

**SUBMISSION TO YARRA STRATEGIC PLAN PANEL  
APPOINTED UNDER SECTION 25 OF THE  
YARRA RIVER PROTECTION (WILIP-GIN BIRRARUNG MURRON) ACT 2017**

## SUBMISSION

### Introduction

1. Kellehers Australia Pty Ltd (**'Kellehers'**) is a specialist town planning, local government, and environmental law firm, located at 497 Swan Street, Burnley (**'Office'**).
2. Our Office is located approximately 200m east from the Burnley Park and approximately 600m east from the Yarra River.
3. The Land Use Framework (**LUF**), provided for within the Yarra Strategic Plan (**YSP**), identifies the Office as within the 'The Inner City Reach' of the Yarra River, and categorises the Office as being within an 'urban' area.
4. Kellehers is supportive of the *Yarra River Protection (Wilip-Gin Birrarung Murron) Act 2017* (**'Act'**).
5. Kellehers is generally supportive of Melbourne Water's YSP, and the LUF. However, we believe that further work is required to ensure, in particular, that the LUF complies with the Act. We believe that without more thorough work on the LUF, the objectives and purposes of the Act are at risk of being 'toothless', ineffective or as providing mere lip-service.
6. This Submission addresses the following, in sequence:
  - a. The Legislation and the Panel's Purpose.
  - b. The Importance of Aboriginal Voice.
  - c. Inner City Pressures.

### The Legislation

7. The Act requires Melbourne Water to prepare a Yarra Strategic Plan in accordance with Part 4 of the Act.
8. The Act's purpose includes, among other things:
  - a. *to provide for the development and implementation of a Yarra Strategic Plan as an overarching policy and planning framework in relation to the Yarra River and certain land in its vicinity; and*



- b. *to set out principles to which responsible public entities must have regard when performing functions or duties or exercising powers in relation to Yarra River land or other land mentioned in paragraph (c); and*
- c. *to provide for the declaration of an area of land as a state significant urban natural entity to be known as the Greater Yarra Urban Parklands; and*
- d. *to amend the Planning and Environment Act 1987 to require ratification by Parliament for amendments to planning schemes in relation to land that is part of the Greater Yarra Urban Parklands*

9. Among other things, Part 4 requires that the YSP:

*'must include a plan for the Yarra Strategic Plan area (a land use framework plan) that –*

- (i) creates the spatial structure for the future use and development of that area; and*
- (ii) identifies areas for protection within that area' [s20(1)(b)]*

10. Part 4, section 21, then sets out the **mandatory** requirements of a land use framework plan. s21 of the Act is quoted in Melbourne Water's Part A submission. However, these mandatory requirements can be summarised generally as:

- a. Include a spatial plan for area;
- b. Indicate the Broad direction for future use and development in the area;
- c. Identify areas of protection;
- d. Recognise and protect Aboriginal (tangible and intangible) cultural and heritage values;
- e. Identify high environmental and landscape values;
- f. Identify areas of urban revitalisation or renewal;
- g. Identify important views;
- h. Identify commercial attractions;
- i. Identify locations for community activities;
- j. Nominate habitat corridors for ecological improvement as related to Yarra river land;
- k. Define open space and urban forest networks providing amenity to communities;
- l. Identify movement and access to link to Yarra River;
- m. Incorporate any agreed strategic transport infrastructure;
- n. Identify public authority infrastructure; and
- o. Recognise projected climate change impacts (flood and bushfire).

11. This Panel has been tasked with providing a report and recommendations to the Minister for Water, the Minister of Planning and Melbourne Water providing the following:

- a. An assessment of the merits of the updated Land Use Framework;
- b. An assessment of submissions;
- c. Recommended final wording for relevant 'directions for future land use and development' in the LUF;

- d. An assessment of whether the updated LUF provides a sound basis for the preparation of a planning scheme amendment;
- e. Advice on particular policy and statutory tools to assist the preparation of a draft planning scheme amendment;
- f. Any other relevant matters raised in the course of the Panel hearing; and
- g. A list of persons consulted or heard.

