

Planning and Environment Act 1987

Panel Report

Melton Planning Scheme Amendment C173

**Melton Landscapes - Significant Landscape Features
Strategy 2016**

30 April 2018

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Melton Planning Scheme Amendment C173

Melton Landscapes – Significant Landscapes Features Strategy 2016

30 April 2018



David Merrett, Chair



Robin Crocker, Member

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List of Abbreviations

The Act	Planning and Environment Act 1987
ESO	Environmental Significance Overlay
ESO1	Schedule 1 to the Environmental Significance Overlay
ESO2	Schedule 2 to the Environmental Significance Overlay
GWMP	Western Plains North Green Wedge Management Plan 2014
SLF Strategy	Melton Landscapes - Significant Landscape Features Strategy May 2016
SLO	Significant Landscape Overlay
SLO1	Schedule 1 to the Significant Landscape Overlay
SW Study	South West Victoria Landscape Assessment Study 2013
VCAT	Victorian and Civil Administrative Tribunal

Overview

Amendment summary	
The Amendment	Melton Planning Scheme Amendment C173
Common name	Melton Landscapes - Significant Landscape Features Strategy 2016
Brief description	Extend the existing Significant Landscape Overlays to include additional land surrounding Mount Cottrell, Mount Atkinson and Mount Kororoit volcanic cones and other planning scheme changes
Subject land	Mount Cottrell, Mount Atkinson and Mount Kororoit and their surrounds and rural areas of the municipality
Planning Authority	Melton City Council
Authorisation	23 August 2017
Exhibition	5 October to 6 November 2017
Submissions	Number of submissions: 16 Opposed: 13 Council considered the submissions on 18 December 2017
Panel process	
The Panel	David Merrett (Chair) and Robin Crocker (Member) appointed on 3 January 2018
Directions Hearing	Western BACE, 222 Ferris Road, Melton South, 30 January 2018
Panel Hearing	Western BACE, 222 Ferris Road, Melton South, 8 March 2018
Site inspections	Unaccompanied, 7 March 2018
Appearances	<ul style="list-style-type: none"> • Melton City Council represented by Greg Tobin of the firm Harwood Andrews lawyers assisted by Don Lewis, Strategic Planner at Melton City Council • Glenn and Barbara Ford • Richard and Kim Bouchier • Sylvia Bugeja represented by Rory O'Connor of Hall and Wilcox lawyers • Michael and Marisa Jones • Ivan Spehar represented by Joseph and Angela Spehar
Date of this Report	30 April 2018

Executive summary

(i) Summary

Melton Planning Scheme Amendment C173 (the Amendment) seeks to implement some recommendations of the *Melton Landscapes - Significant Landscape Features Strategy, May 2016* by:

- extending the existing Significant Landscape Overlay mapping of Mt Kororoit, Mt Cottrell and Mt Atkinson to include a cone environs area
- amending Schedule 1 to the SLO by updating all its content
- amending Schedule 1 to the Environmental Significance Overlay (Remnant woodlands, open forests and grasslands) by updating all its content
- amending Schedule 2 to the Environmental Significance Overlay (Wetlands, waterways and riparian strips) by updating all its content
- amending the Municipal Strategic Statement
 - at Clause 21.01 (Snapshot of Melton City in 2014) by replacing Clause 21.01-11 (Environment and Landscapes) with a new Clause 21.01-11
 - at Clause 21.03 (Planning visions and objectives for Melton) to refer to the proposed new rural landscape character policy
 - at Clause 22.16 introduce a Rural Landscape Character Policy, including inserting the *Melton Landscapes - Significant Landscape Features Strategy, May 2016* as a reference document.

The Amendment is supported by recommendations from the 2012 Planning Scheme Review and the *Western Plains North Green Wedge Management Plan 2014* which found there was a need to prepare a landscape strategy for the municipality.

Prior to the Hearing, Council agreed with some submitters that the proposed extension of the Significant Landscape Overlay at Mt Atkinson could be abandoned as it extended into areas that would be developed for urban uses, and that this would be inconsistent with the objective of the overlay control.

The key issues raised in submissions were:

- existing provisions of the planning scheme, such as the GWZ, sufficiently address landscape significance.
- the methodology used to determine proposed SLO boundaries is inadequate.
- roads and other features should be used to define the extent of the SLO.
- the application requirements are onerous and could be expensive for minor buildings and works proposals.

The Panel has considered these issues and makes the following conclusions.

The existing provisions of the planning scheme appropriately address the core cone areas and discourages development. Outside of this in the area where the cone environs areas are located, Council would need to rely upon the relevant zone control and general state and local policy. The application of the SLO to the cone environs area is a superior outcome as this provides tailored local content, in addition to the zone control and other policies, including the new rural landscape character policy.

The use of the 1:5 ratio to determine the cone environs area has been used previously in western Victoria for other volcanic cones and is appropriate.

The extension of the Significant Landscape Overlay to incorporate a cone environs area is appropriate. It creates a two-tiered policy framework; the most significant area is the core cone area (currently mapped by the SLO) which discourages buildings and works and a cone environs area that has objectives and decision guidelines that seeks to guide development, without expressly discouraging it. Additionally, the zoning surrounding Mt Cottrell and Mt Kororoit limits development opportunities.

The use of roads, property boundaries and vegetation would undermine the intent of the Significant Landscape Overlay and would not be consistent with the accepted approach to mapping overlay controls.

The Panel acknowledges the application requirements could require costly reports and there is a need to calibrate the use of the application requirements which may not be required in full if they are for minor buildings and works.

The Panel has supported drafting improvements to some of the planning controls. Prior to approval of the Amendment, Council should ensure the mapping of the SLO that reflects the cone environs area is based upon the relevant contour for Mt Cottrell and Mt Kororoit.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Melton Planning Scheme Amendment C173 be adopted as exhibited subject to the following:

- 1. Abandon the proposed extension of the Significant Landscape Overlay at Mt Atkinson.**
- 2. Amend Schedule 1 to the Significant Landscape Overlay by replacing landscape objective dot points 2, 3, 4 and 5 with:**
 - To keep the core volcanic cone areas free from development where possible, by discouraging building and works at:
Mt Kororoit above the 180 metre AHD contour line
Mt Cottrell above the 160 metre AHD contour line
Mt Atkinson above the 120 metre AHD contour line.*
- 3. Amend Clause 3.0 of Schedule 1 to the Environmental Significance Overlay to introduce a permit exemption for fencing within the Eynesbury mixed use development as defined by the Mixed Use Zone, as follows:**
 - This does not apply if the fence is within the Eynesbury mixed use development as defined by the Mixed Use Zone.*

1 Introduction

1.1 The Amendment

(i) Amendment description

The exhibited Amendment proposes to:

- extend the existing Significant Landscape Overlay (SLO) mapping of Mt Kororoit, Mt Cottrell and Mt Atkinson to include a cone environs area at the base of the volcanic cones
- amend Schedule 1 to the SLO to update all its content
- amend Schedule 1 to the Environmental Significance Overlay (ESO1 - Remnant woodlands, open forests and grasslands) to update all its content
- amend Schedule 2 to the Environmental Significance Overlay (ESO2 – Wetlands, waterways and riparian strips) to update all its content
- amend the Municipal Strategic Statement
 - at Clause 21.01 (Snapshot of Melton City in 2014) by replacing Clause 21.01-11 (Environment and Landscapes) with a new Clause 21.01-11
 - at Clause 21.03 (Planning visions and objectives for Melton) to refer to the proposed new rural landscape character policy
- introduce a Rural Landscape Character Policy at Clause 22.16, including inserting the *Melton Landscapes - Significant Landscape Features Strategy, May 2016* (SLF Strategy) as a reference document.

The purpose of the Amendment is to protect the rural and landscape character of the remaining undeveloped rural areas of the City of Melton and to provide added recognition to the landscape significance of the volcanic cones.

