

Amendment VC197 – Summary of changes to the Yarra River Planning Controls



1. Updates are policy neutral

Amendment VC197 introduces permanent planning controls along the Yarra River (Birrarung) corridor, replacing the controls introduced on an interim basis from Richmond to Warrandyte in 2017 through Amendment GC48. The amendment removes expiry dates and updates existing Design and Development Overlay (DDO) and Significant Landscape Overlay (SLO) schedules within the Banyule, Boroondara, Manningham, Nillumbik, Stonnington and Yarra planning schemes. The permanent controls made by Amendment VC197 are policy neutral. While the revised schedules to the SLO and DDO look substantially different, the majority of changes make only minor clarifications and revise the structure and drafting of the schedules to achieve consistency with *Ministerial Direction – The Form and Content of Planning Schemes*. As such, the permanent controls introduced by Amendment VC197 are not anticipated to effect outcomes materially different to those achieved by the interim controls.

Amendment VC197 also includes minor policy neutral updates to other sections of the planning scheme through relocation of a number of provisions to ensure consistency with the ministerial direction. This includes Clause 12.03-1R and schedules to Clause 66.04 and Clause 72.08. Details of the changes and reasons for change are outlined below.

2. No updates to planning scheme maps

Amendment VC197 does not vary the extents to which overlays area applied to land. No mapping changes are included in the amendment.

3. Updates to schedules to the Significant Landscape Overlay - Yarra (Birrarung) River Protection

Sub-Clause	SLO action	Details of change	Strategic justification
1.0 <i>Statement of nature and key elements of landscape</i>	Reduced body of text.	Now 3 paragraphs.	The Statement of nature and key elements of the landscape has been made more concise in response to council feedback which indicated the statements are too long and do not support decision making. While the remaining paragraphs are less locally specific, they focus on what is valued and significant about the Yarra River landscape. Deleted text

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			was found to be primarily descriptive of visitor destinations and geological features, as opposed to the landscape characteristics that the SLO seeks to protect and enhance.
<i>2.0 Landscape character objectives to be achieved</i>	Reduced number of objectives.	16 objectives reduced to 5. Subheadings deleted.	<i>Ministerial Direction – Form and Content of Planning Schemes</i> allows for a maximum of 5 objectives in a schedule to the SLO. The 16 objectives in the schedule to the SLO have been reduced to 5. The revised objectives more directly relate to the permit requirements in the schedule and avoid duplication of regional policy 12.03-1R (Yarra River Protection). One objective “to protect and conserve areas of known indigenous and non-indigenous cultural or archaeological significance” is rehomed as a strategy at Clause 12.03-1R, elevating this to the regional policy level as it is consistent with existing state and regional policy and relevant to the entire Yarra River corridor.
<i>3.0 Permit requirement</i>	Minor updates.	Minor drafting changes. Reordering of requirements. Height for measuring tree circumference changed from 1.3m to 1.4m. More detailed scope introduced around tree pruning permit exemption.	Updates make the requirements easier to interpret, clarify triggers and exemptions for vegetation removal and fencing and achieve consistency with <i>AS 4970-2009 Protection of trees on development sites</i> .
<i>4.0 Application Requirements</i>	Minor updates.	Minor drafting changes to most requirements.	Updates improve the consistency and clarity of the application requirements.
<i>5.0 Decision Guidelines</i>	Minor updates.	Changes to sub-headings. Term critical root zone replaced with tree protection zone.	Updates bring the schedule into compliance with Ministerial Direction – Form and Content of Planning Schemes and achieve consistency with <i>AS 4970-2009 Protection of trees on development sites</i> .