12. Thus, a key main task for this Panel is to assess the LUF, its merits and whether it will form an appropriate basis for further planning scheme.

13. Kellehers believes whilst many of the requirements of s21 have been considered or met, the Act is clear the LUF **must** include the matters set out in s21 and the 'The Inner City Reach' ('ICR') does not, in our view, adequately or at all in some instances include the following mandatory considerations. For that reason, we consider there are important elements requiring redrafting before the YSP, including the LUF, are approved by the Minister – and we urge the Panel to recommend attention to these matters.

14. Kellehers identified the following gaps:

- a. There appear to be no areas identified for protection within the ICR, including and in particular the 'Yarra River Land'<sup>1</sup>, which appears to run counter to the purpose of the Act under which the LUF is being created.
- b. Whilst some Aboriginal (tangible and intangible) cultural and heritage sites are included in the ICR LUF, we note at least one significant Indigenous heritage site, at Burnley Park, is not mentioned at all and express concern as to the many others in the area.
- c. There is no hierarchy of environmental or landscape values included in the LUF and certainly no high environmental and landscape values identified in it.
- d. The LUF does not identify any areas for urban revitalisation or renewal within the ICR, missing an important opportunity for sensitively designed increase usage of the Yarra River.
- e. No commercial attractions are identified in the ICR LUF.
- f. No locations for community activities are identified in the ICR LUF.
- g. Whilst there are three nominated habitat corridors, there is almost no support for their reasoning within the ICR and there are large sections for the River which are ignored as habitat corridors, particularly Burnley Park.

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<sup>1</sup>Yarra River Protection (Wilip-Gin Birrarung Murron) Act 2017, S3. – 'The Yarra River, including its bed, soil and banks..'

- h. No defined open space and urban forest networks are provided, these being necessary and important amenity needs of communities.
  - i. Whilst the ICR LUF identifies one new broad area for improved access - the 'north side' of the River running east-west - it fails to identify important existing access pathways to the Yarra River which are increasingly under threat from development.
  - j. The LUF provides no tangle mechanisms or framework for projecting and planning for the impacts of climate change.
15. So, in making its recommendations, the Panel ought to require the proposed LUF to, at a minimum, be redrafted to clearly comply with s21 and address the above matters.
16. In reviewing Melbourne Water's supporting document '*Yarra Strategic Plan Map Book – Current state land use for the Yarra Strategic Plan*', we note that it does include many of the matters required by s21, for example community activities, commercial attractions, detail views and open space networks. We suggest the detailed work included in these supporting documents be updated, to identify future strategies and be incorporated into the YSP.
17. Supporting the LUF, in its current form, would amount to poor planning policy, as the detail planning scheme amendments which follow it will either be likely to ignore important requirements of the Act or only find direction by going beyond the LUF into its supporting document. This is a poor policy outcome for such a highly significant place and can be addressed relatively simply now by requiring Melbourne Water to include more detailed LUF for each district using existing supporting material.
18. The Act clearly places great weight on the LUF, by explicitly stating what it is required to contain. To ignore or undermine those fundamentally undermines the purpose for which the LUF and the Act exist.
19. If the LUF is approved in its current form and becomes, in that form, an Incorporated Document in the planning scheme, Kellehers believes it will lack the robustness required to actually provide coordinated River-wide planning policy.

