the peri-urban regions for agriculture and agribusiness, biodiversity, recreation and open space, tourism, heritage and landscape conservation' (Plan Melbourne p139).

Plan Melbourne is currently being reviewed via Plan-Melbourne Refresh (2015). The review retains strategies to contain urban growth and protect key values in green wedges and peri-urban areas. Council noted:

It seeks to achieve a city of 20 minute neighbourhoods, delivering a compact urban form with a fixed urban growth boundary and protecting environmental values and agricultural productivity in green wedges and the peri-urban area.

Council submitted that the Amendment supports and is consistent with Plan Melbourne and Plan-Melbourne Refresh (2015). The Panel generally agrees.

(iii) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

Clause 11.04-7 'Green Wedges' has an objective *'to protect the green wedges of Metropolitan Melbourne from inappropriate development'*.

Strategies at this clause are:

- *Ensure strategic planning and land management of each green wedge area to promote and encourage its key features and related values.*
- *Support development in the green wedge that provides for environmental, economic and social benefits.*
- *Consolidate new residential development within existing settlements and in locations where planned services are available and green wedge area values can be protected.*
- *Plan and protect major transport facilities that serve the wider Victorian community, such as airports and ports with their associated access corridors.*
- *Protecting important productive agricultural areas such as Werribee South, the Maribyrnong River flats, the Yarra Valley, Westernport and the Mornington Peninsula.*
- *Protect areas of environmental, landscape and scenic value.*
- *Protect significant resources of stone, sand and other mineral resources for extraction purposes.*

Clause 11.06-8 ‘Agricultural productivity’ has an objective ‘to support long-term agricultural productivity.’

Clause 11.06-9 ‘Cultural heritage and landscapes’ has an objective ‘to recognise the importance of cultural heritage and landscapes as economic and community assets.’ And the strategy:

- Provide clear urban boundaries and maintain distinctive breaks and open rural landscapes between settlements.

Clause 12 ‘Environmental and landscape values’ states:

‘Planning should help to protect the health of ecological systems and the biodiversity they support (including ecosystems, habitats, species and genetic diversity) and conserve areas with identified environmental and landscape values.’

Planning must implement environmental principles for ecologically sustainable development that have been established by international and national agreements. Foremost amongst the national agreements is the Intergovernmental Agreement on the Environment, which sets out key principles for environmental policy in Australia. Other agreements include the National Strategy for Ecologically Sustainable Development, National Greenhouse Strategy, the National Water Quality Management Strategy, the National Strategy for the Conservation of Australia’s Biological Diversity, the National Forest Policy Statement and National Environment Protection Measures.

Planning should protect sites and features of nature conservation, biodiversity, geological or landscape value.’

Clause 12.04-2 ‘Landscapes’ states:

Objective

To protect landscapes and significant open spaces that contribute to character, identity and sustainable environments.

Strategies

- Ensure sensitive landscape areas such as the bays and coastlines are protected and that new development does not detract from their natural quality.
- Improve the landscape qualities, open space linkages and environmental performance in green wedges and conservation areas and non-urban areas.
- Recognise the natural landscape for its aesthetic value and as a fully functioning system.
- Ensure natural key features are protected and enhanced.’

Council noted that on 21 December 2015 the SPPF was amended by Amendment VC121, which updated state policy relating to river corridors and introduces new state policy for the Yarra River.

'12.05-1 River corridors states

Objective

To protect and enhance the significant river corridors of metropolitan Melbourne.

Strategies

- *Ensure strategic planning and land management for all river corridors protects their environmental, cultural and landscape values.*
- *Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of all river corridors.*
- *Ensure new development is sensitively designed and sited to maintain and enhance environmental assets, significant views and the landscapes along all river corridors.*
- *Ensure development does not compromise bank stability, increase erosion or impact on a river's natural capacity to manage flood flow.*

Policy guidelines

Planning must consider as relevant:

- *Guidelines for Approval of Jetties 2011, Melbourne Water*
- *Healthy Waterways Strategy 2013, Melbourne Water*
- *Maribyrnong River – Vision for Recreational and Tourism Development (Melbourne Parks and Waterways, 1996)*
- *Maribyrnong River Valley Design Guidelines 2010, Department of Planning and Community Development*

12.05-2 Yarra River protection

Objective

Maintain and enhance the natural landscape character of the Yarra River corridor in which the topography, waterway, banks and tree canopy are dominant features providing a highly valued, secluded, natural environment for the enjoyment of the public.

Strategies

- *Strengthen the river's natural environment, heritage and overall health by:*
 - *Protecting the river's riparian vegetation, natural riverbank topography and flood management capacity.*
 - *Ensuring development does not increase the rate or quantity of stormwater, sediment or other pollutants entering the river.*
 - *Protecting and enhancing both terrestrial and aquatic habitats and their linkages along the river corridor.*
- *Maintain a sense of place and landscape identity.*

Council submitted that the Amendment supports and is consistent with the above aspects of State Planning Policy. The Panel generally agrees. Further discussion is included in chapter 3 of this report.

(iv) Local Planning Policy Framework

Council submitted that the key provisions of the Municipal Strategic Statement are:

- Clause 21.05-2 'Rural Land Use' which has an objective '*to protect and enhance rural landscape character*'; and
- Clause 21.05-3 'Environment, Conservation and Landscape' which has an objective '*To protect and enhance streetscapes and landscapes in the Shire.*

Other clauses of the MSS which Council highlighted as being applicable to the Amendment were detailed in paragraphs 90 – 100 of its Part A submission to the Panel under the following headings:

- Clause 21.02 – Municipal Overview & Regional Context
- Clause 21.03 – Municipal Profile & Key Influences
- Clause 21.03-3 – Environment, Conservation & Landscape
- Clause 21.04 – Vision - Strategic Framework
- Clause 21.05-1 – Settlement and Housing
- Clause 21.05-2 – Rural Land Use
- Clause 21.05-3 – Environment, Conservation, Landscape.

The Panel notes that Clause 21.03 states:

The protection of significant landscapes and vistas in the rural areas will be identified as an outcome from the Green Wedge Management Plan.

There is an existing local policy at Clause 22.04 of the Nillumbik Planning Scheme which guides the siting and design of buildings in non-urban areas. The policy applies to the Green Wedge Zone, Rural Conservation Zone, Lot 8 in PS415064K in the Special Use Zone - Schedule 1 and the Low Density Residential Zone in North Warrandyte. Council advised that:

The applicability of this policy is broader than the areas affected by Amendment C81 and also addresses matters other than building siting and design.

Clause 22.04 includes reference to the 'Nillumbik Siting and Design Guidelines – Environmentally Sensitive Areas', which themselves are based on earlier work undertaken by the former Shire of Eltham, which first prepared similar guidelines in the 1980s.

The relevant objectives and policies which relate to the siting and design of buildings have been drawn up into the C81 Significant Landscape Overlays.

Nillumbik Shire Council is in the process of comprehensively reviewing its Local Planning Policy Framework and the local policy at Clause 22.04 forms part of this review.

Council concluded that the Amendment supports and is consistent with the Municipal Strategic Statement. The Panel generally agrees. Further discussion is included in chapter 3 of this report.

(v) Other planning strategies or policies used in formulating the Amendment

Nillumbik Shire Council Green Wedge Management Plan

The Amendment implements parts of the Green Wedge Management Plan. The *Green Wedge Management Plan 2010-2025*, identified that the aesthetic qualities of the rural landscapes were a defining feature of the Green Wedge area and valued by the local community. Chapter 3 of this report discusses the Green-Wedge Management Plan.

Nillumbik Shire Council Landscape Character Assessment 2009 and Nillumbik Landscape Character Assessment Update 2015

The *Nillumbik Landscape Character Assessment 2009*, identified the landscape character of seven areas and the *Nillumbik Landscape Character Assessment Update 2015* reviewed bushfire affected areas. The Amendment seeks to implement the recommendations of these assessments. Chapter 3 of this report discusses the Landscape Character Assessments.

2.2 Planning scheme provisions

(i) Zones

The majority of the Nillumbik Green Wedge is located within the Rural Conservation Zone.

Farming areas in the north west are within the Green Wedge Zone.

The suburban rural areas generally between Yan Yean Road and the Plenty River are within the Low Density Residential Zone.

(ii) Overlays

Approximately half of the land within the Green Wedge is affected by the Environmental Significance Overlay. Council advised that it had recently undertaken a review of the Environmental Significance Overlay, and has prepared Amendment C101 in response, which seeks to apply four new schedules:

- ESO1: Core Habitat
- ESO2: Buffer Habitat
- ESO3: Urban Habitat
- ESO4: Waterways.

Sixty six percent of the Green Wedge is within the Bushfire Management Overlay.

2.3 Ministerial Directions and Practice Notes

(i) Ministerial Directions

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

PPN9 - Metropolitan Strategy

PPN11 - Strategic Assessment Guidelines

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment Guidelines)

The Form and Content of Planning Schemes (s7(5))

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

2.4 Discussion

Based on the submissions made by Council, the Panel concludes that the Amendment is generally supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

The following chapter of this report considers the strategic basis of the Amendment in more detail including submissions received on this issue.

3 Is the strategic basis for Amendment C81 sound?

3.1 The issue

A number of submitters argued that Amendment C81 does not have a sound strategic basis.

3.2 Evidence and submissions

As outlined in chapter 2 Council submitted that Amendment C81 has been prepared following extensive strategic planning for the Nillumbik Green Wedge. It provided material to the Panel regarding the history of the Green Wedges and the existing planning requirements under:

- the *Planning and Environment Act 1987*;
- Plan Melbourne (2014);
- Plan Melbourne Refresh (2015);
- State and Local Planning Policy Framework.

Council submitted that Green Wedges have been a long-standing policy in the planning of Victoria and metropolitan Melbourne. They contain a mix of agriculture and low-density activities, including major infrastructure that supports urban areas. They also contribute significantly to the landscape character and the open space network; providing opportunities for tourism and recreation.

In its Part A submission, Council stated:

“In recognition of the substantial variation in the land and conditions of each green wedge, the State government required Councils to prepare Green Wedge Management Plans. The purpose of a Green Wedge Management Plan is to identify a vision, objectives and actions for the sustainable use and development of each green wedge. A Green Wedge Management Plan identifies the values and features of each green wedge, the preferred future land use, environmental and natural resources that should be protected, based on the needs of the local community. The Plans also articulate the type, scale and form of change in the green wedge and how those changes will be managed and facilitated” (paragraph 49).

Following three years of preparation and consultation, Council adopted the Nillumbik Green Wedge Management Plan in 2010.

Council’s Green Wedge Management Plan includes the high priority actions: ‘EN8 Identify, document and protect the character of the diverse landscapes of the green wedge’ and ‘EN8.1 Complete an assessment of the Green Wedge Landscape Character and implement planning controls and other recommendations arising from this study’.

In September 2008, Council commissioned Planisphere to complete a landscape character study of the Nillumbik Green Wedge. Fieldwork to survey and characterise the Green Wedge landscapes was completed in January 2009.

Council submitted in its Part A submission that:

“The Shire of Nillumbik Landscape Character Assessment, (December 2009) provides guidance in relation to the siting and design of new development within designated areas to compliment the preferred character and visual amenity, helping to ensure the Green Wedge is not diminished by new development.

It also provides recommendations for planning provisions to protect identified landscape values, by distinguishing between the different characteristics of particular rural areas, in order to apply tailored controls rather than a ‘one size fits all’ provision across the whole area.

The Shire of Nillumbik Landscape Character Assessment recommends changes to the Nillumbik Planning Scheme to implement the recommendations within the report“ (paragraphs 71-73).

In January 2015 Council commissioned Planisphere to review the 2009 Landscape Character Assessment to assess the outcomes of the Black Saturday bushfires as related to landscape character.

Council also noted that the current Nillumbik Planning Scheme contains a Local Policy (Clause 22.04) that deals with the ‘Siting and design of buildings and works in non-urban areas’. This policy applies to the Green Wedge Zone, Rural Conservation Zone, Lot 8 in PS415064K in the Special Use Zone - Schedule 1 and the Low Density Residential Zone in North Warrandyte. Council stated that the relevant objectives and policies that relate to the siting and design of buildings are consistent with the proposed C81 Significant Landscape Overlays.

Council submitted that while there are controls in place to protect the environmental values of the Nillumbik Green Wedge, there are no effective planning controls in place to protect the character of the rural landscapes. In its Part B submission, Council summarised the shortcomings of the current existing landscape protection in the Green Wedge as follows:

- *“Many of the planning provisions, and the associated reference documents, are up to 25 years old and in need of review.*
- *There is no consistent approach to the use of the VPP provisions across the Nillumbik Green Wedge area.*
- *Nor is there any consistency in the structure, format or criteria used to assess and protect landscape character in the different areas.*
- *Until the most recent investigation by Planisphere, there has never been a comprehensive assessment of the landscape character of the Nillumbik Green Wedge area. Nor does the existing system of provision have any reference to a consistent methodology for identifying significant landscapes.*
- *Consequently, the existing provisions don’t identify the key elements of the landscape which require protection, nor the key threats to the character.*
- *Nor does the existing framework distinguish between different landscapes in the Green Wedge, such as the difference between open paddocks and bushland areas.*

- *Without distinguishing between landscapes, the resulting framework – particularly the application of the Clause 22.04 policy – results in a ‘one-size-fits-all’ approach to design guidance, which doesn’t adequately respond to the threats in each character area.*
- *Permit triggers are inconsistently applied, relying on a variety of other provisions (various zones and overlays) to trigger the need for assessment. The permit requirements thus do not always respond to the identified threats and key elements of the landscape.*
- *The inconsistent approach to permit triggers prevents the Planning authority being able to develop a considered approach to exemptions from the need for a permit to a) avoid unnecessary permit applications and b) provide an incentive (by avoiding the need for a permit) to encourage compliance with the desired landscape outcome.*
- *The existing provisions do not articulate any sense of ‘preferred future character’ in line with current industry practice for the assessment of built form and character issues.*
- *The lack of a preferred ‘future character statement’ prevents a truly effective ‘performance based assessment’ process for planning applications, as it there is not presently a clear articulation of preferred outcome.*
- *The existing reference documents are not necessarily easy to interpret or use to the general ‘lay’ member of the public. Nor is there any consistency between the existing reference documents.*
- *It is not clear to prospective purchasers (via the Section 32 certificate and planning certificate) that the property is within a significant landscape, and any future development would need carefully considered. (paragraph 17)*

Council also advised the Panel in its Part B submission that:

“It should be noted that in line with the actions identified within the 2010 (Nillumbik) Planning Scheme Review, Council is currently in the process of fundamentally restructuring its Local Planning Policy Framework, in line with the best practice examples and principles articulated in ‘Making Local Policy Stronger’ and the ‘Pilot Restructure of the Local Planning Policy Framework’. If Amendment C81 is approved, then it is imagined that the existing Clause 22.04 ‘Siting and design policy for buildings and works in non-urban areas’ could be deleted, with greater reliance on the MSS and schedules to the SLOs” (paragraph 29).

Mr Glossop gave evidence that:

“It is my opinion that the Amendment is strategically justified and should be supported. The Significant Landscape Overlay provides an appropriate mechanism to protect the landscape character of the Nillumbik Green Wedge, which is significant in a metropolitan-regional context. The Amendment makes appropriate use of the Victoria Planning Provisions and the controls

have been effectively drafted to implement the Shire of Nillumbik Landscape Character Assessment (2009) and the Nillumbik Green Wedge Management Plan 2010-2025" (paragraph 8).

Approximately a quarter of submitters supported Amendment C81. Some commented that it aligned with Council's Green Wedge Management Plan. Submission 140 supported the Amendment and thought that it had "solid support from both the State Planning Policy Framework and the MSS of the Planning Scheme."

Submission 3 thought that Council was correct in applying a SLO to the Nillumbik Green Wedge but they submitted that the Council had the detail of the implementation wrong.

Submission 151 did not believe there was sufficient strategic justification for the Amendment. "C81 is regulation that seeks to restrict opportunity rather than encourage compliance and we have not been presented with a case that supports the inadequacy of current regulations" (Document 25).

Submission 97 said that the "reality is that the Amendment does apply a one size fits all policy approach in that it introduces a Significant Landscape Overlays over the whole of the Green Wedge in the municipality." He believed that this was too 'broad brush' and did not reflect the different qualities of the Green Wedge. He was particularly concerned with the application of SLO11 in close proximity to the urban areas of Wattle Glen and noted that Wattle Glen was not referred to in the character statement for SLO11.

Submissions 10 and 134 said that there were already adequate planning controls in place and that Amendment C81 proposed additional and unnecessary requirements for land owners that created extra costs for little or no improvement in outcomes.

Submission 86 said that the soils, rainfall and other conditions in the Green Wedge were such that the planning scheme should not support agricultural pursuits, as it is not sustainable or appropriate in the area. The submission questioned whether the Nillumbik Green Wedge landscape was deserving of protection in the context of other competing objectives. He thought that high quality environmental areas should be preserved for biodiversity purposes and other areas should be available for urban development utilising existing available infrastructure such as the Hurstbridge railway line. He thought that Amendment C81 would create further obstacles to the implementation of this vision and would have a negative impact on housing affordability.

Submissions 176, 177, 178, 179 and 180 objected to the Landscape Character Assessment report. They expressed strong views that the report was flawed and that it should not be given any statutory weight. They objected to Council adopting the findings of the study and the character analysis papers.

3.3 Discussion

The Panel notes that Section 4 of the *Planning and Environment Act 1987* lists the objectives for planning in Victoria. They include:

(a).....

(b).....

(c).....

- (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historic interest, or otherwise of special cultural value;*
- (e)...*
- (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e); and;*
- (g) to balance the present and future interests of all Victorians.*

The State Planning Policy Framework provides guidance with respect to a range of matters regarding the Green Wedges of Melbourne and other landscape policies. Some relevant clauses are highlighted below.

Clause 11.04-7 'Green Wedges' has an objective 'to protect the green wedges of Metropolitan Melbourne from inappropriate development'. Strategies at this clause are:

- *Ensure strategic planning and land management of each green wedge area to promote and encourage its key features and related values.*
- *Support development in the green wedge that provides for environmental, economic and social benefits.*
- *Consolidate new residential development within existing settlements and in locations where planned services are available and green wedge area values can be protected.*
- *Plan and protect major transport facilities that serve the wider Victorian community, such as airports and ports with their associated access corridors.*
- *Protecting important productive agricultural areas such as Werribee South, the Maribyrnong River flats, the Yarra Valley, Westernport and the Mornington Peninsula.*
- *Protect areas of environmental, landscape and scenic value.*
- *Protect significant resources of stone, sand and other mineral resources for extraction purposes.*

Clause 12.04-2 'Landscapes' has an objective to "protect landscapes and significant open spaces that contribute to character, identity and sustainable environments". Strategies at this clause are:

- *Ensure sensitive landscape areas such as the bays and coastlines are protected and that new development does not detract from their natural quality.*
- *Improve the landscape qualities, open space linkages and environmental performance in green wedges and conservation areas and non-urban areas.*
- *Recognise the natural landscape for its aesthetic value and as a fully functioning system.*
- *Ensure natural key features are protected and enhanced."*

It is clear that the *Planning and Environment Act 1987* and the SPPF provide encouragement for the protection of significant landscapes. In this sense, Amendment C81 is consistent with the implementation of State planning policy.

In addition, the Nillumbik Green Wedge Management Plan recommends the identification, documentation and protection of the diverse landscapes within the Nillumbik Green Wedge. To do this, Council has completed a detailed Landscape Character Assessment in accordance with the actions identified in the Green Wedge Management Plan.

The Landscape Character Assessment made recommendations regarding the implementation of new planning controls and Amendment C81 is broadly consistent with these recommendations.

The Panel agrees that it is good planning for Council to pursue Significant Landscape Overlays as an effective way of introducing targeted planning controls for these areas. Whilst the existing planning policy at Clause 22.04 provides some general guidance, the Panel agrees with Council that the Significant Landscape Overlays provide opportunities for a more nuanced approach.

The Panel also notes that many of the policies or principles expressed in Clause 22.04 have been transferred to the provisions in the proposed Schedules. In this respect, some of the controls in the Schedules are not 'new'; rather, they have been transferred from Clause 22.04 into an overlay with better context.

It is accepted that in this instance the use of zones, overlays and schedules are more effective than local policies to control the use and development of land in the Green Wedge.

The Panel also agrees with the Council's position that should Amendment C81 be approved then it should review the need for Clause 22.04. The Panel understands that Council is in the process of reviewing its overall MSS and it would seem logical to complete the review of Clause 22.04 as part of that process.

The Panel agrees with Council and Mr Glossop that the Amendment is soundly based on well researched strategic planning. Council has completed an extensive and very thorough planning process leading to the preparation of Amendment C81. Each step in the process is the result of the implementation of recommendations made in previous strategic planning studies and reports.

The Panel commends the Council for a generally sequential and logical planning framework that has led to the preparation of Amendment C81.

3.4 Conclusions

As an overarching finding, the Panel concludes that the protection of the Green Wedge landscape via the preparation of Significant Landscape Overlay controls in the Nillumbik Planning Scheme has a sound strategic basis. Amendment C81 represents the implementation of a range of recommendations arising from various strategic planning documents over a long period of time.

4 Has Amendment C81 been transformed since the exhibition of the Amendment?

4.1 The issue

Following the exhibition of Amendment C81 and in response to submissions received, the Council varied a number of the provisions in the proposed Significant Landscape Overlay Schedules. The issue is whether or not these changes to the Schedules have transformed Amendment C81 to such an extent that it is a different Amendment to that which was originally exhibited. If the Amendment has been transformed then should it be abandoned or re-exhibited?

4.2 Evidence and submissions

The Council advised the Panel that at its 'Policy and Services Committee' meeting on 13 August 2015, the Committee resolved to:

- i. Receive and note the issues raised by submitters.*
- ii. ...*
- iii. Request that Council's Agricultural Advisory Committee review those parts of the amendment relating to agricultural structures, to ensure the amendment does not unreasonably constrain productive agricultural activities.*
- iv. Request that the Minister for Planning appoint a Planning Panel to hear submissions relating to Amendment C81.*
- v. Provide a submission to the Panel which supports the Amendment as exhibited, but explores variations to the Amendment documentation to achieve the following outcomes:*
 - That the Character Statements are inclusive of atypical properties and the transition to urban areas.*
 - Refinements to the mapping of the SLO boundaries.*
 - Develop a more effective way to protect significant views and vistas.*
 - Revision to the Lighting section of the design guidelines to make them consistent with exemptions elsewhere within the planning scheme, and provide guidance on reasonable levels of external lighting.*
 - Revision of the seven SLO schedules to ensure they more effectively respond to the identified statements of landscape significance.*
 - Where concerns have been raised about specific images, these images will be replaced by examples from outside Nillumbik.*
 - Review of the fencing permit triggers to ensure that they do not unnecessarily require a planning permit for typical agricultural fencing.*

- *Review the SLOs to strengthen support for agricultural land uses in the agricultural areas of the Green Wedge.*
 - *To ensure consistency with the CFA Guidelines for Meeting Victoria's Bushfire Planning Requirements, and other suggestions from the CFA.*
- vi. *Receive a further report on the final wording of the amendment documentation, following the consideration of the Panel and the issuing of its recommendations' (Part A submission, paragraph 5).*

The Council presented a set of revised Schedules to the Panel to reflect these resolutions of the Policy and Services Committee.

Council submitted that the changes to the Schedules are minor in nature and do not materially alter the purpose or effect of the Amendment.

Mr Glossop gave evidence that he was involved in assisting the Council draft the variations to the Schedules. This was in response to submissions raised during the exhibition process, the resolution of Council on 13 August 2015 and his own review of the drafting to try and make points clearer and avoid repetition.

In response to questioning from the Panel, Mr Glossop stated that he thought the changes to the Schedules were relatively minor and they did not represent a transformation of the Amendment.

Many submitters were confused and frustrated by the changes proposed by Council. They felt that the variations represented substantial changes to the provisions and that the community did not have a reasonable chance to comment on them. A sample of some of these comments is presented below.

Submitter 43 said the Amendment had so many changes that they thought it ought to be abandoned. He listed the numerous changes to the various sections of each of the schedules and believed that the amendments were so significant that they changed the meaning of the provisions.

Submission 151 said that the replacement of words such as 'managing' with 'avoiding' sends a clear message about what is likely.

Submitter 8 supported the exhibited Amendment C81 and was concerned that some of the changes post exhibition may not be 'genuinely needed' and that they might be "a political sop to the noisy outliers". He wanted the Panel to check the need for the proposed changes to the wording of the schedules.

Submitter 134 believed the changes to the Amendment represented a transformation by significantly changing the details of the Schedule and requested the Panel either require the re-exhibition of the Amendment or its abandonment.

4.3 Discussion

The Panel has reviewed the type and extent of changes to each of the proposed Schedules to the Significant Landscape Overlays. Council has presented these changes to the Panel based on expert advice from Mr Glossop.

The Council circulated the proposed changes to the Schedules with its Part A submission in advance of the commencement of the Panel Hearing. This was provided to parties as a 'tracked changes' version as well as a 'clean' version. All parties to the Hearing were able to access the proposed changes to the Schedules throughout the Hearing.

In the Panel's view, these changes have been relatively minor and are consistent with similar variations commonly presented at Panel Hearings by a Planning Authority.

Amendment C81 still proposes to utilise the Significant Landscape Overlay control and each of the proposed Schedules are broadly structured in a similar way. Additional wording has been added or amended in numerous places, however, the net result is to still fundamentally implement the same desired outcome.

It does not appear to the Panel that the Council has materially changed direction or re-worked the Amendment to such an extent that it could reasonably be considered to be a different Amendment to that which was exhibited. Planning Authorities (and Panels) regularly refine the wording of schedules and planning policies as a result of the Panel process. This is part of a legitimate process to fine tune documents to ensure that they reflect best practice as well as the views of the community, as appropriate.

The Panel accepts that the changes proposed by the Council are minor and are intended to clarify the intent of the Amendment. Whilst the redrafted Schedules refine the detail of the Schedules, the purpose of the exhibited amendment has not changed.

4.4 Conclusions

The Panel concludes that Amendment C81 has not been transformed following the exhibition of the Amendment.