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		New decision guideline referring to the <i>Shared Pathway Guidelines 2009, Melbourne Water</i> , previously included at the Sub-Clause 6.0 Reference Documents.	
6.0 Reference documents	Deleted.	Sub-Clause 6.0 (Reference Documents) is deleted from the SLO. Most documents previously included here are rehomed under the schedule to Clause 72.08 (Background Documents). Selected documents are instead integrated with decision guidelines.	Under <i>Ministerial Direction – Form and Content of Planning Schemes</i> the inclusion of Reference Documents in a schedule to the SLO is non-compliant. The appropriate place to include documents which are of use to the Responsible Authority in exercising their discretion is Clause 72.08 (Background Documents).
7.0 Transitional arrangements	Deleted.	No transitional requirements in the updated controls.	Amendment GC48 included transitional arrangements to prevent anyone who had already obtained a planning permit or building permit from needing to comply with the new controls. The planning controls implemented by Amendment GC48 were in effect for four years. Building permits and planning permits generally expire within two years, and the extension of a planning permit requires the Responsible Authority to consider the current planning policy framework in deciding on whether to extend a permit. In this context, there was no ongoing need for transitional requirements to be included in permanent controls.
8.0 Expiry	Deleted.	No expiration date in the updated controls.	Amendment GC48 implemented the existing controls on an interim basis, with an expiry of 31 January 2021. Amendment GC177 extended the interim controls by three months to allow adequate time to progress updates to the interim controls. Amendment VC197 implements permanent planning protections for the Yarra River between Richmond and Warrandyte, dispelling any need for an expiry to be included with the controls.

4. Updates to schedules to the Design and Development Overlay – Yarra (Birrarung) River Corridor Protection

Sub-Clause	Action	Details of change	Strategic justification
1.0 Design objectives	Reduced number of objectives.	12 objectives reduced to 5.	<i>Ministerial Direction – Form and Content of Planning Schemes</i> allows for a maximum of 5 objectives in a schedule to the DDO. The retained

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		Subheadings deleted.	objectives directly relate to the building and works requirements in the schedule and avoid duplication of the regional policy 12.03-1R (Yarra River Protection).
2.0 Buildings and works	Policy neutral updates.	<p>Definitions have been removed and instead built into the requirements they relate to.</p> <p>Changes to table formatting.</p> <p>Height for measuring tree circumference changed from 1.3m to 1.4m.</p> <p>Redrafting of requirements.</p>	<p>Updates improve the clarity and legibility of building and works requirements in accordance with best practice drafting principals. Specifically, the updates clarify:</p> <ul style="list-style-type: none"> - requirements that are mandatory and cannot be varied and - requirements that can be varied by a planning permit - the scope of permit exemptions for fencing - that basements and balconies are included within setback requirements <p>Updates also achieve consistency with <i>AS 4970-2009 Protection of trees on development sites</i>.</p> <p>Explicit definitions have been deleted from the schedule and instead drafted into the specific requirements to which they relate, achieving a more user-friendly outcome consistent with Ministerial Direction – Form and Content of Planning Schemes.</p> <p>The mandatory height and setback controls have not been varied.</p>
3.0 Application requirements	Minor updates.	Minor drafting changes to some requirements.	Updates improve the consistency and clarity of the application requirements.
4.0 Referral of applications	Deleted.	Referral requirement no longer included as a Sub-Clause in the schedule to the DDO. It is rehomed at Clause 66.04 (Referral of Permit Applications Under Local Provisions) and referred to in the decision guidelines in the schedule to the DDO.	<p>Under <i>Ministerial Direction – Form and Content of Planning Schemes</i> the inclusion of a Sub-Clause for Referral Requirements in a schedule to the DDO is non-compliant. The amendment relocates the existing Melbourne Water referral function to Clause 66.04 (Referral of Permit Applications Under Local Provisions) consistent with the existing requirement to “refer all applications within 100 metres of the Yarra River to Melbourne Water, unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed to in writing between the responsible authority and Melbourne Water.”</p> <p>A new decision guideline requires a responsible authority to consider the views of Melbourne Water as a recommending referral authority in</p>