Appendix A contains a list of submitters to the Amendment.

Appendix B contains a list of documents submitted prior to and at the Hearing.

(ii) The subject land

Figure 1 contains a map that shows the context of the three volcanic cones. Figures 2 and 3 contained photos of Mt Cottrell and Mt Kororoit and Figures 4, 5 and 6 contain maps that show the proposed extension (diagonal shading) of the SLO at Mt Kororoit, Mt Cottrell and Mt Atkinson.

More generally, the new policy is applicable to the volcanic cones and other areas within the Green Wedge Zone (GWZ), Green Wedge A Zone, Rural Conservation Zone, Farming Zone, SLO and Environmental Significance Overlay (ESO). This effectively covers all the non-urban parts of the municipality.

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Figure 1 Context of the three volcanic cones

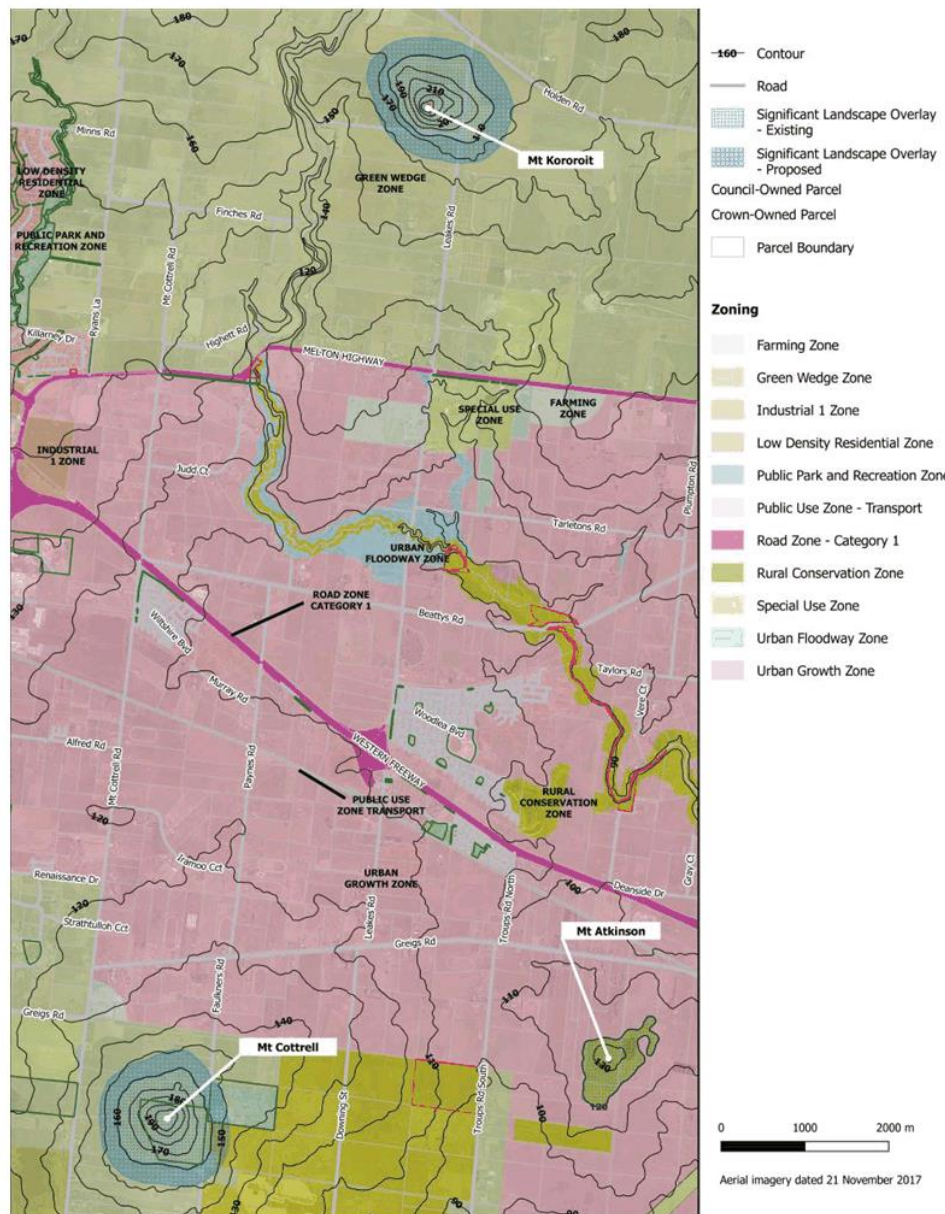


Figure 2 Mt Cottrell viewed from Greigs Road



Figure 3 Mt Kororoit viewed from Leakes Road



Figure 4 Mt Kororoit SLO

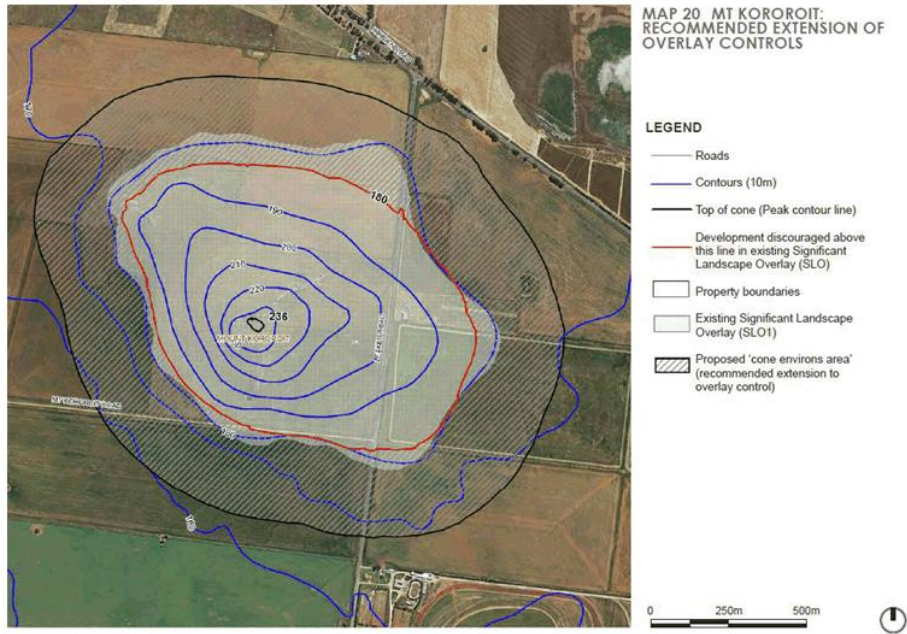


Figure 5 Mt Cottrell SLO

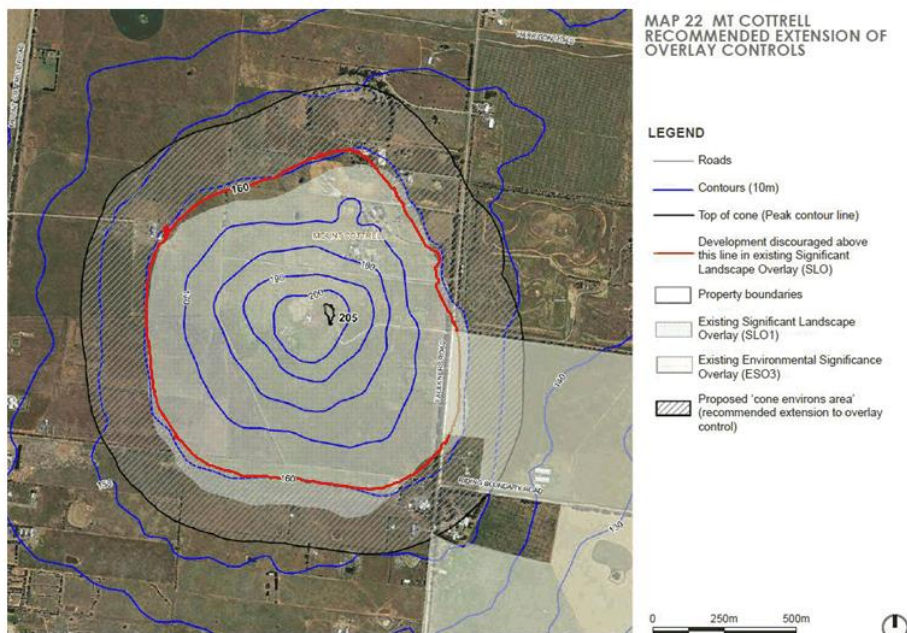
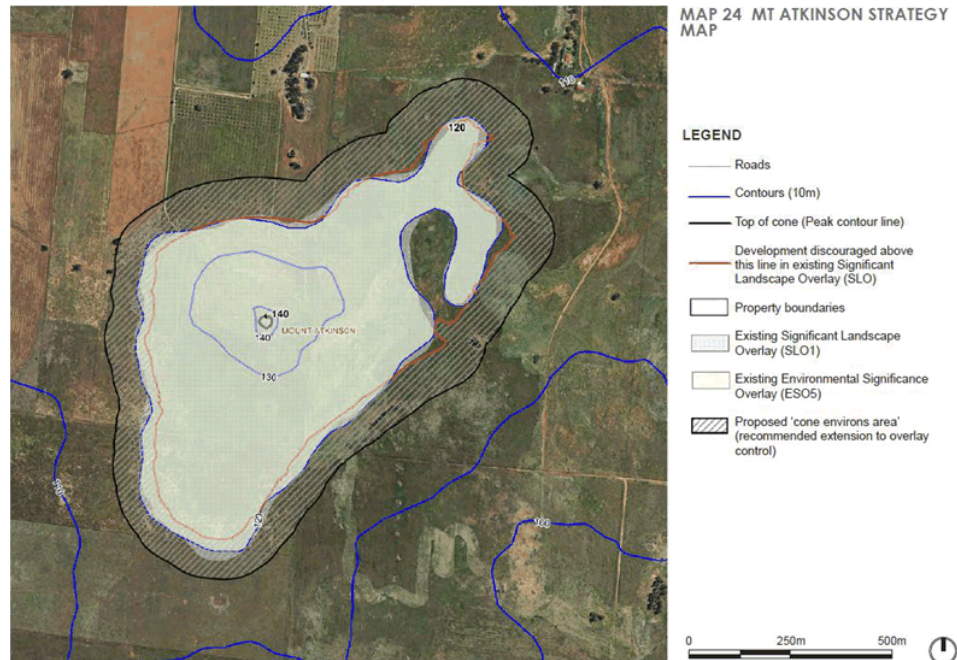


Figure 6 Mt Atkinson SLO



(iii) Amendment detail

The Amendment creates a two-tiered policy framework for the volcanic cones in Melton. The existing policy for the core cone areas is to be retained which discourages buildings and works above the relevant contour and strengthened. New policy for the cone environs area is more flexible and does not specifically discourage building and works.

Development is to be guided by new decision guidelines in the SLO1 and the design guidelines in Clause 22.16. The Rural Landscape Character policy applies to all areas outside the current and future urban areas of Melton. It is based upon preferred character statements for the Western Volcanic Plain and the Uplands. It contains design guidelines derived from the SLF Strategy that address elements such as land maintenance, geological features, dry stone walls, indigenous vegetation, shelter belts, views and vistas and building siting. Each element contains a design response and what to avoid. The application requirements require a site assessment by a suitably qualified person, a response report and an Environmental Management Plan. There are no specific exemptions, but the requirements are administered “as appropriate”.

The proposed ESO1 provides added detail on the significance of the woodlands, forests and grasslands, significance is clarified, and objectives and decision guidelines are revised.

The proposed ESO2 provides added detail on the significance of the wetlands, waterways and riparian areas and updates the environmental objectives to be achieved. It also includes revised decision guidelines requiring consideration of setbacks, permeable surfacing, scale, visual impact, the retention of vegetation and the role and function of wetlands.

1.2 Procedural issues

(i) Panel Direction 9(f)

Council advised the Panel prior to the Hearing that it sought to abandon the proposed SLO extension for Mount Atkinson as it:

... has considered the Mt Atkinson related submissions in light of the approved Precinct Structure Plan (an event that occurred after finalisation of the Amendment documentation and at a time when the Amendment was too advanced to change the documentation). In the circumstances Council advises the Panel that it does not intend to peruse at Panel the mapping changes to the Significant Landscape Overlay for Mt Atkinson.

Council now proposes that the existing mapping of the Significant Landscape Overlay continue to apply to Mt Atkinson. This is outside of the approved limits of residential development and ensures consistency between the Precinct Structure Plan objectives and the application of the SLO.¹

This issue of applying the SLO to an area where future urban development was addressed by the Panel's Direction 10(d) which required Council to address:

How the overlap of the Significant Landscape Overlay and Mt Atkinson and Tarneit Plains Precinct Structure Plan, the Eynesbury Township Development Plan (February 2013) or any other Precinct Structure Plan can be practically managed by Council.