5 Is there a need for seven new Schedules to the Significant Landscape Overlay?

5.1 The issue

The Landscape Character Assessment report divides the Nillumbik Green Wedge into seven different landscape character areas. There are two key issues. First, are there seven landscape character areas that are sufficiently distinctive to warrant their own designation? Second, is there a need for seven new Schedules to the Significant Landscape Overlay?

5.2 Evidence and submissions

Ms Knight of Planisphere outlined on behalf of Council the background, context and process behind the preparation of the Landscape Character Assessment (2009). This was described in detail in her Part A submission. Ms Knight informed the Panel that Planisphere has been involved in many landscape character assessments throughout Victoria and this experience was used in the project methodology and analysis of data.

Ms Knight defined 'landscape character' as *"the interplay of geology, topography, vegetation, water bodies and other natural features, combined with the effects of land use and built development, which makes one landscape different from another"* (Part A submission, page 7).

The Landscape Character types and areas were delineated through various methods, including:

- *"Review of the IBRA (Interim Biogeographic Regionalisation for Australia) classification of the landscape to identify preliminary Character Types.*
- *Desktop analysis of GIS data to assess the physical and visual elements of the landscape, such as topography, land use, water form, vegetation cover and patterns of built form, to identify preliminary Character Areas.*
- *Site survey and collation of photographic library to confirm Character Types and Areas 'on the ground'*
- *Refinement of the proposed Character Type and Character Area boundaries and descriptions as required through review and feedback from Project Working Group and community"* (Part A submission, page 7).

The Landscape Character Assessment report notes that:

"While factors such as density of settlement, land use and topography do vary across the Shire, when taken as a whole the overall landscape generally presents as a single entity with common characteristics and associated threats. This view is further supported by the IBRA classification of the Highlands – Southern Fall (SEH1) subregion, which covers the entire Shire of Nillumbik and beyond" (page 11).

Ms Knight said the key elements of the Highlands - Southern Fall landscape character as they relate to the Nillumbik Green Wedge are:

- *“Undulating topography with moderate to steep slopes and flat areas along the valleys.*
- *Large areas of forested public land which have a high scenic value and recreational value.*
- *Agricultural activity in settled areas, with patches of native vegetation on farmland or roadsides.*
- *Threats to the underlying landscape from clearing, weed proliferation and bushfire” (Part A submission, pages 7-8).*

Within the Highlands – Southern Fall character area, Planisphere identified seven ‘sub-areas’ or ‘Landscape Character Areas’. These were called:

- Character Area 1: Open Pastures
- Character Area 2: Rolling Valleys
- Character Area 3: Undulating Agricultural
- Character Area 4: Bushy Slopes
- Character Area 5: Agricultural Uplands
- Character Area 6: River Interface
- Character Area 7: Suburban Rural.

The Landscape Character Assessment commenced by Planisphere in 2008 did not proceed through the consultation phases originally envisioned due to the February 2009 Black Saturday bushfires. This was outlined by Council and in Ms Knight’s Part A submission to the Panel. Due to the deferral of consultation, Planisphere instead drew upon the community values that were documented through consultation carried out for other related studies, which included:

- Green Wedge Management Plan (2010)
- Environmental Strategy consultation (2000)
- Recreation Trails Strategy (2007)
- Open Space Strategy (2005)
- Nillumbik 2020
- Roadside Management Plan (1997)
- Hurstbridge Township citation report (2008)
- Diamond Creek Activity Centre Structure Plan (2006)
- Plenty Low Density Development Plan (2001).

The Landscape Character Assessment report was, therefore, first released for public comment concurrent with the exhibition of Amendment C81. The report is proposed to be included as a reference document within various parts of the Nillumbik Planning Scheme.

In January 2015, Council engaged Planisphere to complete a review of the bushfire affected areas within the 2009 Assessment study area. These areas included a large part of Character Area 2: Rolling Valleys and parts of Character Area 4: Bushy Slopes. Ms Knight advised the Panel the review found that the description of the landscape of these Character Areas and the objectives and directions for their future management in the 2009 Assessment remain essentially unchanged.

Ms Knight explained the rationale for the Landscape Character Areas and noted that the SLO boundaries generally follow the boundaries of each of the Landscape Character Areas. She explained that there were several slight differences between the mapping due to minor errors and anomalies within the Landscape Character Area assessment report that have been corrected in the mapping of the SLO boundaries.

Ms Knight submitted in her Part A statement that:

“The Character areas are broad in their nature and represent a generalisation of the overarching character elements of the landscape across large areas of the municipality. As a result, some properties will display variations to the landscape elements as described in the Existing Character Statement for each area.

Identification of large, broad areas is a means by which the landscape of the Green Wedge areas can be easily understood and managed; a more fine-grained analysis which takes into account site by site variations would result in numerous, small character areas which would be difficult to manage” (Page 17).

The Council submitted that following advice from Planisphere and Glossop Town Planning, it:

“has chosen a separate Significant Landscape Overlay for each character area because the ‘nature and key elements of the landscape’, the ‘future character’, the ‘landscape character objectives’ and some ‘decision guidelines’ are different for each of the seven areas. It is considered that this results in the most transparent and user-friendly planning scheme content.

Whilst some objectives are common to a number of the proposed Significant Landscape Overlays, others are specific and unique to a particular area. The ‘landscape character objectives’ for each area have been drawn from Planisphere’s assessment of the attributes of each landscape and the threats to its character” (Part B, paragraph 90).

The Council submitted that the Yarra River’s character and environment changes along its course with varying degrees of development, access, land use and management in each location. Currently different planning policies and controls are applied by each municipality along the river’s length reflecting a range of approaches to its management.

In March 2013 the Minister for Planning announced a State Government funded study of the Middle Yarra River corridor from Ivanhoe to Warrandyte. Planisphere was commissioned to complete the study.

The project was managed by the Department of Transport, Planning and Local Infrastructure in partnership with the three councils within the study area: Nillumbik Shire Council, Banyule City Council, and Manningham City Council which form the Project Reference Group. In 2015 the project was broadened to include the entire Yarra River corridor.

The Department of Environment, Land, Water and Planning (DELWP) has initiated a program to implement reformed planning controls for the Yarra River. This includes a revised State Planning policy relating to the entire Yarra River corridor and updated overlay controls to

manage development along the river between Punt Road, Richmond and Warrandyte including the municipalities of Yarra, Stonnington, Boroondara, Banyule, Manningham and Nillumbik.

Council submitted that:

“For Nillumbik, the planning controls recommended include a Design and Development Overlay and Significant Landscape Overlay. Details of these are to be determined and consultation will take place at Phase 3 of the project” (Part A, paragraph 149).

Council advised the Panel that the outcomes of the planning study have not been released for public comment or review. A regional planning scheme amendment was expected to be prepared around the middle of 2016.

The Council stated that the Victorian Government has recently given statutory effect to this project and the protection of the landscape qualities of Melbourne’s significant waterways through amendment VC121, which introduced new provisions to the SPPF on 21 December 2015.

Council believed it had successfully:

“anticipated the strategic directions of the Victorian Government by identifying the specific character attributes of river-side landscapes, including the Yarra River, and developing SLO provisions which seek to preserve the regionally significant aesthetic values of these sensitive areas.

Nillumbik Amendment C81 directly gives effect to SPPF Clauses 12.05-1 ‘River corridors’ and 12.05-2 ‘Yarra River protection’, in proposing to apply SLO13 to the viewsheds of the Plenty and Yarra Rivers” (Part A, paragraphs 152-153).

A number of submitters have made comments that the character descriptions within the proposed controls are not reflective of the character of their property. Others make suggestions regarding refinement of the boundaries between Significant Landscape Overlay areas.

The Bushy Slopes Character Area (SLO11) attracted the most comment from submitters. For example, submitters 3, 9, 11, 66, 69, 70, 145, 149, 152, 153 and 168 all thought that the description of character and attributes of the area was not relevant to their properties or they believed that their property was not significant.

Other submitters made similar comments regarding the:

- Undulating Agricultural Character Area (SLO10) – for example, submitters 29,33 and 34;
- Agricultural Uplands Character Area (SLO12) – for example, submitter 7;
- River Interface Character Area (SLO13) – for example submitters 37, 121 and 123.

Ms Knight of Planisphere advised the Panel in her Part B submission that she had reviewed submissions that questioned the character areas. Whilst she acknowledged that the descriptions of some of the Character Areas could have minor modifications (refer chapter 7 of the Panel report), she believed that the broad description of the character areas remain valid.

Submitter 153 said they thought the Amendment did not reflect the diverse landscape qualities of the Green Wedge in sufficient detail and noted that much of the content of each of the schedules was very similar. They questioned Council's submission that the proposed Amendment was a progression from the current one size fits all approach of Clause 22.04.

Submission 97 did not believe that the SLO areas were properly configured and thought the land around Wattle Glen was not appropriately classified within SLO11.

Submitter 150 rejected the Landscape Character Areas on the basis that divides the community and they imply that only certain types of activities are allowed in these areas.

Submitter 35 raised a number of concerns regarding the appropriateness of the Suburban Rural Character Area (SLO14). He noted that much of the content of the SLO14 Schedule related to rural issues whereas the area was really within a Low Density Residential Zone. He thought there were already sufficient planning controls in place through the existing zoning and an existing Development Plan Overlay and a Design and Development Plan Overlay.

The Green Wedge Protection Group (GWPG) was not an original submitter to Amendment C81, however, it made a submission at the panel Hearing. It stated that:

"The GWPG is supportive of the objectives of the SLO and especially the development into 7 Character Areas – the boundaries of each are appropriate based on landscape features and environmental aspects/land values. The assessment of threats to these areas is balanced and realistic and the objectives of each of the Character Areas reflects the purpose of the Land Use Zones" (Document 26, page 3).

5.3 Discussion

The Panel accepts the general principle that there are seven broad Character Areas as explained in the Landscape Character Assessment prepared by Planisphere (2009). It has reviewed the Landscape Character Assessment report and observed the changes in landscape character during its accompanied and unaccompanied site inspections.

The Panel agrees with the general methodology and approach adopted by Planisphere and believes the definition of seven distinct landscape character areas is a reasonable and sound outcome. That is not to say that this is the only outcome that could be concluded. It is possible to juggle character areas, boundaries and characteristics in a variety of ways to arrive at different outcomes. The Panel notes, however, that the seven character areas presented by Planisphere appear to be based on a well-founded logic and according to the data it researched.

The Panel also notes that there will always be anomalies and discrepancies within any specific landscape character area and boundaries to character areas can always be difficult to determine. On balance, however, the Panel agrees with the boundaries proposed in the various Landscape Character Areas and their translation (as modified) into Significant Landscape Overlays.

Although the Panel agrees that it is reasonable to conclude that there are seven distinct Landscape Character Areas, the Panel has some concerns regarding the implementation of

seven Significant Landscape Overlays at this time. These concerns relate to two specific Significant Landscape Overlays – SLO13 (River Interface) and SLO14 (Suburban Rural). Both of these are discussed below.

Schedule 13 to the Significant Landscape Overlay deals with the River Interface Landscape Character Area. It relates to the interface with the Plenty River in the west and the Yarra River in the south. The Panel is somewhat concerned that the large area of SLO13 proposed along the Yarra River could be premature pending the outcome of the broader State government review of planning controls along the river.

The broader strategic planning for the Yarra River corridor crosses multiple municipalities. It is possible that these controls could also include a Significant Landscape Overlay or other overlay control to manage the visual impact of buildings and works along the whole Yarra River corridor. The Panel believes it makes sense that any planning controls along the Yarra River are, as much as possible, consistent across the various relevant municipalities. This will ensure a common and consistent approach to the assessment of permit applications along the river corridor.

The Panel is concerned that the ‘tail does not wag the dog’ regarding the preparation of appropriate planning controls for the Yarra River corridor. If SLO13 proceeds and the broader Yarra River study ultimately recommends a different approach or a different set of provisions for a Significant Landscape Overlay it has the potential to create multiple overlays or other controls that may cause confusion or duplication.

The Council believes it has successfully “*anticipated the strategic directions of the Victorian Government*” through the proposed introduction of SLO13. This may well prove to be the case, however the Panel is loath to second guess the outcomes of the State government Yarra River study. A variety of outcomes from that study are possible and Amendment C81 may or may not end up consistent with the final planning controls for the broader Yarra River corridor.

On the other hand, the Panel is also cognisant of the need to deal with the known rather than the unknown. It can only deal with the Amendment as Council has presented it. It is possible that to leave out SLO13 at this time may result in a policy vacuum for this part of the Nillumbik Green Wedge and this would be a most unfortunate outcome.

Therefore on balance, the Panel agrees with the introduction of SLO13 despite the ongoing work by the State government regarding the Yarra River corridor. Careful monitoring of the planning controls for the Yarra River corridor should ensure that there is no duplication or confusion caused as result of SLO13. It is possible that should other planning controls for the Yarra River corridor eventually be proposed then SLO13 (insofar as it affects the Yarra River) could be deleted.

The Panels views on SLO13 should in no way impact the progress or direction of the broader Yarra River corridor planning controls. It makes these comments without any prejudice to the outcomes of that study or the type of controls that it may recommend. The Panel only wants to avoid SLO13 creating the potential for repetition, overlap and confusion through the introduction of local planning controls in Amendment C81 that may be different or similar to more regional based statutory planning controls.

The second issue relates to Schedule 14 to the Significant Landscape Overlay, which deals with the Suburban Rural Landscape Character Area.

The Panel is concerned about a number of matters regarding SLO14 and agrees with many of the issues raised by Submitter 35. The land affected by SLO14 is within a Low Density Residential Zone. The land north of Kurrak Road is also within a Design and Development Overlay – Schedule 2. The land south of Kurrak Road is within a Development Plan Overlay – Schedule 4. Council has approved a Development Plan for this area in accordance with the requirements of the Development Plan Overlay.

Both of these overlays call up various siting and design requirements to minimise the impact of buildings and works on the landscape. This includes reference to the Plenty Valley Environmental Living Area Siting and Design Guidelines, June 1991, which includes extensive coverage of landscaping, site access, house siting, fire hazard, house design and building colours and materials.

The approved Development Plan south of Kurrak Road also includes sections dealing with siting and design guidelines dealing with building envelopes, setbacks, site coverage, fencing, building materials and colours and so on. Many of these controls are referred to in the Development Plan as mandatory and are required to be included as part of agreements made under Section 173 of the *Planning and Environment Act 1987*.

The Council advised the Panel that approval of Amendment C81 would enable a review of DDO2 and DPO4 “to eliminate duplication of siting and design guidance” (Part B, paragraph 30). In its right of reply, the Council said that development within the DPO4 area was approximately 50 per cent complete and that once the Development Plan area had been fully developed then DPO4 would become redundant.

The Panel is concerned that SLO14 is an unnecessary duplication of the detailed planning and design guidance already articulated in DDO2 and DPO4. It would be confusing to all stakeholders if an additional layer of control were introduced whilst these other planning overlays are in operation. Many of the DDO2 and DPO4 controls relate to the same matters as proposed in Amendment C81. Some of these are dealt with in a similar way, although most are subtly different in some form. This ‘gap and overlap’ between the existing and proposed overlays should be avoided.

The Panel has inspected the Suburban Rural Landscape Character Area and was impressed with the high quality of development within this precinct. The substantial homes on large lots within well maintained landscape settings created a pleasant low density residential neighbourhood. To this extent, the Panel believes that the existing planning controls for this area is generally achieving its objectives and sees no reason for adding further controls over this land at this stage.

The Panel suggests that following the more substantial completion of residential development under the existing overlays then consideration could be given towards removing the current overlays and replacing them with the Significant Landscape Overlay. The Panel provides further comment on the content of SLO14 in later sections of this report to assist the Council in the future implementation of this overlay.

5.4 Conclusions

The Panel concludes that there is sufficient evidence to demonstrate the existence of seven distinct landscape character areas within the Nillumbik Green Wedge.

The Panel supports the introduction of six of the seven proposed Significant Landscape Overlay Schedules.

SLO13 (River Interface) is, on balance, supported but the Panel notes that the need for this overlay along the Yarra River could become unnecessary pending the introduction of broader regional planning controls along the river. The Panel urges the careful monitoring of this process to avoid repetitive or contradictory planning controls being introduced.

The Panel does not support the introduction of SLO14 at this time. It believes that the existing planning controls provide sufficient guidance regarding siting and design issues. An additional layer of control is not necessary and has potential to create confusion and duplication. Consideration of the introduction of SLO14 (or similar) should only be contemplated once the low density residential area has been substantially developed and the existing DDO2 and DPO4 are removed. At that time, the content of SLO14 as proposed in Amendment C81 should be thoroughly reviewed to ensure it is appropriate to the circumstances.

5.5 Recommendations

The Panel recommends:

Delete Significant Landscape Overlay Schedule 14 from the Amendment.

A secondary recommendation of the Panel is as follows:

Should the Panel's recommendation to delete Significant Landscape Overlay Schedule 14 from the Amendment not be accepted, the Panel recommends replacing the exhibited version of Significant Landscape Overlay Schedule 14 with the Panel version contained in Appendix D of this report.

6 Does Amendment C81 increase the risk of bushfire within the Nillumbik Green Wedge?

6.1 The issue

Many of the submissions to Amendment C81 raised concerns with what they perceive as a direction or consequence of the proposed Schedules. They are concerned that provisions in the proposed Schedules encourage the retention of native vegetation and the re-vegetation of areas particularly to screen proposed buildings and works. This has the potential to raise fuel loads and fire risk within the municipality. Some submitters are concerned that Amendment C81 may result in an unintended consequence of increasing fire risk. Additionally, some submitters are concerned that if buildings and works are unable to be screened (because of the increase in fire risk) then Council may refuse a permit application because of the visual impact of the proposed buildings or works.

6.2 Evidence and submissions

In its Part B submission, Council reflected on the recent bushfire tragedy to impact the Shire of Nillumbik. It noted that:

- On 7 February 2009 the Nillumbik community was affected by the Black Saturday bushfires.
- The fires occurred during extreme bushfire-weather conditions and resulted in Australia's highest ever loss of life from a bushfire - 173 people died and 414 were injured as a result of the fires.
- The Kinglake/Whittlesea fire, which affected the communities of Strathewen, St Andrews and Arthurs Creek, resulted in 120 fatalities and destroyed 1,244 houses.
- Sixty six percent of the Nillumbik Green Wedge is covered by the Bushfire Management Overlay.
- Forty nine of the 172 submissions to Amendment C81 raise bushfires as a concern.

The Council informed the Panel that planning for bushfire is addressed within many existing provisions of the Nillumbik Planning Scheme, including:

- Clause 13.05 Bushfire state planning policy
- Clause 22.13 Wildfire Management local planning policy
- Clause 44.06 Bushfire Management Overlay
- Clause 52.17 Native Vegetation
- Clause 52.47 Planning for Bushfire
- Clause 52.48 Bushfire Protection
- Clause 66 Referral and Notice Provisions.

Many of these existing clauses had exemptions for the removal of vegetation in order to provide for fuel breaks, ground fuel reduction within proximity to dwellings, roadside vegetation clearance, the creation of defensible space and so on.

The Council submitted that:

“The variations to the planning provisions to implement the Nillumbik Landscape Character Assessment will not vary the existing bushfire risk management provisions as they relate to vegetation, siting and design. Within all planning schemes across Victoria, as-of-right vegetation clearance distances are specified which allow residents to remove vegetation for bushfire risk management. (Part A submission, paragraph 256)

Mr Glossop gave evidence that the parent clause of the Significant Landscape Overlay also includes a decision guideline at Clause 42.03-4 that states when deciding an application the responsible authority must consider, as appropriate:

- *“The need to remove, destroy or lop vegetation to create defensible space to reduce the risk of bushfire to life and property.”*

Mr Glossop noted that each of the schedules to the SLO where the BMO applies (Schedules 9, 11, 12, and 13) also have been updated following exhibition of the Amendment to include the following objective:

- *“To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defensible space.”*

Mr Glossop outlined in his evidence a wide range of existing permit exemptions for the removal of native vegetation to create defensible space. He also noted the referral requirements to the CFA where applications are within the BMO. His evidence concluded that:

“It is my opinion that these provisions and mechanisms will provide a balance between exempting certain activities from planning approval and an opportunity to consider bushfire risk prior to the approval of any permit. (paragraph 137)

In its right of reply the Council submitted to the Panel that:

“To clarify, the objective of the Amendment C81 and the SLOs is to minimise landscape impacts, and the role of vegetation in this regard - as per the Decision Guidelines - is “the extent to which any proposed landscape screens buildings and structures...”

To this end, landscaping and planting undertaken in accordance with the CFA’s ‘Landscaping for Bushfire Guidelines’ would satisfy both the strategic intent of minimising visual impact, and minimising the risk from bushfire. Accordingly, the Planning Authority believes that Amendment C81 is consistent with the over-riding objective of minimising the risk to life and property from bushfire.” (paragraphs 87 & 88)

Submitter 162 (CFA) was concerned that Amendment C81 did not fully acknowledge bushfire considerations in the drafting of the SLO schedules. It stated that:

“CFA would like to see recognition of the impact of bushfire events and the role of appropriate fire regimes in the ecological sustainability of landscapes and many vegetation types in the Statement of nature and key elements of

*landscape and future character statements within the SLO schedules”
(Document 14, paragraph 24)*

The CFA did not however suggest any specific wording to be included in the SLO schedules.

The submission in particular sought to ensure that additional screening or requirements for additional vegetation must not compromise defensible space requirements.

The CFA also recommended that the Design Guidelines should draw upon the document ‘Landscaping for Bushfire Guidelines’ prepared by the CFA.

Many submitters (for example 25, 43, 44, 45, 90, 97, 130, 150, 154, 171) also picked up on the theme expressed by the CFA regarding what they saw as contradictory elements of the SLO. On the one hand, they said, the SLO required minimising vegetation removal and often screen planting of buildings, however, this was in contradiction to the need to ensure that their properties were bushfire ready.

For example, submitter 90 was concerned about the wording in the Future Character Statement of SLO14 that says “vegetation cover will continue to be strengthened over time with the establishment of additional landscaping of locally appropriate native species set amongst pocket of remnant trees.” He was particularly concerned that this wording appeared to encourage the increase in ground fuel loads and would create a high risk of bushfire. The submitter believed that generally cleared land with little or no understorey is required in such a bushfire prone location.

Many of these submitters were passionate about the risk of bushfire in the area and recounted with profound emotion the horrors of the ‘Black Saturday’ bushfires on 7 February 2009 and other significant bushfires over time. They were most anxious that Amendment C81 should not reduce the capacity for landowners to properly manage their properties to minimise the risk of bushfire. This includes ensuring that they have the capacity to clear native vegetation as well as limiting the extent of native vegetation that the Council may require to screen buildings and works as a result of a future planning permit requirement.

Submitter 89 thought that bushfire management should be included in every schedule in order to reflect the importance of human life.

6.3 Discussion

The Panel acknowledges that bushfire is a major issue in the Nillumbik Green Wedge. Recent history is testament to the significant impact that bushfire can produce. Planning for the future should also acknowledge and accept that bushfire will continue to play an important role in shaping the landscape.

The Panel accepts the submissions from Council and the evidence from Mr Glossop that there is already an extensive array of bushfire controls within the Nillumbik Planning Scheme. These provisions include exemptions for vegetation removal and other exemptions in certain circumstances. The Panel accepts that Amendment C81 does not propose to change or limit the circumstances of these existing provisions.

The Nillumbik Planning Scheme must be read as a whole. The proposed Significant Landscape Overlay does not exist in isolation and all of the other various parts of the

planning scheme must also be considered when a responsible authority is deciding whether to issue a planning permit. Sometimes, this creates confusion for stakeholders as different parts of a planning scheme appear to contradict other parts of the scheme. It is then the role of the responsible authority to balance out those apparent contradictions and decide in the circumstances which policy or provision should prevail.

Following the Black Saturday bushfires in 2009, all planning schemes in Victoria have been amended to make it clear that the protection of human life from bushfire is a priority over all other policies in the planning scheme.

The SPPF is clear in its objective to strengthen community resilience to bushfire, by 'prioritising the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire' (Clause 13.05-1). Further, this overarching strategy is to be achieved as follows:

"In areas identified in the planning scheme as being affected by bushfire hazard, require a site-based assessment to be undertaken to identify appropriate bushfire protection measures for development that has the potential to put people, property or community infrastructure at risk from bushfire.

Only permit new development where:

- The risk to human life, property and community infrastructure from bushfire can be reduced to an acceptable level.*
- Bushfire protection measures, including the siting, design and construction of buildings, vegetation management, water supply and access and egress can be readily implemented and managed within the property.*
- The risk to existing residents, property and community infrastructure from bushfire is not increased.'*

The proposed Amendment is designed to discourage unsympathetic buildings, works and vegetation removal in significant landscapes. The SLO itself includes reasonable exemptions for proper land management. Some submitters were concerned about the extent of existing fuel loads on their own properties, their neighbours properties or within Councils road reserves. The Panel notes that it is the responsibility of all land owners to continually manage their properties to ensure that their property is bushfire ready. This involves active engagement and awareness of the risks and dangers.

The Panel believes that some further direction within the proposed Schedules regarding the role and threat of bushfire could be of assistance to highlight the significance of fire in the landscape.

In this regard, the Panel agrees with the submission from the CFA that each of the Schedules could be amended to refer to the role that fire has played and will continue to play in the Nillumbik Green Wedge. The Landscape Character Assessment makes reference to the role that fire has historically played in shaping the landscape character of the area. It is the Panel's view that fire will also continue to play a significant role in shaping the future character of the area and it would be appropriate to provide such reference within each of

the 'Statement of nature and key elements of landscape', including the 'Future character statement'.

The Panel considers that these changes should be made to all schedules in the Green Wedge, not just those within the BMO. The significance of bushfire within the whole of the Green Wedge area needs to be acknowledged and reflected in each of the schedules. Whilst vegetation removal within the context of providing defensible space is referred to in the decision guidelines of the parent clause of the SLO, the Panel is of the view that the consideration of bushfire risk is of very high importance within the Nillumbik Green Wedge and that this should be given appropriate acknowledgement within each of the proposed schedules.

The Panel accepts that the publication 'Landscaping for Bushfire Guidelines', prepared by the CFA is a useful document that provides practical and helpful information. Whilst the CFA does not seek for it to become a reference document or otherwise cited within the planning scheme, the Panel agrees with Council that it would be appropriate to refer to it within any design guidelines that may help to explain the provisions in the schedules.

