

**Macedon Ranges Planning Scheme Amendment C145macr
Eppalock Special Water Supply Catchment**

Panel Report

Planning and Environment Act 1987

22 June 2023

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Macedon Ranges Planning Scheme Amendment C145

Eppalock Special Water Supply Catchment

22 June 2023



Sarah Carlisle, Chair

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Glossary and abbreviations

catchment	Eppalock Special Water Supply Catchment
CMP	<i>Upper Coliban Integrated Catchment Management Plan, North Central Catchment Management Authority and Coliban Region Water Corporation, 2019</i>
Coliban Water	Coliban Region Water Corporation
Council	Macedon Ranges Shire Council
DELWP	Department of Environment, Land, Water and Planning (former)
MRRA	Macedon Ranges Residents Association
PE Act	<i>Planning and Environment Act 1987</i>
Practitioner's Guide	<i>A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022</i>
Waterway Identification Guidelines	<i>Waterway Identification Guidelines 2022, DELWP</i>

Overview

Amendment summary

The Amendment	Macedon Ranges Planning Scheme Amendment C145macr
Common name	Eppalock Special Water Supply Catchment
Brief description	<ul style="list-style-type: none"> - Update Environmental Significance Overlay Schedule 4 (ESO4) to modify the matters requiring planning permission on land within the Eppalock Special Water Supply Catchment - Modify referral requirements for permit applications under the ESO4 - Include the <i>Upper Coliban Integrated Catchment Management Plan</i> as a background document in the Planning Scheme
Amendment land	Land within the Eppalock Special Water Supply Catchment – see Figure 1
The Proponent	Coliban Regional Water Corporation
Planning Authority	Macedon Ranges Shire Council
Authorisation	22 July 2022 with conditions
Exhibition	20 October to 24 November 2022
Submissions	Number of Submissions: 16 Opposed/requesting changes: 12

Panel process

The Panel	Sarah Carlisle
Directions Hearing	26 April 2023 online
Panel Hearing	23 May 2023 online
Site inspections	Not required
Parties to the Hearing	<p>Council represented by Matthew Buckmaster of Niche Planning Studio</p> <p>Coliban Water represented by Joseph Monaghan of Holding Redlich, calling the following expert evidence:</p> <ul style="list-style-type: none"> - Duncan Wallis of RM Consulting Group in catchment water quality <p>P. Rush and M. Holt represented by Nicholas Rush</p> <p>Victorian Farmers Federation represented by Lisa Gervasoni</p>
Citation	Macedon Ranges PSA C145macr [2023] PPV
Date of this report	22 June 2023

Executive summary

The Eppalock Special Water Supply Catchment is an open water catchment that provides raw drinking water supplies to over 130,000 people. It is one of a number of strategic water resources within the Macedon Ranges. The catchment is currently protected by the Environmental Significance Overlay Schedule 4 (ESO4).

Macedon Ranges Planning Scheme Amendment C145macr (the Amendment) seeks to update the ESO4 to provide an improved balance between the needs of the catchment and the needs of landowners and occupiers by:

- ensuring the need for a planning permit has a clearer relationship to the need to protect the water quality and health of the catchment
- providing clearer application requirements
- requiring permit applications to be referred to the water authorities with responsibility for the catchment (including Coliban Water).

The updated ESO4 triggers permits for activities that pose a higher risk to water quality, and provides exemptions for lower risk activities. The permit triggers and exemptions are informed by the Upper Coliban Catchment Management Plan, which is based on commissioned research into pathogen risk (as well as common understandings of activities that present a higher contamination risk). This is an appropriate and strategically justified approach to balancing the protection of water quality within the catchment, and the reasonable use and development of land within the catchment. The Panel supports the Amendment, subject to some adjustments to the wording of the ESO4.

The first adjustment relates to the environmental objective in Clause 2.0 of the ESO4, and Coliban Water's proposed additional decision guideline in Clause 5.0 of the ESO4. These imply an obligation on private landowners to take active steps toward restoring and enhancing the catchment, rather than just minimising impacts on water quality and quantity. This is not the responsibility of private landowners – this is the responsibility of the water authorities and catchment management authorities.

The second adjustment relates to the application requirements in Clause 4.0 of the ESO4, and the decision guidelines in Clause 5.0 of the ESO4. While the Panel largely supports these, some elements of the requirements do not have a clear rationale. These should be removed.

Submitters raised concerns over specific permit triggers and exemptions. The Panel concludes:

- it is appropriate to remove the exhibited permit trigger for fencing
- the exhibited permit triggers and exemptions for vegetation removal are appropriate
- additional exemptions for farm infrastructure or public works are not justified.

In relation to the mechanics of the Amendment, the Panel concludes:

- it is appropriate to define a waterway by reference to the definition in the *Water Act 1989*, and to refer to the *Waterway Identification Guidelines 2022* as providing further guidance
- it is appropriate for Coliban Water (and Goulburn Murray Water) to be specified as determining referral authorities for all permit applications under the ESO4
- neither the Upper Coliban Catchment Management Plan nor the *Waterway Identification Guidelines 2022* need to be included as background documents in the Planning Scheme.

Recommendations

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

- 1. Adopt Amendment C145macr to the Macedon Ranges Planning Scheme as exhibited, with the changes recommended in this report.**

The following detailed recommendations have been consolidated and re-ordered, but are substantively the same as the recommendations that appear in each Chapter:

- 2. Amend the exhibited Environmental Significance Overlay Schedule 4 as shown in Appendix D:**
 - a) provide further clarification on what constitutes a waterway
 - b) in Clause 2.0, delete 'restores and enhances'
 - c) in Clause 3.0, remove the permit trigger for all forms of fencing
 - d) in Clauses 4.0 and 5.0, remove application requirements and decision guidelines for which no clear rationale has been provided
 - e) in Clause 5.0, include the following additional decision guideline:

The impacts of the proposed development on the natural environment and on the quality and quantity of water in the catchment.
- 3. Amend the exhibited Schedule to Clause 66.04 as follows:**
 - a) amend the Table in Clause 1.0 to read 'relevant water ~~authority~~ authorities' in column 3 and determining referral authority' in column 4.
- 4. Amend the exhibited Schedule to Clause 72.08 as follows:**
 - a) delete the reference to the *Upper Coliban Integrated Catchment Management Plan*, North Central Catchment Management Authority and Coliban Region Water Corporation, 2019.

1 Introduction

1.1 The Amendment

(i) The Amendment land

The Amendment applies to land shown green in Figure 1, which includes all land within the Macedon Ranges Shire that is within the Eppalock Special Water Supply Catchment (the catchment).