Mount Atkinson Holdings and Stockland Development own land affected by the Mt Atkinson SLO mapping and withdrew from the Hearing based on Council's decision to abandon the Mt Atkinson mapping and to retain its current application. Figure 7 indicates the type of urban development expected around Mt Atkinson from Amendment C162 which approved the Mt Atkinson and Tarneit Plains Precinct Structure Plan on 12 September 2017.

The Panel supports the deletion of the Mount Atkinson SLO mapping from the Amendment as it would have applied a control that was inconsistent with the approved future urban land use and form. This report therefore considers the balance of the Amendment.

1.3 Recommendation

The Panel recommends:

- 1. Abandon the proposed extension of the Significant Landscape Overlay at Mt Atkinson.**

¹ Harwood Andrews letter dated 22 February 2018

Figure 7 Mt Atkinson future urban form



Council confirmed the Amendment does not conflict with any planning provisions or controls that apply to the Eynesbury Township Development Plan area but did concede that the ESO1 and ESO2 that apply to Eynesbury include a new permit trigger for a fence if it was not of rural construction. This was the subject of Submission 6.

(i) Post-panel Directions

At the end of the Hearing, the Panel issued the following further Direction to Council for a response:

- The current status of the land use immediately to the south of Mr Jones' property at Mt Cottrell. This will enable the Panel to understand the context of Mr Jones' submission.
- Whether the current Significant Landscape Overlay (SLO) that applies to Mt Cottrell and Mt Kororoit is based upon the Rosengren work of the 1980s and

incorporate a buffer (or environs area). The Rosengren work in the 1980s uses the 170 metre contour (not 160 metres as used by Planisphere) for Mt Cottrell. For Mt Kororoit the Rosengren work does not align with a contour but it seems the Rosengren mapping indicates an area smaller than the current SLO.

- *Confirm what land Council owns at Mt Cottrell.*

In response, Harwood Andrews, on behalf of Council, advised:

- there is a history of non-compliance with a planning permit and illegal works since mid to late 2016 that involve the dumping of landfill on the land and levelling of it.
- Council owns land identified in Figure 8 at Mt Cottrell.
- Council was unable to find any materials that supported the use of the 160 metre contour for the SLO at Mt Cottrell. It submitted:
 - *The Melton Rural Landscape Assessment 1993 recommended no development occur above the 140m contour for Mt Cottrell and applying design guidelines between the 100-140m contour. This study does reference the Rosengren report amongst others. There is no evidence that this work was translated into an amendment at this time.*
 - *In 1994 Council completed a Rural Areas Review which included recommendations to also apply the 140m contour at Mt Cottrell, and in relation to Mt Kororoit, a 'development free cone area' (no contour). There is reference in the Council materials to an Amendment L50 but there is no evidence of this being implemented.*
 - *Council records show that around this time Council determined not to take up an opportunity to purchase the land at Mt Cottrell. This may have influenced the introduction of a planning overlay under the new format Planning Scheme. Council notes that the new format planning scheme panel report does not provide any further detail but in its discussion of submission No 52 from the National Trust commented "The Trust proposes a different zone for the volcanic cones. Council has selected the Rural Zone with a Significant Landscape Overlay which, in the Panel's view, is appropriate."*
- Council confirmed the Rosengren work referenced the 170 metre contour, not the 160 metre contour and emphasised his work was from a geology and geomorphology view, not a landscape character view which considers additional attributes contributing to landscape values.