The Panel notes that the Council has expressed its view that *"landscaping and planting undertaken in accordance with the CFA's 'Landscaping for Bushfire Guidelines' would satisfy both the strategic intent of minimising visual impact, and minimising the risk from bushfire."*

This approach would seem to alleviate many of the concerns expressed by submitters.

6.4 Conclusions

The Panel concludes that Amendment C81 does not increase the risk of bushfire within the Nillumbik Green Wedge. Existing provisions within the planning scheme regarding the management of bushfire risk are not proposed to be varied. Existing provisions within the SLO parent clause acknowledge the need to reduce the risk of bushfire to life and property.

The Panel also notes that some Schedules already contain some provisions regarding consideration of bushfire issues. The Panel considers it appropriate to extend these provisions to all schedules.

The Panel also concludes that it is appropriate to further strengthen the consideration of bushfire by making minor modifications to each of the Statements of nature and key elements of landscape, including the Future character statement. Additional Landscape character objectives to be achieved and additional Decision Guidelines to all Schedules, are also considered appropriate.

The above conclusions are reflected in the Panel's preferred version of the SLO Schedules presented in Appendix D of this report.

7 Are the proposed Schedules to the Significant Landscape Overlay appropriate?

7.1 The issues

Mr Glossop gave evidence regarding the preparation of the Schedules to the Significant Landscape Overlays. He said that the Schedules were prepared in a partnership between Council and his firm.

Each Schedule consists of the following general headings:

- Clause 1 - A statement of nature and key elements of landscape, including a Future Character Statement.
- Clause 2 - Landscape character objectives to be achieved.
- Clause 3 - Permit requirements (generally expressed as permit exemptions).
- Clause 4 - Application requirements.
- Clause 5 - Decision guidelines.
- Clause 6 - Reference documents.

Following exhibition of the Amendment C81 and in accordance with a Council resolution in August 2015, Mr Glossop revised various aspects of the wording of the Schedules.

At the conclusion of the Hearing, the Council provided the Panel with a consolidated version of the Schedules that included the post exhibition changes presented at the Hearing as well as the further changes it recommended in its 'right of reply'. The Panel uses the consolidated version of the Schedules in this section of the report and in Appendix D.

In response to a question from the Panel, the Council advised:

- The Permit Requirements at Clause 3.0 are the same in the Schedules for SLO's 8, 9, 10, 11, 12 and 14. The Schedule for SLO13 requires a permit for new buildings used for agriculture, where new buildings used for agriculture are exempt in the other schedules if they comply with building height, setback, floor area, locational and colours and materials criteria.
- The Application Requirements are the same in all Schedules.
- In the reviewed Significant Landscape Overlay Schedules, some Decision Guidelines are the same across all schedules and others are locally specific.

Submitters made comments about various aspects of the Schedules. Some of these comments relate to a specific Schedule; others relate more broadly to all of the Schedules.

The following sections discuss each of the key headings of the Schedules in turn. As noted by Council, many of the parts of the Schedules are common to all Schedules.

The Panel has considered the issue of the reference documents separately in Section 8.5 of this report.

The issue is whether the details of the proposed Schedules are appropriate.

7.2 Are the statements of nature and key elements of landscape appropriate?

(i) Evidence and Submissions

Mr Glossop gave evidence that:

“Each Statement of nature and key elements of landscape...has been drafted to reflect the varying landscape character attributes and future character statement for each area. The descriptions and future character statements are derived directly from the Landscape Character Assessment Study” (paragraph 55).

In its resolution of 13 August 2015, Council’s Policy and Services Committee resolved:

- *“The Character Statements will be reviewed by the consultants who undertook the Landscape Character Assessment to ensure they are inclusive of atypical properties and the transitional character to urban areas.*
- *The consultants who undertook the Landscape Character Assessment will be asked to make recommendations where submitters have suggested refinements to SLO area boundaries.”*

Council engaged Planisphere to assist in responding to these submissions as the character assessments and area boundaries are based upon their Landscape Character Assessment study.

In her Part B submission, Ms Knight of Planisphere reviewed the concerns of Submitters 3, 7, 9, 11, 25, 33, 34, 37, 66, 67, 69, 70, 74, 97, 121, 123, 145, 149, 152, 153 and 168. As a result of her review of these submissions she recommended that minor changes to the descriptions of landscape character should be made to a number of the SLO schedules. These changes included:

- The Future Character Statement for SLO10 Undulating Agricultural Character Area to be revised to refer more clearly to the large areas of dense native vegetation that exist within this Character Area
- The Existing Character Statement and Future Character Statement for SLO11 Bushy Slopes Character Area to be revised to reflect the presence of occasional open or cleared areas
- The Future Character Statement for SLO13 River Interface Character Area to be revised to reflect the Yarra and Plenty Rivers as viewing corridors.

The recommendations made by Planisphere were incorporated into the revised Significant Landscape Overlay Schedules prepared by Glossop Town Planning.

The Panel questioned Mr Glossop regarding the wording of the Future character statements in a number of the Schedules.

For example, in SLO8 the Panel queried why he had changed the wording from the Landscape Character Assessment report where it reads “Ribbon development of residences along roads should be avoided” to “The presence of built form along roads will be avoided.”

He explained that he thought the sentences were similar and that he thought “ribbon development” was an imprecise term.

In SLO10, the Landscape Character Assessment refers to “The rural landscape character will be maintained by controlling and managing the establishment of built form and non-agricultural land uses which detract from this character.” Mr Glossop has reworded this to say “The rural landscape character will be maintained by limiting development and non-agricultural uses that detract from this character.” He said that he thought when read in totality with the rest of the statement that the two sentences were essentially the same.

In SLO12, the Landscape Character Assessment refers to “Buildings and structures on visible hillfaces and ridgelines will be managed in ways that maintain long range views to the surrounding mountain ranges and distant city skyline.” Mr Glossop has preferred the words “...will be avoided in order to maintain long range views to the surrounding mountain ranges...”. He stated that he thought that the use of the word “avoided” was more appropriate and accurate than “managed”.

In SLO14, Mr Glossop stated that he thought the sentence dealing with storage areas could be reworded to say that “Storage areas, outbuildings and other structures will be managed to avoid visual clutter”.

Submitter 145 stated that the Landscape Character Assessment did not adequately reflect the true rural nature and character of the Green Wedge. Of particular concern was the consistent lack of recognition of the extensive equine industry within the region, including the significant physical, economic, cultural and social benefits that this activity brings.

The submission stated:

“The SLO11 Bushy Slopes is a great example of how the refusal to acknowledge the equine rural character could impact the many hobby farm/horse/grazing properties in this SLO by suggesting that agricultural infrastructure such as ménages, yarding, stables, shedding and outbuildings do not complement or are out of place in the existing rural landscape character. This is also the case for the majority of SLOs” (Document 22, page 5). Other submissions (for example, submissions 35 and 150) also lamented the lack of recognition of grazing activity within SLO11.

Submission 145 requested specific wording changes to the SLO11 Statement of nature and key elements of landscape as follows (post exhibition version):

- The first sentence to read “Native vegetation and picturesque, open grazing land and lightly treed pastures contribute strongly to the character of the Area. Remnant vegetation occurs ...’ (variations underlined).
- The second sentence to read “A strong sense of spaciousness is afforded by large gaps between residences, which are often set back from the roads and are frequently ‘hidden’ by native ~~bushland~~ vegetation and the undulating topography of the rolling pastures, valleys and hills.”
- The third sentence to read “~~Occasional~~ Cleared pastures and areas of rural activity such as the grazing of animals are interspersed among the well-established ...’

Submission 145 also requested specific wording changes to the Future Character Statement in Schedule 11 as follows:

- The first sentence in the first paragraph to read “The Bushy Slopes Character Area will continue to be characterized by native vegetation interspersed with picturesque, open grazing land and lightly treed pastures. Native vegetation can provide an enclosed setting to roadsides ...’
- A new sentence in the first paragraph to read “Rural activity such as the keeping of horses and other grazing animals will remain popular on the smaller acreage properties.”
- The first sentence in the second paragraph to read “The rural and bushland Character of this area will be ~~protected by siting~~ enhanced by the sensitive siting of built form and structures ...
- The second sentence of the second paragraph to read “Management of the natural environment will continue to be important to the significance of the rural landscape character.”
- The third sentence of the second paragraph to either be deleted or clarified as it is ambiguous as what is meant to be screened.
- The last sentence of the second paragraph to read ““Waterways and other natural features will be maintained and enhanced as important environmental, scenic, recreational and tourism resources.”

Submitter 89 supported the recommendations of submitter 145.

Submitter 90 said that in SLO14 Suburban Rural Landscape Character Area, the Future Character Statement should be amended by deleting the first sentence and last sentence of the second paragraph. He said the first sentence was inconsistent with the existing character and development in a low density residential area. The last sentence increased the risk of bushfire.

In its right of reply, Council responded in detail to the wording changes suggested by Submitter 145. With respect to the Statement of nature and key elements of landscape, the Council:

- Did not agree with the proposed changes to the first sentence of the first paragraph because the sentence deals specifically with native vegetation and the third sentence deals with the presence of pasture in the landscape.
- Agreed in part for the second sentence to read “A strong sense of spaciousness is afforded by large gaps between residences, which are often set back from the roads and hidden by native vegetation and undulating topography.”
- Agreed in part for the third sentence to read “Cleared pastures and areas of rural activity are also interspersed among the well-established.”

In the Future character statement, the Council submitted in its right of reply that it:

- Agreed in part for the first and second sentence in the first paragraph to read “The Bushy Slopes Character Area will continue to be characterized by native vegetation interspersed with open grazing land and treed pastures. Native bushland will provide an enclosed setting at roadsides, to settlements and from tourism and recreation locations throughout.”
- Does not agree with the inclusion of a sentence that reads “Rural activity such as the keeping of horses and other grazing animals will remain popular on the smaller acreage properties.”

- Does not agree with the proposed changes to the second paragraph other than in the third sentence to delete the words “and screened by native vegetation”.

The CFA was concerned that Amendment C81 did not fully acknowledge bushfire considerations in the drafting of the SLO schedules. It stated that:

*“CFA would like to see recognition of the impact of bushfire events and the role of appropriate fire regimes in the ecological sustainability of landscapes and many vegetation types in the Statement of nature and key elements of landscape and future character statements within the SLO schedules”
(Document 14, paragraph 24)*

The CFA did not suggest any specific wording to be included in the SLO schedules.

(ii) Discussion

The Panel generally accepts that the ‘Statements of nature and key elements of landscape’ and the ‘Future character statements’ are appropriate.

The Panel is, however, of the view that sections of the Schedules could be enhanced with a series of minor modifications. These are discussed below.

First, the Panel agrees with the CFA that it would be appropriate to recognise the significance of bushfire in all Schedules in both the ‘Statements of nature and key elements of landscape’ and the ‘Future character statements’. This would acknowledge the importance of fire within the Nillumbik Green Wedge.

In SLO8, the Panel does not accept the wording of Council or Mr Glossop with respect to the second sentence of the second paragraph. The Landscape Character Assessment was concerned to limit the impact of dwellings along roads. Mr Glossop’s wording expands this to include all built form. The Panel suggests that it is more accurate to require that the “presence of dwellings along roads will be managed to avoid visual clutter”.

In SLO10, the Panel also prefers that the “rural landscape character will be maintained by managing development...” rather than “...limiting development...” This provides a more flexible approach to dealing with any negative impacts from a particular proposal. It is the view of the Panel that it is more important to manage a desired outcome rather than be overly prescriptive.

In SLO11, the Panel generally agrees that there is scope to enhance references to grazing and the special role that horse keeping has within this area in particular. The site inspections demonstrated quite clearly the significant extent of horse keeping in this area. The fencing, ménages, trails and other infrastructure all add to the character of this area and it should be appropriately recognised in the ‘Statement of nature and key elements of landscape’ as well as the ‘Future character statement’.

In SLO12, the Panel believes that the second sentence in the Future Character statement should be amended to read “buildings and structures on visible hill faces and ridgelines will be managed in order to ...” rather than “... will be avoided in order to...”. The Panel agrees with submissions that it is more appropriate to specify the outcome rather than to be prescriptive.

Notwithstanding that the Panel has recommended the deletion of SLO14, the Panel makes the observation that the wording of the first two sentences appear at odds with the type of low density residential development currently occurring in the area. This precinct is clearly characterised by large homes on large lots and this is consistent with the existing planning controls for the area. It seems incongruous to require low to medium scale dwellings in such a low density residential area. Storage areas and outbuildings should also be managed to avoid visual clutter rather than simply 'limited'.

The above findings are reflected in the Panel's preferred version of the SLO schedules presented in Appendix D of this report.

(iii) Conclusions

The Panel concludes that the Statement of nature and key elements of landscape and the Future character statements are generally appropriate subject to minor changes to the wording as expressed in Appendix D.

7.3 Are the landscape character objectives to be achieved appropriate?

(i) Evidence and submissions

Mr Glossop gave evidence that

"The Landscape character objectives to be achieved contain numerous objectives that apply broadly across all rural areas and some which are specific to each precinct.

The first three objectives from Clause 22.04 have been translated into objectives under the control, while other objectives are derived directly from the landscape Character Assessment study" (paragraphs 56-57).

Submitter 145 stated that although the objectives in SLO11 had increased from 5 to 14 in number since the exhibition of the Amendment, none of the additions aimed to protect existing grazing land that supports rural activity and uses such as the keeping of animals.

For example, there is little difference in the objective 'To preserve views of the Kinglake National Park and surrounding mountain ranges' and 'To encourage the retention of occasional patches of cleared land where it provides views of the Kinglake National Park and surrounding mountain ranges.'

She submitted that there is no need for both of these objectives as they are essentially the same.

This submitter also suggested that an objective to protect the presence of cleared open grazing land should be included, which might read 'To protect the open grazing land and lightly treed pastures that contribute to the rural landscape.'

In addition, the submitter requested that the objective 'To discourage clearing of areas which break the dominance of native vegetation across the landscape' should be amended to read 'To discourage clearing areas of native vegetation.'

In its right of reply, Council submitted that it did not support these changes.

Submitter 90 recommended that several objectives in SLO14 be deleted, including the first, third, fifth, sixth and last dot points. He said that these objectives were inconsistent with a low density residential area.

(ii) Discussion

The Panel generally accepts that the landscape objectives to be achieved are appropriate. In most instances they correlate with the Future character statements and appear to be consistent with the intentions of the Landscape Character Assessment study.

The Panel notes that with the assistance of Mr Glossop, the Council's modifications to the objectives since exhibition has improved the wording of the Schedules.

The Panel notes that the Schedules to SLO9, SLO11, SLO12 and SLO13 all contain an objective:

"To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defensible space."

The Schedules to SLO8, SLO10 and SLO14 do not contain such an objective.

Consistent with the Panel's comments regarding bushfire in the preceding sections of this report, it is of the view that all Schedules should contain this objective. This would ensure that the bushfire risk is appropriately considered when balancing issues such as vegetation removal and the need for landscaping to screen buildings or works.

The Panel also suggests that a range of objectives be slightly modified to accord with the Panel's changes to the Future Character Statements referred to above. This will provide greater consistency between the Future character statements and the objectives. A summary of these changes is presented below.

In SLO8, modify the second last objective to read "To minimise the visual impact of development along main roads."

In SLO12, delete the second last objective, as it is inconsistent with the need for agricultural and horticultural structures in an area that encourages the continuation of productive agricultural activity on high quality agricultural land. The Panel believes that the eighth objective "to ensure that agricultural and horticultural buildings and structures complement rather than dominate the landscape" is sufficient. The second last objective is too restrictive for this Landscape Character area and is inconsistent with the Future Character Statement.

Notwithstanding that the Panel has recommended the deletion of SLO14, it is of the view that the fourth and last objectives should be deleted as they are unnecessary and inconsistent with the Future Character Statement.

The Panel does not support any changes to the objectives of SLO11 as it believes that the issues raised by submitters are already satisfactorily addressed in the revised Future character statement and the existing objectives.

The above findings are reflected in the Panel's preferred version of the SLO Schedules presented in Appendix D of this report.

(iii) Conclusions

The Panel concludes that the Landscape objectives to be achieved are generally appropriate subject to minor changes to the wording as expressed in Appendix D.

7.4 Are the vegetation permit exemptions appropriate?

(i) Evidence and submissions

Council submitted that the exhibited Amendment required a planning permit for removal of not just native vegetation but also shelterbelts and hedgerows, based on the Landscape Character Assessment undertaken by Planisphere in 2009.

Following exhibition of the Amendment, Council's arborist advised it that 95 per cent of the shelterbelts in Nillumbik are Cyprus. Throughout Victoria, Cyprus shelterbelts have developed Cyprus canker, causing dieback, ultimately necessitating the removal of the tree rows.

Council's revised position is that it is unnecessary to require a planning permit for removal of a shelterbelt when a planning permit will always be granted.

The Council advised the Panel that a Heritage Overlay protects the Hawthorn hedgerows in Kangaroo Ground.

The Schedules state that a permit is required to remove, destroy or lop 'a substantial native tree'. It then lists several instances where this does not apply.

The exhibited version of the Amendment defined a 'substantial native tree' as "a tree that is indigenous to Victoria and has a diameter at breast height (DBH) greater than 0.16 metres at 1.4 metres above the ground." The Council advised the Panel that this definition was confusing and inconsistent with the way trees are measured elsewhere in the Nillumbik Planning Scheme.

The redrafted Schedules commended to the Panel redefine 'a substantial native tree' as "a tree indigenous to Victoria that has a trunk circumference greater than 0.5 metres at 1 metre above natural ground level."

It is noted that a diameter of 0.16 metres is the same as a circumference of 0.5 metres. It is a change in expression but not in quantity.

Mr Glossop gave evidence to the Panel that a permit is already required for all native vegetation removal (with some exceptions) for those parts of the Nillumbik Green Wedge covered by an Environmental Significance Overlay. He said that an Environmental Significance Overlay covers an extensive part of the proposed SLO area. In addition, under Clause 52.17, a planning permit is required to remove any native vegetation (with some exceptions such as for lots smaller than 0.4 hectares). He said that most lots in the Green Wedge were generally larger than 0.4 hectare.

Few submissions commented specifically upon the permit exemptions for vegetation removal. Most of the submissions regarding vegetation related to the planting of vegetation or references made in the Design Guidelines.

Submitter 162 thought that the definition of a substantial tree was too broad and that it should relate to vegetation of local provenance as no-local provenance native species can be weedy and a fire risk.

Submitter 90 thought that the definition of substantial tree should be a tree that has a diameter of 0.16 metres at 1.4 metres above the natural ground level.

(ii) Discussion

The Panel supports the permit exemptions for native vegetation removal as expressed in Council's revised Schedules. It agrees with Council's revised definition of a 'substantial native tree' and notes that it is a significant improvement on the exhibited version.

(iii) Conclusions

The Panel is generally satisfied that the vegetation permit exemptions are appropriate.

7.5 Are the permit exemptions to construct or carry out works for an alteration or extension to an existing dwelling or building used for agriculture or a new building used for agriculture appropriate?

(i) Overview

Mr Glossop gave evidence that:

"The Landscape Character Assessment recommended adopting a scaled approach to permit triggers and exemptions, whereby the higher level of control was applied to Schedules 10, 11, 12, and 13, a moderate degree of control was applied to Schedules 8 and 9 and the lowest degree of control to the urban area of Yarrambat (Schedule 14).

In areas with the highest degree of control, the Study recommended only exempting minor extensions to buildings. This was expanded in moderate control areas to include minor structures relating to rural or agricultural land use.

Ultimately, the Council decided to adopt an approach to apply the moderate restriction across all schedules (with the exception of Schedule 13). I was instructed that the reason for this approach was to ensure that the permit requirements were not unreasonably restrictive or onerous on small scale agricultural sheds and structures within rural areas. The lack of permit exemption for new agricultural buildings in Schedule 13 is to provide appropriate protection for the river interfaces.

The permit triggers and exemptions respond to the threats to character identified in the Landscape Character Assessment, by only exempting minor buildings and works where the proposal is sited away from ridgelines and hilltops, clad in muted, low reflective materials, is of a low scale and designed to meet setback requirements.

Where possible, the setback requirements for permit exemptions have been drafted to be consistent with other provisions that affect land, such that permits are not triggered unnecessarily under one provision and not another. For instance, the requirement that buildings and works be located at least 100 metres from a Road in a Road Zone, category 1 or 20 metres from any other road creates an alignment between the Rural Conservation Zone, the Green Wedge Zone and the proposed schedules.

Following exhibition, the permit exemptions for minor buildings and works were collapsed into one statement to reduce repetition and improve clarity” (Paragraphs 58-65).

In its right of reply submission, Council stated that:

“The specification of exemptions does not constitute a mandated, prescriptive design outcome. The standards specified are not the desired outcome; they constitute forms of development that are clearly low impact, unlikely to cause adverse impact on the landscape character, and thus would always be approved. For this reason, they are exempt from a permit.

Variations, innovations and approaches that differ from or exceed the standards outlined within the exemptions are thus possible, but they need to be assessed against a performance-based framework. There is not one, set way to meet the outcome, but rather many different approaches; approaches which balance the various elements of design against the overall objective of minimising the visual intrusion on the landscape.

Rather than being a prescriptive design outcome, the exemptions from the need for a permit proposed as part of Amendment C81 are designed to remove the administrative burden from residents for low impact developments” (paragraphs 68-70).

For convenience, the Panel explores each of the key parts of the permit exemptions as listed in the Schedule.

(ii) Evidence and submissions

Building height

Submitter 49 thought that the height threshold should be increased from 7 metres to 8 metres as this would make it consistent with the maximum height limits in the Neighbourhood Residential Zone and is a more typical dwelling height. A threshold of 8 metres was said to provide more flexibility in the design of dwellings with pitched roofs.

Submitter 126 said they thought that the threshold should be set at 9 metres.

Submitter 90 objected to a 7 metre permit threshold in SLO14 and requested it be deleted.

Building setbacks

Submitters 176, 177, 178, 179 and 180 objected to the exemption that required buildings and works to be setback 5 metres from a substantial native tree. They believed that this was too restrictive and there should be no such requirement.

Building floor areas

Submitter 90 requested that in SLO14 the floor area threshold for a dwelling should not include the words “or 100 square metres, whichever is the lesser” as it is inappropriate in a Low Density Residential context for such a requirement.

Building colours and materials

In the exhibited version of the Schedules the Council proposed an exemption that required:

“The external surfaces, including roofs and walls, of the alteration and extension are clad and maintained in non-reflective materials coloured in muted tones.”

In the post-exhibition version of the Schedules, Council inserted particular colours into the exemption to reduce the ambiguity about what constitutes a muted tone. The exemption was reworded to read:

“The external surfaces, including roofs and walls, of the buildings and works are clad and maintained in low-reflective materials coloured in muted, earthy tones of green and brown.”

In its right of reply submission, Council explained why these colours were added:

“Green and brown are proposed as exempt, muted tones, as these are generally present within the Nillumbik landscapes, depending on the time of year. Other colours, such as tones of earthy red, or mustard, or blue may be appropriate in some circumstances, but not others. For this reason, their use should be subject to assessment against the performance based framework of the SLOs” (paragraph 100).

Submitters were concerned about the selective use of exempt colours for what are small, low impact structures.

For example, submitters 49 and 145 queried why grey has not been added to green and brown, as it is a muted colour.

Submitter 145 requested that where external surfaces are recommended to be clad in ‘low reflective materials coloured in muted, earthy tones of green and brown...’, either include grey or delete the reference to earthy and leave it at muted tones.

During its right of reply, the Council advised the Panel that it had further considered the comments from submitters and was again prepared to review the wording of the exemption. The review of the wording had been prepared in consultation with Council’s statutory planning department. The Panel was told that the statutory planners had seen a number of examples where the use of grey had not been low impact, nor muted in the landscape. One example in Kangaroo Ground was presented to the Panel.

The Council concluded its position in its right of reply as follows:

“Part of the dilemma arises due to the large range of tones that constitute grey. Statutory Planners were concerned that grey could include very light tones, which almost border on white. But there is general agreement amongst

practitioners that dark grey is an acceptable within the landscape, and its use would generally be approved.

Having further considered the matter, the Planning authority would be willing to entertain that the colour exemption should be expanded to include 'dark grey'. Any other suggestions by the Panel to reduce the ambiguity around this wording would be welcomed."

Submitter 90 requested that in SLO14 the provision should refer to 'muted tones' only.

Submitter 97 was concerned that the wording of this exemption was too vague and would be impossible to interpret.

Views and vistas

Council submitted that Clause 22.04 in the Nillumbik Planning Scheme (Siting and Design for Buildings and Works in Non-urban Areas) discourages the siting of buildings and other structures on hill-tops and ridge lines. This has been a long-standing policy in the planning scheme.

The policy states:

"The siting of buildings (including dwellings, sheds, utility services and other structures) on hill-tops and/or ridge-lines should be avoided and will be discouraged. Buildings on hill-tops/ridge-lines should only be considered when it can be demonstrated that a building will be sited and designed so that it will be adequately screened from other properties and roads so not to be prominent in the landscape.

Buildings should be located wholly below the alignment of ridgelines to ensure silhouetting against the skyline does not occur and to allow buildings to blend into the natural landscape with the elevated ridgeline providing the appropriate backdrop."

The exhibited Amendment proposed buildings and works exemptions for alterations or extensions that, amongst other things, required:

"The top of the roof line of the alteration or extension is lower than the top of the ridgeline located directly behind the site of the extension or alteration."

Submitters (for example, submitter 154) were concerned that this was too complex to interpret. They were concerned that this requirement would create confusion and uncertainty for applicants, neighbours and the Council planners.

The Council acknowledged that the wording made it difficult for a landowner to establish whether or not their proposed building or works met this criterion. In its Part B submission, the Council stated that:

"Where possible, it is better for planning scheme content which directs whether a planning permit is or is not required, to be expressed in black and white terms rather than in a manner which requires the exercise of judgement" (paragraph 201).

Following exhibition of the Amendment and in response to these issues, the Council revised the wording of the exemption to read:

“The buildings and works are setback at least 50 metres from the crest of any hill or topographic feature located directly behind the extension alteration, measured from natural ground level at both points.”

The Council presented a diagram to the Panel to illustrate that if a building was setback 50 metres from the top of a ridge or hill and the building had a maximum height of 7 metres and was on a slope of no more than 20 per cent, the top of the building would be comfortably below the top of the ridge or hill.