Figure 1 Amendment land



Source: Council's Part A submission

(ii) Amendment description

The Amendment land is currently within the Environmental Significance Overlay Schedule 4 (ESO4). The Amendment proposes to update the ESO4, to provide an improved balance between the needs of the catchment and the needs of landowners and occupiers by:

- ensuring the need for a planning permit has a clearer relationship to the need to protect the water quality and health of the catchment
- providing clearer application requirements.

Specifically, the Amendment proposes to:

- update the permit triggers and exemptions in the ESO4
- update the application requirements in the ESO4

- amend the Schedule to Clause 66.04 to require all permit applications under the ESO4 to be referred to the relevant water authorities as determining referral authorities
- make the *Upper Coliban Integrated Catchment Management Plan* (the CMP) a background document in the Planning Scheme.

The Amendment has been prepared by Macedon Ranges Shire Council (Council) at the request of Coliban Regional Water Corporation (Coliban Water).

(iii) The catchment

The Eppalock Special Water Supply Catchment is an open catchment which provides raw water for drinking water purposes for over 130,000 people. The catchment extends west into Hepburn Shire, and north into the City of Greater Bendigo and Mitchell Shire.

The Coliban River flows north through the catchment to meet the Campaspe River which then flows into Lake Eppalock.

The catchment is made up of four sub-catchments:

- the Upper Coliban River catchment
- the Lower Coliban River catchment
- the Campaspe River catchment
- the Wild Duck Creek catchment.

The Amendment land includes parts of the Upper Coliban and Campaspe River sub-catchments. The remainder of the Upper Coliban River sub-catchment is in Hepburn Shire, and is covered by the ESO1 in the Hepburn Planning Scheme. The remainder of the Campaspe River sub-catchment is in the City of Greater Bendigo and Mitchell Shire.

Three water storage reservoirs are located in the Upper Coliban River sub-catchment, on the Coliban River:

- Malmsbury
- Lauriston
- Upper Coliban.

There are two water authorities with responsibility for the Eppalock Special Water Supply Catchment:

- Coliban Water as regional water authority
- Goulburn Murray Water as rural water authority.

(iv) The catchment management plan

The CMP was prepared by the North Central Catchment Management Authority and Coliban Water in 2019 to achieve a coordinated approach to managing the catchment. The CMP applies to the Upper Coliban River sub-catchment only.

1.2 Updated versions of the proposed controls

Council advised in its Part A submission that it proposed two post-exhibition changes in response to submissions:

- updates to the ESO4 to remove the permit trigger for constructing a fence
- updates to the Schedule to Clause 66.04 (referral requirements) to correct the reference to a 'determining referral authority' (rather than 'determining authority').

The changes are shown in Council's updated ESO4 (Document 2).

On 19 May 2023, Coliban Water provided its preferred versions of the Amendment documents with its submissions, including:

- an updated version of the ESO4 with various changes (Document 7)
- an updated version of the Schedule to Clause 66.04 with the change proposed by Council in Document 2, plus an additional change to specify 'relevant water authorities' (rather than authority) as referral authorities, given there are two water authorities with responsibility for the catchment (Document 8)
- an updated version of the Schedule to Clause 72.08 to add the *Waterway Identification Guidelines 2022*, Department of Environment, Land, Water and Planning (DELWP) as a background document (Document 9).

On 23 May 2023, Coliban Water provided a further updated version the ESO4 (Document 12), and explained that after discussing the changes with Council, it no longer wished to pursue most of the changes in its earlier version (Document 7).

The Panel has had regard to all of the different versions of the Amendment documents in forming its advice and recommendations.

1.3 Key issues

Key issues raised in submissions were:

- whether the Amendment may result in a deterioration of water quality in the catchment
- what amounts to a waterway for the purposes of the ESO4
- whether the buffer distances from waterways are appropriate
- whether the environmental objectives, application requirements and decision guidelines of the revised ESO4 are an 'overreach'
- whether the proposed permit exemptions (in particular in relation to vegetation removal, agricultural fencing and public works) are appropriate
- whether the Amendment would impact property owners' ability to discharge stormwater
- concerns over Coliban Water's status as determining referral authority.

Some submissions raised issues that are not relevant planning matters:

- the impact of the Amendment on property values
- whether the Amendment may result in Coliban Water charging service levies
- past complaints about alleged failures to properly maintain a particular waterway
- whether the relationship between Council and Coliban Water is at arms length.

1.4 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, and submissions, evidence and other material presented to it during the Hearing. It has been 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:

- Strategic and policy issues
- Permit triggers and exemptions
- Mechanics of the Amendment.

2 Strategic and policy issues

2.1 Planning context

This chapter identifies the relevant planning context. Appendix C provides more detail.

Table 1 Planning context

	Relevant references
Victorian planning objectives	Sections 4 and 4AB of the PE Act
Planning Policy Framework	State planning policy clauses: <ul style="list-style-type: none"> - 12.03-1S (River and riparian corridors, waterways, lakes, wetlands and billabongs) - 12.05-1S (Environmentally sensitive areas) - 12.05-2S (Landscapes) - 13.03-1S (Floodplain management) - 14.02-1S (Catchment planning and management) Local planning policy clauses: <ul style="list-style-type: none"> - 21.02-2 (Environmental and Landscape Values) - 21.03-2 (Land use vision) - 21.03-3 (Strategic framework plans) - 21.04 (Settlement) - 21.06-2 (Soil degradation and contamination) - 21.07-3 (Water) - 21.09-2 (Rural residential) - 21.12-3 (Rural infrastructure)
Other planning strategies and policies	- Macedon Ranges Statement of Planning Policy
Planning scheme provisions	<ul style="list-style-type: none"> - Clause 42.01 (Environmental Significance Overlay) - Clause 52.17 (Native vegetation)
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	<ul style="list-style-type: none"> - Planning Practice Note 46: Strategic Assessment Guidelines - Planning Practice Note 55: Planning in open drinking water catchments

2.2 The issues

The strategic issues are whether:

- the Amendment is consistent with policy and strategically justified
- the Amendment will appropriately protect water quality in the catchment
- the buffers are appropriate
- the Amendment is an ‘overreach’
- the CMP provides an appropriate strategic basis for the Amendment
- the controls in the ESO4 are consistent with those that apply to other parts of the catchment.

2.3 Consistency with policy and strategic justification

(i) Evidence and submissions

Coliban Water explained that the Amendment was informed by the CMP, which aims (among other things) to help:

- improve river health
- provide reliable and safe supplies of raw water for drinking water purposes
- provide the local community with the opportunity to develop while minimising the risks to natural resources
- provide broader biodiversity outcomes for the catchment.