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			accordance with section 55 of the Act, ensuring that proponents and planning practitioners do not overlook the referral requirement established elsewhere in the planning scheme.
<i>5.0 Decision Guidelines</i>	Minor updates.	Now references Melbourne Water referral requirement.	Updates ensure that proponents and planning practitioners are aware of requirement to refer applications to Melbourne Water through the updated Clause 66.04 and consider the views of Melbourne Water a recommending referral authority in exercising discretion.
<i>6.0 Reference documents</i>	Deleted.	Sub-Clause 6.0 (Reference Documents) deleted. Documents previously located here are mostly rehomed under the schedule to Clause 72.08 (Background Documents). Selected documents are integrated with the decision guidelines.	Under <i>Ministerial Direction – Form and Content of Planning Schemes</i> the inclusion of Reference Documents in a schedule to the DDO is non-compliant. The appropriate place to include documents which are of use to the Responsible Authority in exercising their discretion is at Clause 72.08 (Background Documents).
<i>7.0 Transitional arrangements</i>	Deleted.	No transitional requirements in the updated controls.	Amendment GC48 included transitional arrangements to prevent anyone who had already obtained a planning permit or building permit from needing to comply with the new controls. The planning controls implemented by Amendment GC48 have been in effect for four years. Building permits and planning permits generally expire within two years, and the extension of a planning permit requires the Responsible Authority to consider the current planning policy framework in deciding on whether to extend a permit. In this context, there was no ongoing need for transitional requirements to be included in permanent controls.
<i>8.0 Expiry</i>	Deleted.	No expiration date in the updated controls.	Amendment GC48 implemented the existing controls on an interim basis, with an expiry of 31 January 2021. Amendment GC177 extended the interim controls by three months to allow adequate time to progress updates to the interim controls. Amendment VC197 implements permanent planning protections for the Yarra River between Richmond and Warrandyte, dispelling any requirement to include an expiry with the controls.

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5. Updates to schedules to the Clause 12.03-1R (Yarra River Protection)

Heading	Action	Details of change	Strategic justification
<i>Objective</i>	No change.	NA	NA
<i>Strategies</i>	New strategy.	1 new strategy “to protect and conserve areas of known indigenous and non-indigenous cultural or archaeological significance” is introduced.	To achieve consistency with <i>Ministerial Direction – Form and Content of Planning Schemes</i> , the number of objectives in the schedule to the SLO has been reduced from 16 to 5. The strategy “to protect and conserve areas of known indigenous and non-indigenous cultural or archaeological significance” previously was included in the schedule to the SLO. It is now rehomed at Clause 12.03-1R. The strategy is consistent with existing state and regional policy and is relevant for the entire Yarra River corridor.
<i>Policy documents</i>	No change.	NA	NA

6. Updates to schedules to the Clause 66.04 (Referral of Permit Applications Under Local Provisions)

Heading	Action	Details of change	Strategic justification
<i>Referral of permit applications under local provisions</i>	Revised requirement.	The existing referral requirement is updated to define the scope of referrals as being “ <i>applications within 100 metres of the Yarra River, as measured from the Setback Reference Line, being the closest parallel property boundary aligned to the banks of the waterway, unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed to in writing between the responsible authority and Melbourne Water.</i> ”	The updated referral requirement is consistent with the existing referral requirement in the schedule to the SLO. Including a referral requirement in the schedule to the SLO does not comply with <i>Ministerial Direction – Form and Content of Planning Schemes</i> . Clause 66.04 is the correct location to define referral requirements under local provisions.

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7. Updates to schedules to the Clause 72.08 (Background Documents)

Heading	Action	Details of change	Strategic justification
<i>Background documents</i>	New background documents.	4 new background documents, linked to the schedule to the SLO, are introduced.	<i>Ministerial Direction – Form and Content of Planning Schemes</i> does not provide for the inclusion of Reference Documents in a schedule to the SLO. Clause 72.08 is the correct location for documents informing the drafting of planning provisions and the application of discretion by a responsible authority.