Under examination from Council, Mr Glossop gave evidence that in his opinion the revised wording was clearer than the exhibited version and was a reasonable outcome.

Submitter 90 requested that in SLO14 the requirement to setback buildings from ridgelines should be deleted, as it was not applicable in the Low Density Residential Zone.

(iii) Discussion

The Panel has reviewed in detail each of the permit exemptions and all of the submissions. On balance, it is generally satisfied that most of the permit exemptions are appropriate.

Many of the submitters appeared to be concerned or confused about how the exemptions will be interpreted and administered. There seemed to be a mistaken assumption that if, for example, a proposed building were not to satisfy a permit exemption under the Significant Landscape Overlay Schedule, a planning permit would not be granted. This interpretation is incorrect. Any failure to satisfy a permit exemption would merely trigger the need to apply for a planning permit.

It is important to remember that Amendment C81 does not prohibit anything. The Significant Landscape Overlays are about regulating the form and siting of development to achieve landscape ends rather than seeking to prevent development per se. The permit exemptions listed in the Schedules eliminate the need for a permit because the proposed development is relatively small or minor enough to not warrant a permit. It is assumed that if a proposal meets the relevant exemptions then it will have no significant impact on the landscape character and therefore a permit will not be required. It does not follow that a permit will not be granted for a proposal that does not meet the exemption criteria.

Although the Panel generally supports the exemptions listed in the Schedule, there are several sections where it believes that some improvements could and should be made. These are listed below.

Introduction

The Panel considers that the wording of the introduction could be reformatted to make it clearer to the reader. The sentence as proposed by Council is very long with multiple use of the word ‘or’ in different contexts. This has the potential to cause confusion and misinterpretation. The Panel considers that the sentence be reformatted as follows:

“A permit is not required to construct a building or construct or carry out works for:

- *An alteration or extension to an existing dwelling; or*
- *An alteration or extension to an existing building used for agriculture; or*
- *A new building used for agriculture,*

provided all of the following are met, as applicable:

- ...
- ...
- ...”

This reformatting should apply to all Schedules. Consistent with the intent of SLO13, the reformatted wording for this Schedule should not include the last dot point regarding a new building for agriculture.

The Panel notes that in Council’s versions of the SLO12 Schedule that it appears to have inadvertently transcribed the introductory wording from SLO13. The Council had previously advised the Panel that the exemptions for a new building for agriculture was not included in only Schedule 13. It appears to the Panel that an error has occurred in the drafting of the Schedule for SLO12 and the Panel notes that this should be corrected accordingly.

The above findings are reflected in the Panel’s preferred version of the SLO Schedules presented in Appendix D of this report.

Building height

The Panel considers that a threshold building height of 7 metres is too restrictive and a more flexible approach is warranted to ensure that a variety of building types can be reasonably accommodated. The Panel considers that a threshold height of 8 metres would be more appropriate as this would more readily facilitate pitched roofs and take account of the generally sloping topography of the area. An 8 metres threshold would also be consistent with other typically restrictive planning controls governing building height, such as in the Neighbourhood Residential Zone.

The Panel is of the view that a threshold height of 8 metres will not cause any significant impact to the visual impact on the landscape.

The above findings are reflected in the Panel’s preferred version of the SLO Schedules presented in Appendix D of this report.

Colours and materials

The Panel has considered the various alternatives for the wording of the exemption regarding colours and materials. It is concerned that all of the options presented to the Panel are open to wide interpretation and it would be very difficult for applicants and the responsible authority to determine if a proposal meets this exemption criteria.

For example, what is meant by ‘muted earthy tones’? How does a potential applicant know if a particular shade is earthy enough? How dark does ‘dark grey’ need to be? Even green and brown has potential for confusion when there are many colour descriptions that could be more, say, a ‘redish brown’ - would that still be ‘brown’? Or red?

In this context, the Panel is concerned about having colours listed as permit exemptions. Similar concerns are held for the reference to ‘low-reflective materials’. The Panel can

envisage potential permit applicants having great difficulty deciding whether or not their proposal meets these criteria.

Permit triggers should be clear and precise. A potential permit applicant reading the Schedule should be able to clearly understand the requirement without resorting to subjective judgements. Indeed, the Panel observes that Council made a similar conclusion in respect to another instance where a judgement was required. In its submission regarding the vagueness of the 'views and vistas' exemption the Council stated:

"Where possible, it is better for planning scheme content which directs whether a planning permit is or is not required, to be expressed in black and white terms rather than in a manner which requires the exercise of judgement" (part B submission, paragraph 201).

The Panel agrees with Council and it is directly applicable to the exemption regarding colours and materials. One might say, there are simply too many shades of grey.

The Panel is of the view that deleting the colours and materials exemption in all Schedules is appropriate. It considers that the low scale development that is generally exempt from a planning permit is not likely to significantly impact the character of the landscape without some form of requirement for the control of colour.

In addition, the Panel notes that in the event that a permit is required for a particular development then the decision guidelines require consideration of colours and materials at that stage. This is appropriate.

The above findings are reflected in the Panel's preferred version of the SLO schedules presented in Appendix D of this report.

Views and vistas

The Panel supports the post-exhibition wording of the exemption regarding the setback of a building from a ridge or hilltop. It accepts that this is not an exact science, however, it believes that the exemption is reasonable in the circumstances.

The Panel notes that it supports the exemption requirement for a 50 metres setback from the hilltop on the basis of a maximum building height of 8 metres (as recommended above). Should the threshold height for a building remain at 7 metres then the Panel recommends that the setback distance should be reduced to 40 metres.

The above findings are reflected in the Panel's preferred version of the SLO schedules presented in Appendix D of this report.

(iv) Conclusions

The Panel concludes that the permit exemptions for buildings and works are generally appropriate subject to minor changes to the wording as expressed in Appendix D.

7.6 Are the permit exemptions for fences appropriate?

(i) Evidence and submissions

In the exhibited Amendment C81 the Council proposed that a permit was not required for a fence provided that it was:

- An open post and wire fence of less than 1.2 metres in height; or
- Post and wire rabbit proof fences of less than 1.2 metres in height; or
- Temporary fencing for construction sites; or
- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

Following exhibition of the Amendment, Council reviewed the fencing exemptions, particularly those relating to agricultural type fences. It referred the fencing controls to its 'Agricultural Advisory Committee' for review. The Council submitted in its Part A submission that members of the Agricultural Advisory Committee expressed a range of views about the height at which a standard or typical agricultural fence should require a planning permit:

"The Committee agreed that increasing the 1.2m figure in the exhibited amendment, to 1.4-1.5m would better accommodate commonly constructed farm fences, whilst still ensuring that less common and potentially visually intrusive fences of greater than 1.4-1.5m height would trigger the need for a permit. All present agreed that commonly used mesh fences (e.g. 'ringlock' fences) fall under the definition of an open post and wire fence" (paragraph 314).

The Council also advised the Panel that the fencing exemptions were further revised having regard to the fencing controls included in proposed Amendment C101 regarding Environmental Significance Overlays. The Council submitted that to avoid confusion, it was considered highly desirable to have consistency in the permit triggers for fencing between the SLO and ESO Schedules.

Mr Glossop gave evidence that:

"In relation to permit requirements for fencing, permit requirements were reworded to provide consistency with proposed controls to be introduced through Amendment C101 to the Nillumbik Planning Scheme" (paragraph 65).

The revised exemptions for fencing increased the threshold height from 1.2 metres to 1.4 metres and introduced detailed descriptions of the fence design regarding the number of strands of wire, minimum gaps, sizes of mesh squares and so on. They also required no barbed wire on any of the rural fence types. These detailed design requirements are consistent with the requirements in the Schedules to the Environmental Significance Overlay in proposed Amendment C101.

Council submitted to the Panel in its Part B submission that the increase in height from 1.2 to 1.4 metres would:

- *Continue to discourage barbed wire and small-gauge mesh, which causes most environmental impact.*

- *Minimise the number of 'unnecessary' planning permits, and reduce the onus on land owners, by allowing some 'discretion', rather than an insistence on the standard 1.2m height. The interests of Council would not be served, nor any real benefit accrue, from having to assess a permit for a slightly higher fence.*
- *Respond to the concerns of local farmers, local fencing contractors, and submitters.*
- *Would have marginal impact on the local wildlife (paragraph 199).*

In its right of reply submission, Council submitted that it was prepared to accept that the exemption for fencing should be extended to include open post and rail fencing up to 1.4 metres high which would enable typical horse fencing without the need for a permit.

Some submitters made comments arguing their right or need to construct high boundary fences. Other submitters commented on matters of detail regarding agricultural fencing.

Submitter 145 thought that post and rail fencing less than 1.4 metres high should be permitted without a permit. They submitted that this was an applicable, aesthetic, safe rural fencing form when keeping livestock and is 'wildlife friendly'.

Submitter 90 requested the simplification of the fencing exemptions to refer to any post and wire or mesh fences not greater than 1.4 metres in height.

Submitter 82 said that no planning permit should be required for a rural fence less than 2.4 metres in height.

(ii) Discussion

The Panel notes that the changes to the exemptions for fencing post exhibition are significant. As well as changing the height threshold, they also introduce a number of other threshold requirements regarding the detailed design of rural fences. The Panel is concerned about the rationale for some of these changes.

First, the Council has stated that a key driver in the changes has been the desire to match the permit exemptions in proposed Amendment C101. The Panel does not find this a compelling reason given that Amendment C101 relates to an Environmental Significance Overlay and Amendment C81 relates to a Significant Landscape Overlay. The Panel considers that they serve fundamentally different purposes and provisions in one overlay need not, and perhaps should not, match the provisions in the other.

This is particularly the case where special provisions may be written for environmental reasons as distinct from the need to manage the visual impact of a structure within the landscape. The Panel is of the view that fencing controls in the SLO should be based on the impact on the landscape character of the area not for some other reason. If there is an important environmental reason for a particular area to have an environmental management control associated with fencing then consideration should be given to that area being included within an ESO. It is not appropriate to include essentially environmental controls within an area only defined as having landscape significance.

As much as the Panel can see some advantages in having a ‘common approach’, it believes it would be an inappropriate application of the VPP to require restrictions within an SLO on the basis of a rationale beyond the purpose of the overlay.

Second, the Panel also notes that Amendment C101 was, at the time of the Panel hearing into Amendment C81, still at a relatively early stage in the planning process. It is not the role of this Panel to speculate or prejudice the future direction of Amendment C101. Our role is to provide a review of Amendment C81.

For these reasons, the Panel does not support the inclusion of threshold restrictions limiting the use of barbed wire. The Panel does not consider that whether a fence is constructed with or without barbed wire will have any material difference to the visual impact on the landscape character of the area.

The Panel also does not support the inclusion of detailed fence design descriptions. It considers that this is too prescriptive and again makes no material difference to the visual impact on the landscape. The Panel is of the view that the permit exemptions should be limited to those matters that result in a fence of an ‘open’ appearance. This type of fence, whether post and wire or post and rail will have minimal visual impact on the landscape and should be exempt from the need for a permit. How many wires and whether they are spaced 10, 20 or 30 centimetres apart makes no material visual difference.

The Panel supports the increase in the threshold height from 1.2 to 1.4 metres for the reasons outlined by the Council. It also supports the exemption of post and rail fences up to a maximum height of 1.4 metres.

The Panel considers that the exemptions for fences can be simplified. As well as the matters discussed above, the Panel observes that there is some duplication in some of the dot points. For example, reference is made to both ‘post and wire’ and ‘post and wire and mesh’ type fencing. This should be simplified to just ‘post and wire’. Indeed, Council submitted that its own Agricultural Advisory Committee “*agreed that commonly used mesh fences (e.g. ‘ringlock’ fences) fall under the definition of an open post and wire fence.*”

The above findings are reflected in the Panel’s preferred version of the SLO Schedules presented in Appendix D of this report.

(iii) Conclusions

The Panel concludes that the permit exemptions for fences are generally appropriate subject to changes to the wording as expressed in Appendix D.

7.7 Are the permit exemptions for earthworks appropriate?

(i) Evidence and submissions

The Council submitted that there are long-standing policies in the Nillumbik Planning Scheme that encourage minimising the need for cut and fill. Clause 22.04 includes policies that:

- *Earthworks should not increase the potential for erosion.*
- *Building profile and form should respond to the topography on which the building is sited and the need for cut and fill should be minimised.*

- *Internal roads should follow contours to minimise the potential for erosion and to support the landscape vista of rural areas. They should also be designed to minimise the impact caused by run-off.*
- *Dams should not be sited in significant gullies/tributaries.*
- *Dams should be located so that there are sufficient areas for spillways to contain overflow on-site.*

Amendment C81 proposes that a permit is required for earthworks that comprise more than 1 metre of cut or fill.

Council did not propose any changes to this requirement following exhibition of the Amendment or during the course of the Panel Hearing.

Council submitted that the proposed permit trigger is consistent with existing policies in the planning scheme and aims to limit the extent of cut and fill without requiring a planning permit. The impacts of more than 1 metre of cut or fill will be managed through the planning permit process.

Mr Glossop gave evidence that a permit is required for earthworks in the Rural Conservation Zone and the Green Wedge Zone if the rate of flow or the discharge point of water across a property boundary changes. He also said that a permit for earthworks is required under the Environmental Significance Overlay if cut exceeds 500 millimetres or is within 5 metres of a substantial tree.

Many submissions made comments regarding the design responses in the Design Guidelines regarding minimising the need for cut and fill. For example, submitter 49 was concerned about the impact on providing accessible housing for aged and disabled households. They were particularly concerned about the prescriptive comments in the Design Guidelines.

Other submitters were concerned about the need for permits to construct tennis courts and ménages. For example, submitter 145 was concerned about the need for permits for ménages.

Submission 97 objected to the requirement for a permit for earthworks over a metre regardless of whether they will have any visual impact on the landscape. He said on remote properties earthworks may not be visible from outside the property yet a planning permit will be required for the works.

(ii) Discussion

The Panel generally supports the requirement for a planning permit for earthworks more than 1 metre in height (cut or fill). Extensive cut or fill has the potential to cause significant visual impact on the landscape through the scarring created by the earthworks itself as well as consequential erosion.

The Panel considers that a threshold of 1 metre of cut or fill represents a reasonable balance between permitting modest earthworks 'as-of-right' and the need to control significant earthworks through a permit process.

The Panel notes that the threshold is higher than the threshold in the Environmental Significance Overlay, which requires a permit for earthworks in excess of only 500 millimetres.

(iii) Conclusions

The Panel concludes that the permit exemptions for earthworks are appropriate.

7.8 Are the permit exemptions for public land appropriate?

(i) Evidence and submissions

The Landscape Character Assessment prepared by Planisphere assumed that Significant Landscape Overlays would not be applied over public land.

The Council submitted that in preparing Amendment C81 it had reviewed the approach adopted in numerous other planning scheme amendments in other municipalities regarding the implementation of Significant Landscape Overlays over public land. It referred to several Panels reports including but not limited to Greater Geelong Amendment C177, Glenelg Amendment C52, East Gippsland Amendment C68, Bass Coast Amendment C98 and Corangamite Amendment C29.

The Council proposes to apply the Significant Landscape Overlay over all public land other than the Kinglake National Park. It also proposes to exempt the need for a permit to construct a building or to construct or carry out works, to construct a fence or to remove vegetation provided that the activity is carried out by or on behalf of a public land manager or Parks Victoria.

An early version of the full exemption provisions did not refer to fences or vegetation. Following questioning from the Panel, Council has agreed that fences and vegetation should be added to the exemptions and it provided an updated version of the exemption wording in its right of reply submission as follows:

“A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.”(paragraph 81)

Council submitted its reasons for this approach in its right of reply as follows:

“While most maintenance and management activities conducted by public land managers are likely to be consistent with the objectives of the SLOs, and not detract from the achievement of the ‘Future Character Statement’, there are some forms of major development on public land that could do so. For instance, the Victorian Government has invited private sector individuals and companies to make unsolicited proposals for the construction of (tourism) facilities on public land. The construction of any major structure or facility

should be subject to assessment against the objectives and decision guidelines within the SLO to ensure that whatever is constructed minimises the visual impact on the landscape” (paragraph 95).

In addition, the Council said that it is aware of circumstances where public land is sold (and a rezoning is required) and an overlay control is not in place but otherwise would be. In this situation, it may not be immediately obvious that a particular overlay control should also be applied during the rezoning process because the stakeholders are not aware of the ‘underlying overlay’. Inclusion of an overlay control over public land with exemptions for public land managers avoids any later confusion or misunderstanding should the land ever be sold.

Submission 163 (DELWP) submitted:

- It supported the use of SLO9 in areas surrounding Kinglake National Park to protect the views of Kinglake National Park;
- It supported that Kinglake National Park was not intended to be included within a SLO;
- That on Map No 4SLO the map appears to show that part of Kinglake National Park has been inadvertently included within SLO9;
- That SLO13 has been placed over the Plenty Gorge Park, Yarra Valley Parklands and Warrandyte State Park.

The submission stated that the natural character of the Plenty and Yarra Rivers is already protected through these parks and they are already afforded long term protection through reservation under the Crown Land Reserves Act and the National Parks Act. The parks also have approved management plans or masterplans, which guide on-going management. The submission requested the removal of all SLO from these parks.

The Panel notes that DELWP did not request to be heard by the Panel.

(ii) Discussion

The Panel supports the approach of Council in applying the SLO over public land and also including permit exemptions for buildings, works, fences or vegetation removal by or on behalf of the public land manager or Parks Victoria.

This approach is consistent with the Greater Geelong Amendment C177, where the Panel recommended that *“public land be included in the proposed Significant Landscape Overlays, but that a specific exemption from permit requirements for development by or on behalf of the public land manager be included.”*

The DELWP submission also highlighted that the SLO has inadvertently been applied to a small area of Kinglake National Park. DELWP has apparently been unable to advise Council which land it is referring to, however Council believes it may be referring to a small parcel of Kinglake National Park that is not within the PCRZ. It appears as though a very small part of the National Park could be within the Rural Conservation Zone. As the Council used the zoning maps as the basis for its mapping, it has inadvertently included this parcel of land within SLO9. This mapping anomaly should be investigated further and corrected.

(iii) Conclusions

The Panel concludes that the permit exemptions for public land are appropriate.

The Panel also notes that the mapping error on Map No 4SLO regarding SLO9 within Kinglake National Park should be corrected following further confirmation with DELWP over the location of the land in question.

7.9 Are the application requirements appropriate?**(i) Evidence and submissions**

The exhibited version of Amendment C81 included a requirement that permit applications *“must be accompanied by a landscape plan showing proposed landscape works and plantings.”*

Following exhibition of the Amendment, Council slightly revised the wording to require applications *“must be accompanied by a landscape plan showing existing and proposed landscape works and plantings as appropriate”* (Panels underlining to highlight changes).

Submitter 90 said that the requirement in the Schedule should read *“an application be accompanied by proposed landscape works”*.

Submitter 89 thought that the words ‘must’ and ‘as appropriate’ should be deleted. They were concerned about how Council might interpret this requirement and the outcome that might result. They believed that landscaping should be a personal choice.

(ii) Discussion

The Panel supports the revised wording of Council with respect to the permit application requirements. It is a reasonable requirement for permit applications within a SLO to be accompanied by a landscape plan. The inclusion of the words ‘as appropriate’ enables the applicant to show only the existing and proposed landscaping works applicable to the consideration of the application. This is a logical and useful addition to the provision.

The above findings are reflected in the Panel’s preferred version of the SLO Schedules presented in Appendix D of this report.

(iii) Conclusions

The Panel concludes that the permit application requirements are appropriate.

7.10 Are the decision guidelines appropriate?**(i) Evidence and submissions**

Mr Glossop gave evidence regarding the Decision Guidelines at Clause 5.0 of the Schedules. He said:

“While permit requirements at Clause 3.0 are generally the same across each schedule, the Decision Guidelines at Clause 5.0 include general decision guidelines relevant across all schedules, along with some locally specific

decision guidelines that are borne out of the Study and Character Area brochures.

...

Having regard to the Practice Note on Reference and Incorporated Documents, I have formed the view that the decision guidelines needed to distil the specific requirements of these documents within the schedule themselves, to enable the decision-maker to confine their assessment to the matters listed in the schedule and other parts of the scheme.

These decision guidelines should also be read in conjunction with the decision guidelines within the header provision of the SLO" (paragraphs 66-68).

Following exhibition of the Amendment, Council revised a number of the decision guidelines with the input of Mr Glossop. The number and extent of these changes were presented to the Panel in Council's Part A submission before the commencement of the Hearing.

Submitters 153 and 154 said that the Decision Guidelines are sufficient for decision makers and they provide a more reasonable approach than the Design Guidelines. He said that they offer a more performance based approach and are generally supported. Like many other submitters, his concerns were more based around the lack of consistency between the Decision Guidelines in the Schedules compared to the design responses in the Design Guidelines.

Submitter 89 and 162 said that the management of the landscape to minimise bushfire risk should be represented in every Schedule.

Submitter 90 wanted fourteen of the decision guidelines in SLO14 deleted or modified. He believed that the many of these dot points were not relevant to land within a Low Density Residential Zone and were more appropriate for a rural context.

Submitters 49 and 154 object to the Decision Guideline that requires consideration be given to the extent to which the development follows the natural topography of the land. They claimed that this was incompatible with the needs of an ageing population and those with special needs.

(ii) Discussion

The Panel has reviewed each of the proposed Decision Guidelines and generally supports the scope and content of all of the Schedules. The Decision Guidelines respond to the key development issues that have potential to impact on the landscape character of the area and are consistent with the Future Character Statements and landscape objectives for each of the Schedules. The Panel supports the performance based approach to the structure of the Decision Guidelines and believes there is sufficient flexibility to accommodate a range of appropriate design outcomes.

The Panel notes that the Decision Guidelines need to be considered as whole. Given the unique constraints for each property in the Green Wedge, it is unlikely that all matters referred to in the Future Character Statements, objectives and Decision Guidelines will be able to be met for every permit application. Trade-offs will inevitably be required; this is the

nature of planning. What is important is the overall outcome that is achieved. For example, in some circumstances it may be unavoidable to site a dwelling in close proximity to a road. If this is the case, then the application may need to address screening, colours and materials in a more emphatic manner than, say, an application where the proposed dwelling is not visible from the road or surrounding properties. The emphasis placed on each of the Decision Guidelines will be determined on a case-by-case basis.

Whilst the Panel is generally satisfied with the overall direction of the Decision Guidelines, there are a few minor modifications that would ensure consistency with other changes to Clauses 1.0 and 2.0 of the Schedules. These are discussed below.

First, the Panel suggests that it is appropriate to link the various references to bushfire risk management in other parts of the Schedules into the Decision Guidelines. This would ensure that the threat of bushfire is a 'top-of-mind' consideration when assessing planning permit applications. The Panel's comments above regarding the need to balance different planning guidelines can then be actively managed in the planning permit process. The Panel considers that this will further address many of the concerns expressed by the CFA and other submitters regarding the need to ensure that landscaping and vegetation removal should be balanced against the very real threat of bushfire within the Nillumbik Green Wedge.

The Panel notes that the proposed Schedules to SLO11, SLO12 and SLO13 have a decision guideline under the 'General' heading that reads:

- *"The extent to which the proposal has addressed bushfire risk."*

The Panel considers that it is appropriate to extend this requirement to all Schedules. In addition, the Panel recommends that in the 'Vegetation and landscaping' section of the Decision Guidelines that an additional dot point could be added that refers to the need to consider the threat of bushfire when maintaining vegetation, removing vegetation or proposing any new landscaping.

Second, notwithstanding that the Panel has recommended the deletion of SLO14 at the current time, the Panel has considered the need to modify the Decision Guidelines in SLO14. On balance, the majority of the decision guidelines are generally acceptable, however, to ensure consistency with other changes recommended by the Panel, it is recommended that the dot point under the 'Building and Structures' heading regarding "the extent to which the low scale residential character is maintained" should be deleted.

Finally, the Panel has noticed that in SLO10 there is a decision guideline regarding the need to consider whether the proposed development maintains views of the Yarra River and Plenty River corridors. There is no reference to maintaining views to either of these corridors in the Statement of nature and key elements of landscape or the Future Character statement. The Panel suggests that this decision guideline should be deleted, as this Landscape Character Area is distant from both river corridors.

The above findings are reflected in the Panel's preferred version of the SLO Schedules presented in Appendix D of this report.

(iii) Conclusions

The Panel concludes that the Decision Guidelines are generally appropriate subject to changes to the wording as expressed in Appendix D.

7.11 Recommendation

The Panel Recommends

Amend each of the Significant Landscape Overlay Schedules as reflected in the Panel's preferred version of the Schedules contained in Appendix D.

Amend the extent of SLO9 on Map No 4SLO following further consultation with the Department of Environment, Land, Water and Planning to accurately reflect the extent of the Kinglake National Park.

8 Are the ‘Design Guidelines’ appropriate?

8.1 The issues

Council seeks to include seven new ‘Design Guidelines’ documents as Reference Documents through their individual listing in *Clause 6.0 - Reference Documents*, within each of the proposed SLO Schedules. Numerous submissions were received that opposed this outcome, on various grounds.

8.2 Are the Design Guidelines consistent with the proposed SLO Schedules?

(i) Evidence and submissions

Council submitted that it has dedicated substantial effort to the drafting of the proposed Significant Landscape Overlays for its Green Wedge. It stated that:

In the drafting of the C81 Significant Landscape Overlays careful consideration has been given to only requiring a planning permit for buildings and works, fencing, earthworks and vegetation removal where they may have an impact on the character of the landscape (paragraph 52, Part B submission).

Council sought guidance from Glossop Town Planning in the preparation of the Schedules and Mr Glossop gave evidence to the Panel that he had significant input into the drafting of each of the proposed Schedules. Following exhibition of the Amendment he was also involved in revising the Schedules.

Mr Glossop noted in his evidence that he was not asked to consider the character elements of each Schedule, such as the appropriateness of each ‘Statement of nature and key elements of landscape’ or the ‘Landscape character objectives to be achieved’, nor the extent of mapping of each Schedule.

Mr Glossop was not involved in the preparation of the Design Guidelines for each of the Landscape Character Areas, although he stated that in the preparing the Schedules he considered the content of the Design Guidelines and the Landscape Character Assessment Report, 2009 prepared by Planisphere.