The CMP was informed by research into pathogen risks which identified activities in the catchment that pose higher risks to water quality. The research confirmed a ‘multiple barrier approach’ is appropriate, as no single barrier is effective against all conceivable sources of contamination, 100 per cent of the time. Coliban Water submitted that the ESO4 is an “*integral part*” of the multi-barrier approach, by minimising the risks of contamination of raw water in the catchment, thereby reducing reliance on the ‘infrastructure barrier’ (treatment plants) to remove pathogens and improve water quality.

Coliban Water submitted that the Amendment achieves an appropriate balance between facilitating reasonable use and development of land within the catchment, and protecting the health of the catchment and water quality within the catchment:

The proposed control achieves this balance by focusing only on matters that may detrimentally affect the health of the catchment which may include farm critical infrastructure if it is too close to a waterway and generates additional wastewater.

Coliban Water called Duncan Wallis of RM Consulting Group to give evidence. His evidence was that there is “*strong justification*” for a water corporation seeking to control the highest risk developments in the catchment areas of their water supply systems. He considered the ESO4 “*will establish a common and accepted tool that will help achieve protection of the Macedon Ranges part of the wider catchment from a water quality perspective*”.

Mr Wallis highlighted two elements that he said are common to all water quality risk management:

- the multiple barrier approach, which applies multiple barriers to a degradation in raw water quality, appropriate to the level of potential contamination facing raw water supply within the catchment

- the precautionary principle, which requires the application of a considered risk management approach.

Mr Wallis considered the ESO4 was an appropriate and strategically justified element in a multi-barrier approach. The ESO4 would act as a barrier by triggering permits for higher risk activities and thereby minimising the contamination of raw water entering the water treatment plants at Sandhurst, McCay, Kyneton, Heathcote and Trentham. His evidence was the success of these infrastructure barriers depends on the quality of the raw water flowing into them.

Coliban Water collaborated with Goulburn Murray Water, the rural water authority responsible for the catchment, in preparing the Amendment. Goulburn Murray Water (Submitter 14) supported the Amendment.

Mr Rush submitted that the Amendment should have stronger regard to other parts of the Planning Policy Framework and Planning Scheme, including:

- Clause 11.02-1S (Supply of urban land)
- Clause 16.01-1S (Housing supply)
- Clause 17.01-1S (Diversified economy)
- Clause 35.03 (Rural Living Zone), the purpose of which is to provide for residential use in a rural environment
- Clause 35.07 (Farming Zone), the purposes of which are to provide for the use of land for agriculture, and to encourage the retention of employment and population to support rural communities.

By way of example, he pointed out that large parts of the township of Malmsbury are within 100 metres of one or more waterways, and the Amendment would make developing this land for housing more difficult.

(ii) Discussion

The Eppalock Special Water Supply Catchment is one of a number of strategic water resources within the Macedon Ranges.

There is strong policy support throughout Clauses 12, 13 and 14 of the Planning Policy Framework for the protection of water quality in the Shire's water supply catchments, and the prevention of pollutants and contaminants entering raw drinking water supplies.

Objective 3 of the Macedon Ranges Statement of Planning Policy is:

To prioritise the conservation and use of the declared area's water catchments to ensure a sustainable local, regional and state water supply, and healthy environment.

One of the key strategies to support this objective is to discourage development that contributes to the degradation of water quality and quantity. This is reinforced by a multitude of clauses in the local Planning Policy Framework, in particular Clause 21.07.

The Panel is satisfied that the multi barrier approach to protecting water quality outlined in the CMP is sound. The multi-barrier approach is universally recognised as foundation for ensuring safe drinking water and protecting water quality and catchment health in both open and closed drinking water catchments. It is consistent with the Australian Drinking Water Guidelines.¹

¹ Prepared by the Australian Government, National Health and Medical Research Council and Natural Resource Management Ministerial Council in 2011, updated in September 2022.

The Eppalock Special Water Supply Catchment is an open water supply catchment. A significant portion of the land within the catchment is private land, where some level of land use and development is inevitable. The ESO4 will help manage higher risk activities on private land that could lead to contamination of raw water supplies, consistent with various parts of the Planning Policy Framework that call for the protection of catchments and raw drinking water supplies. Lower risk activities will no longer require a permit. This is an appropriate and strategically justified approach that achieves an appropriate balance between policies that support agricultural activity, and those that support the protection of water quality in catchments.

With regard to Mr Rush's submission, the Panel acknowledges that various parts of the Planning Policy Framework encourage the provision of adequate land supply for residential and agricultural purposes. It does not, however, consider that the Amendment strikes the wrong balance in its emphasis on policies that seek to protect water quality. The Amendment does not prevent the residential or agricultural use of land within the catchment, it merely seeks to ensure that any such use or development has proper regard to the need to protect water quality.

2.4 Water quality

(i) Evidence and submissions

Coliban Water submitted the ESO4 was already an integral part of protecting water quality within the catchment, and the Amendment would further improve water quality by focussing on higher risk activities. It submitted:

- Clause 1.0 of the ESO4 (the statement of environmental significance) now properly emphasises that:
 - cumulative impacts of development in the catchment have the potential to degrade water quality and quantity
 - protecting waterways from inappropriate development is essential to enhancing and protecting the health of the catchment environment, habitat, vegetation and the community.
- Clause 2.0 (the objective) now better identifies the outcomes to be achieved (development that protects and enhances the catchment and mitigates detrimental impacts on water quality and quantity).
- Clause 3.0 (the permit exemptions) now appropriately targets the activities that pose a higher risk to water quality.

Coliban Water suggested including an additional decision guideline in Clause 5.0 of the ESO4 that reads:

Whether the proposed development restores or enhances the natural environment in a way that will contribute to improving the quality and quantity of water in the catchment.

Mr Wallis' evidence was that the permit controls in the ESO4 will not eliminate all risks to water quality, but will protect water quality by focussing permit requirements on a 60 metre wide corridor along the waterways, which impacts the most on water quality and waterway health. He considered that the permit triggers appropriately focus on higher risk uses outside the 30 metre buffer, namely:

- new and altered on-site wastewater systems and substantial buildings and works, both of which are commonly identified as risks to water quality

- proposals that increase wastewater or discharge stormwater within 100 metres of a waterway.