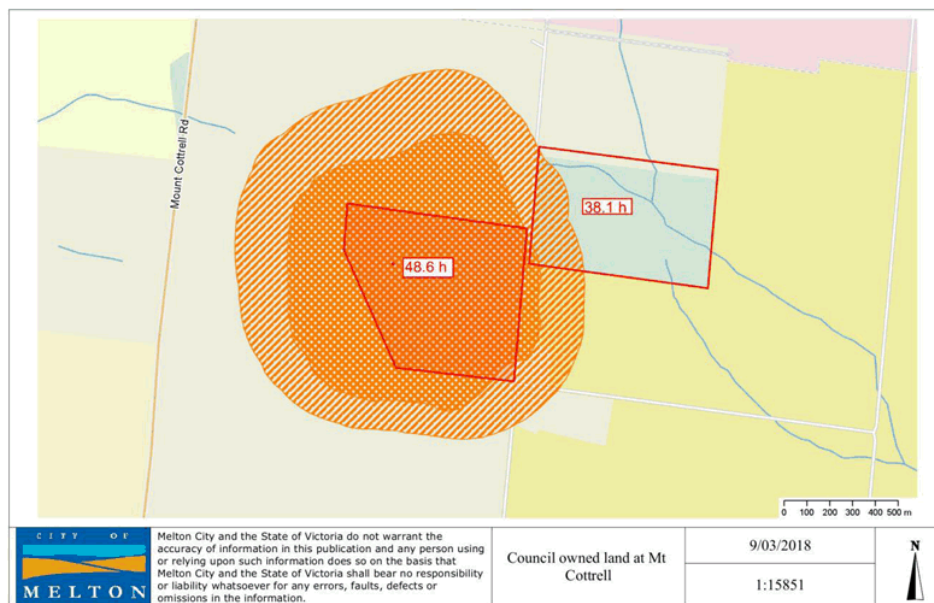
Council provided further clarity to the SLO mapping, in response to a Panel Direction. This Direction noted there were two different reference points (for example, for Mt Cottrell it refers to both the 160 metre contour and the existing SLO boundary) in the SLF Strategy from which the cone environs area was to be based. Figures 2, 3 and 4 indicate these are not the same. Council advised:

- *The current extent of the SLO1 for Mt Cottrell and Mt Kororoit was mapped around the time of the new format planning scheme. Since this time significant advances have been made in contour mapping technology.*

- As discussed at the Panel hearing, the existing SLO mapping was understood to reflect the relevant contour. However, with the benefit of modern LIDAR data, it has become apparent that the existing SLO area does not correspond with the actual AHD contours (Mt Kororoit 180m; Mt Cottrell 160m).
- Reference in the SLF Strategy to distances measured ‘from the base of the cone area (i.e. existing SLO Boundary)’ (Figure 1), and ‘from the core cone area (i.e. existing SLO boundary)’ (Figure 2) were intended as references to the actual AHD contour of the base of the cones (Mt Kororoit 180m; Mt Cottrell 160m).
- The proposed extent of the SLO is calculated using the formula set out in Figures 1 and 2 of the SLF Strategy. The relevant extent is measured from the relevant AHD contour (Mt Kororoit 180m; Mt Cottrell 160m).

Council advised the red line on Figures 2, 3 and 4 represent the relevant contour as derived from ‘best available’ LIDAR data. Council confirmed the reference to “existing SLO boundary” is not accurate.

Figure 8 Council owned land at Mt Cottrell



1.4 Background to the proposal

The 2012 Melton Planning Scheme Review identified the need to undertake a landscape strategy and recommended improved planning controls. In addition to this, the *Western Plains North Green Wedge Management Plan 2014* (GWMP) recommended that a landscape strategy be undertaken to identify significant landscape features in the north Green Wedge area of the city.

Council commissioned the SLF Strategy in 2014 to identify these areas and review the existing SLO1 schedule. The report found that the SLO1 did not provide an appropriate level of protection for Mt Kororoit, Mt Cottrell and Mt Atkinson and that a local planning policy was required to provide guidance for future development both in the Green Wedge areas and other rural areas of the City.

Council advised that rural areas provide an important break between the urban growth boundary and the remaining undeveloped farmland located in the north and south west of municipality. The City of Melton is predicted to grow from its current level of 144,457 people to more than 347,700 people by 2041. Council noted that while this predicted growth is important for the city and the region, it also presents many challenges, including pressure on rural landscapes from inappropriate development.

1.5 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are briefly summarised as follows:

(i) Melton City Council

The key issues for the Council were:

- to ensure there was a net community benefit generated by the increased protection of significant landscape features
- the extension of the SLO follows a consistent methodology established by a similar study in south west Victoria
- the SLO for the cone environs area does not discourage or prohibit development.

(ii) Individual submitters or groups of submitters

The key issues for the submitters were:

- the proposed extension of SLOs will adversely affect property values
- the methodology used to determine proposed SLO boundaries was inadequate
- the current SLO should be deleted as it was introduced without consultation
- roads and other features should be used to define the extent of the SLO
- existing provisions of the planning scheme, such as the GWZ, sufficiently address landscape significance
- the application requirements are onerous and could be expensive for minor buildings and works proposals
- permit exemptions in the ESO1 could be created for fencing at Eynesbury.

The methodology and approach to the new SLO mapping, whether existing provisions of the planning scheme were sufficient, and the appropriateness of the application requirements are issues yet to be resolved. These are discussed in Chapter 4.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Are existing controls adequate?
- Methodology and approach
- Drafting of the planning provisions.

1.6 Limitations

(i) Potential conflict of interest

Mr Spehar considered Council had a conflict of interest because it owns land covering the majority of the Mt Cottrell volcanic cone. The Panel refers to Council's role as the planning authority for all land in the municipality, including land that it owns. The Panel does not believe this represents a conflict of interest and this matter is not considered any further.

(ii) Consultation

Mr Tobin advised that consultation for the SLF Strategy included use of Facebook, Council's website, local media, three community 'drop in' sessions and mailouts to selected landowners and others. A total of 12 written submissions were received in response to the draft document.

For the Amendment, nearly 2000 notices were sent out to landowners directly affected by the proposed controls, and to other stakeholders including relevant government bodies and agencies. A total of 15 submissions were received in response to the draft Amendment.

Mr O'Connor stated that the report did not reveal how the community's views were considered and integrated into the final recommendations.

Mr Spehar suggested that consultation was very limited, notification of landowners directly involved was inadequate and the use of consultation findings was not explained. Mr Corey Bugeja, in a written submission, put forward similar arguments.

The Panel finds that the consultation process used in the development of the SLF Strategy was basic in scope and initiated only a limited number of submissions. Other forms of engagement, other than direct notification of landowners, was used such as the use of postcards and drop-in sessions. This is not uncommon as the SLF Strategy is a broad strategy that affects all non-urban areas of Melton. Notwithstanding this, the Panel supports the findings of the SLF Strategy regarding landscape values and notes the consultation mechanisms Council and its consultant adopted in 2014-2016 are not a matter for this Panel.

The Panel also finds that notification of the Amendment met the requirements of section 19 of the *Planning and Environment Act 1987* (the Act).