In response to questions from the Panel, Mr Glossop said that there were several differences between the wording in parts of the ‘Future character statements’ in the Schedules and the proposed Design Guidelines. For example:

- Schedule 8 states “the presence of built form along roads will be avoided” compared to the corresponding Design Guideline which reads “ribbon development of residences along roads will be avoided”;
- Schedule 12 states “buildings and structures on visible hill faces and ridgelines will be avoided in order to maintain long range views to the surrounding mountain ranges and distant city skyline” compared to the Design Guidelines which reads “buildings and structures on visible hill faces and ridgelines will be managed in ways that maintain long range views to the surrounding mountain ranges and distant city skyline”.

Mr Glossop also said that there were other subtle difference between the proposed Schedules and the Design Guidelines, for example the sections dealing with 'views and vistas'.

Mr Glossop believed that there should be a high level of congruity between the Schedules and the Design Guidelines.

Ms Knight of Planisphere submitted on behalf of Council that following a review of submissions to the exhibited Amendment that several minor changes to the Statement of nature and key elements of landscape' for SLO10, SLO11 and SLO13 should be made. These changes are detailed elsewhere in the Panel report. Ms Knight did not recommend any specific changes to the Design Guidelines.

Numerous submissions commented on the detail in the Guidelines and expressed concerns about their scope and content.

Many submissions focussed attention on the content and detail of the Design Guidelines and seemed confused about the relationship between the proposed Schedules and the Design Guidelines (for example, submissions 69, 74, 169). Whatever the actual status of the Design Guidelines, these submitters thought that the Design Guidelines would become de facto planning provisions.

Submission 28 noted that the Design Guidelines require that planning permit applications must be accompanied by three sets of specified plans and was concerned about the cost and time implications for the applicant and Council. The proposed Schedules do not require the same plans and the details referred to in the landscape plan are different to the Design Guidelines.

Many submissions expressed concerns about the lighting requirements in the Design Guidelines (for example, submissions 98 and 154). There are no specific lighting requirements in the Schedules. Submission 154 asked how do you regulate and enforce a lighting guideline where there is no statutory planning permit trigger?

Similar views were expressed with respect to the signage sections of the Design Guidelines (for example, submissions 153 and 154).

In its 'right of reply', Council submitted a 'mock up' of a revised version of the Bushy Slopes Design Guidelines. This revised version was prepared by Glossop Town Planning during the course of the Hearing and responded to many of the issues discussed by submitters. The revised Design Guideline was a significant re-write of the original version and included recommendations for new graphics – although these graphics were not presented to the Panel.

(ii) Discussion

The Panel has reviewed the structure and content of the Schedules and Design Guidelines in detail. It is concerned that there are significant areas of difference between the two documents and that this has the potential to cause considerable confusion to all stakeholders.

The Panel also notes that the Design Guidelines themselves include differences in terminology. For example, on page 3 of the Open Pastures Design Guidelines the guidelines also appear to be referenced as the 'Landscape Management Design Guidelines' and the 'Nillumbik Landscape Management Design Guidelines'. This creates a further level of confusion for stakeholders.

Differences between the documents occur in a variety of places, for example:

- A 'Future Character Statement' in the Schedule compared to a 'Future Character Direction' in the guidelines;
- Differences in the wording of some of the Future Character Statements compared to the guidelines (as noted in the submissions above);
- Differences in the wording of the objectives included in Clause 2.0 of the Schedule compared to 'Landscape Character Objectives' in the guidelines (and these differences have been exacerbated following Councils' revisions to the objectives in each of the Schedules following exhibition of the Amendment).
- Additional objectives included in the guidelines for each of the key design elements of:
 - Vegetation and landscaping;
 - Views and vistas;
 - Buildings and structures siting;
 - Buildings and structures design;
 - Rural buildings and structures
 - Infrastructure and signage;
 - Property entrances, front boundary fencing and gates;
 - Car parking, formed driveways and roads;
 - Lighting;
 - Tennis courts and ménages;
- Application requirements; and
- Decision guidelines.

The Panel is particularly concerned about a statement in the Design Guidelines that says:

"How a proposed development responds to the objectives and design responses of these Guidelines is also a matter Council must consider in order to make a decision on any planning permit application affected by the SLO."

This statement is inconsistent with the Decision Guidelines included in the Schedule. The Design Guidelines are not referred to in the Decision Guidelines of any of the proposed Schedules. Moreover, the objectives of the Design Guidelines are significantly different to the objectives in the Schedule.

Reference to the 'design responses' included in the Design Guidelines as a matter that Council must consider is misleading and infers a status on the Design Guidelines that is not correct.

The Panel notes that Council has attempted to address some of the above concerns in a draft revision of the Design Guidelines for the Bushy Slopes prepared by Glossop Town Planning. Whilst this version is a considerable improvement, there appears to still be substantial work required in order to fully address the inconsistencies referred to above.

(iii) Conclusions

Whilst much of the content of the Design Guidelines is broadly consistent with the overall intent of the proposed Schedules, the Panel is of the view that there are also considerable differences between the two documents. These differences are sometimes dramatic and sometimes subtle. The cumulative effect of these differences is to present a confused set of requirements to the general public that is difficult to decipher.

Any form of Design Guidelines prepared to assist planning permit applicants should have a high level of consistency with the planning controls they are attempting to explain. It is not the role of Design Guidelines to extend the ambit of controls beyond the scope of any approved planning controls. Nor is it appropriate for Design Guidelines to vary the planning controls as expressed in, say, a Schedule. Even subtle changes to the wording of objectives and character statements can have the potential to create different meanings and interpretations.

The Panel concludes that the Design Guidelines as exhibited concurrently with the exhibition of Amendment C81 are not consistent with the proposed Schedules to the SLO.

8.3 Are the Design Guidelines too prescriptive?

(i) Evidence and submissions

The Council submitted in its Part A submission that:

“The proposed Design Guidelines are not statutory documents. They provide illustrative guidance to land owners about meeting the objectives of the proposed Significant Landscape Overlays and give broader suggestions about being respectful of the landscape” (paragraph 208).

Mr Glossop gave evidence that Design Guidelines are commonly prepared by Councils to assist applicants in understanding the planning controls and to provide design suggestions. He agreed with the Council that they were not statutory documents and that any design requirements should be articulated in the planning scheme.

A number of submissions were received in response to the exhibition of the amendment agreed with the tenor of Council’s submission. Submitter 166, as an example, stated that they supported the Design Guidelines and that good site planning and building design are essential if new developments are to respect and reinforce the existing character of the Green Wedge landscapes.

Submitter 156 stated that they thought the Design Guidelines should be clear and as strong as possible and that “the last thing Nillumbik needs are weak policy settings which don’t stand up when tested at VCAT”. Submitter 37 also wanted strong controls and supported more mandatory controls along the Yarra River.

Counter to these opinions, a large number of submitters opposed the detailed nature of the Design Guidelines. Some submissions called for the deletion of the Design Guidelines (Submitters 44 and 45).

Submitter 49 was indicative of many of the comments when they stated that they thought the Design Guidelines “direct applicants to a one size fits all approach to design responses

where in the past decades, innovation has been allowed to flourish and is a feature of the built environment.” The submitter thought that the Design Guidelines were “overly prescriptive, inflexible and will hinder rather than encourage innovation in design responses and work against what is actually sought by the SLO to encourage appropriate development that respects the natural landscape”. They thought that earthy muted tones of red and green in certain contexts can result in the opposite of the desired outcome and that dark to mid greys provide the most recessive colours in a landscape setting.

Submitter 131 stated that the palette of materials that are considered to complement the natural setting of Nillumbik’s Green Wedge Areas and those materials, colours and finishes that should be avoided are overly limited and will not guarantee good design outcomes. The submission objected to the design guidelines that state avoid:

- “excessive symmetry in plan or elevation”;
- “bland, boxy, unarticulated building forms”;
- “overuse of heavy looking materials such as masonry or brick detailing”.

Submitters also highlighted other specific provisions within the Design Guidelines. These were typically those guidelines that required the avoidance of a particular design or outcome. A selection of these guidelines include the following. Avoiding ...:

- “Formal landscape design (eg geometrically aligned tree avenues/large areas of lawn/formal garden beds)” (Submitter 151)
- “Buildings that do not follow the natural contours of the site, and require excessive cut and fill” (Submitter 49)
- “Mock historic style housing, poorly proportioned, with excessive use of reproduction or decorative detailing” (Submitter 10)
- “Bricks and other rendered surfaces should be used only as minor elements of a building’s exterior” (Submitter 49)
- “Large entry features, particularly in heavy materials such as brick, wrought iron, cast iron or concrete” (Submitter 151)
- “Car parking areas located between the road frontage and buildings on the site”(Submitter 153)
- “Interior and exterior lighting that has a negative impact on the landscape of the area” (Submitter 154)
- “Tennis courts and ménages located in rural/agricultural areas where they detract from the prominent land use characteristics of the area” (Submitter 89).

Many of these submissions expressed concern that the wording of the Design Guidelines implied that Council would effectively prohibit the types of development listed under the ‘avoid’ headings and that the only way a permit would be issued by Council is if an applicant strictly follows the Design Guidelines.

In its right of reply closing submission Council reiterated that it thought the Design Guidelines were not prescriptive.

“Amendment C81 is not about specifying a particular design outcome; ie a particular style of housing such as Federation or modernist. Equally, the proposed amendment does not seek to prohibit any particular style of architecture.

Rather, the amendment is performance based, seeking to achieve a general outcome – minimising visual intrusion and preserving the rural character of the area – and is neutral to architectural design.

Nowhere within the SLO schedules, nor the Design Guidelines, is the word ‘must’ used to mandate a design response. Nothing is prohibited by the amendment (Paragraphs 49-51).

(ii) Discussion

The Panel acknowledges the significant resources the Council has committed to the preparation of the Design Guidelines. The documents are visually attractive and well presented. Some of the content of the Design Guidelines provides useful information and assistance to permit applicants. There are, however, also many sections that have caused confusion and angst in the community and the Panel shares some of these concerns.

The Panel agrees with Council that the Design Guidelines are not intended to be statutory documents. They do not express the planning controls; rather, their anticipated role is to help applicants understand the planning controls as expressed in the schedules to the SLO.

The Victorian planning system is founded strongly in the principle of performance based planning controls. This is particularly true for built form and design outcomes. That is, the planning control should generally outline the design objective to be achieved and then it is up to the applicant to demonstrate how they have complied with the objective. Prescriptive requirements that specify what materials, colours, style or other detailed design parameters are the antithesis of a performance-based system.

Design Guidelines should clearly explain the objectives to be achieved. In this regard, it is also important that the objectives in the Design Guidelines should reflect the same objectives in the relevant SLO schedules. The Design Guidelines should then provide some design suggestions as examples of ways the Council believes that an applicant might meet the objective. Design guidance typically emphasises that there may be other ways to meet the objective and that an applicant may pursue other alternatives that might also meet the objective.

The Panel shares many of the concerns of the submitters regarding the detailed lists of ‘avoids’ and the prescriptive wording of many of the design responses in the Design Guidelines. Whilst it may not be Council’s intention to prohibit these design outcomes, the Panel is concerned that various stakeholders within the planning process could misinterpret the Design Guidelines.

The Design Guidelines are not defacto planning controls. The Schedules to the SLO are the relevant planning controls and the Panel is concerned that the Design Guidelines appear to extend beyond providing helpful design suggestions towards a more prescriptive approach.

The Panel acknowledges that the revised Bushy Slopes Design Guidelines prepared by Glossop Town Planning appears to represent a more appropriate performance based approach. The Panel supports the use of ‘Design Suggestions’ and the general simplifying of the documents. Although still a work in progress, the revised Design Guidelines presented to the Panel is a useful ‘first cut’ and has the potential to be a useful and practical brochure

that can assist planning permit applicants. The Panel envisages that Council could similarly revise the full suite of Design Guidelines and that these could more reasonably assist applicants in the preparation of planning permit applications.

(iii) Conclusions

The Panel supports the concept of having some form of Design Guidelines to assist permit applicants understand the Significant Landscape Overlay planning controls. The specific details of the content of the Design Guidelines are beyond the scope of the Panel to resolve, however the Panel encourages the Council to continue the process of refining the Design Guidelines along the lines recommended by Glossop Town Planning. This should result in a less prescriptive and more performance based document that provides more flexibility in design outcomes.

8.4 Should the Design Guidelines be amended?

(i) Evidence and submissions

As noted in the section above, during the course of the hearing the Council asked Mr Glossop to review the content of the Design Guidelines and to provide some further comment to the Panel about ways in which they could be refined.

In an email to Council dated 5 February 2016, Glossop Town Planning stated it had reviewed the Bushy Slopes Design Guidelines in the context of the 'Practice Note on Incorporated and Reference Documents' (Practice Note PPN13) and the content of the 'Landscape Character Assessment' study (2009). With respect to the need for any changes to the Design Guidelines (referred to in the email as 'brochures'), the email stated:

We are of the view that there is a high degree of overlap between the Landscape Character Assessment and the brochures. In general, the content of the brochures (particularly the front end) could be substantially removed, as it is better expressed within the Landscape Character Assessment.

...

It is our suggestion that the brochures be redrafted to the following structure:

- *Purpose - which outlines when and where the SLOs and Guidelines apply.*
- *Future Character Statement.*
- *Permit requirements – an illustrative explanation of individual permit requirements, to allow landowners to determine whether a permit is required immediately.*
- *Design Guidance – similarly structured in the way that the Nillumbik Residential Design Guidelines are. In this manner, the objectives and decision would be derived from the SLO schedule themselves, with the current Design Guidelines more tightly worded and illustrative to inform each decision guideline.*

Using the Bushy Slopes Design Guideline as an example, Glossop Town Planning provided a draft of how the revised 'brochure' might look. Although the revised document was

incomplete, it appeared to be generally consistent with the written advice provided by Glossop Town Planning.

The Council noted in its right of reply that it supported the approach recommended by Glossop Town Planning.

As noted in the section above, numerous submitters requested that the Design Guidelines be amended or deleted. The Panel will not repeat the specific issues of concern, however the revised Bushy Slopes Design Guideline document would appear to address many of the concerns expressed by submitters.

The Panel notes that submitters were unable to respond to the revised version of the Design Guidelines prepared by Glossop Town Planning.

(ii) Discussion

The Panel accepts the thrust of the changes to the Design Guidelines recommended by Glossop Town Planning. The suggested overall approach appears to the Panel to be more consistent with a brochure providing helpful advice to permit applicants in understanding the planning provisions within the relevant SLO Schedule.

The Panel notes, however, that the amendments to the Design Guidelines are not a matter of small refinements to the existing documents. The amendments to the Design Guidelines are in effect a complete rewrite of the documents.

A 'mock-up' of the Bushy Slopes Design Guideline was presented to the Panel as an example only. There is still significant work to complete the draft and update graphics and so on. A further six Design Guidelines will also need to be prepared.

The Panel understands that Council accepts the need for changes to the Design Guidelines and commends it for responding to the concerns expressed during the hearing.

(iii) Conclusions

The Panel agrees with Glossop Town Planning and Council that the Design Guidelines need to be substantially rewritten. The final content of the Design Guidelines is not a matter for the Panel to determine as they sit outside of the Nillumbik Planning Scheme. We encourage Council to complete the suite of Design Guidelines using the advice provided by Glossop Town Planning as a useful starting point.

8.5 Should the Design Guidelines be included as Reference Documents?

(i) Evidence and submissions

The Council stated in its part A submission that:

"Nillumbik Shire Council is fully cognisant of the role of reference documents in planning schemes. Statutory decision making is based on the decision guidelines within relevant parts of the planning scheme. The 'Design Guidelines' are public information brochures intended to assist in permit applicants' understanding of what is encouraged and discouraged by both the planning scheme and relevant broader Council programs." (paragraph 302)

In response to questions from the Panel, Mr Glossop said he thought that the proposed Design Guidelines could be included as a reference document within each of the Schedules provided that they had “a good edit”. He thought that the inclusion of the Design Guidelines as a reference document was consistent with Planning Practice Note titled ‘Incorporated and Reference Documents’ (PPN13).

Glossop Town Planning in its email to Council dated 5 February 2016 noted that:

“Our preliminary review is that there is certainly scope to retain the brochures as reference documents within the Schedule. However, substantial changes will be required.

...

Our view is that both the brochure and the Landscape Character Assessment should sit as reference documents within the Schedules, but that the brochures should be refocussed to be more illustrative and informative to permit applicants.”

Some submitters thought that the Design Guidelines should be included as a reference document, for example Submission 37.

Some submitters thought that the Design Guidelines should not be included as a reference document, for example Submissions 44, 45, 90, 153 and 154.

It was also apparent from the comments from some submitters that they were unclear about the status of a reference document within a planning scheme.

(ii) Discussion

A reference document in a planning scheme provides background information to assist in understanding the context within which a particular policy or provision has been framed. The Planning Practice Note ‘Incorporated and Reference Documents’ states that:

“Reference documents can be used in a number of ways. They can be used as a basis for preparing the Municipal Strategic Statement (MSS), local planning policies or requirements in the planning scheme, or can be mentioned in the planning scheme as a source of useful background information.

Reference documents have only a limited role in decision-making as they are not part of the planning scheme. They do not have the status of incorporated documents or carry the same weight.

Many documents, while useful, may be too long or complex or cover too wide a subject matter to be suitable for inclusion as an incorporated document in the scheme. If they provide useful background information or general advice to applicants, or will assist in understanding the scheme, they may be suitable as reference documents.

A reference document may explain why particular requirements are in the scheme, substantiate a specific issue or provide background to specific decision guidelines in local planning policies or schedules. Generally, the

substantive planning elements of the reference document will have been included in the scheme in either the MSS, a local planning policy or a schedule.

The VPP Practice Note on Writing Schedules also comments on when to refer to incorporated and reference documents in schedules. It states that:

Where possible, the provisions set out in a schedule should be self contained. They should be capable of being understood without having to refer to any other documents.

Incorporated and reference documents can be used in schedules where:

- *A map to a schedule is too large to be included in the schedule. This map can be an incorporated document instead.*
- *A study that provides the justification for a statement of significance used in a schedule needs to be cited as a reference document. Where possible the conditions or assumptions used in such a study are subject to change, the responsible authority should bear in mind that this will imply the need to review the study and to review any overlay that has been based on its findings.*
- *Decision guidelines refer to strategy documents where the document is clearly relevant to the implementation of the provision. The document should be an incorporated document. The document should be a published and publically available document and preferably should be subject to an approval process that takes public comments into consideration.*

Having regard to the above, the Panel agrees that the Landscape Character Assessment report prepared by Planisphere (2009) meets the criteria for inclusion as a reference document in each of the relevant SLO schedules. In the Panel's view, this report is the foundation and justification for Amendment C81 and provides the basis of the statements of significance in each of the character areas. The Panel supports the inclusion of the Landscape Character Assessment report as a reference document.

The Panel however does not agree with Council or Mr Glossop that the Design Guidelines should be included as a reference document. There are two main reasons.

First, the Panel notes that reference documents should primarily provide the background and context for the provisions in the schedule. They are not intended to provide a detailed explanation of how a Council may interpret the provisions of the planning scheme or to be used as a substitute or addendum to the decision making guidelines specified in a schedule. The substantive elements of a reference document should be included within the schedule.

The Panel is not convinced that the proposed Design Guidelines provide context or background to the preparation of the Amendment C81. Instead, the Panel is of the view that the Design Guidelines have been derived from the SLO schedules. This is evident in the rewrite of the Bushy Slopes Design Guidelines prepared by Glossop Town Planning.

The Panel believes that whilst the Design Guidelines may have a useful role to play, they do not meet the criteria of a reference document. The Panel is concerned that the inclusion of

the Design Guidelines as reference documents affords them a status, albeit still negligible, that is not warranted and could be confusing to permit applicants.

Second, the Panel notes that the Design Guidelines are a work in progress. The Panel has already concluded that it has significant concerns with the content and structure of the Design Guidelines in the form that they were originally drafted. Council and Mr Glossop have also conceded that the Design Guidelines need substantial re-writing. Whilst the revised draft version of the Bushy Slopes Design Guidelines is a vast improvement, the Panel has not been presented with a final set of revised Design Guidelines and is reluctant to recommend they become a reference document when it has not reviewed the finalised documents in question.

The above findings are reflected in the Panel's preferred version of the SLO schedules presented in Appendix D of this report via the removal of the listing of each Design Guideline document from Clause 6.0.

(iii) Conclusions

The Panel supports the preparation of Design Guidelines to assist applicants in understanding the content of the SLO schedules. These guidelines need not, and in this instance should not, however, be included as reference documents.

8.6 Recommendation

The Panel recommends:

Amend Clause 6.0 of each of the proposed Significant Landscape Overlay Schedules by deleting reference to the 'Design Guideline' document as follows:

- a) Delete '*Open Pastures Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 8.
- b) Delete '*Rolling Valleys Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 9.
- c) Delete '*Undulating Agricultural Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 10.
- d) Delete '*Bushy Slopes Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 11.
- e) Delete '*Agricultural Uplands Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 12.
- f) Delete '*River Interface Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 13.
- g) Delete '*Suburban Rural Design Guideline (Nillumbik Shire Council, March 2015)*' from Clause 6.0 in Significant Landscape Overlay Schedule 14.

This Recommendation is reflected in the drafting of the Panel's preferred version of each Schedule as presented in Appendix D.

9 Will Amendment C81 impact on the potential to rezone land or vary the Urban Growth Boundary in the future?

9.1 The issue

Some submitters believed that if approved, Amendment C81 would prejudice the opportunity for them to develop their land for urban purposes. Notwithstanding that their land is currently outside the Urban Growth Boundary, they expressed concern that the introduction of a Significant Landscape Overlay would make it harder for them to apply for a future rezoning. Many submitters thought that they should be compensated for the imposition of a Significant Landscape Overlay on their land.

9.2 Evidence and submissions

Council submitted that zoning, the Urban Growth Boundary and minimum lot sizes are not relevant matters in the consideration of Amendment C81. The Council noted that none of these matters were affected by the introduction of SLO Schedules 8 to 14 to land within the Nillumbik Green Wedge. That is, there are no proposed changes to the zoning of any land, there is no change to the Urban Growth Boundary and there are no changes to any subdivision provisions as a result of Amendment C81.

Submissions 176, 177, 178, 179 and 180 dealt with wide ranging issues associated with the Urban Growth Boundary and the Nillumbik Green Wedge. They submitted that if Amendment C81 was approved it would 'sabotage' the opportunity for non-urban land that they were associated with to be rezoned in the future to facilitate urban development. They argued that existing urban infrastructure was available or had the capacity to become available to service development of their non-urban land.

The submitters advised the Panel that they have been in a long running dispute with Council over zoning and various planning permit applications for their land holdings. They were concerned that Amendment C81 would 'cement the Green Wedge forever' and preclude any further development of their land.

The submissions were critical of almost every aspect of Amendment C81 and they believed that it was unfair and unjust for it to proceed.

The Panel was provided with 35 documents from these submitters and they are recorded in the Appendix C of this report.

The submitters called Mr Fairbairn, consulting engineer, as an expert witness.

Mr Fairbairn gave evidence that he had been providing engineering advice to the submitters for about 10 years. He said that he initially provided advice to the submitters regarding the availability of water supply to their properties. He later gave further advice regarding a range of other utility services. Mr Fairbairn said that his evidence related to civil engineering and not town planning.

Mr Fairbairn gave evidence regarding the availability of a range of services to the submitters' properties. He also spoke of the long running planning dispute between the submitters and the Council, including the disputed zoning of their land. The bulk of his evidence statement did not specifically relate to the details of proposed Amendment C81.

On page 3 of his evidence statement, Mr Fairbairn commented on the 'implementation of the Significant Landscape Overlay'. He stated:

"The subject properties are currently entirely within the SLO10 are that is Undulating Agricultural as defined in the Amendment. The Design Guidelines for the SLO10 are generally aimed at preservation of a predominantly rural character of the area. My clients have argued for some time that their properties should be recognised as urban rather than rural and therefore that this Amendment is not appropriate for their land as it is only being applied to land outside the urban growth boundary. Therefore the design guidelines will have significant impact on the potential of the properties for further development in the following manner:

- *The restrictions on vegetation removal will not only affect any future plans for development but will also restrict the use of the land for agricultural purposes. The preservation of dense vegetation is also in conflict with the Wildfire Management Overlay which applies to the properties.*
- *The restriction of development on hillsides and ridges coupled with the restriction of vegetation removal further limits the land uses and development of these properties.*
- *Building and structure siting guidelines would impact heavily on possible infrastructure construction such as for roads and buildings associated with future development."*

Mr Fairbairn concluded:

Therefore on behalf of my clients ..., I wish to support their objection to the provisions of the Nillumbik Planning Scheme proposed Amendment C81 on the grounds outlined in this report. My clients therefore request that the Panel not approve the proposed Amendment C81 so as to not detrimentally affect the current and future potential of the land for development and the best use of infrastructure available to the properties.

The Council stated that Mr Fairbairn's evidence statement did not comply with the requirements of Planning Panels Victoria's Guide to Expert Evidence. The Council did not cross-examine Mr Fairbairn.

Submitter 85 said, "while we accept that sensitive areas in Nillumbik need to have buffer zones, we believe it is not the case that areas with landscape value should be treated with the same mindset as those used as buffer zones for areas of highly valuable biodiversity". They thought some areas of landscape value may be suitable for development and that Amendment C81 would restrict this potential. "We believe it is important not to legislate restrictions that might make future adaptations difficult and even impractical."

Submitter 171 was concerned about the impact of Amendment C81 on his ability to rebuild on the same site if a future bushfire destroyed his dwelling.

Submission 97 thought that Amendment C81 would prejudice the future rezoning of his land for residential purposes.

Submitter 25 asked that in the event that Amendment C81 proceeds then it should contain a provision that the land subject to the SLO schedules is reserved for a public purpose under a planning scheme or will be needed for a public purpose so that land owners may qualify for compensation under the provisions of Part 5 of the *Planning and Environment Act 1987*.

Other submitters (for example, 12, 48, 52, 81, 90, 176,177,178, 179 and 180) were also concerned that their properties would be devalued as a result of proposed Amendment C81.

Submitter 146 suggested that compensation should be paid if the SLO was applied as she considered it would devalue her property. She also noted that if Council considered the SLO would increase the property value, compensation should also be paid as her rates would increase.