He noted that grazing, stock access to waterways and intensive animal industries are higher risk activities that are not specifically mentioned in the ESO4, but he considered that their impacts would be appropriately controlled by the requirement for a permit for developments that increase wastewater or discharge stormwater within 100 metres of a waterway.

Mr Wallis pointed out that the ESO4 complements other land management and vegetation controls in the Planning Scheme including Clause 52.17 (Native vegetation), as well as other legislative requirements – for example, requirements for septic tanks permits, compliance with Australian Standard AS/NZ 1547 *Onsite Domestic Wastewater Management*, and the general environmental duty under the *Environment Protection Act 2020*). His evidence was:

The planning controls provided through ESO4, together with broader integrated catchment planning initiatives, will provide Coliban Water (and it's 150,000 drinking water customers) with the surety that the necessary and cost-effective catchment "Barrier" initiatives are being implemented consistent with the drinking water risks and the type of water treatment processes in place.

Macedon Ranges Residents Association (MRRA) was concerned about the proposed changes to the decision guidelines in Clause 5.0 of the ESO4, which include deleting references to several matters to be considered when assessing a permit application, including:

- vegetation retention in recharge areas
- septic tanks within 100 metres of a watercourse
- existing degradation
- density of septic tanks in the area
- litter traps
- local landcare policies.

It submitted:

These matters have been endorsed as important in Macedon Ranges Shire through various panel hearings. It is not clear that they continue to be embraced in [the Amendment's] changes.

Other submitters asserted that Coliban Water had not, to date, adequately protected water quality, by virtue of accidental releases from sewage treatment infrastructure under its management.

Several submitters expressed concern that Coliban Water is a commercial organisation, and its protection of water quality in the catchment may be compromised by commercial imperatives.

(ii) Discussion

The general approach of triggering permits for higher risk activities (and providing exemptions for lower risk activities) is appropriate to protect water quality within the catchment. As noted in Chapter 2.3, the permit triggers and exemptions are informed by the higher risk and lower risk activities identified in the CMP, which are based on commissioned research into pathogen risk (as well as common understandings of activities that present a higher contamination risk). They are consistent with the higher risk activities identified in Council's Biodiversity Strategy.²

² Document 10(a).

As pointed out by MRRA, the Amendment proposes to remove specific reference to several higher risk activities in the decision guidelines in the ESO4. However, the Panel does not consider that this will negatively impact on water quality. The important thing is to ensure that the permit triggers in Clause 2.0 capture the higher risk activities.

Coliban Water's suggestion of adding an additional decision guideline to Clause 5.0 specifically referencing water quality will assist in focussing the minds of decision makers on the overall objective of the ESO4, being to preserve water quality and catchment health. This will go some way to addressing the MRRA's concerns. The Panel supports Coliban Water's additional decision guideline, subject to some modification to address the issue of 'overreach' discussed in Chapter 2.6.

Regarding concerns in relation to Coliban Water's status as a commercial organisation, Coliban Water (while a corporation) is not a commercial organisation. It is a state owned enterprise with specific functions, powers and obligations under the *Water Industry Act 1994*.

Regarding concerns in relation to sewage leaks from Coliban Water's treatment plants, submitters provided no evidence of these other than some unreferenced newspaper articles. In any event, this does not, of itself, render the Amendment strategically unsound.

2.5 Buffers

(i) Evidence and submissions

Coliban Water submitted the 30 and 100 metre buffers reflected in the ESO4 are appropriate to protect water quality. It noted that the 30 metre buffer (within which a permit is required to remove vegetation) is consistent with the requirements of Clause 14.02-1S of the Planning Scheme, which encourages maintaining vegetated buffer zones of 30 metres either side of a waterway to:

- maintain the natural drainage function, stream habitat and wildlife corridors along waterways
- minimise erosion of stream banks and verges
- reduce polluted surface runoff from adjacent land uses.

(ii) Discussion

A 30 metre vegetated buffer (60 metre corridor) is wider than the buffers sought to be established and maintained in the CMP, which aims to see a continuous vegetated riparian corridor of at least an average of 20 metres each side of various specified waterways (including the Upper Coliban River) where land availability permits. The CMP contemplates a vegetated buffer of 10 metres each side of smaller waterways.

The Panel asked both Coliban Water and Mr Wallis what the evidence base was for the 30 metre and 100 metre buffers specified in the ESO4. Neither were able to provide a comprehensive answer. That said, there is a wide body of research and literature that sits behind the buffers, particularly the 30 metre vegetated buffer, which is reflected in Clause 14.02-1S (Catchment planning and management) of the Planning Scheme. The buffers are also consistent with those specified in the ESO1 in the Hepburn Planning Scheme, and nothing presented to the Panel suggested that wider buffers are required in this part of the catchment.

The Panel is satisfied that the buffers are appropriate.

2.6 Overreach

(i) Evidence and submissions

Mr Rush raised a concern that the ESO4 seeks to protect more than just the quality or volume of water within the Eppalock catchment, and represents an ‘overreach’ of the intent of the original ESO4. He was concerned that this will conflict with the purpose of the Farming Zone. He submitted that the reference in Clause 2.0 of the ESO4 to ‘restore and enhance natural resources’:

... outlines the intention of Coliban Water to use this amendment to dictate revegetation of private land. We consider this an onerous obligation on applicants and will reduce land use.

The Victorian Farmers Federation raised a concern that the statement of environmental significance in the ESO4:

... clearly indicates that this is a land management issue for [Coliban Water] to help them comply with the *Water Act 1989*. Therefore, it should be an action under the *Catchment and Land Protection Act 1994*, with compensation calculated and provided for. At no stage does it focus on a land use / development objective – purely a land management one.

Coliban Water responded that the updated Statement of environmental significance at Clause 1.0 of the ESO4 is consistent with the CMP’s identification of the environmental values to be protected. It submitted:

The underlying intent of this Amendment is to protect the health of the Eppalock Special Water Supply Catchment. To do this a number of matters needed to be updated including the relationship between waterway health and the ecological health and natural value of the catchment.

(ii) Discussion

The objectives of the Amendment, and what it seeks to protect, are set out in both Clause 1.0 (Statement of environmental significance) and Clause 2.0 (Environmental objective to be achieved) of the ESO4.

The purposes of the ESO are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify areas where the development of land may be affected by environmental constraints.
- To ensure that development is compatible with identified environmental values.

With one qualification, the Panel does not consider that the objectives of the Amendment are an ‘overreach’, or that they are more appropriately dealt with under the *Catchment and Land Protection Act 1994* rather than the PE Act. The objectives relate to protecting and restoring the health of the natural resources and environmental systems within the catchment. This is entirely consistent with the Victorian planning objectives, the policy objectives in the Planning Policy Framework, and the purposes of the ESO.