(iii) Effect on property values

Some submitters considered the Amendment would reduce property values. This matter has been considered by many Panels and the Victorian Civil and Administrative Tribunal (VCAT) as not relevant under the *Planning and Environment Act 1987*. The possible reduction of property values is not a matter that can be considered further by this Panel.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

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

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework:

- Clause 11.04-2 (Public open space) is supported as the Amendment provides for the long-term management of public open space, which is achieved through protecting *"sites and features of high scientific, nature conservation, biodiversity, heritage, geological or landscape value."*
- Clause 11.06-7 (Green wedges) is supported as the Amendment assists in protecting the green wedges of Metropolitan Melbourne from inappropriate development.
- Clause 12.04-2 (Landscapes) is supported as the Amendment seeks to *"protect landscapes and significant open spaces that contribute to character, identity and sustainable environments."*

The Amendment supports the State Planning Policy Framework by providing further protection to Melton's significant landscape features (the volcanic cones).

(ii) Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives, strategies and policies:

- Clause 21.01-11 (Environment and landscape) is supported as the Amendment updates this clause with information from the SLF Strategy.
- Clause 21.03-2 (Areas of historical, cultural and environmental significance) is supported as the Amendment seeks to *"protect and enhance areas of environmental, historical and cultural significance and sensitivity."*
- Clause 22.02 (Sustainable environment policy) is supported by the Amendment which includes the policy objective *"to preserve and protect existing vegetation, wetlands, creeks and grasslands and encourage their incorporation into development designs."*
- Clause 22.08 (Rural land use policy) applies to all land within the GWZ, Green Wedge A Zone, Rural Conservation Zone or Farming Zone and is supported by the Amendment which has a policy objective to *"maintain and enhance the landscape of the rural areas by encouraging development that is in harmony with the rural landscape."*

The new rural character policy (Clause 22.16) *"applies to applications for buildings and works within the Green Wedge Zone, Green Wedge A Zone, Rural Conservation Zone, Farming Zone,*

Significant Landscape Overlay and Environmental Significance Overlay." The policy inserts the SLF Strategy as a reference document.

The Amendment supports the Local Planning Policy Framework by extending controls designed to protect significant landscape features. Submitters considered the existing controls were adequate. Whether these additional controls are required, instead of relying on existing controls, is addressed in Chapter 3. The methodology and approach adopted by the SLF Strategy is addressed in Chapter 4.

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

Council referred to the 2012 planning scheme review that recommended a landscape strategy be completed *"to identify places to be added to the SLO"* but noted the SLO1 as it applies to the volcanic cones was *"currently effective"*.

The GWMP applies to land in the north of the municipality that includes Mt Kororoit but did not include areas further south around Mt Cottrell. The GWMP found that *"a more comprehensive visual assessment of the landscape, having particular regard to the changes in topography, would be necessary to guide Council's decision making and to ensure a robust evidence base that would withstand any challenge at VCAT."*²

2.2 Planning scheme provisions

(i) Zones

The Amendment does not change the zoning regime that applies to the volcanic cones or more generally in the rural areas.

(ii) Overlays

The Amendment extends the SLO1 to the cone environs area and introduces new text to the schedule with a more comprehensive statement of the nature and key elements of landscape, additional objectives, introduces a permit requirement for fencing (with an exemption of rural-type fencing) and additional decision guidelines.

Similar updates are proposed for the ESO1 and ESO2.

2.3 Ministerial Directions and Practice Notes

Ministerial Directions and Planning Practice Notes

Council submitted that the Amendment meets the relevant requirements of:

- Ministerial Direction 9 (Metropolitan Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 15 (The Planning Scheme Amendment Process)
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

² GWMP, page 17

- Council submitted that the Amendment is consistent with Planning Practice Note 46 (PPN46) Strategic Assessment Guidelines, June 2015.

The Panel notes that the Ministerial Direction on the Form and Content of Planning Schemes recommends only a maximum of one landscape objective be used. The proposed SLO1 contains ten objectives. This matter is discussed in Chapter 5.

2.4 Discussion and conclusion

The protection of the volcanic cones is already established in the Melton Planning Scheme. The Amendment is not a new direction taken by Council; it sets out to enhance the current provisions to provide for a greater net community benefit. The concept of protecting key landscapes is established in *Plan Melbourne*. Policy 4.5.2 (Protect and enhance valued attributes of distinctive areas and landscapes) states:

Planning for identified distinctive areas within green wedges and peri-urban areas needs to identify the valued attributes of these areas (as summarised on the following pages) and ensure they are protected and enhanced for ongoing use by present and future generations.

For landscapes and open space, the desired planning outcomes are:

Protect significant views, maintain non-urban breaks between urban areas, and conserve the cultural significance, tourism appeal and character of scenic rural landscapes. Recognised high-value landscape features include open farmed landscapes, sites of geological significance, ranges, hills and ridges and open coastal spaces.

One of the key roles of a planning authority is to balance competing policy in favour of net community benefit, as recognised in Clause 10.01 of the SPPF (Integrated decision making). Council submitted that the imposition of new controls should be balanced against the broader goal of protecting landscapes which would result in a net community benefit.

The Panel notes the abandonment of the Mt Atkinson SLO mapping was appropriate, particularly in this circumstance where the SLO would extend over a future urban form that would be markedly different to what currently exists. At the same time, the Panel recognises that the Mt Atkinson and Tarneit Plains Precinct Structure Plan does contain some guidance on how development adjacent to Mt Atkinson should address its context.

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters. This includes the methodology used to determine the extent of the new SLO mapping.

3 Are existing controls adequate?

3.1 The issue

The issue for the Panel is whether the current provisions of the Melton Planning Scheme are adequate to address landscape significance.

3.2 Evidence and submissions

Council referred to the 2012 planning scheme review, the GWMP and the SLF Strategy to establish there was need to provide greater protection to the volcanic cones. The 2012 planning scheme review found that the ESO1 and ESO2 were out of date and Council should provide stronger protection for vegetation and waterways. The review found that more places should be covered by the SLO. The GWMP concluded on landscape significance:

The high value of rural landscapes has been identified through both the background research and community consultation. The rural landscape is considered a key factor in the attractiveness of the area not only for rural residents but for any tourism activities. While some of the key views within the Green Wedge were identified through the background stages to the project, these were not exhaustive and there is very little protection of these landscapes through the Melton planning Scheme. While Council can seek to ensure that siting of new development is sensitive, a more comprehensive visual assessment of the landscape, having particular regard to the topography, would be necessary to guide Council's decision making and to ensure a robust evidence base that would withstand any challenge at VCAT.³

Council submitted the "SLF Strategy found that the SLO1 did not provide an appropriate level of protection for Mt Kororoit, Mt Cottrell and Mt Atkinson and that a planning policy was required to provide guidance for future development both in the Green Wedge and other rural areas."⁴ In providing additional decision guidelines (SLO1) and design guidelines (Clause 22.16 policy), Council considered "the ability to reference these clauses, in both designing and assessing proposals, stands in contrast to the existing situation."⁵

Council submitted "in the absence of local planning policy on rural landscape character, applicants and decision makers are left without guidance on why it is important to protect the character and appearance of the area, or indeed what the existing character and appearance is."⁶ Council did accept the GWZ does address these issues, but without specific local content.

Council submitted "the revised SLO1 provides useful information on the key elements of landscape contribution of the cones, through identifying aspects of the cones that are the most discernible and roads from which key views are enjoyed. Clause 2.0 includes objectives such

³ Council Part B submission, page 16, paragraph 71

⁴ Council Part B submission, page 16, paragraph 74

⁵ Council Part B submission, page 20, paragraph 91

⁶ Council Part B submission, page 20, paragraph 94

as locating buildings and structures “within foreground setting of the volcanic cones” and ensuring that they “demonstrate a high standard of design.”⁷

Council noted *“that suitably designed and sited buildings will still be permitted under the revised overlay”* but did concede *“that these provisions will make it less likely that a dwelling, tourist structure or agricultural building, with a visually intrusive design will be permitted in isolation on the highest parts of Mt Cottrell and Mt Kororoit. Council submits this is an appropriate outcome.”⁸*

Mr O'Connor considered *“there are effective permit triggers for most uses and development under the existing controls, and sufficient guidance exists for the decision maker already, particularly with respect to our Client’s land. The fact that “a permit is required anyway” is not sufficient justification for extension of the SLO1 area.”⁹* Mr O'Connor considered *“one does not get the impression of unrestrained development occurring.”¹⁰* Mr O'Connor referred to East Gippsland Planning Scheme Amendment C68, which applied the SLO to large areas of the coast, to avoid the outcome where land is unnecessarily included and considered this Amendment presented a similar issue, which this Panel should resolve.