9.3 Discussion

The Panel agrees with Council that zoning, the location of the Urban Growth Boundary and subdivision provisions are not relevant matters in the consideration of Amendment C81.

The Panel found most of Mr Fairbairn's evidence in respect to this matter to be irrelevant to the consideration of Amendment C81. Mr Fairbairn did not convince the Panel that Amendment C81 would impact on any future potential to rezone and develop his client's land. In any event, the Panel considers these matters to be separate to and beyond the scope of the substance of Amendment C81.

The Panel also agrees with Council's observations that Mr Fairbairn's evidence statement reads more like an advocate's submission than an expert witness statement.

The Panel does not believe that the proposed Amendment C81 will have any impact on the future potential to rezone any land or on any future potential change to the Urban Growth Boundary. Amendment C81 does not change any subdivision provisions and it therefore will not change any current minimum lot sizes specified in the existing zones within the Nillumbik Green Wedge.

Any future change to the Urban Growth Boundary, zoning or subdivision provisions would require a separate planning scheme amendment via a separate planning process. The Panel notes that a change to the Urban Growth Boundary is a significant change in planning policy and this also requires the approval of Parliament.

The Panel notes that proposed SLO Schedules 8 to 14 relate to non-urban areas. Other SLO Schedules already in the Nillumbik Planning Scheme relate to urban areas. The proposed SLO schedules are written within the context of a non-urban area. If the Urban Growth Boundary were to ever change (and the Panel makes no comment about the merits or otherwise of changing the Urban Growth Boundary) then it would be necessary to review the applicability of any SLO Schedule (and any other overlay) to any land that was so affected.

This is not, however, a matter for this Panel to consider. It is not the role of this Panel to review the Urban Growth Boundary or the appropriate zoning of land. The Panel's role in this instance is to consider submissions relating the applicability and suitability of the Significant Landscape Overlay to the areas proposed by Council, including the detailed provisions of each of the relevant Schedules.

The Panel acknowledges the long running disputes that some submitters have had with the Council, however, it is beyond the scope of this Panel to solve these issues or to provide any comment on the merits or otherwise of the claims.

The Panel does not believe that the proposed Amendment will have any significant impact on the capacity to rebuild a dwelling if a dwelling is destroyed by bushfire. There are existing provisions in the Nillumbik Planning Scheme that address this issue and each circumstance would need to be treated on its merits.

The Panel appreciates that some submitters are concerned about the impact that the proposed Amendment may have on their property values. Many Panels have over the years been asked to consider the financial impacts of a proposed rezoning or overlay control on private land. The Panel considering Amendment C2 to the Colac Otway Planning Scheme stated:

“The legal position is that there is no entitlement to financial compensation for the rezoning of land to what are considered to be more restrictive provisions, or for the introduction of an overlay provision. The Planning and Environment Act essentially provides for compensation where land is reserved for a public purpose. Other legislation provides a process to ensure fair compensation for that land. While the Panel recognises that some elements of the amendment may the affect the capacity to use and develop land in a manner envisaged by the owner, the amendment does not propose that any land would be acquired. Claims for financial compensation are therefore outside the scope of both the Act and the Panel’s deliberations.” (page 62)

The Panel agrees with these observations and they are equally applicable in the circumstances of Amendment C81. Moreover, the Panel has not been provided with any evidence that Amendment C81 will have any financial impact on land owners.

The Panel does not agree with submitter 25. There is no justification for any declaration that land affected by Amendment C81 should be reserved for a public purpose or will be needed for a public purpose. No land is required for a public purpose as a result of Amendment C81.

9.4 Conclusions

The Panel concludes that Amendment C81 will not impact on the potential to rezone land or vary the Urban Growth Boundary in the future. Any future changes to the zoning of land or changes to the Urban Growth Boundary would be subject to a separate planning process. The Panel also concludes that no financial compensation is appropriate for any land owners affected by Amendment C81.

10 Will Amendment C81 create an unreasonable administrative burden on residents and Council?

10.1 The issue

Amendment C81 introduces new planning controls that may trigger the need for a planning permit application. This issue is whether the proposed Amendment will create an unreasonable impost on residents and the Council?

10.2 Evidence and submissions

Council submitted that due to a variety of issues such as the restrictive zoning of the land (particularly the extensive application of the Green Wedge Zone and Rural Conservation Zone) and the application of various overlays (including the Environmental Significance Overlay, Bushfire Management Overlay and Design and Development Overlay) as well as other existing provisions in the planning scheme relating to flooding issues, native vegetation removal and so on, there is already a need to gain a planning permit for buildings and works for the vast majority of activities within the Nillumbik Green Wedge. In addition, the existing planning policy expressed in Clause 22.04 dealing with siting and design in non-urban areas has been around for many years. The Council submitted that the proposed Amendment was simply a refinement of this policy. Council did not believe that Amendment C81 represented a new or unreasonable requirement for properties within the Green Wedge.

Some submitters considered that the proposed planning scheme requirements are unconstitutional and that the planning system infringes on personal freedom and human rights (for example, submissions 176, 177, 178, 179 and 180). These submitters believe that the amendment represents an onerous restriction on their property rights or personal liberties, by introducing a new and unreasonable 'restriction'.

Submission 43 said that "I own the land and Council has no right to limit my uses and enjoyment of the land as they are trying to do with Amendment C81". He thought that the Amendment denies natural justice and infringes on common law rights through the application of prescriptive policies on private land.

Submission 112 thought that the proposed Amendment represented a step towards totalitarian control and that the Council was not interested in good design outcomes. They were suspicious of the implementation of the SLO schedules and the motives of Council.

Submission 89 was worried that their existing use rights will be altered or reduced.

Approximately a quarter of submitters stated that Council rates are too high and the Council budget would be better spent on other things.

Submission 97 thought that the Amendment would add significantly to the statutory planning burden of an already overloaded planning department.

Submission 43 also thought the level of documentation and the administrative processes were too complex for many people to understand.

Submission 82 suggested that planning permits triggered by the SLO should be fast tracked and have no fee requirement. Delays could be reduced by applying and issuing permits on-line and potentially via a 'self-assess' system with random compliance audits conducted by Council.

10.3 Discussion

The Panel is mindful that the planning system in general is already complex and confusing for many people. Indeed, professional experts often find aspects of the system confusing. The Panel has therefore endeavoured to ensure that Amendment C81 does not create another layer of control just for the sake of it.

The Panel has already established in this report that there is a strong strategic justification for planning controls dealing with significant landscapes in the Nillumbik Green Wedge. In refining the detailed provisions of the schedules, the Panel's recommendations have focussed on simplifying the provisions to ensure that the resulting controls are reasonable for all stakeholders.

The Panel asked the Council throughout the Hearing for details regarding the impact of various proposed controls relative to the existing permit triggers in the current planning scheme. This information was most useful to the Panel in helping to understand the impact of Amendment C81 – both on the local community and the Council officers.

As noted in Council's submission, the Nillumbik Green Wedge is already covered by extensive planning controls. To some extent, this is not surprising. It is common for land within a Green Wedge to have a high level of statutory control. The Panel accepts that whilst there will be some additional planning permits required as a result of the proposed SLO, it does not believe that this is unreasonable and will not create a significant burden for the Council to manage or for the local community to comply.

Council has indicated that it has the capacity to deal with the implementation of Amendment C81. To this end, the Panel acknowledges the significant resources it has devoted to the preparation of Amendment C81 and encourages the Council to 'follow through' with the statutory planning support required to implement the Amendment.

The Panel encourages the Council to prepare information brochures to assist planning permit applicants understand the SLO provisions and to simplify the planning process for applicants as much as possible. It may also be possible to process simple and straightforward planning permit applications (for example, say, a front fence) within a more expeditious time frame than other more complicated applications. It goes beyond the brief of the Panel to specify this process, however we encourage the Council to give serious consideration to its internal administration of relatively simple permit applications resulting from the introduction of Amendment C81.

Amendment C81 has been prepared under the legal framework of the *Planning and Environment Act 1987*. The Panel disagrees with submitters who claim that the Amendment is unconstitutional and infringes unreasonably on human rights. The Council has prepared the Amendment based on an appropriate strategic planning study and in accordance with the Victoria Planning Provisions.

Rates are levied in accordance with the Local Government Act and the Valuation of Land Act. This is not a relevant planning issue in the consideration of Amendment C81. The allocation of Council resources is managed through its annual budget process and is not a relevant matter in the consideration of Amendment C81.

10.4 Conclusion

The Panel concludes that Amendment C81 will not create an unreasonable burden on residents or the Council.

11 Other proposed changes

11.1 The issue

The Amendment proposes to delete land from the existing Significant Landscape Overlay Schedule 2 (Bush and Semi Bush Residential Areas).

11.2 Submissions

Council advised that two parcels of land which are located outside the Urban Growth Boundary, and that are zoned Rural Conservation Zone mistakenly have SLO2 (Bush and Semi Bush Residential Areas) applied (Refer Figure 2).



Figure 2: Existing Overlay Mapping Correction

11.3 Discussion

The Panel accepts that the current application of SLO2 to land identified in Figure 2 is inappropriate as the land is not zoned 'Neighbourhood Residential Zone' nor is it within the Urban Growth Boundary. No submissions were received regarding Council's proposal to correct this anomaly. It is noted that via Amendment C81, SLO11 - Bushy Slopes Landscape Character Area, is to be applied to the land.

11.4 Conclusion

The Panel supports the removal of SLO2 from the land identified in Figure 2 as exhibited.

Appendix A Submitters to the Amendment

No.	Submitter
1	J Gourlay
2	C Foot
3	N Campbell
4	Formerly G Schnapp, E Caspi, D Schnapp, Estate of M Freeman, C and D Bennett and Adjungbilly Pty Ltd – refer Submissions 176-180)
5	D Foster
6	P Horne
7	R Murphy
8	S Germancheva
9	N Guggenheimer
10	P Alexander
11	S Gaunt
12	Parisienne Basket Shoes Pty Ltd
13	A Frost
14	J and J Flett
15	S Graham
16	P Reynolds
17	P Semple
18	S McKinnon
19	Friends of Panton Hill Bushlands Reserve System
20	W McKimmie
21	W Lord
22	N Roberts
23	R Zollie and A Trueman
24	E and B Johnson
25	F and J Bauer
26	R Kellow
27	S Penrose
28	M and G Poulton
29	A Sells

30	M Marshall
31	P and J Lawson
32	A Frost
33	D and M Arelette
34	D Nicholls
35	R Mayes
36	Manningham City Council
37	I Penrose
38	J Friend
39	M Nuttall
40	F Heseltine
41	S Apted
42	R Robinson
43	Nillumbik Ratepayers Association
44	R and K Stoneman
45	A Stoneman
46	J Leonard
47	S Leonard
48	A and D Bramall
49	W Holden
50	J Rooke
51	S Turner
52	B Veerman
53	A Tesch
54	L and N Nikolaou
55	I McKimmie
56	R McKimmie Young
57	M Hamment
58	K Collins
59	Y Raju
60	N Deards
61	M Fox
62	R Teakle

63	G and M Donnelly
64	C Duggleby
65	M and L Harraway
66	S and C Donald
67	F Proll
68	E Hughes
69	D Smith
70	P Keene
71	S Raju
72	N Raju
73	N and K McCormack
74	B Waites
75	D Poppenbeek
76	M Spencer
77	A and K Karasavidis
78	G Bailey
79	K L Schoof
80	M Macmillan
81	B Tully
82	R Bassett-Smith
83	R Macmillan
84	J Maino and Douray Pty Ltd
85	Diamond Creek Progress Association
86	R and V Maino
87	F Conto
88	I Macmillan
89	M McDonald
90	B Murray
91	E Murray
92	T Pettingill
93	T Guthrie
94	W Henzell
95	G Sanderson

96	A Bean
97	J Gedye
98	A Gerrand
99	R Raju
100	J O'Reilly
101	T O'Reilly
102	J and N Heseltine
103	Land Owners Rights Association
104	M and M De Pellegrin
105	Parisienne Basket Shoes
106	K Nation
107	P and E Floberg
108	F Roberts
109	A Klasens
110	C Balfour-Browne
111	C and G Hackett
112	N Woodley
113	J and M Majoor, M and S Lee
114	S, H and C Cayzer
115	Parks Victoria
116	I McIntosh
117	F Laino
118	D Jenkins
119	N Forbes
120	G Stevenson
121	A Field
122	G and P White
123	P and M Butler
124	J Crosswhite
125	Banyule City Council
126	F and P Vincent
127	M Rowe
128	J Rowe

129	L Brain
130	J and T Huitt
131	U Kyriazis
132	J Seed
133	J and B Kendall
134	T and B Bell
135	R Coffey
136	P, E and S Tsagalidis
137	B and D Hurst
138	G and M Acquaviva
139	D and P Thompson
140	Friends of Nillumbik
141	W and J Van Tenac
142	A and B Ozimeck
143	L and D Raines
144	J Crouch
145	Nillumbik Horse Action Group
146	T Moore
147	R Butler
148	N Huitt
149	C Giles
150	G Daniel
151	T and A Watson
152	S Jamison
153	L Rigoni (on behalf of 30 land owners)
154	J Borg
155	G Thomson
156	Nillumbik Greens
157	R Niven
158	G Beissbarth
159	V Fitzgerald
160	D English
161	National Trust of Australia (Victoria)

162	Country Fire Authority North West Region
163	DELWP Port Phillip Region
164	Windy Mile Gateway Action Group
165	J Mattiske
166	Eltham Gateway Action Group
167	S Turner
168	No submission
169	L and S Manning
170	L Atkinson
171	S Gough
172	J Gove
173	C Karamoshos
174	S, N and I Lukic
175	No submission
176	Group submission on behalf of G Schnapp, E Caspi, D Schnapp, Estate of M Freeman, C and D Bennett and Adjungbilly Pty Ltd
177	D Schnapp
178	Adjungbilly Pty Ltd
179	Estate of M Freeman
180	E Caspi

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Shire of Nillumbik	Ms K Bayly and Mr C Griffiths, assisted by H Knight (Planisphere). The following expert witness was called: <ul style="list-style-type: none"> Mr Glossop, Town Planner, Glossop Town Planning Pty Ltd
Country Fire Authority	Mr Leslie, Mr Allen and Ms Coxon
Nillumbik Ratepayers Association	Mr Murray
Diamond Creek Progress Association	Mr Maino
Eltham Gateway Action Group	Ms Dyet
Mr Holden and Ms Nervegna	Ms Nervegna
Nillumbik Horse Action Group	Ms Giles
Mr and Mrs Watson	Mr Watson
Green Wedge Protection Group	Mr Franke
Wattle Glen Residents Association	Mr Lord
Friends of Nillumbik Inc.	Mr Johnson
Mr Gedye	
Nillumbik Greens	Mr Yates
Mr and Mrs Bell	Mr Kell of Planning Central
Mr Borg	Mr Rigoni of Terrain Consulting Group
Thirty property owners in Diamond Creek	Mr Rigoni of Terrain Consulting Group
Mr Murray	
Mr Gough	
Ms McDonald	
Mr Mayes	
Mr and Mrs Maino	Mr Maino
Ms Daniel	
Mr and Mrs Huitt	Ms Huitt
Campbell and Taurian Families	Ms Campbell
Mr Alexander	
Mr and Mrs Acquaviva	Mr Acquaviva
Ms A Stoneman and RJ and KB Stoneman	Ms Stoneman
Mr and Mrs Bauer	Mr Bauer

Mr Penrose

Ms English

Mr Murray

Mrs Woodley

Mr Bassett-Smith

Ms Schnapp, Ms Caspi, Adjungbilly Pty Ltd,
Estate of M Freeman, D Schnapp, C and D
Bennett

Ms Schnapp assisted by Ms Caspi. The following
expert witness was called:

- Mr Fairbairn, Consulting Engineer

Note:

Mr Foster and Mr Nation were scheduled to
appear however they did not attend.

Appendix C Document list

No.	Date	Description	Presented by
1	01/02/16	Revised evidence statement from Mr Fairbairn	Ms Schnapp
2	01/02/16	Facsimile to Panel Chair from Morrison Sawers Lawyers dated 29/01/16	Ms Schnapp
3	01/02/16	Email from Morrison Sawers Lawyers to Council dated 08/09/14	Ms Schnapp
4	01/02/16	Email from Morrison Sawers Lawyers to Council dated 23/07/14	Ms Schnapp
5	01/02/16	'Part 5 Open Group Submission' on behalf of Estate of M Freeman, Adjungbilly Pty Ltd, D Schnapp, C and D Bennett	Ms Schnapp
6	01/02/16	Copy of envelope addressed to Ms Schnapp from DELWP	Ms Schnapp
7	01/02/16	Shire of Diamond Valley Rate Notice to N Freeman dated 1974	Ms Schnapp
8	01/02/16	Notice to N Freeman from Plenty-Yarrambat Waterworks Trust dated 08/07/75	Ms Schnapp
9	01/02/16	Part B Submission to Panel from Council dated 01/02/16	Ms Bayly
10	01/02/16	Part B Submission to Panel from Ms Knight (Planisphere) on behalf of Council dated 01/02/16	Ms Knight
11	01/02/16	Proposed route of all-day bus tour site inspections to be held 02/02/16	Ms Bayly
12	03/02/16	PowerPoint slides presented on 01/02/16 by Ms Knight	Ms Bayly
13	03/02/16	Aerial photo of Mr Bauer's land (inspected 02/02/16)	Ms Bayly
14	03/02/16	CFA submission dated 03/02/16	Mr Leslie
15	03/02/16	'Landscaping for Bushfire – Garden Design and Plant Selection', brochure prepared by CFA	Mr Leslie
16	03/02/16	Nillumbik Ratepayers Association submission dated 03/02/16	Mr Murray
17	03/02/16	Proposed Plan of Subdivision – 55 Wadeson Road, Hurstbridge, dated 29/05/14 (sheet 3 of 3)	Mr Murray
18	03/02/16	Diamond Creek Progress Association Inc submission	Mr Maino
19	03/02/16	Diamond Creek Progress Association Inc. appendices to submission (Appendices A1 – H1)	Mr Maino
20	03/02/16	Eltham Gateway Action Group submission	Ms Dyet
21	03/02/16	Ms Nervegna and Mr Holden submission dated 03/02/16	Ms Nervegna
22	03/02/16	Nillumbik Horse Action Group submission and Power	Ms Giles

No.	Date	Description	Presented by
		Point slides	
23	03/02/16	Map showing location of horse riders in part of Shire	Ms Giles
24	03/02/16	Nillumbik Horse Action Group – suggested word changes to SLO11	Ms Giles
25	03/02/16	T and A Watson submission	Mr Watson
26	03/02/16	Green Wedge Protection Group Inc. submission dated February 2016	Mr Franke
27	03/02/16	Wattle Glen Residents Association dated 03/02/16	Mr Lord
28	03/02/16	Friends of Nillumbik Inc. submission dated 03/02/16	Mr Johnson
29	03/02/16	Mr Gedye submission	Mr Gedye
30	05/02/16	Curriculum vitae Mr Fairbairn	Ms Schnapp
31	05/02/16	Nillumbik Greens submission	Mr Yates
32	05/02/16	T and B Bell submission dated 05/02/16	Mr Kell
33	05/02/16	J Borg submission dated 05/02/16	Mr Rigoni
34	05/02/16	Submission on behalf of 30 land owners dated 05/02/16	Mr Rigoni
35	05/02/16	Mr Murray submission dated 05/02/16	Mr Murray
36	05/02/16	Ms McDonald submission dated 03/02/16	Ms McDonald
37	05/02/16	Mr Gough submission	Mr Gough
38	05/02/16	Mr Mayes submission, including photographs	Mr Mayes
39	08/02/16	Map showing SLO2 mapping anomaly	Ms Bayly
40	08/02/16	Early draft SLO Schedules prepared by Planisphere for Council and analysis table prepared by Council	Ms Bayly
41	08/02/16	Memorandum from Glossop Town Planning dated 05/02/16 comparing permit triggers	Ms Bayly
42	08/02/16	Nillumbik Planning Scheme Environmental Significance Overlay – Schedule 1 (existing ESO1 Schedule)	Ms Bayly
43	08/02/16	Nillumbik Planning Scheme Design and Development Overlay – Schedule 2 (existing DDO2 schedule)	Ms Bayly
44	08/02/16	'Nillumbik's Native Fauna – A Pocket Guide to Local Wildlife' – Shire of Nillumbik, June 2013	Ms Bayly
45	08/02/16	Wildlife Friendly Fencing prepared by the Macedon Ranges Wildlife Network	Ms Bayly
46	08/02/16	Barbed Wire Action Plan prepared by Queensland Conservation, January 2007	Ms Bayly
47	08/02/16	Wildlife Friendly Fencing brochure	Ms Bayly

No.	Date	Description	Presented by
48	08/02/16	RJ and VI Maino submission including Appendices Number 1 - 4	Mr Maino
49	08/02/16	Ms Daniel submission dated 08/02/16	Ms Daniel
50	08/02/16	J and T Huitt submission	Mr and Ms Huitt
51	08/02/16	Campbell and Taurian family submission dated 08/02/16	Ms Campbell
52	08/02/16	Mr Alexander submission dated 08/02/16	Mr Alexander
53	08/02/16	Plenty Low Density Area Development Plan, December 2001	Ms Bayly
54	08/02/16	Siting and Design Guidelines Environmentally Sensitive Areas, April 2001	Ms Bayly
55	08/02/16	Plenty Valley Environmental Living Area Siting and Design Guidelines, June 1991	Ms Bayly
56	08/02/16	Mr Acquaviva submission dated 08/02/16, including letter from Shire of Nillumbik dated February 2011 regarding Amendment C64 and Environmental Significance Overlay brochure for Amendment C101	Mr Acquaviva
57	08/02/16	R J, K B and A Stoneman submission dated 08/02/16 including Attachments 1-4	Ms Stoneman
58	08/02/16	F and J Bauer submission dated 08/02/16	Mr Bauer
59	08/02/16	Mr Penrose submission dated 09/02/16	Mr Penrose
60	08/02/16	Ms English submission dated 08/02/16	Mr Murray
61	08/02/16	Newspaper article (1971), assorted letters (2002) and report on England and France tour (2002)	Mrs Woodley
62	12/02/16	Email to PPV from Ms Stoneman dated 10/02/16	Ms Stoneman
63	12/02/16	Mr Bassett-Smith submission dated 08/02/16	Mr Bassett-Smith
64	12/02/16	Documents from Mrs Woodley	Ms Bayly
65	12/02/16	Map showing extent of SLO covered by Public Land	Ms Bayly
66	12/02/16	Review of Design Guidelines by Glossop Town Planning on behalf of Council	Ms Bayly
67	12/02/16	Submission on behalf of Caspi, Schnapp and Freeman, Adjungbilly Pty Ltd, D Schnapp and C and D Bennett dated 12/02/16	Ms Schnapp and Ms Caspi
68	12/02/16	Proposed subdivision layout plan dated 24/11/11	Ms Schnapp
69	12/02/16	Proposed Retirement Village perspective drawing dated October 2001	Ms Schnapp
70	12/02/16	Current Water Supply System Plan, Yarra Valley Water	Ms Schnapp

No.	Date	Description	Presented by
71	12/02/16	Aerial photograph, 175-199 Ironbark Road, Diamond Creek	Ms Schnapp
72	12/02/16	Notice to N Freeman from Plenty-Yarrambat Waterworks Trust dated 08/07/75	Ms Schnapp
73	12/02/16	Pioneer Road Infrastructure Catchment plan	MS Schnapp
74	12/02/16	Photograph and text regarding poultry shed on Freeman farm, 1949	Ms Schnapp
75	12/02/16	Letter from Mr Fairbairn to Ms Schnapp dated 29/05/15	Ms Schnapp
76	12/02/16	Proposed Independent Retirement Homes plan, 175-199 Ironbark Road, Diamond Creek, October 2001	Ms Schnapp
77	12/02/16	Aerial photograph, circa 1960s	Ms Schnapp
78	12/02/16	Submission by Ms Schnapp	Ms Schnapp
79	12/02/16	Extract from Victorian Government Gazette dated October 1975	Ms Schnapp
80	12/02/16	Proposed Amendment C81 Schedule 10 as revised by Council following exhibition (tracked changes version)	Ms Schnapp
81	12/02/16	Index to property locations – Adjungbilly Pty Ltd, Estate of M Freeman, D Schnapp, C and D Bennett	Ms Schnapp
82	12/02/16	Plenty Growth Corridor plan	Ms Schnapp
83	12/02/16	Bed and Breakfast Residence plan- planning permit application plan	Ms Schnapp
84	12/02/16	Revised evidence statement from Mr Fairbairn dated 29/01/16	Ms Schnapp
85	12/02/16	Part 2 Open Group Submission	Ms Schnapp
86	12/02/16	Part 5 Open Group Submission	Ms Schnapp
87	12/02/16	Part 3 of Open Group Submission	Ms Schnapp
88	12/02/16	'Open presentation on Objections to Directions in our Absence'	Ms Schnapp
89	12/02/16	Open Submission Book 5 dated 08/09/09	Ms Schnapp
90	12/02/16	Proposed Plan of Subdivision, 175-199 Ironbark Road, Diamond Creek	Ms Schnapp
91	12/02/16	'Proposed Revised Aged Home Proposal at 175-199 and 201-219 Ironbark Road, Diamond Creek', April 2007	Ms Schnapp
92	12/02/16	Aerial photograph	Ms Schnapp
93	12/02/16	Extracts from Nillumbik Planning Scheme maps (DDO2, DPO4, DPO5)	Ms Bayly

No.	Date	Description	Presented by
94	12/02/16	Council Right of Reply submission	Mr Griffiths and Ms Bayly
95	12/02/16	Updated version of SLO9 prepared by Council (variations in red)	Ms Bayly
96	12/02/16	Extent of Public land	Ms Bayly
97	12/02/16	Plans showing current zoning and extent of public land compared to proposed SLO boundaries	Ms Bayly
98	12/02/16	Colourbond Steel standard colour range and photograph of 'Shale Grey' roof	Ms Bayly
99	12/02/16	Extract from book titled 'Welcome – Design ideas for Accessible Homes', Building Commission Victoria, October 2002	Ms Bayly

Appendix D Panel Preferred Versions of SLO Schedules

The following versions of the SLO Schedules are those recommended by the Panel. Tracked changes are highlighted as follows:

[Tracked additions recommended by the Panel](#)

~~Tracked deletions recommended by the Panel~~

IMPORTANT NOTE:

As discussed in chapter 5 of this Report, a primary recommendation of the Panel is to delete SLO14 from Amendment C81. Should this recommendation not be accepted, the Panel's secondary recommendation is to replace the exhibited version of SLO14 with the version contained herein.