That said, the Panel has some concern that the references to ‘restoring and enhancing’ in Clause 2.0 may imply an obligation on private landowners to take active steps toward restoring and enhancing the catchment, beyond measures necessary to manage the impacts of their proposed development. Broader restoration and enhancement of the catchment is the responsibility of the water authorities and catchment management authorities under the *Water Act 1989* and the *Catchment and Land Protection Act 1994*. It is not the responsibility of landowners.

To address this issue, the Panel recommends Clause 2.0 be amended by deleting the words “restores and enhances”.

2.7 The catchment management plan as a strategic basis

(i) Evidence and submissions

MARRA submitted the CMP does not provide an appropriate basis for the Amendment. It submitted the Amendment applies to both the Upper Coliban and Campaspe River sub-catchments, but the CMP only addresses the Upper Coliban River sub-catchment:

This generates great concern in regard to the Amendment’s proposals to remove permit requirements for vegetation removal and for development and works by authorities and on public land within both the ... catchments.

Coliban Water responded that the Amendment does not propose to modify the extent of the ESO4 as it currently applies. While the updates to the ESO4 are based on work undertaken for the Upper Coliban River sub-catchment, the requirements are such that they are suitable for other catchment areas in the Eppalock Special Water Supply Catchment. It submitted that modifying the extent of the ESO4 to only include the Upper Coliban River sub-catchment area “*is likely to be to the detriment of the other areas*”.

Mr Wallace’s evidence was:

Applying the controls across the whole of the Macedon Ranges part of the Lake Eppalock catchment area (as is proposed and is already the footprint for the ESO4) seems a logical and defensible approach. Even though [the CMP] focussed on a subset area (being the Upper Coliban catchment within which sit the three Coliban River Storages), drinking water offtakes feeding supply channels and water treatment plants are located throughout the catchment, so applying the provisions across the whole catchment (as is proposed) makes sense. The fact that the whole of the Lake Eppalock catchment is a special water supply catchment also supports this view.

(ii) Discussion

The Panel notes that the Amendment does not change the extent of ESO4.

The Panel acknowledges that the CMP only applies to the Upper Coliban River sub-catchment, not to the whole of the ESO4 area. However, the Panel supports consistent controls across both the Upper Coliban River and Campaspe River sub-catchments. It was not persuaded that a specific assessment of conditions within the Campaspe River sub-catchment is required before the Amendment can proceed.

The CMP identifies broad principles for the protection of water quality within catchments, including the use of a multi-barrier approach and the precautionary principle. These principles are equally applicable in the Campaspe River sub-catchment as they are in the Upper Coliban River sub-catchment.

Further, it is reasonable to expect that the higher risk activities in the Upper Coliban River sub-catchment identified by the CMP are also occurring in the Campaspe River sub-catchment, given the land uses are broadly similar in both catchments (demonstrated by the land use maps provided in Mr Wallis’ evidence).

2.8 Consistency across the catchment

(i) Evidence and submissions

Mr Wallis noted that the controls in the ESO4 are similar (but not identical) to the ESO1 in the Hepburn Planning Scheme, which applies to that part of the catchment in Hepburn Shire.

(ii) Discussion

The Panel is satisfied that the Amendment adopts a consistent approach to that in the Hepburn Planning Scheme to the protection of that part of the catchment in the Hepburn Shire. Coliban Water prepared the revised ESO schedules in both planning schemes. The ESO1 in the Hepburn Planning Scheme, which was introduced by Amendment C80hepb, is worded slightly differently to the ESO4 but applies consistent controls to the part of the catchment in Hepburn Shire.

No material was put before the Panel in relation to the controls protecting those parts of the catchment in the City of Greater Bendigo or Mitchell Shire. The Panel therefore makes no findings on consistency with controls in the Greater Bendigo or Mitchell Planning Schemes.

2.9 Conclusions and recommendations

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel recommends:

Adopt Amendment C145macr to the Macedon Ranges Planning Scheme as exhibited, with the changes recommended in this report.

Amend the exhibited Environmental Significance Overlay Schedule 4 as shown in Appendix D:

- a) in Clause 2.0, delete 'restores and enhances'
- b) in Clause 5.0, include the following additional decision guideline:

The impacts of the proposed development on the natural environment and on the quality and quantity of water in the catchment.

3 Permit triggers and exemptions

3.1 Background

Current and proposed permit triggers and exemptions under the ESO4 are summarised in Table 2.

Table 2 Current and proposed permit triggers and exemptions

Current	Proposed
Buildings and works	
<p>Does not require a permit <u>except</u>:</p> <ul style="list-style-type: none"> - for accommodation (including a dwelling) that is not connected to reticulated sewerage - for intensive animal husbandry 	<p>Does not require a permit <u>if</u>:</p> <ul style="list-style-type: none"> - for a dwelling more than 30 metres from a waterway and connected to reticulated sewerage - more than 30 metres from a waterway <u>and</u> meets the following requirements: <ul style="list-style-type: none"> - does not generate additional wastewater - does not require substantial site cut or excavation - does not discharge stormwater within 100 metres of a waterway except to street drainage or a legal point of discharge - extensions that do not encroach on the capacity of an existing effluent disposal field - by or on behalf of a Minister, government department, public authority or municipal council - on public land by or on behalf of the public land manager
Fences	
<p>Does not require a permit</p>	<p>Exhibited: Does not require a permit <u>if</u>:</p> <ul style="list-style-type: none"> - more than 10 metres from a waterway - a temporary fence to protect vegetation, work sites or waterways - constructed by or on behalf of a Minister, government department, public authority or municipal council <p>Post-exhibition: Does not require a permit</p>
Subdivision	
<p>Requires a permit</p>	<p>Does not require a permit <u>if</u>:</p> <ul style="list-style-type: none"> - subdividing an existing building or land into two lots connected to reticulated sewerage - the subdivision creates lots of 40+ hectares - the subdivision is by or on behalf of a Minister, government department, public authority or municipal council

Current	Proposed
Vegetation removal	
Requires a permit <u>except</u> : - removal of vegetation for the construction of VicRoads roadworks.	Requires a permit <u>only if</u> native vegetation within 30 metres of a waterway (unless by or on behalf of a Minister, government department, public authority or municipal council, in which case no permit is required)

3.2 Fences

(i) The issue

The issue is whether fences should be exempt only in certain conditions (as exhibited), or whether all fences should be exempt (as proposed in Coliban Water's post-exhibition changes).