Mr Ford considered *“constitutionally the principle of overlays is eroding the rights of a freehold landowner...Overlays have gone over board and planners utilise this planning tool indiscriminately and with no regard to the cost on the individual for the benefit of the community.”* Mr Bouchier considered the expanded SLO1 was unnecessary red tape and requested that no expansion be approved.

Submitter 7 considered the new rural character local policy was unnecessary as the planning scheme already contains a range of tools to assess relevant applications. Council supported the local policy as it provided additional guidance for the assessment of applications in the rural areas and refers directly to the landscape management guidelines derived from the SLF Strategy.

3.3 Discussion

Land including and surrounding Mt Cottrell (land east of Faulkners Road is generally zoned Rural Conservation) and Mt Kororoit is zoned Green Wedge. Two of the purposes of the GWZ is to recognise, protect and conserve green land for its landscape opportunities and its open rural and scenic non-urban landscapes. Under design and siting issues, the GWZ decision guidelines require the following consideration:

- *The need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas.*
- *The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape.*

⁷ Council Part B submission, page 21, paragraph 96

⁸ Council Part B submission, page 21, paragraph 97

⁹ Hall and Wilcox (Bugeja) submission, page 5, paragraph 29

¹⁰ Hall and Wilcox (Bugeja) submission, page 5, paragraph 30

- *The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance.*

The SLO seeks to “*identify significant landscapes*” and “*to conserve and enhance the character of significant landscapes.*” This zone/overlay combination does provide a reasonable basis for the protection of landscape character. However, the effectiveness of the current controls is limited to a high-level policy basis, dated material and for the SLO, in the mind of Council, worthy of extension. The Amendment contains material that is detailed, contemporary and specific to the Melton landscapes. Council advised the Panel its statutory planners considered the current controls were operating well. The non-urban areas of Melton will continue to transition from traditional farming activities to hobby farming that relies on off-site income or value added on farm income. The area will come under further development pressure as the growth areas are developed over time. Council should have the best policy framework in place to proactively address this scenario. The Panel does not accept the position of Mr O’Connor that “*if it ain’t broke, don’t fix it*” which effectively considers a reactive planning approach is best.

The distinction provided between the core cone area (that already has the SLO applied) and the cone environs area in policy terms is important. The proposed SLO1 effectively maintains current policy for the core cone areas, which seeks to discourage inappropriate development. There is no similar discouragement for development in the core environs area.

As the SLO currently applies to the volcanic cones, the real issue is whether the amended SLO schedule is appropriate, or the existing SLO is inappropriate. The Panel agrees with Council there is a line of strategic work that supports the need for improved SLO and ESO schedules. Of interest though is the comment from staff in the 2012 planning scheme review that the current SLO seems to be working well. In the context of a broad planning scheme review, the Panel considers the SLF Strategy provides a more detailed assessment of the SLO/ESO and greater weight should be provided to this in pursuing an expanded SLO than a comment in the broad planning scheme review over five years ago.

Council has not found a “*smoking gun*” that clearly justifies the application of the SLO in the new format planning scheme in the early 2000s, apart from a rural landscape assessment in 1993 and a rural areas review in 1994. As it was approved, the Panel must assume it has been strategically justified. However, the SLF Strategy, the 2012 planning scheme review and the GWMP fill this ‘void’ and recommend improvements to the SLO and ESO1 and ESO2. The Panel supports the new SLO schedule as it:

- provides local content from a recent landscape review
- augments what is a limited statement of nature and key elements of the landscape with improved information on why the landscape is significant
- removes a lack of nexus in the current SLO1 between its mapping and its content. It requires “*an application to construct a building or construct or carry out works on visible slopes generally above the 100 metre contour but below the above specified figures will be required to demonstrate how appropriate siting and landscaping treatment can be achieved*”, yet the overlay only applies to land above the 160 metre contour for Mt Cottrell.
- provides an expanded set of decision guidelines.

Whether a planning permit is required already by another provision of the planning scheme is not a justification, by itself, to impose another permit requirement by another expanded control. It may be a contributing factor, which is the point that Council was making.

The new local policy applies to all of Melton's rural areas, not just the volcanic cones or other areas identified for landscape significance. As a policy it does not have the ability to trigger the need for a planning permit. The Panel considers the policy is appropriate provided Council uses its discretion in its use of the applications requirements. This matter is considered further in Chapter 5.

3.4 Conclusions

The Panel concludes:

- the current policy basis provides reasonable protection to volcanic cone significant landscapes in Melton
- the revised SLO1 (including the cone environs area), ESO1 and ESO2 provide additional local content that is both contemporary and appropriate
- the new rural landscape character policy provides additional guidance to assist Council in assessing permit applications, which is appropriate.

4 Methodology and approach

4.1 Overview

The methodology was outlined in Council's Part A and Part B submissions and explained in detail in the SLF Strategy. Key aspects were:

- a field survey and GIS mapping of the whole study area by the study team to determine landscape character: the elements that make one landscape different from another
- identification of landscape significance based on field assessments of aesthetic value and information from secondary sources and community feedback on other landscape values such as environmental, historic and social
- identification of past, present and potential changes to the landscape, and analysis of existing planning policies and controls
- determination of appropriate planning and management practices to provide for future landscape protection.

An important component of the methodology related to the determination of the cone environs areas at the base of each of the three volcanic cones to help determine an appropriate SLO boundary for each cone. This was calculated by using a ratio of 1:5 applied to the cone height. For example, a cone with a height measuring 100 metres from the base to the top would require a 500 metres radius for the proposed control, measured from the base of the cone. This methodology was developed and applied as part of the South West Victoria Landscape Assessment Study (SW Study) that examined the landscape west of Melton Shire Council to the state border.

4.2 What are the issues?

Key issues related to the methodology were:

- the levels of landscape significance
- the use of the 1:5 ratio to inform the new SLO
- the reference point for the new SLO mapping
- whether other features such as roads and tree shelter belts should form a boundary to the SLO
- other issues.

4.3 Levels of landscape significance

(i) Submissions

Mr Tobin supported the findings of the SLF Strategy regarding the landscape significance of the cone areas. In the 'Western Volcanic Plains' landscape character type, 'Volcanic Cones and Hills' were found to have local significance for aesthetic value, local/regional significance for historical values, state significance for environmental and scientific values and local significance for social values.

Additionally, the SLF Strategy described Mt Cottrell as: *'one of the best examples of a lava shield volcano in Victoria, is one of the most striking volcanoes close to Melbourne. This*

*dormant volcano has a classic profile formed by lava erupting in a radial fashion ... Its summit provides panoramic views in all directions.*¹¹

Although volcanic cones are common across western Victoria, the three main cones in the study area were determined to be of particular importance to Melton:

*The City of Melton's volcanic plain is punctuated by dormant volcanic cones which rise up from the surrounding landscape. Of these, Mount Kororoit, Mount Cottrell and Mount Atkinson are the most prominent. ... Despite their relatively low elevation, they are visible from long distances and provide points of interest within the open plains. Visible throughout the municipality, the cones create a high level of contrast and visual interest in the landscape. These cones are iconic features of local significance that are scarce due to their topographic variation, unusual in the local context.*¹²

Mr O'Connor submitted that the application of an SLO to a landscape of local significance is unusual and has not been supported by other Planning Panels. He referred to the Greater Bendigo C217 Panel Report which quoted from the South Gippsland C45 Panel Report that landscape of local significance could be adequately "managed by ... character objectives and strategies identified in the MSS."