### **The Importance of Aboriginal Voice**

20. Kellehers Australia acknowledges the Traditional Owners of the land through which the Yarra River flows, particularly the Wurundjeri-willam people of the Kulin nation.
21. Kellehers Australia echoes the beautiful words of Aunty Joy Murphy and Andrew Kelly in their childrens' book about the River:

*As ngua rises, turning clouds over the distant city red... Below, Birrarung begins its long winding path down to palem warren... Birrarung is Wilam (home) to many.*

*'Wilam – A Birrarung story'*

22. Kellehers Australia supports the need for genuine and lasting partnerships with Traditional Owners to protect the Yarra River and respect highly significant Indigenous cultural connections to Country. We believe an approach which is lead by Traditional Owners is one which will achieve deep and genuine management of and planning for the River. This approach must be core to the planning function, relying respectfully upon their input, as they desire, and not a mere token formality.
23. Kellehers Australia has strong links with Aboriginal People throughout Australia. For nearly two decades it has undertaken extensive *pro bono* legal work for Aboriginal Peoples and Aboriginal individuals from all over Australia. It deeply respects the voice and opinions of Aboriginal Peoples and urges the Panel to listen to and implement their requests of the Panel and of the Plan. We emphasise the importance of listening and actioning – rather than deciding what will be best for the Aboriginal Peoples whose Country includes the Yarra River.
24. Kellehers Australia stresses the critical need to ensure that *all* Aboriginal heritage must be protected to ensure its careful preservation. This must include not only an archaeological approach, but also protection of the living cultural heritage of current Aboriginal Peoples of the River along with the appropriate and sensitive preservation of stories, language and intangible heritage.
25. The area of Burnley Park, part of a traditional corroboree ground, is particularly important and illustrative of its strength to the broad community through access to its knowledge of and connection with Indigenous cultural heritage. This Park is routinely used by our staff at lunchtime and for work breaks and we observe its solid use by office workers, school students and residents at these times.
26. The YSP, at page 113, identifies Burnley Park, located at the eastern end of Swan Street in Burnley, as Yarra River Land and Greater Yarra Urban Parkland. The park homes, what we understand to be, a significant Corroborree Tree, identified by the Yarra Planning Scheme as a place of aboriginal heritage (HO298). This Tree is not shown in the LUF.
27. The Aboriginal Land Claims Bill of 1983 focused attention on the Corroboree Tree in Richmond Park. Saved from fire by the quick actions of a nearby resident in 1959 (Richmond Council minutes, 16.11.1959), the tree was one of the subjects of a 12 month archaeological survey of the Melbourne metropolitan area in 1983-84 (Richmond Council Special File - Aboriginal sites, File 106.1). As a result of this survey, the Corroboree Tree was gazetted by the Australia Heritage Commission to be placed on the register of the National Estate (Special Commonwealth Gazette No. S.92, in File 106.1 as before). The City of Richmond and the Aboriginal Advancement League worked together to carry out preservative work on the tree and landscape its surrounds, to better reflect the past natural environment and the Wurundjeri's relationship with it (City of Richmond - Aboriginal sites in Richmond - File 106.1, 14.4.1986). (See also Meyer Eidelson, *The Melbourne*



*dreaming: a guide to the Aboriginal places of Melbourne* (Canberra: Aboriginal Studies Press, 1997) pp. 18-19.)

28. Other significant trees also exist in the Park and on proximate lands eg the former AEG site. However, the plan remains silent as to any long-term goals for the protection of this highly significant parkland Aboriginal heritage.
29. The Burnley Park is also significant as a transition site between Indigenous People and the first white settlers. The area became an important surveying camp and stable from 1836 and used by Robert Hoddle, as Officer-in-Charge of the Port Phillip Survey Department, to survey and lay out Melbourne's iconic grid. In, 1862 it was gazetted as 'Richmond Park' – Richmond's first public park.<sup>2</sup> Burnley Park and the surrounding areas of park form a historically significant abuttal to the River which warrants careful and respectful land use planning.