(ii) Evidence and submissions

Submitters raised a number of questions about the fencing trigger. Some appeared to have misinterpreted the trigger as a requirement to fence waterways, rather than a requirement to seek a planning permit if fencing was proposed within 10 metres of a waterway. Others raised questions about whether replacement of existing fencing would require a permit, or whether specific types of fences would require a permit.

Several submitters raised concerns that a permit trigger for fencing within 10 metres of a waterway (as exhibited) would place an undue restriction on farming and agricultural activity. For example, the Victorian Farmers Federation submitted that the introduction of a permit trigger for farm fencing impacts lawful land use and ability to comply with other statutes:

If a common sense approach was taken to the decision guidelines, then there should not be a permit for a farm fence within 10 metres of a waterway. The only potential issue would be a minimal chance for erosion, which is far negated by the ability to minimise the impact from livestock in an area.

Other submitters considered that the trigger for fences only within 10 metres of a waterway did not offer adequate protection from stock, and fences further than 10 metres should also require a permit.

Coliban Water revised their position in response to submissions, and proposed removing the fences trigger altogether (which is consistent with the current ESO4). Coliban Water considered this would not impact the health of the waterways, and noted that a permit trigger could impede current riparian revegetation efforts by discouraging landowners from erecting fences to protect riparian areas due to the cost, time and uncertainty in obtaining planning approval.

Council supported Coliban Water's position to remove the permit trigger for fences.

(iii) Discussion

The Panel notes that fencing and revegetation of riparian corridors are among the actions nominated in the CMP's 10 year action plan.³

³ Document 4(a2) at pages 12 to 14

The default position under the ESO is that a fence only requires a permit if specified in the schedule to the clause (see Clause 42.01-2). The exhibited ESO4 included a permit trigger for fences within 10 metres of a waterway (with some exceptions). Coliban Water's post-exhibition version (Document 12) removed references to fences in Clause 3.0 of the ESO4, so that the default position under Clause 42.02-1 (no permit is required) prevails.

While the Panel notes the exhibited permit trigger for fences is consistent with the ESO1 in the Hepburn Planning Scheme, it supports Coliban Water's proposal to remove the permit trigger for fences altogether. Fencing of riparian corridors to protect vegetation and revegetation from stock and the spread of weeds is an important part of protecting the corridor and the water quality within the waterway. The benefits to water quality of fencing riparian corridors outweigh the risks posed by the construction of fencing (which is a low impact activity). Including a permit trigger for fences could disincentivise fencing near waterways.

(iv) Conclusion and recommendation

The Panel concludes:

- It is appropriate to remove the permit trigger for fencing.

The Panel recommends:

Amend the exhibited Environmental Significance Overlay Schedule 4 as shown in Appendix D:

- a) in Clause 3.0, remove the permit trigger for all forms of fencing.**

3.3 Vegetation removal

(i) The issues

The issues are whether:

- it is appropriate to exempt vegetation removal beyond 30 metres from a waterway
- vegetation removal within the 30 metre buffer should be exempt in event of flood or storm debris, damage or fire risk.

(ii) Evidence and submissions

Several submitters, including MRRRA, were concerned that removing the permit trigger for vegetation removal more than 30 metres from a waterway would lead to greater vegetation loss, and a consequent deterioration in the waterways. MRRRA submitted that this would be inconsistent with the Macedon Ranges Statement of Planning Policy and other environmental protection policies.

Coliban Water responded that:

... vegetation within 30 metres of waterways is the most important to enhance and maintain. Regulation of vegetation outside of this area is less likely to protect waterways and will constitute excessive burden on landowners, Council and the relevant Water Corporations.

Mr Wallace's evidence was:

... vegetation works will only need a permit if within 30 metres of a waterway rather than across the whole catchment. From a water quality perspective this change seems logical, given that there are other more targeted vegetation controls in the scheme.

Council submitted that the proposed ESO4 supports additional consideration of vegetation removal *“in those areas where such removal is more likely to adversely impact the health of the catchment”*. Vegetation removal outside the 30 metre buffers would remain regulated by Clause 52.17 (Native vegetation), which *“is the appropriate provision to provide broad protection for native vegetation”* and *“provides an appropriate balance between the protection of native vegetation and the need to support reasonable exemptions”*.

Mr Rush requested that further exemptions be provided for removal of vegetation within 30 metres of a waterway, similar to the exemptions provided in Clause 52.17 (which include removal of dead vegetation, removal of native vegetation by stock grazing, and maintenance lopping and pruning). Submitters 6 and 11 raised concerns that the proposed ESO4 does not provide exemptions to remove, destroy or lop vegetation in the event of flood or storm debris, damage or fire.

Coliban Water responded that the ESO head clause (Clause 42.01-3) sets out exemptions in relation to vegetation removal which include emergencies and bushfire protection. It pointed out that removal of vegetation that was either planted or grown as direct seeding for crop raising or grazing animal does not require a permit. It submitted:

... while the proposed ESO4 would require a permit to remove, destroy or lop native vegetation within 30 metres of a waterway, as a whole it decreases regulation of vegetation across the extent of the ESO4 compared to the current ESO4.

(iii) Discussion

The Panel is satisfied that the exhibited vegetation removal permit triggers are appropriate. It is well accepted (and confirmed by Mr Wallis' evidence) that native vegetation within 30 metres of a waterway is far more protective of riparian corridor health and water quality than vegetation beyond this distance. It is therefore appropriate that native vegetation removal within 30 metres of a waterway should trigger a permit under the ESO4 (as well as under Clause 52.17).

The Panel agrees with Council and Coliban Water that Clause 52.17 is the appropriate tool to regulate native vegetation removal beyond the 30 metre buffer.

The Panel notes the concerns of Submitters 6 and 11 about exemptions for vegetation removal required in an emergency, but considers that the exemptions provided in Clause 42.01-3 for emergency works and fire protection are appropriate to address these concerns. Nor was the Panel persuaded that any of the general exemptions in Clause 52.17 should be applied to removal of vegetation within 30 metres of a waterway. The ESO4 is specifically targeted at protecting water quality. More restrictive controls within 30 metres of a waterway than those that would otherwise apply under Clause 52.17 are therefore justified.

(iv) Conclusion

The Panel concludes:

- the exhibited permit triggers and exemptions for removing, destroying or lopping vegetation are appropriate.

3.4 Agricultural activities

(i) The issues

The issues are whether the Amendment:

- will impose an undue burden on farming activities
- should apply a permit trigger for farm dams.