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Proposed C81

SCHEDULE 8 TO THE SIGNIFICANT LANDSCAPE OVERLAY

Shown on the planning scheme map as **SLO8**

OPEN PASTURES LANDSCAPE CHARACTER AREA**1.0 Statement of nature and key elements of landscape**

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Proposed C81

The Open Pastures Character Area comprises flat to gently rolling agricultural pastures adjoining the north-eastern fringe of the Metropolitan Urban Growth Boundary. The area has been substantially cleared for pasture, with occasional remnant native trees and mature exotic shelter belts throughout. Within paddocks, scattered agricultural buildings provide a contrast with the broad acres of open pasture. Open rolling topography and sparse vegetation affords excellent outviews, particularly towards the Kinglake National Park, which forms a dominant landscape backdrop to the north. The area is characterised by an overall sense of openness, where the absence of buildings provides a sharp contrast to the adjoining urban residential land to the west. [Fire has been a major influence in shaping the ecosystems and evolutionary processes in the region and continues to pose a serious threat to life and property.](#)

Future Character Statement

The character and diversity of the Open Pastures Character Area will be maintained by encouraging the continuation of agricultural and grazing activities, while improving the native vegetation linkages through plantings in paddocks and along watercourses. The area will retain its scenic, rural aspect with views to distant ranges a key feature when viewed from roads and other publicly accessible vantage points.

The pastures will continue to be characterised by a sense of openness, with low scale built form integrated with existing vegetation where it occurs. The presence of ~~built form~~ [dwellings](#) along roads will be ~~avoided~~ [managed to avoid visual clutter](#). Viewlines to visible hill faces and ridgelines will be protected, with low scale development maintaining views to the mountain backdrop.

[The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defendable space and appropriate landscaping and vegetation management.](#)

2.0 Landscape character objective to be achieved

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Proposed C81

To encourage development that achieves the area's future character statement.

To encourage the appropriate and respectful siting and design of dwellings, other buildings and structures to minimise landscape impacts.

To encourage appropriate and respectful works to minimise landscape impacts.

To maintain the character of an open rural landscape with gently rolling topography.

To protect views to the Kinglake National Park, which forms a backdrop to this area.

To protect views of hill faces and ridgelines.

To protect clusters of remnant vegetation.

To minimise the visual impact of buildings and structures within this open landscape and visually prominent locations, such as ridgelines.

To ~~avoid a clustering~~ [minimise the visual impact](#) of development along main roads.

To maintain the scenic rural aspect.

[To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defendable space.](#)

3.0 Permit requirement

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Proposed C81

A permit is required to remove, destroy or lop a substantial native tree. This does not apply:

- If the lopping of a tree is undertaken to assist its regeneration.

- If the tree is dead.
- To the partial removal or lopping of branches directly overhanging dwellings, garages or outbuildings to the extent that the branches no longer overhang the building.
- To the removal, destruction or lopping of vegetation in accordance with Clause 52.48.

A permit is not required to construct a building or construct or carry out works for:

- an alteration or extension to an existing dwelling; or
- an alteration or extension to a building used for agriculture; or
- a new building used for agriculture.

provided all of the following are met, as applicable:

- The height of the buildings and works is less than ~~7~~ 8 metres above the natural ground level;
- The buildings and works are setback at least 5 metres from the base of any substantial native tree;
- The new building is located on land with a slope of no more than 20%;
- The floor area of the alteration or extension to an existing dwelling is less than 50 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser;
- The new building is setback 100 metres from a Road Zone Category 1 or 20 metres from any other road;
- The floor area of the new building or alteration or extension to an existing outbuilding or building used for agriculture is less than 10 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser; and
- ~~▪ The external surfaces, including roofs and walls, of the buildings and works are clad and maintained in low reflective materials coloured in muted, earthy tones of dark grey, green and brown; and~~
- The buildings and works are setback at least 50 metres from the crest of any hill or topographic feature located directly behind the extension or alteration, measured from natural ground level at both points.

A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.

A permit is required to construct a fence. This does not apply if the fence is:

- Of post and wire construction, not greater than 1.4 metres in height ~~,has no more than five strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- ~~▪ Of post and wire and mesh construction, not greater than 1.4 metres in height with mesh squares no less than 15 centimetres in width, has no more than five horizontal strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire; or~~
- Of rabbit proof mesh construction, not greater than 1.4 metres in height ~~with rabbit proof mesh no more than 5 centimetres in width and contains no barbed wire;~~ or
- Of open timber post and rail construction, not greater than 1.4 metres in height ~~where a minimum gap of 30 centimetres is maintained between the ground level and the lowest rail and contains no barbed wire;~~ or
- Temporary fencing for construction sites; or
- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

A permit is required for earthworks that comprise more than 1 metre cut or fill.

For the purpose of this clause a substantial native tree means a tree indigenous to Victoria that has a trunk circumference greater than 0.5 metres at 1 metre above natural ground level.

4.0 Application requirements

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Proposed C81

An application must be accompanied by a landscape plan showing existing and proposed landscape works and plantings as appropriate.

5.0 Decision guidelines

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Proposed C81

Before deciding on an application, the responsible authority must consider as appropriate:

General

- The extent to which the development respects the future character statement and objectives of this Schedule.
- [The extent to which the proposal has addressed bushfire risk.](#)

Vegetation and Landscaping

- The type, extent, quality and significance of any tree to be removed.
- The effect of the proposed removal of the vegetation on the area's character and tree canopy.
- The extent and type (species) of new planting.
- The extent to which new planting is provided in paddocks and along watercourses.
- The extent to which any proposed landscaping screens buildings and structures viewed from road corridors and public spaces.
- The extent to which the siting of the proposed buildings and works has minimised the need for the removal of native vegetation.
- [Whether maintaining vegetation, removing vegetation or any proposed landscaping will impact on the risk of bushfire.](#)

Views and Vistas

- Whether the proposed development still allows a rural outlook and protects views from public land and road reserves towards hill sides and ridgelines.
- Whether the proposed development will maintain views of Kinglake National Park.
- The cumulative impact of all buildings and works visible from road reserves and public land on the area's landscape character.

Buildings and Structures

- The extent to which the development follows the natural topography of the land and minimises the need for earthworks.
- The prominence of the building along ridgelines, hill sides and elevated areas when viewed from a road reserve or public land.
- The effect of the building on the profile of the ridgeline or skyline.
- The setback of the building from property boundaries, river and creek corridors and roads.
- The scale, massing and roof form of the building.
- Whether the proposed development sits below the existing tree canopy.
- The extent to which the proposed development integrates with existing vegetation.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.
- The location, and siting and impact of tennis courts and lighting not normal to a dwelling.

Rural Buildings and Structures

- The scale and siting of the proposed buildings and structures.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.

Fencing, Access and Driveways

- The height and materials used to construct any proposed fencing.
- The extent to which the proposed fencing respects the future character statement and objectives of this Schedule.
- Whether the proposed fencing is required for safety reasons.
- The extent to which roads, access tracks, driveways and car parking areas conform with the topography and maintain vegetation as a screen.
- The materials used to construct the proposed road base, access track or driveway.

6.0 Reference Documents

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Proposed C81

Nillumbik Landscape Character Assessment (Planisphere, 2009).

~~Open Pastures Design Guidelines (Nillumbik Shire Council, March 2015)~~

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Proposed C81

SCHEDULE 9 TO THE SIGNIFICANT LANDSCAPE OVERLAY

Shown on the planning scheme map as **SLO9**

ROLLING VALLEYS LANDSCAPE CHARACTER AREA**1.0****Statement of nature and key elements of landscape**

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Proposed C81

Set beneath the steep vegetated slopes of the Kinglake National Park, this Character Area is dominated by rolling hills and vegetated valleys of the Arthurs and Diamond Creek corridors. Characterised by open viewing opportunities and an overall sense of isolation, the area attains a well-balanced diversity of natural/cultivated landscapes. Interspersed farms are set on large lots amongst the rolling hills and creek valleys, with carefully sited individual residences and occasional agricultural infrastructure. Active viticulture and fruit orchards are common throughout, but do not dominate the surrounding natural landscape. Native vegetation is scattered throughout the valleys, with more intense remnant indigenous vegetation occurring at roadsides and alongside the creek gullies. [Fire has been a major influence in shaping the ecosystems and evolutionary processes in the region and continues to pose a serious threat to life and property.](#)

Future Character Statement

The diversity of agricultural/horticultural, natural and developed landscapes will be maintained by protecting remnant native vegetation, ensuring productive agricultural and horticultural activity continues on productive land and carefully integrating buildings, structures and infrastructure. Parts of the area will remain a working agricultural/ horticultural landscape with infrastructure related to the more intensive use of the land, but carefully designed and sited to maintain an attractive outlook. Only single or small groups of buildings will occur within open paddocks, and these will be softened by substantial vegetation.

Views from roads and public spaces linking Strathewen to Arthurs Creek/St Andrews will be maintained. Vegetation at roadsides and within creek valleys will continue to be a defining feature, while rolling paddocks and pastures will create an open, scenic contrast to the natural backdrop of the Kinglake National Park. Revegetation of less productive farmlands and areas of environmental degradation will continue to be encouraged. The landscape management of private forested land bordering the Kinglake National Park will be consistent with the landscape priorities identified for those areas, and the contribution their forested character makes to the Green Wedge.

[The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defendable space and appropriate landscaping and vegetation management.](#)

2.0**Landscape character objective to be achieved**

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Proposed C81

To encourage development that achieves the area's future character statement.

To encourage the appropriate and respectful siting and design of dwellings, other buildings and structures to minimise landscape impacts.

To encourage appropriate and respectful works to minimise landscape impacts.

To maintain the scenic rural landscape character of rolling topography and vegetated creek corridors interspersed with agricultural/ horticultural land uses.

To protect views to the Kinglake National Park which forms a backdrop to this area.

To maintain the visual prominence of the forested ranges.

To site and design buildings and structures so that they appear as minor parts of the landscape.

To retain areas of native vegetation, particularly along roadsides and creek corridors.

To ensure that agricultural or horticultural buildings complement rather than dominate the landscape.

To preserve the overall sense of isolation that is created through the natural topography and clusters of remnant vegetation, particularly along roadsides and creek corridors.

To site and design buildings to integrate with the landscape and reflect the topography.

To minimise the visual impact of buildings in prominent locations and along ridgelines.

To protect clusters of remnant vegetation.

To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defensible space.

3.0 Permit requirement

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Proposed C81

A permit is required to remove, destroy or lop a substantial native tree. This does not apply:

- If the lopping of a tree is undertaken to assist its regeneration.
- If the tree is dead.
- To the partial removal or lopping of branches directly overhanging dwellings, garages or outbuildings to the extent that they no longer overhang the building.
- To the removal, destruction or lopping of vegetation in accordance with Clause 52.48.

A permit is not required to construct a building or construct or carry out works for:

- an alteration or extension to an existing dwelling; or
- an alteration or extension to a building used for agriculture; or
- a new building used for agriculture.

provided all of the following are met, as applicable:

- The height of the buildings and works is less than ~~7~~ 8 metres above the natural ground level;
- The new building is located on land with a slope of no more than 20%;
- The buildings and works are setback at least 5 metres from the base of any substantial native tree;
- The floor area of the alteration or extension to an existing dwelling is less than 50 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser;
- The new building is setback 100 metres from a Road Zone Category 1 or 20 metres from any other road;
- The floor area of the new building or the alteration or extension to an existing outbuilding or building used for agriculture is less than 10 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser; and
- ~~The external surfaces, including roofs and walls, of the buildings and works are clad and maintained in low reflective materials coloured in muted, earthy tones of dark grey, green and brown; and~~
- The buildings and works are setback at least 50 metres from the crest of any hill or topographic feature located behind the extension or alteration, measured from natural ground level at both points.

A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.

A permit is required to construct a fence. This does not apply if the fence is:

- Of post and wire construction, not greater than 1.4 metres in height, ~~has no more than five strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- ~~Of post and wire and mesh construction, not greater than 1.4 metres in height with mesh squares no less than 15 centimetres in width, has no more than five horizontal strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire; or~~

- Of rabbit proof mesh construction, not greater than 1.4 metres in height ~~with rabbit proof mesh no more than 5 centimetres in width and contains no barbed wire~~; or
- Of open timber post and rail construction, not greater than 1.4 metres in height ~~where a minimum gap of 30 centimetres is maintained between the ground level and the lowest rail and contains no barbed wire~~; or
- Temporary fencing for construction sites; or
- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

A permit is required for earthworks that comprise more than 1 metre cut or fill.

For the purpose of this clause a substantial native tree means a tree indigenous to Victoria that has a trunk circumference greater than 0.5 metres at 1 metre above natural ground level.

4.0 Application requirements

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Proposed C81

An application must be accompanied by a landscape plan showing existing and proposed landscape works and plantings as appropriate.

5.0 Decision guidelines

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Proposed C81

Before deciding on an application, the responsible authority must consider, as appropriate:

General

- The extent to which the development respects the future character statement and objectives of this Schedule.
- [The extent to which the proposal has addressed bushfire risk.](#)

Vegetation and Landscaping

- The effect of the proposed removal of the vegetation on the area's character and tree canopy (as relevant);
- The extent to which remnant vegetation is protected.
- The type, extent, quality and significance of any tree to be removed.
- The extent and type (species) of new planting.
- The extent to which the proposed landscaping screens buildings and structures viewed from road corridors and public land.
- The extent to which the siting of the proposed buildings and works has minimised the need for the removal of native vegetation, including meeting defensible space requirements.
- [Whether maintaining vegetation, removing vegetation or any proposed landscaping will impact on the risk of bushfire.](#)

Views and Vistas

- Whether the proposed development still allows a rural outlook and protects views from public land and road reserves towards hill sides and ridgelines.
- Whether the proposed development will maintain views of Kinglake National Park.
- The cumulative impact of all buildings and works visible from road reserves and public land on the landscape character of the area.
- The extent to which the siting and design of buildings maintains an attractive outlook.

Buildings and Structures

- The extent to which the development follows the natural topography of the land and minimises the need for earthworks.
- The prominence of the building along ridgelines, hill sides and elevated areas when viewed from a road reserve or public land.
- The setback of the building from property boundaries, river and creek corridors and roads.
- The scale, massing and roof form of the building.

- Whether the proposed development sits below the existing tree canopy.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.
- The extent to which landscaping softens or screens the presence of built form.
- The location and siting of tennis courts.

Rural Buildings and Structures

- The scale and siting of the proposed buildings and structures.
- The extent to which landscaping softens or screens the presence of built form.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.

Fencing, Access and Driveways

- The height and materials used to construct any proposed fencing.
- The extent to which the proposed fencing respects the area's future character statement.
- Whether the proposed fencing is required for safety reasons.
- The extent to which roads, access tracks, driveways and car parking areas conform with the topography and maintain vegetation as a screen.
- The materials used to construct the proposed road base, access track or driveway.

6.0 Reference Documents

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Proposed C81

Nilumbik Landscape Character Assessment (Planisphere, 2009).

~~Rolling Valleys Design Guidelines (Nilumbik Shire Council, March 2015)~~

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Proposed C81

SCHEDULE 10 TO THE SIGNIFICANT LANDSCAPE OVERLAY

Shown on the planning scheme map as **SLO10**

UNDULATING AGRICULTURAL CHARACTER AREA**1.0****Statement of nature and key elements of landscape**

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Proposed C81

The Undulating Agricultural Character Area provides a scenic transition between the open rural pastures to the north, the heavily vegetated areas to the east and the built up urban residential areas to the south of the Shire. Comparatively open and predominantly agricultural, the area is characterised by farms and residences set on gently undulating topography with occasional shelterbelts and patches of native vegetation. Large areas of dense native vegetation also occur throughout, particularly along roadsides and creek corridors towards the north east. Two creek lines run through the north of the area, where small rural settlements are nestled amongst the vegetated creek corridors. A dominant rural character is evident across the mosaic of agricultural, natural and settled landscapes that occupy this area. [Fire has been a major influence in shaping the ecosystems and evolutionary processes in the region and continues to pose a serious threat to life and property.](#)

Future Character Statement

The Undulating Agricultural Character Area will continue to provide an open and rural aspect of medium scale cultivation interspersed with occasional shelterbelts and patches or large areas of dense native vegetation. The rural landscape character will be maintained by [limiting managing](#) development and non-agricultural land uses that detract from this character. Gradual evolution of the agricultural character will be encouraged including new farming practices and crops (e.g. orchards and vineyards), and revegetation of less productive agricultural land and areas of environmental degradation.

The pattern of agricultural, natural and settled landscapes will be maintained by protecting existing areas of native vegetation, which contrast with the openness of hillsides by carefully integrating buildings, settlements and infrastructure into the landscape. Vegetation patterns will be maintained with a mix of established exotic vegetation and native remnants.

[The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defendable space and appropriate landscaping and vegetation management.](#)

2.0**Landscape character objective to be achieved**

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Proposed C81

To encourage development that achieves the area's future character statement.

To encourage the appropriate and respectful siting and design of dwellings, other buildings and structures in rural areas to minimise landscape impacts.

To encourage appropriate and respectful works in rural areas to minimise landscape impacts.

To maintain the rural, agricultural character of the area.

To protect clusters of remnant vegetation, particularly along narrow roads and creek corridors.

To minimise the visual impact of buildings and structures within this open landscape.

To maintain a balance between natural and settled landscapes.

[To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defendable space.](#)

3.0**Permit requirement**

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Proposed C81

A permit is required to remove, destroy or lop a substantial native tree. This does not apply

- If the lopping of a tree is undertaken to assist its regeneration.
- If the tree is dead.

- To the partial removal or lopping of branches directly overhanging dwellings, garages or outbuildings to the extent that they no longer overhang the building.
- To the removal, destruction or lopping of vegetation in accordance with Clause 52.48.

A permit is not required to construct a building or construct or carry out works for:

- an alteration or extension to an existing dwelling; or
- an alteration or extension to a building used for agriculture; or
- a new building used for agriculture.

provided all of the following are met, as applicable:

- The height of the buildings and works is less than ~~7~~ 8 metres above the natural ground level;
- The buildings and works are setback at least 5 metres from the base of any substantial native tree;
- The new building is located on land with a slope of no more than 20%;
- The floor area of the alteration or extension to an existing dwelling is less than 50 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser;
- The new building is setback 100 metres from a Road Zone Category 1 or 20 metres from any other road;
- The floor area of the new building or the alteration or extension to an existing outbuilding or building used for agriculture is less than 10 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser; and
- ~~The external surfaces, including roofs and walls, of the buildings and works are clad and maintained in low-reflective materials coloured in muted, earthy tones of dark grey, green and brown; and~~
- The buildings and works are setback at least 50 metres from the crest of any hill or topographic feature located directly behind the extension or alteration, measured from natural ground level at both points.

A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.

A permit is required to construct a fence. This does not apply if the fence is:

- Of post and wire construction, not greater than 1.4 metres in height ~~, has no more than five strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- ~~Of post and wire and mesh construction not greater than 1.4 metres in height with mesh squares no less than 15 centimetres in width, has no more than five horizontal strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire; or~~
- Of rabbit proof mesh construction, not greater than 1.4 metres in height ~~with rabbit proof mesh no more than 5 centimetres in width and contains no barbed wire;~~ or
- Of open timber post and rail construction, not greater than 1.4 metres in height ~~where a minimum gap of 30 centimetres is maintained between the ground level and the lowest rail and contains no barbed wire;~~ or
- Temporary fencing for construction sites; or
- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

A permit is required for earthworks that comprise more than 1 metre cut or fill.

For the purpose of this clause a substantial native tree means a tree indigenous to Victoria that has a trunk circumference greater than 0.5 metres at 1 metre above natural ground level.

4.0 Application requirements

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Proposed C81

An application must be accompanied by a landscape plan showing existing and proposed landscape works and plantings, as appropriate.

5.0 Decision guidelines

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Proposed C81

Before deciding on an application, the responsible authority must consider, as appropriate:

General

- The extent to which the development respects the future character statement and objectives of this Schedule.
- [The extent to which the proposal has addressed bushfire risk.](#)

Vegetation and Landscaping

- The type, extent, quality and significance of any tree to be removed.
- The effect of the proposed removal of the vegetation on the area's character and tree canopy (as relevant).
- The extent to which patches and clusters of dense native vegetation are protected.
- The extent and type (species) of new planting.
- The extent to which the proposed landscaping screens buildings and structures viewed from road corridors and public land.
- The extent to which the siting of the proposed buildings and works has minimised the need for the removal of native vegetation.
- [Whether maintaining vegetation, removing vegetation or any proposed landscaping will impact on the risk of bushfire.](#)

Views and Vistas

- Whether the proposed development still allows a rural outlook and protects views from public land and road reserves toward hill sides and ridgelines.
- Whether the proposed development will maintain views of Kinglake National Park.
- ~~Whether the proposed development will maintain views of the Yarra and Plenty River corridors.~~
- The cumulative impact of all buildings and works visible from road reserves and public land on the landscape character of the area.

Buildings and Structures

- The extent to which development maintains the open and rural aspect of the area.
- The extent to which the development follows the natural topography of the land and minimises the need for earthworks.
- The prominence of the building along ridgelines, hill sides and elevated areas when viewed from a road reserve or public land.
- The setback of the building from property boundaries, river and creek corridors and roads.
- The scale, massing and roof form of the building.
- Whether the proposed development sits below the existing tree canopy.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.
- The location and siting of tennis courts.

Rural Buildings and Structures

- The extent to which development maintains the open and rural aspect of the area.
- The scale and siting of the proposed buildings and structures.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.

Fencing, Access and Driveways

- The height and materials used to construct any proposed fencing.
- The extent to which the proposed fencing respects the future character statement.
- Whether the proposed fencing is required for safety reasons.
- The extent to which roads, access tracks, driveways and car parking areas conform with the topography and maintain vegetation as a screen.
- The materials used to construct the proposed road base, access track or driveway.

6.0

Reference Documents

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Proposed C81

Nillumbik Landscape Character Assessment (Planisphere, 2009).

~~Undulating Agricultural Design Guidelines (Nillumbik Shire Council, March 2015).~~

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Proposed C81

SCHEDULE 11 TO THE SIGNIFICANT LANDSCAPE OVERLAY

Shown on the planning scheme map as **SLO11**

BUSHY SLOPES LANDSCAPE CHARACTER AREA**1.0 Statement of nature and key elements of landscape**

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Proposed C81

Native vegetation contributes strongly to the character of the Area, with remnants occurring in dense copses within properties and near-continuous along roadside reserves, creek corridors and in National Parks adjoining the Character Area. A strong sense of spaciousness is afforded by large gaps between residences, which are often set back from the roads and 'hidden' by native bushland vegetation and undulating topography. Cleared pastures and areas of rural activity [including grazing](#) are also interspersed among the well-established stands of native vegetation that extend across the Area. [This Area is also known for horse keeping and associated activities.](#) A number of main touring routes traverse the Area, linking the settled areas to the south of the Shire to key destinations in the north/ north-east, and offering long-range scenic views to the Kinglake National Park and surrounding hill slopes. Essentially, the landscape of this Character Area is what many people relate to as 'quintessentially' Nillumbik. The Green Wedge township centres of Hurstbridge, Pantom Hill and St Andrews are situated along the main touring routes; where small concentrations of low-scale dwellings and basic commercial facilities are set amongst highly vegetated surrounds. [Fire has been a major influence in shaping the ecosystems and evolutionary processes in the region and continues to pose a serious threat to life and property.](#)

Future character statement

The Bushy Slopes Character Area will continue to be characterised by native vegetation interspersed with open grazing land and treed pastures. Native bushland will provide an enclosed setting at roadsides, to settlements and from tourism and recreation locations throughout. [Rural uses including horse related activities will continue to be small scale.](#) Townships will present hard edges (softened with vegetation) to create an identifiable boundary to the surrounding natural landscape. Housing located outside of the main Green Wedge centres will continue to be low-scale.

The **bushland** character of this area will be protected by siting built form and structures away from prominent hill slopes, ridgelines and roadsides and designing them to blend in with the surrounding landscape. Management of the natural environment will continue to be important to the significance of the landscape character. Cleared areas will be kept to a minimum. Waterways and other natural features will be maintained and enhanced as important environmental, scenic, [recreational](#) and tourism resources.

[The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defendable space and appropriate landscaping and vegetation management.](#)

2.0 Landscape character objective to be achieved

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Proposed C81

To encourage development that achieves the area's future character statement.

To encourage the appropriate and respectful siting and design of dwellings, other buildings and structures in rural areas to minimise landscape impacts.

To encourage appropriate and respectful works in rural areas to minimise landscape impacts.

To protect the strong presence of native vegetation within the landscape.

To design and site buildings and structures to respond to and blend into the surrounding bushland setting and complement the undulating and sloping topography.

To preserve views of the Kinglake National Park and surrounding mountain ranges.

To encourage the retention of occasional patches of cleared land where it provides views of the Kinglake National Park and surrounding mountain ranges.

To maintain a sense of spaciousness and remoteness that is created by the sparse siting of buildings and structures.

To ensure that agricultural or horticultural buildings and structures complement rather than dominate the landscape.

To protect intact native bushland areas.

To discourage the proliferation of agricultural and horticultural structures.

To discourage clearing of areas which break the dominance of native vegetation across the landscape.

To discourage high fencing along major touring routes.

To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defensible space.

3.0 Permit requirement

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Proposed C81

A permit is required to remove, destroy or lop a substantial native tree. This does not apply

- If the lopping of a tree is undertaken to assist its regeneration.
- If the tree is dead.
- To the partial removal or lopping of branches directly overhanging dwellings, garages or outbuildings to the extent that they no longer overhang the building.
- To the removal, destruction or lopping of vegetation in accordance with Clause 52.48.