(ii) Discussion

The methodology used in the SLF Strategy was broadly similar to that used in a series of related landscape studies undertaken for State and local government agencies since 2004. Examples include the *Great Ocean Road Regional Landscape Assessment Study, 2004*, the *Coastal Spaces Landscape Assessment Study 2006* and the SW Study. These studies have identified significant landscapes in different parts of Victoria and provided the basis for landscape protection through planning scheme amendments, often involving the application of Significant Landscape Overlays.

These and subsequent studies were generally well received by the agencies and departments involved, although some criticism arose at later Panel Hearings.

This methodology includes criteria used to determine levels of significance ranging from State to regional to local. The Panel notes that no submitters contested the significance ratings for the volcanic cones. The Panel accepts these significance ratings for the three cones and supports the description of the cones as iconic features in the Melton context, warranting protection from inappropriate development around the cone bases.

The Panel notes that SLOs have been used to protect landscapes of local significance in several municipalities and considers the proposal to expand landscape recognition at Melton as appropriate.

¹¹ SLF Strategy page 60

¹² SLF Strategy page viii (Executive summary)

4.4 The use of the 1:5 ratio to inform the cone environs area

(i) Submissions

Mr Tobin submitted that the use of the 1:5 ratio based on cone height was appropriate at Melton and had been accepted by the former Department of Planning and Community Development in 2013 when applied to the protection of volcanic cones in the SW Study. Mr Tobin stated that *“the expansion of the SLO into these ‘environs areas’ [based on the 1:5 ratio] will ensure that the landscape significance of the cones will not be compromised by inappropriate development around the cone base”*¹³. He also noted that the SW Study set a larger buffer, using a ratio of 1:10, for large landscape features or state significant features.

Mr O’Connor stated that *“the methodology appears to be sound, but it has not been properly applied, and the implementation of the cone environs measure and the basis for the 1:5 ratio in the calculations has not been made out ...”*.

Mr Spehar argued that the application of the 1:5 ratio should be made from the base of the cone, not the existing SLO line, which he said has been incorrectly mapped.

In a written submission on behalf of Deer Park Nominees and Mr and Mrs Ford, Mr Haack from Urbis submitted that the break of slope (for Mt Kororoit) is not clear and application of the 1:5 ratio can lead to an unnecessarily large buffer distance.

Mr O’Connor and other submitters referred to Panel Reports that discussed the methodology used in other landscape studies by Planisphere, particularly: *Greater Bendigo Planning Scheme Amendment C217 - Significant Landscape Overlays, 2016*, and, *South Gippsland Planning Scheme Amendment C45 - Coastal Landscapes and Settlement Framework Plans, 2009*.

Mr Ford was concerned buildings and works were discouraged above the 180 metre contour for Mt Kororoit.

(ii) Discussion

A key component of the methodology used in the SLF Strategy relating to volcanic cones was derived directly from the 2013 SW Study – which covered the major geographical area in Victoria with volcanic cones. The approach used to calculate each cone environs area adopted a ratio of cone height to width of 1:5.

The Panel notes that criticism of some other Planisphere projects did not relate to the methodology used to determine a cone environs area – a key aspect of the methodology used at Melton. The matters raised were not directly relevant to the use of the 1:5 ratio.

The Panel considers there is a need for a consistent approach to determining landscape significance around volcanic cones, otherwise any analysis becomes too subjective. The Panel supports the use of the 1:5 ratio as a basis to define the new SLO boundary. Whether other features should be used to assist in defining the SLO is discussed in Chapter 4.6.

¹³ Council Part B submission page 14, paragraph 62

The issue Mr Ford raised relates to an existing provision of the SLO (discouraging buildings above the 180 metre contour for Mt Kororoit), which the Panel has limited ability to influence and is unwilling to re-visit it.

4.5 The reference point for the cone environs area mapping

(i) Submission

Mr Spehar questioned the reference point for the SLO boundary mapping for Mt Cottrell. He noted that, either the current SLO1 is mapped incorrectly as it extends beyond the relevant contour (that is, 160 metres for Mt Cottrell) or it includes a buffer already and there is no need for an extended cone environs area. If the former were true, then the cone environs areas would be reduced in size and not affect his father's property. This led to the Panel issuing a further Direction. Council's response is provided in Chapter 1.2.

(ii) Discussion

The point Mr Spehar raised is important and has identified what could be a potential mapping anomaly. Council, however, did not consider there was an error and referred to the imprecise nature of the mapping at the time of the new format planning scheme when the SLO was introduced and has confirmed the mapping was always intended to refer to the relevant contour level as a basis for mapping the cone environs area.

The Panel supports the use of the designated contour as the reference point from which the expanded SLO is based. That is, for Mt Cottrell it is the 160 metre contour and for Mt Kororoit it is the 180 metre contour. The use of the 1:5 ratio should result in a new SLO that is relatively non-controversial as it is based upon simple maths. However, the Panel encourages Council to ensure the mapping is based upon these contours prior to the approval of the Amendment.

4.6 Should other features form the boundary of the cone environs area?

(i) Submissions

Mr O'Connor submitted that *"a reasonable approach in determining overlay boundaries is to align them with road boundaries where proximate to the areas containing the landscape to be protected."* Mr O'Connor considered the Amendment should be abandoned and for the Panel to recommend *"that Council revisit the current alignment of the SLO1 boundary accordingly."*

Mr and Mrs Ford argued that the SLO1 eastern boundary for Mt Kororoit should be Leakes Road, and not as determined by the 1:5 ratio, as this ignored existing tree cover and may limit developments on their property. Mr Ford referred to a refusal from Council to construct a new dwelling within the current extent of the SLO which was overturned at the VCAT placed greater weight detriment the alternate location would have on the operating efficiency of the farm.

Mr Bouchier also submitted that the SLO boundary should be at Leakes Road.

Urbis, on behalf of Deer Park Nominees and Mr and Mrs Ford, argued that the boundary determined by the 1:5 ratio disregards other landscape features such as vegetation patterning, road cuttings and cadastral boundaries.

(ii) Discussion

Several submitters argued that the proposed expansion of the SLOs at Mt Cottrell and Mt Atkinson should adopt road or cadastral boundaries where applicable, so that future development would not be unduly restricted. The Panel notes that these areas are within the Green Wedge Zone or the Rural Conservation Zone; both of which have limited development opportunities.

The experience of Mr Ford where VCAT issued a permit for a new dwelling within the SLO is a demonstration that other matters are required to be considered in addition to the SLO and a balance struck between individually competing policies. The Panel encourages Council to take a whole-of-scheme approach to considering development within the SLO which, in this instance where a cone environs area is being created, has added flexibility in terms of what the core cone areas could accommodate and a different policy platform than that of the core cone areas.

Leakes Road at Mt Kororoit is flanked in part by a cypress pine windrow plantation which do obscure Mt Kororoit at times. Similarly, Faulkners Road at Mt Cottrell contains roadside vegetation that also obscures its view. The Panel notes the future of this vegetation could not be guaranteed and refers to the proposed local planning policy that seeks to avoid *"the loss of shelterbelts as a landscape feature"*.

Photos provided by Mr O'Connor offer a distant view of Mt Cottrell which, it was submitted, indicated that vegetation at the bottom of the Mt Cottrell along Faulkners Road would screen any development on Ms Bugeja's property from view corridors. This did not assist the Panel to any great degree as any view from that distance provides a limited or no view of the Bugeja property. Conversely, the closer the view the more prominent the view is.

The submitters considered roads or property boundaries could form the boundary of the SLO. As with the accepted approach to applying overlay controls, the Panel prefers not to restrict its application defined by other features within the environment.