(ii) Evidence and submissions

Some submitters were concerned that the Amendment would negatively impact their ability to use their land for farming. Submitter 3 submitted that farm critical infrastructure such as pumps, sheds or slabs should be exempt from requiring a permit.

In oral submissions at the Hearing, the Victorian Farmers Federation submitted that the Amendment had been prepared without having regard to the need for farmers to be able to undertake essential agricultural activity. Their main concerns seemed to be in relation to the permit trigger for fencing, which is addressed in Chapter 3.2.

Coliban Water submitted:

The importance of not impeding primary production is understood; however, there is a balance that needs to be achieved between this and the protection of the health of the catchment and its waterways. The proposed control achieves this balance by focusing only on matters that may detrimentally affect the health of the catchment which may include farm critical infrastructure if it is too close to a waterway and generates additional wastewater.

It pointed out that the existing ESO4 requires a permit for buildings and works and vegetation removal (including dead vegetation), and that the Amendment is more likely to reduce the burden on those using their land for farming by expanding permit exemptions. It went on:

Where ESO4 does require a permit, the development in question is likely to have potential to harm water quality and thus the burden is justified ...

Coliban Water pointed out that under the ESO4, buildings and works outside the 30 metre buffer do not require a permit if they do not:

- generate additional wastewater that is not connected to a reticulated sewerage system
- require substantial site cut or excavation works
- result in additional stormwater being discharged within 100 metres of a waterway that is not connected to the street drainage system or a legal point of discharge
- encroach on the capacity of an existing effluent disposal field.

It pointed out that general exemptions also apply under Clause 62.02 of the Planning Scheme.

(iii) Discussion

The Panel is not persuaded that the Amendment will necessarily reduce the burden on farmers, as Coliban Water suggested. The current ESO4 only requires a permit for buildings and works for intensive animal husbandry, or accommodation (including dwellings) that are not connected to reticulated sewerage. The revised ESO4 proposes a permit trigger for all buildings and works, unless they meet the requirements set out in the ESO4 (summarised in Table 2 above), or the general exemptions in Clause 62.02.

However, the Panel considers that the Amendment strikes an appropriate balance between protecting agricultural activities and protecting water quality and the health of the catchment.

Permits are only triggered for activities that pose a higher risk to water quality and catchment health. Apart from the exemption for fencing, the Panel was not persuaded that any additional exemptions are justified, other than those already contained in the exhibited ESO4 and in Clause 62.02.

Regarding dams, the Panel asked Coliban Water whether the intention of the exemptions relating to site cuts and excavation was to capture, or exempt, farm dams. Coliban Water made it clear that it did not intend for the ESO4 to regulate farm dams, and indicated that a further amendment to its final preferred version of the ESO4 (Document 12) might be appropriate to make this explicit. The Panel does not consider that this is necessary. Clause 62.02 of the Planning Scheme contains a general exemption for buildings and works associated with a dam if a licence is required to construct the dam or to take and use water from the dam under the *Water Act 1989*.

(iv) Conclusion

The Panel concludes:

- additional exemptions for farm infrastructure are not justified.

3.5 Public works

(i) The issue

The issue is whether the exemptions for public works are appropriate.

(ii) Evidence and submissions

MARRA raised concerns that the exemptions for public works are too broad and that consequently, the health of the catchment will not be sufficiently protected.

Coliban Water responded that Ministers, government departments, public authorities, municipal councils and public land managers all have regulatory compliance requirements and other constraints and oversight that “*make these permit requirements redundant*”. It submitted:

From a practical perspective the issues with the health of water in the catchment do not result from the action of these agencies. In addition, there are other mechanisms available to catchment management authorities to deal with such issues that are more appropriate when dealing with public agencies.

(iii) Discussion

The Panel was not persuaded that a permit trigger for public works is justified. Most public works are exempt under the existing ESO4, and no evidence was presented to the Panel to suggest that this would no longer be appropriate. The Panel is also mindful of the need to avoid unnecessary administrative burdens on public authorities, and to not repeat in planning controls matters that are already regulated under other legislation.

(iv) Conclusion

The Panel concludes:

- additional permit triggers for public works are not justified.

4 Mechanics of the Amendment

4.1 Definition of a waterway

(i) The issue

The issue is whether references to a ‘waterway’ in the ESO4 are sufficiently clear.

(ii) Evidence and submissions

Coliban Water submitted that the meaning of the term ‘waterway’ is essential in the operation of the proposed ESO4, as the proposed permit triggers apply to activities within 30 metres or 100 metres of a waterway. It explained that the ESO4 gives ‘waterway’ the same meaning as under section 3 of the *Water Act 1989*:

- a) a river, creek, stream or watercourse; or
- b) a natural channel in which water regularly flows, whether or not the flow is continuous; or
- c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or
- d) a lake, lagoon, swamp or marsh, being:
 - (i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or
 - (ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or
- e) land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or
- f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or
- g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip.

Coliban Water submitted that its interpretation of this statutory definition is guided by the *Waterway Identification Guidelines* released by DELWP in 2022 (the *Waterway Identification Guidelines*), and suggested that these be added as a background document to guide the operation of the ESO4.

Council pointed out that neither the PE Act nor the Planning Scheme provide a definition of a waterway. It pointed to the definition in section 3 of the *Water Act 1989*, and agreed that the *Waterway Identification Guidelines* provide further assistance to support decision-making.

Mr Rush was concerned that the ESO4 requires the responsible authority to consider matters that are more than just ‘waterways’, including references to drainage lines, water supply reservoirs and springs, and buffers to and from drainage lines, gullies, property boundaries and effluent disposal areas.

Coliban Water responded that while there may be some discussion of terms or meaning based on individual facts and circumstances (especially when dealing with a natural feature), it is “*prudent to*

minimise these ambiguities as much as possible". It submitted that 'gullies' and 'water supply channels' would likely fall within the meaning of 'waterway', and references to these could be removed. In relation to other terms, it submitted:

... 'drainage lines', 'water supply reservoirs' and 'springs' and 'ground water' have meanings beyond 'waterway' and are proposed to be retained as the terms fulfil important purposes within the proposed ESO4 to protect water health in the catchment.

(iii) Discussion

In the absence of a definition of waterway in the PE Act or the Planning Scheme, the Panel considers it is appropriate to apply the definition in section 3 of the *Water Act 1989*.

The Panel acknowledges the concerns of submitters that the definition of waterway is unclear. This is demonstrated by the fact that the Waterway Identification Guidelines are needed to provide clarification of what constitutes a waterway for the purposes of the *Water Act 1989*.