A permit is not required to construct a building or construct or carry out works for:

- an alteration or extension to an existing dwelling; or
- an alteration or extension to a building used for agriculture; or
- a new building used for agriculture.

provided all of the following are met, as applicable:

- The height of the buildings and works is less than ~~7~~ 8 metres above the natural ground level;
- The buildings and works are located at least 5 metres from the base of any substantial native tree;
- The new building is located on land with a slope of no more than 20%;
- The floor area of the alteration or extension to an existing dwelling is less than 50 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser;
- The new building is setback 100 metres from a Road Zone Category 1 or 20 metres from any other road;
- The floor area of the new building or the alteration or extension to an existing outbuilding or building used for agriculture is less than 10 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser; and
- ~~The external surfaces, including roofs and walls, of the buildings and works are clad and maintained in low-reflective materials coloured in muted, earthy tones of dark grey, green and brown; and~~
- The buildings and works is setback at least 50 metres from the crest of any hill or topographic feature located directly behind the extension or alteration, measured from the natural ground level at both points.

A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.

A permit is required to construct a fence. This does not apply if the fence is:

- Of post and wire construction, not greater than 1.4 metres in height ~~, has no more than five strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- ~~▪ Of post and wire and mesh construction, not greater than 1.4 metres in height with mesh squares no less than 15 centimetres in width, has no more than five horizontal strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire; or~~
- Of rabbit proof mesh construction, not greater than 1.4 metres in height ~~with rabbit proof mesh no more than 5 centimetres in width and contains no barbed wire;~~ or
- Of open timber post and rail construction, not greater than 1.4 metres in height ~~where a minimum gap of 30 centimetres is maintained between the ground level and the lowest rail and contains no barbed wire;~~ or
- Temporary fencing for construction sites; or
- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

A permit is required for earthworks that comprise more than 1 metre cut or fill.

For the purpose of this clause a substantial native tree means a tree indigenous to Victoria that has a trunk circumference greater than 0.5 metres at 1 metre above natural ground level.

4.0 Application requirements

--/20--

Proposed C81

An application must be accompanied by a landscape plan showing existing and proposed landscape works and plantings, as appropriate.

5.0 Decision guidelines

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Proposed C81

Before deciding on an application, the responsible authority must consider, as appropriate:

General

- The extent to which the development respects the future character statement and objectives of this Schedule.
- The extent to which the proposal has addressed bushfire risk.

Vegetation and Landscaping

- The type, extent, quality and significance of any tree to be removed.
- The effect of the proposed removal of the vegetation on the area's character and tree canopy (as relevant).
- The extent and type (species) of new planting.
- The extent to which any proposed landscaping screens buildings and structures viewed from road corridors and public land.
- The extent to which the siting of the proposed buildings and works has minimised the need for the removal of native vegetation, including meeting defensible space requirements.
- The extent to which intact native bushland is maintained.
- [Whether maintaining vegetation, removing vegetation or any proposed landscaping will impact on the risk of bushfire.](#)

Views and Vistas

- Whether the proposed development still allows a rural outlook and protects views from public land and road reserves towards hill sides and ridgelines.
- Whether the proposed development will maintain views of Kinglake National Park.
- Whether the proposed development will maintain views of the Yarra River corridor.
- The cumulative impact of all buildings and works visible from road reserves and public land on the landscape character of the area.
- The extent to which the spacious character of the area is maintained.

Buildings and Structures

- The extent to which the development follows the natural topography of the land and minimises the need for earthworks.
- The prominence of the building along ridgelines, hill sides and elevated areas when viewed from a road reserve or public land.
- The location and siting of the building.
- The setback of the building from property boundaries, river and creek corridors and roads.
- The scale, massing and roof form of the building.
- Whether the proposed development sits below the existing tree canopy.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.
- The location and siting of tennis courts.

Rural Buildings and Structures

- The scale and siting of the proposed buildings and structures.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.

Fencing, Access and Driveways

- The height and materials used to construct any proposed fencing.
- The extent to which the proposed fencing respects the future character statement.
- Whether the proposed fencing is required for safety reasons.
- The extent to which roads, access tracks, driveways and car parking areas conform with the topography and maintain vegetation as a screen.
- The materials used to construct the proposed road base, access track or driveway.

6.0

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Proposed C81

Reference Documents

Nillumbik Landscape Character Assessment (Planisphere, 2009).

~~Bushy Slopes Design Guidelines (Nillumbik Shire Council, March 2015)~~

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Proposed C81

SCHEDULE 12 TO THE SIGNIFICANT LANDSCAPE OVERLAY

Shown on the planning scheme map as **SLO12**

AGRICULTURAL UPLANDS LANDSCAPE CHARACTER AREA**1.0 Statement of nature and key elements of landscape**

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Proposed C81

Ongoing agricultural activity in the form of grazing and cropping has resulted in a relatively open agrarian landscape character, interspersed with occasional stands of native vegetation and exotic shelter belts. Rich in black volcanic soils, the Area is also a popular location for active viticulture and olive groves. Buildings are generally minor parts of the landscape, with occasional farmhouses and low scale dwellings scattered in less prominent locations and carefully integrated with vegetation and topography. The plateau surrounding Kangaroo Ground offers a high vantage point, where sweeping views across the Shire capture Mt Dandenong, Kinglake National Park and the Melbourne city skyline. [Fire has been a major influence in shaping the ecosystems and evolutionary processes in the region and continues to pose a serious threat to life and property.](#)

Future Character Statement

The unique agrarian character of this Area will be protected by encouraging the continuation of productive agricultural activity on high quality agricultural land and siting buildings and infrastructure in less prominent locations, integrated with vegetation and topography. Buildings and structures on visible hill faces and ridgelines will be **avoided managed** in order to maintain long range views to the surrounding mountain ranges and distant city skyline. Rolling topography viewed from roads will continue to be largely rural in character with continued agricultural activity and an absence of incongruous structures and developments. Areas of native vegetation will be maintained and strengthened.

[The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defendable space and appropriate landscaping and vegetation management.](#)

2.0 Landscape character objective to be achieved

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Proposed C81

To encourage development that achieves the area's future character statement.

To encourage the appropriate and respectful siting and design of dwellings, other buildings and structures in rural areas to minimise landscape impacts and reflect the topography.

To encourage appropriate and respectful works in rural areas to minimise landscape impacts and reflect the topography.

To maintain the open and spacious agrarian character of the landscape.

To preserve long open views to distant mountain ranges, Kinglake National Park and the Melbourne CBD.

To protect clusters of remnant vegetation.

To minimise the visual impact of buildings and structures within this open landscape and visually prominent locations such as ridgelines.

To ensure that agricultural or horticultural buildings and structures complement rather than dominate the landscape.

To maintain a balance between natural and settled landscapes.

To encourage the retention of cleared grazing paddocks.

To discourage buildings and structures which break the skyline.

~~To discourage the proliferation of agricultural and horticultural structures.~~

To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defendable space.

3.0 Permit requirement

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Proposed C81

A permit is required to remove, destroy or lop a substantial native tree. This does not apply:

- If the lopping of vegetation is undertaken to assist its regeneration.
- If the vegetation is dead.
- To the partial removal or lopping of branches directly overhanging dwellings, garages or outbuildings to the extent that they no longer overhang the building.
- To the removal, destruction or lopping of vegetation in accordance with Clause 52.48.

A permit is not required to construct a building or construct or carry out works for:

- an alteration or extension to an existing dwelling; or
- an alteration or extension to a building used for agriculture; or
- a new building used for agriculture,

provided all of the following are met, as applicable:

- The height of the buildings and works is no more than ~~7~~ 8 metres above the natural ground level;
- The buildings and works are located at least 5 metres from the base of any substantial native tree;
- The floor area of the alteration or extension to an existing dwelling is less than 50 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser;
- The floor area of the new building or the alteration or extension to an existing outbuilding or building used for agriculture is less than 10 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser; and
- The buildings and works are setback at least 50 metres from the crest of any hill or topographic feature located directly behind the extension or alteration, measured from natural ground level at both points; ~~and~~
- ~~The external surfaces, including roofs and walls, of the buildings and works are clad and maintained in low reflective materials coloured in muted, earthy tones of dark grey, green and brown.~~

A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.

A permit is required to construct a fence. This does not apply if the fence is:

- Of post and wire construction, not greater than 1.4 metres in height ~~, has no more than five strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- ~~Of post and wire and mesh construction, not greater than 1.4 metres in height with mesh squares no less than 15 centimetres in width, has no more than five horizontal strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire; or~~
- Of rabbit proof mesh construction, not greater than 1.4 metres in height ~~with rabbit proof mesh no more than 5 centimetres in width and contains no barbed wire;~~ or
- Of open timber post and rail construction, not greater than 1.4 metres in height ~~where a minimum gap of 30 centimetres is maintained between the ground level and the lowest rail and contains no barbed wire;~~ or
- Temporary fencing for construction sites; or
- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

A permit is required for earthworks that comprise more than 1 metre cut or fill.

For the purpose of this clause a substantial native tree means a tree that is indigenous to Victoria and has a circumference greater than 0.5 metres at 1 metre above natural ground level.

4.0 Application requirements

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Proposed C81

An application must be accompanied by a landscape plan showing existing and proposed landscape works and plantings, as appropriate.

5.0 Decision guidelines

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Proposed C81

Before deciding on an application, the responsible authority must consider, as appropriate:

General

- The extent to which the development respects the future character statement and objectives of this Schedule.
- The extent to which the proposal has addressed bushfire risk.

Vegetation and Landscaping

- The type, extent, quality and significance of any tree to be removed.
- The effect of the proposed removal of the vegetation on the area's character and tree canopy (as relevant).
- The extent and type (species) of new planting.
- The extent to which any proposed landscaping screens buildings and structures viewed from road corridors and public spaces.
- The extent to which the siting of the proposed buildings and works has minimised the need for the removal of native vegetation, including meeting defensible space requirements.
- The extent to which clusters of remnant native vegetation are protected.
- [Whether maintaining vegetation, removing vegetation or any proposed landscaping will impact on the risk of bushfire.](#)

Views and Vistas

- Whether the proposed development still allows a rural outlook and protects views from public land and road reserves towards hill sides and ridgelines.
- Whether the proposed development will maintain views of Kinglake National Park.
- The cumulative impact of all buildings and works visible from road reserves and public land on the landscape character of the area
- The extent to which an open landscape character and skyline is maintained.

Buildings and Structures

- The extent to which the development follows the natural topography of the land and minimises the need for earthworks.
- The prominence of the building along ridgelines, hill sides and elevated areas when viewed from a road reserve or public land.
- The setback of the building from property boundaries, river and creek corridors and roads.
- The scale, massing and roof form of the building.
- Whether the proposed development sits below the existing tree canopy.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.
- The location and siting of tennis courts.

Rural Buildings and Structures

- The scale and siting of the proposed buildings and structures.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.

- The extent to which rural buildings and structures blend with the landscape.
- The extent to which rural buildings and structures are visually prominent.

Fencing, Access and Driveways

- The height and materials used to construct any proposed fencing.
- The extent to which the proposed fencing respects the future character statement.
- Whether the proposed fencing is required for safety reasons.
- The extent to which roads, access tracks, driveways and car parking areas conform with the topography and maintain vegetation as a screen.
- The materials used to construct the proposed road base, access track or driveway.

6.0 Reference Documents

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Proposed C81

Nullumbik Landscape Character Assessment (Planisphere, 2009).

~~Agricultural Uplands Design Guidelines (Nullumbik Shire Council, March 2015)~~

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Proposed C81

SCHEDULE 13 TO THE SIGNIFICANT LANDSCAPE OVERLAYShown on the planning scheme map as **SLO13****RIVER INTERFACE LANDSCAPE CHARACTER AREA****1.0 Statement of nature and key elements of landscape**

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Proposed C81

The Yarra and Plenty Rivers form the edges of the southern and western Nillumbik Shire boundary, respectively. Although geographically separate, these areas are both characterised by steep, highly vegetated hill slopes that form the interface between the major river corridors and the more settled areas of the Shire. Built form is generally sporadic and interspersed, often set high up on steep topography, immersed in the natural surroundings. Remnant native vegetation is a key feature of the area, particularly dominant at roadsides and along the immediate river and creek valleys. Scenic views from the river corridors themselves, and from main roads and other public recreation locations capture the surrounding forested gullies and vegetated hill slopes, where inconspicuous built form is subsidiary to the natural landscape. [Fire has been a major influence in shaping the ecosystems and evolutionary processes in the region and continues to pose a serious threat to life and property.](#)

Future character statement

The natural character of waterways will continue to be protected and enhanced. This area will continue to present a highly vegetated interface between the major river corridors and the more settled areas of the Shire. Settlement will be contained within existing built-up areas of the Shire, and development will continue in a manner, which protects the scenic, vegetated setting and views from roads, townships, public recreation areas and the river corridors.

Buildings and structures will be screened by vegetation and / or sited away from prominent hill faces and hilltops. Remnant native vegetation will be maintained as a dominant feature, particularly at roadsides and along the immediate river and creek valleys. Expansion of the native vegetation cover will be encouraged with linkages forming across cleared hill faces towards the river environs. Protection and rehabilitation of waterways for environmental and scenic values will be encouraged.

[The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defendable space and appropriate landscaping and vegetation management.](#)

2.0 Landscape character objective to be achieved

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Proposed C81

To encourage development that achieves the future character statement.

To encourage the appropriate and respectful siting and design of dwellings, other buildings and structures in rural areas to minimise landscape impacts and protect the scenic vegetated setting.

To encourage appropriate and respectful works in rural areas to minimise landscape impacts.

To ensure that built form is subservient to the natural surroundings.

To discourage buildings and structures which are not compatible with the surrounding landscape and bushland character.

To protect the strong presence of native vegetation, particularly along roadsides, the immediate river and creek valleys.

To design and site buildings and structures to blend into the surrounding bushland setting and complement the steep topography.

To preserve scenic views from the river corridors, main roads and other public recreation locations to surrounding waterways, vegetated hills and forested gullies.

To maintain the steep, highly vegetated slopes, along river corridors.

To protect and enhance the natural character of waterways.

To minimise the visual impact of buildings and structures within open areas of the landscape.

To encourage retention of occasional patches of cleared land.

To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defensible space.

3.0 Permit requirement

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Proposed C81

A permit is required to remove, destroy or lop a substantial native tree. This does not apply

- If the lopping of a tree is undertaken to assist its regeneration.
- If the tree is dead.
- To the partial removal or lopping of branches directly overhanging dwellings, garages or outbuildings to the extent that they no longer overhang the building.
- To the removal, destruction or lopping of vegetation in accordance with Clause 52.48.

A permit is not required to construct a building or construct or carry out works for:

- an alteration or extension to an existing dwelling (including an outbuilding normal to a dwelling); or
- an alteration or extension to a building used for agriculture,

provided all of the following are met, as applicable:

- The height of the alteration or extension is less than ~~7~~ 8 metres above the natural ground level;
- The alteration or extension is setback at least 5 metres from the base of any substantial native tree;
- The floor area of the alteration or extension to an existing dwelling is less than 50 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser;
- The floor area of the alteration or extension to an existing outbuilding or building used for agriculture is less than 10 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser; and
- ~~The external surfaces, including roofs and walls, of the alteration or extension are clad and maintained in low reflective materials coloured in muted, earthy tones of dark grey, green and brown; and~~
- The extension or alteration is setback at least 50 metres from the crest of any hill or topographic feature located directly behind the extension or alteration and measured from the natural ground level at both points.

A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.

A permit is required to construct a fence. This does not apply if the fence is:

- Of post and wire construction, not greater than 1.4 metres in height ~~, has no more than five strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- ~~Of post and wire and mesh construction, not greater than 1.4 metres in height with mesh squares no less than 15 centimetres in width, has no more than five horizontal strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire; or~~
- Of rabbit proof mesh construction, not greater than 1.4 metres in height ~~with rabbit proof mesh no more than 5 centimetres in width and contains no barbed wire;~~ or
- Of open timber post and rail construction, not greater than 1.4 metres in height ~~where a minimum gap of 30 centimetres is maintained between the ground level and the lowest rail and contains no barbed wire;~~ or
- Temporary fencing for construction sites; or

- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

A permit is required for earthworks that comprise more than 1 metre cut or fill.

For the purpose of this clause a substantial native tree means a tree that is indigenous to Victoria and has a circumference greater than 0.5 metres at 1 metre above natural ground level.

4.0 Application requirements

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Proposed C81

An application must be accompanied by a landscape plan showing existing and proposed landscape works and plantings, as appropriate.

5.0 Decision guidelines

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Proposed C81

Before deciding on an application, the responsible authority must consider, as appropriate:

General

- The extent to which the development is consistent with the future character statement and objectives of this Schedule.
- The extent to which the natural character of waterways is protected and enhanced.
- The extent to which the proposal has addressed bushfire risk.

Vegetation and Landscaping

- The type, extent, quality and significance of any tree to be removed.
- The effect of the proposed removal of the vegetation on the area's character and tree canopy (as relevant).
- The extent and type (species) of new planting.
- The extent to which any proposed landscaping screens buildings and structures viewed from road corridors and public spaces.
- The extent to which the siting of the proposed buildings and works has minimised the need for the removal of native vegetation, including meeting defensible space requirements.
- The extent to which vegetation is maintained along river corridors.
- The extent to which patches of existing cleared land are maintained.
- [Whether maintaining vegetation, removing vegetation or any proposed landscaping will impact on the risk of bushfire.](#)

Views and Vistas

- Whether the proposed development will maintain views from public land and road reserves towards hill sides and ridgelines.
- Whether the proposed development still allows a rural outlook and protects views of Kinglake National Park.
- The cumulative impact of all buildings and works visible from road reserves and public land on the landscape character of the area.

Buildings and Structures

- The extent to which the development follows the natural topography of the land and minimises the need for earthworks.
- The prominence of the building along ridgelines, hill sides and elevated areas when viewed from a road reserve or public land.
- The setback of the building from property boundaries, river and creek corridors and roads.
- The extent to which buildings and structures are compatible with the surrounding landscape and bushland character.
- The extent to which the built form is subservient to the landscape.
- The scale, massing and roof form of the building.
- Whether the proposed development sits below the existing tree canopy.

- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.
- The location and siting of tennis courts.

Rural Buildings and Structures

- The scale and siting of the proposed buildings and structures.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.

Fencing, Access and Driveways

- The height and materials used to construct any proposed fencing.
- The extent to which the proposed fencing respects the preferred future character statement.
- Whether the proposed fencing is required for safety reasons.
- The extent to which roads, access tracks, driveways and car parking areas conform with the topography and maintain vegetation as a screen.
- The materials used to construct the proposed road base, access track or driveway.

6.0 Reference Documents

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Proposed C81

Nillumbik Landscape Character Assessment (Planisphere, 2009).

~~River Interface Design Guidelines (Nillumbik Shire Council, March 2015)~~

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Proposed C81

SCHEDULE 14 TO THE SIGNIFICANT LANDSCAPE OVERLAYShown on the planning scheme map as **SLO14****SUBURBAN RURAL LANDSCAPE CHARACTER AREA****2.0 Statement of nature and key elements of landscape**

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Proposed C81

The Suburban Rural Landscape Character Area consists of predominantly low density residential land located to the west of Yan Yean Road and north of Greensborough, including the local villages of Yarrambat and Plenty. Roads are typically lined by grassed swales and native vegetation located in grassed verges. Remnant native vegetation is scattered throughout this area. Dwellings on large allotments are generally set back from road frontages on hillsides. Front gardens are landscaped and contain both native and/or exotic plantings and rustic elements such as post and wire fencing. These factors help to create a semi-rural landscape character. Gaps in vegetation, both within road reserves and private properties, afford intermittent views across cleared undulating land. Other areas, such as Vista Court, have a more formal character created by large, relatively new dwellings set within predominantly cleared landscaped grounds featuring formal sealed driveways and exotic plantings. [Fire has been a major influence in shaping the ecosystems and evolutionary processes in the region and continues to pose a serious threat to life and property.](#)

Future Character Statement

This Character Area will continue to provide low density residential living opportunities within a semi-rural setting, in close proximity to the built-up areas of the Shire and nearby Whittlesea. Residential land will continue to be developed with lot sizes that meet the requirements of the Low Density Residential Zone. Small scale farming activities/hobby farms will contribute to the rural character and amenity of the area.

Dwellings will be ~~of low to medium scale and maintain a small building footprint,~~ setback from property boundaries, with landscaped surrounds. Storage areas, outbuildings and other structures will be ~~limited sited to avoid visual clutter.~~ Low open style fencing, native gardens and a lack of formal kerbing and footpaths will contribute to the Area's semi-rural, informal and spacious landscape character. Vegetation cover will continue to be strengthened over time, with the establishment of additional landscaping of locally appropriate native species set amongst pockets of remnant trees.

[The risk of bushfire will be managed having regard to the nature of the bushfire hazard of the area and the necessity to provide defensible space and appropriate landscaping and vegetation management.](#)

2.0 Landscape character objective to be achieved

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Proposed C81

To encourage development that achieves the future character statement.

To encourage the appropriate and respectful siting and design of dwellings, other buildings and structures in rural areas to minimise landscape impacts.

To encourage appropriate and respectful works in rural areas to minimise landscape impacts.

~~To maintain the low scale and open, rural residential character of the area.~~

To minimise the visual impact of buildings and structures in open, cleared areas and visually prominent locations such as ridgelines.

To maintain a balance between natural and settled landscapes.

To protect clusters of remnant vegetation.

~~To minimise a clustering of built form within the landscape.~~

[To ensure that the siting of buildings has regard to the nature of bushfire hazard of the site and the surrounding area and the necessity to provide defensible space.](#)

3.0 Permit requirement

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Proposed C81

A permit is required to remove, destroy or lop a substantial native tree. This does not apply:

- If the lopping of a tree is undertaken to assist its regeneration.
- If the tree is dead.
- To the partial removal or lopping of branches directly overhanging dwellings, garages or outbuildings to the extent that they no longer overhang the building.
- To the removal, destruction or lopping of vegetation in accordance with Clause 52.48.

A permit is not required to construct a building or construct or carry out works for:

- an alteration or extension to an existing dwelling; or
- an alteration or extension to a building used for agriculture; or
- a new building used for agriculture,

provided all of the following are met, as applicable:

- The height of the buildings and works is less than ~~7~~ 8 metres above the natural ground level;
- The buildings and works are located at least 5 metres from the base of any substantial native tree;
- The floor area of the alteration or extension to an existing dwelling is less than 50 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser;
- The floor area of the new building or the alteration or extension to an existing outbuilding or building used for agriculture is less than 10 percent of the gross floor area of the existing building or 100 square metres, whichever is the lesser; and
- ~~The external surfaces, including roofs and walls, of the buildings and works are clad and maintained in low reflective materials coloured in muted, earthy tones of dark grey, green and brown; and~~
- The buildings and works setback at least 50 metres from the crest of any hill or topographic feature located directly behind the extension or alteration, measured from the natural ground level at both points.

A permit is not required to construct a building or to construct or carry out works, to construct a fence or to remove vegetation, provided the activity is carried out by or on behalf of a public land manager or Parks Victoria under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 or the Crown Land (Reserves) Act 1978.

A permit is required to construct a fence. This does not apply if the fence is:

- Of post and wire construction, not greater than 1.4 metres in height ~~, has no more than five strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- Of post and wire and mesh construction, not greater than 1.4 metres in height ~~with mesh squares no less than 15 centimetres in width, has no more than five horizontal strands of plain wire where a minimum gap of 30 centimetres is maintained between the ground level and the lowest wire and contains no barbed wire;~~ or
- Of rabbit proof mesh construction, not greater than 1.4 metres in height ~~with rabbit proof mesh no more than 5 centimetres in width and contains no barbed wire;~~ or
- Of open timber post and rail construction, not greater than 1.4 metres in height ~~where a minimum gap of 30 centimetres is maintained between the ground level and the lowest rail and contains no barbed wire;~~ or
- Temporary fencing for construction sites; or
- Transparent safety fencing for a swimming pool located in the immediate vicinity of the swimming pool.

A permit is required for earthworks that comprise more than 1 metre cut or fill.

For the purpose of this clause a substantial native tree means a tree that has a circumference greater than 0.5 metres at 1 metre above the natural ground level.

4.0 Application requirements

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Proposed C81

An application must be accompanied by a landscape plan showing existing and proposed landscape works and plantings, as appropriate.

5.0 Decision guidelines

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Proposed C81

Before deciding on an application, the responsible authority must consider as appropriate:

General

- The extent to which the development respects the future character statement and objectives of this Schedule.
- [The extent to which the proposal has addressed bushfire risk.](#)

Vegetation and Landscaping

- The type, extent, quality and significance of any tree to be removed.
- The effect of the proposed removal of the vegetation on the area's character and tree canopy (as relevant).
- The extent and type (species) of new planting.
- The extent to which any proposed landscaping screens buildings and structures viewed from road corridors and public spaces.
- The extent to which the siting of the proposed buildings and works has minimised the need for the removal of native vegetation.
- [Whether maintaining vegetation, removing vegetation or any proposed landscaping will impact on the risk of bushfire.](#)

Views and Vistas

- Whether the proposed development still allows a rural outlook and protects views from public land and road reserves towards hill sides and ridgelines.
- Whether the proposed development will maintain views of Kinglake National Park.
- The cumulative impact of all buildings and works visible from road reserves and public land on the landscape character of the area.

Buildings and Structures

- The extent to which the development follows the natural topography of the land and minimises the need for earthworks.
- The prominence of the building along ridgelines, hill sides and elevated areas when viewed from a road reserve or public land.
- The setback of the building from property boundaries, river and creek corridors and roads.
- The scale, massing and roof form of the building.
- Whether the proposed development sits below the existing tree canopy.
- Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.
- ~~The extent to which the low scale residential character is maintained.~~
- The location and siting of tennis courts.

Rural Buildings and Structures

- The scale and siting of the proposed buildings and structures.

Whether the proposed development utilises non-reflective materials coloured and maintained in earthy, muted tones that are consistent with the natural setting.

Fencing, Access and Driveways

- The height and materials used to construct any proposed fencing.

- The extent to which the proposed fencing respects the future character statement.
- Whether the proposed fencing is required for safety reasons.
- The extent to which roads, access tracks, driveways and car parking areas conform with the topography and maintain vegetation as a screen.
- The materials used to construct the proposed road base, access track or driveway.

6.0 Reference Documents

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Proposed C81

Nillumbik Landscape Character Assessment (Planisphere, 2009).

~~Suburban Rural Design Guidelines (Nillumbik Shire Council, March 2015).~~