The Panel considers the proposed extension of the SLOs would not constitute an unreasonable imposition in the context of the restrictions already generated by the applicable zone. The Panel accepts that protection of the cone environs areas is a priority, given their iconic features, and does not support reducing SLO areas by adopting road or cadastral boundaries closer to the cones.

4.7 Other issues**(i) Submissions**

Other matters raised include:

- other aspects of the methodology including the number of site visits, and the use of secondary sources
- impacts of present and possible future infrastructure/development on Mt Cottrell and Mt Kororoit
- inadequate recognition of opportunities to provide for public access and sightseeing from the volcanic cones.

(ii) Discussion

The Panel recognises that resources for the landscape assessment were limited but agrees with submitters that more detailed site inspections could have been undertaken at key locations. More specific reference could also have been made to secondary sources.

The Panel agrees with submitters that the impact of existing infrastructure/development and possible future infrastructure on the three cones was not adequately assessed in the SLF Strategy. This does not substantially affect the ratings of significance but could have resulted in more specific planning and management responses.

Protection of the volcanic cones from inappropriate development was a priority in the SLF Strategy, but more could have been made of the opportunities to plan for regulated public access in the long-term to allow for community appreciation of Melton's expansive landscapes. Mt Atkinson is to be developed into a significant area of passive open space encapsulated by its future urban form. The majority of Mt Cottrell is owned by Council and Mt Kororoit remains in private ownership. The Panel encourages Council to consider how further public access and improvement opportunities could be achieved in these areas.

4.8 Conclusions

The Panel concludes:

- the general methodology used in the SLF Strategy is well established in Victoria and broadly appropriate for use at Melton. The specific method used to determine the cone environs areas in the SW Study of Victoria's Western Volcanic Plains (using a 1:5 ratio based on cone height) can be reasonably applied to the volcanic cones in Melton which form part of the same landscape character type
- Melton's three volcanic cones are of local landscape significance, but because of their iconic status and scarcity in the municipality, and their geological/geomorphological significance, warrant a high level of recognition - which will be provided by the proposed expanded SLO
- the SLO boundary should not be adjusted to account for roadside vegetation, property boundaries or vegetation within private land
- the proposed extension of the SLO based on contours is supported to maximise protection of landscape values in the cone environs areas. Council should ensure the new SLO mapping is accurate and based upon the relevant contour
- the methodology used in the SLF Strategy had some shortfalls, but these did not undermine the main outcomes related to landscape protection.

5 Drafting of the planning provisions

5.1 Schedule 1 to the Significant Landscape Overlay

The Ministerial Direction on the Form and Content of Planning Schemes supports the use of only one landscape character objective. The SLO1 contains ten landscape character objectives. It is not uncommon for overlay controls to contain more than one objective. The Panel has reviewed these landscape objectives and notes they could be reduced to seven if some were consolidated and made clear they relate to the core cone areas only. The Panel supports the replacement of objectives dot points 2, 3, 4 and 5 with the following:

- *To keep the core volcanic cone areas free from development where possible, by discouraging buildings and works at:*
 - *Mt Kororoit above the 180 metre AHD contour line*
 - *Mt Cottrell above the 160 metre AHD contour line*
 - *Mt Atkinson above the 120 metre AHD contour line.*

The Panel recommends:

2. **Amend Schedule 1 to the Significant Landscape Overlay by replacing landscape objective dot points 2, 3, 4 and 5 with:**
 - *To keep the core volcanic cone areas free from development where possible, by discouraging building and works at:*
 - Mt Kororoit above the 180 metre AHD contour line*
 - Mt Cottrell above the 160 metre AHD contour line*
 - Mt Atkinson above the 120 metre AHD contour line.*

5.2 Local planning policy

(i) Submissions

The local planning policy requires, as appropriate:

- a site assessment by a suitably qualified person
- a report addressing the findings of the above
- an Environmental Management Plan by a suitably qualified person addressing protection of environmental features, weed management, landscaping and re-vegetation measures.

The Panel questioned the need for some of the application requirements of the Rural Landscape Character local planning policy given they will need to be drafted by a third party at a significant cost borne by the permit applicant.

Council supported the application requirements and submitted the need for them (refer to the discretion allowed by “*as appropriate*”) should be calibrated against what is proposed. Council referred to a dwelling extension as an example where perhaps neither of the application requirements should be required or a more rudimentary assessment prepared by the permit applicant would suffice. Alternatively, Council submitted that a new dwelling in an area where there was not a cluster of dwellings or structures should be required to provide the necessary reports.

Mr O'Connor considered compliance with the application requirements would be costly for permit applicants but did concede Council does have discretion to calibrate these requirements against the significance of what is proposed.

(ii) Discussion

The Panel generally supports the application requirements and recognises the importance of administering them appropriately based on the scale and significance of what is proposed. The Panel did consider basing the application requirements on land uses, however prefers to rely on Council's appropriate use of its discretion on this matter, as all applications should be treated on their merits. The Panel agrees with Council that minor and less significant permit applications should not be required to comply with all the application requirements. We encourage Council to appropriately use its discretion in this matter.

(iii) Conclusions

The Panel concludes the application requirements of the Rural Landscape Character local planning policy are satisfactory provided Council uses its discretion appropriately.

5.3 Schedule 1 to the Environmental Significance Overlay

Submission 6 (Eynesbury) noted there was not an exemption for urban style fencing at the Eynesbury mixed use development in the ESO1. As exhibited, it exempts rural type fencing. The development of Eynesbury is guided by a development plan and environmental management plans for pest plants and animals. It is an isolated mixed use urban development that is surrounded by rural land. The Panel agrees with the submitter that development at Eynesbury should be allowed to occur in line with its approved documents and not be impacted by a permit trigger in the ESO1 for fencing. This would create an unnecessary and inappropriate permit requirement.

The Panel considers a permit exemption at Clause 3.0 of the ESO1 should be inserted for fencing at the Eynesbury mixed use development.

The Panel recommends:

- 3. Amend Clause 3.0 of Schedule 1 to the Environmental Significance Overlay to introduce a permit exemption for fencing within the Eynesbury mixed use development as defined by the Mixed Use Zone, as follows:**
 - *This does not apply if the fence is within the Eynesbury mixed use development as defined by the Mixed Use Zone.*

Appendix A Submitters to the Amendment

No.	Submitter
1	Highlink Pty Ltd, Lightbase Pty Ltd and Melton 3 Victoria Pty Ltd
2	Ivan Spehar
3	Dominique Morizzi
4	Stockland Development Pty Ltd
5	Glenn and Barbara Ford
6	Eynesbury Property Development Pty Ltd
7	Ryaine Holdings Pty Ltd, Tiger Estate Pty Ltd and Karmade Developments Pty Ltd
8	Kim and Richard Bouchier
9	Mount Atkinson Holdings Pty Ltd
10	Deer Park Nominees Pty Ltd and Leakes Road Plumpton Pty Ltd
11	Marino and Vincenza Lauricella
12	Michael and Marisa Jones
13	Corey and Sylvie Bugeja
14	Western Water
15	Dosolina Beninati
16	Country Fire Authority

Appendix B Document list

No.	Date	Description	Tabled by
1	08/03/2018	Council hearing folder	Mr Tobin
2	08/03/2018	Council Part B submission	Mr Tobin
3	08/03/2018	Ford submission	Mr and Mrs Ford
4	08/03/2018	Bouchier submission	Mr Bouchier
5	08/03/2018	Guidelines for the Preparation of Environmental Management Plans in Melton's Rural Areas, Melton Shire Council, 1996 (in part)	Mr Bouchier
6	08/03/2018	Sylvia Bugeja submission	Mr O'Connor
7	08/03/2018	Jones submission	Mr and Mrs Jones
8	08/03/2018	Ivan Spehar submission	Joseph and Angela Spehar
9	08/03/2018	VCAT submission	Mr Ford