### **Inner City Pressures.**

30. The Yarra River, "Birrarung" – '*river of mists and shadows*', runs through the heart of Melbourne city, its metropolitan areas and far into its surrounds. The Yarra River is the lifeline of much of Greater Melbourne, providing clean drinking water to about 2.6 million households and open space for recreation, wellness and exercise.
31. Also, as the 'lungs' of this wide area, the River provides beauty, passive recreational opportunities and mental health respite for many of its local residents and workers. For many years experts have reported that 'blue space', including rivers, lakes and even urban water features, can have a positive impact on wellbeing<sup>3</sup>. Recent COVID experiences emphasise the River's critical importance to the city, in providing a sanctuary of wellbeing for many of Melbourne's closely settled inner city population. Were this lost, it would be forever gone – and the loss to the city immeasurable.
32. Riparian Australia Pty Ltd, in its submission to the Panel, reported significant increases in cycling and walking, as forms of exercise during the COVID-19 pandemic, including by children. For Melbourne's inner-city population, the surrounds of the River is their primary opportunity to safely undertake these activities. Kellehers Australia supports the submission of Riparian Australia Pty Ltd and the letter produced by doctors, public health and transport researchers seeking to enable safe walking and cycling during the COVID-19 pandemic and into the future, in particular along the environs of the River.
33. Beyond important health and well-being goals, the River's protection also aids emission reduction, by encouraging and enabling more residence and commuters to travel by methods other than motor vehicles.

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<sup>2</sup> <https://prov.vic.gov.au/explore-collection/provenance-journal/provenance-2013/mystery-cottage-burnley-park>

<sup>3</sup> <https://www.theguardian.com/sustainable-business/impact-sea-lakes-rivers-peoples-health>

34. Development pressures are intense in areas alongside and proximate to the River. Kellehers Australia recognizes the substantial strain this places upon it, particularly its role as a domestic and commercial water source, its water quality and its biodiversity. The LUF, is currently silent on how this will be managed and, in our view, must be significantly expanded to account for all the additional burdens this pressure is currently creating and can be expected to increasingly produce into the future. To that end the LUF, is largely silent on how it will:
- a. account for increased water consumption;
  - b. greater water traffic and pollution;
  - c. increased foot and vehicular traffic in the surrounding parklands and trails and their associated entry and exit points; and
  - d. the significant pressure, given State Government policies, for increased urban development within the River environs.
35. Further work on developing policies and frameworks for handling these increased pressures is critical of a functioning LUF.
36. Kellehers Australia emphasizes how important it is that YSP and the LUF look to the future sufficiently and specifically so as to ensure they implement a framework which both mitigates against and reduces the impact of Climate Change as part of its core framework for long-term sustainability and viability of the River and its protections.
37. The YSP identifies the likelihood of a significant drop in rainfall entering the river as a result of climate change. Given climate change will impact and likely lower the level of the river, which as it currently stands is a key determining factor in setting the boundaries of the non-development area proximate to the River. These boundaries are set by relevant Design and Development Overlay, as well as the Land Subject to Inundation Overlay. Given the level of the River is a foreseeably going to change, the LUF and any planning scheme amendments should ensure that River level reductions do not (by altered setback distances) risk opening up for development yet more highly sought after additional land proximate to the River edge, compounding the negative effects of climate change.
38. Kellehers Australia considers further consideration is required as to climate change impacts upon the River and its environs: and how to mitigate these.

### Conclusion

39. Kellehers Australia supports the Act and is generally supportive, subject to alterations suggested above, of the YSP and the purpose of the LUF. We request the Panel recommend that the Minister:
- a. Require Melbourne Water, to provide a more detailed and robust LUF, which fully demonstrates compliance with the mandatory requirements of s21 of the Act;
  - b. Require the LUF to be returned to the public and a Panel hearing for detailed consideration of the district specific issues of the proposed LUF; and

- c. Conduct and segment further Panel hearings focused on specific districts in order to ensure those elements of LUF are accurate and thorough, given the unique issues across the Yarra River.

40. Kellehers Australia reflects the sentiment of the Wurundjeri Council to *Wilip-gin Birrarung murrong* (Keep the Birrarung alive) that it is vital together, in partnership, guided by ancient wisdom and contemporary values, to enshrine this sentiment in both law and policy.

**KELLEHERS AUSTRALIA**

**5 June 2020**