The Panel explored with Council, Coliban Water and Mr Wallis whether there was an appropriate and comprehensive mapping of Victorian waterways that could be referred to, in order to provide clarification or certainty as to whether a particular feature constitutes a waterway. Neither Council or Coliban Water, nor Mr Wallis, were able to point the Panel to a reliable mapping resource.

On that basis, the Panel supports reference to the Waterway Identification Guidelines as providing guidance for decision makers as to whether a waterway exists or not. It recommends specifically referencing the Guidelines in the ESO4.

References to drainage lines, gullies, springs and water supply channels create confusion. It is not clear from the drafting of the ESO4 whether or not these are intended to be references to waterways. If these features meet the definition of a waterway, it is appropriate that the ESO4 regulate activities that potentially impact on them. If these features do not meet the definition of a waterway, permit requirements are not triggered and no clear rationale was presented as to why they should be considered under the ESO4. The Panel has included amendments in Appendix D to remove this potential source of confusion.

(iv) Conclusions and recommendation

The Panel concludes:

- it is appropriate to define a waterway by reference to the definition in the *Water Act 1989*, and to refer to the Waterway Identification Guidelines in the ESO4 as providing further guidance
- further clarification to the drafting of the ESO4 is needed to avoid confusion as to what constitutes a waterway.

The Panel recommends:

Amend the exhibited Environmental Significance Overlay Schedule 4 as shown in Appendix D:

- a) provide further clarification in relation to what constitutes a waterway.

4.2 Application requirements and decision guidelines

(i) The issues

The issues are whether:

- the application requirements are too onerous
- the decision guidelines are appropriate to the matters that the ESO4 seeks to regulate.

(ii) Evidence and submissions

Council explained that the revised application requirements in Clause 4.0 of the ESO4 now include matters that were previously identified as decision guidelines. The rationale for this change is to more clearly identify the information that is needed for Council and referral authorities to undertake and complete a proper assessment of applications.

Coliban Water explained that the updated application requirements now require the information necessary for it to adequately assess, consider and determine its referral response for permit applications under the ESO4. It explained that under the current ESO4, permit applicants would often not address the risks to catchment and waterway health from development, prompting further information requests. This information is clearly required from the outset under the updated requirements, reducing the administrative burden on Coliban Water and Council, and reducing the processing time for permit applications.

Mr Rush raised a concern relating to the application requirement for:

A plan to be implemented as part of the development outlining measures to protect and enhance the natural environment of the area, including:

- Proposed vegetation retention and revegetation including native vegetation buffers along waterways, drainage lines and property boundaries.

He submitted that what he understood to be a mandatory requirement to revegetate native vegetation along property boundaries and drainage lines is excessive and onerous, would represent a significant cost on applicants, and does not take into account the need to manage bushfire risks.

Coliban Water responded that native vegetation works close to waterways can have implications for catchment water quality. In addition, the requirement for plans to show revegetation, rather than mere retention, is consistent with the new objective in the ESO4 – to restore and enhance natural resources and environmental systems, rather than simply to protect and maintain water quality.

(iii) Discussion

The Panel agrees with Council and Coliban Water that the new application requirements are better targeted to the environmental objectives sought to be achieved under the ESO4. They should ensure that applicants provide sufficient information with their applications for both Council and Coliban Water to properly assess the application, minimising the potential for further information requests and the associated delays and administrative burdens.

That said, the Panel agrees with submitters, including Mr Rush, that some of the application requirements and decision guidelines are too onerous, and appear to have no direct relationship with the environmental objective set out in Clause 2.0 of the ESO4 (as modified in accordance with the Panel's recommendation in Chapter 2).

No clear rationale was presented for application requirements and decision guidelines relating to:

- vegetation more than 30 metres from a waterway (given vegetation outside the 30 metre buffer has a much more limited impact on waterway health)

- vegetation along property boundaries and drainage lines that do not constitute a waterway (unless perhaps the drainage line feeds directly into a waterway)
- a geotechnical report (Coliban Water clarified in the Hearing that this is an error and is not required).

The application requirements and decision guidelines should be amended to remove these references. The Panel has made appropriate changes in Appendix D.

The Panel acknowledges Mr Rush's concern that the reference to 'revegetation' in the final application requirement could imply revegetation obligations as part of any permit application under the ESO4. On balance, the Panel considers this is a low risk. Applications need to be assessed on their merits. The absence of revegetation is not grounds for refusing a permit, provided the impacts of the proposed buildings and works are acceptable without revegetation.

The risk is further reduced by the Panel's recommended changes to the environmental objective in Chapter 2, to remove the possible implication that it is the responsibility of private landowners to ensure their development restores and enhances the catchment (rather than minimises detrimental impacts on water quality).

(iv) Conclusion and recommendation

The Panel concludes:

- broadly speaking, the application requirements and decision guidelines are appropriate and justified and should improve the operation of the ESO4
- however, some modifications are required to remove references to matters for which no clear rationale has been provided, or which are outside the scope of responsibility of individual landowners.

The Panel recommends:

Amend the exhibited Environmental Significance Overlay Schedule 4 as shown in Appendix D:

- a) **remove application requirements and decision guidelines for which no clear rationale has been provided.**

4.3 Coliban Water as a determining referral authority

(i) The issue

The issue is whether Coliban Water should be a determining referral authority for applications under the ESO4.

(ii) Evidence and submissions

Some submitters raised concerns that Coliban Water's role as a determining referral authority for permit applications under the ESO4 may lead to negative environmental outcomes and inappropriate development. Some appear to have assumed that if Coliban Water is nominated as the determining referral authority, Council is no longer ultimately responsible for assessing and determining the permit application. Mr Rush submitted that Coliban Water may "*act as a 'blocker' unless the permit is within their interest to approve which will reduce development within areas affected by the ESO4 area*".

Coliban Water submitted:

Coliban Water considers that all applications for buildings and works that are not exempt under Clause 3.0 of the ESO4 pose a level of risk to water quality. Accordingly, it is appropriate that all of these applications are referred to Coliban Water for consideration.

Council explained that under Clause 66.02-5 of the Planning Scheme, and relevant legislation including the *Catchment and Land Protection Act 1994* and the *Water Act 1989*, the relevant water authority is always a determining referral authority for Special Water Supply Catchments. It pointed out that Council's role as a responsible authority under the PE Act means Council can refuse a permit even where Coliban Water as the determining referral authority does not object to the permit being granted.

(iii) Discussion

It is appropriate that Coliban Water (and Goulburn Murray Water) are determining referral authorities for applications under the ESO4. They are the water authorities responsible for managing the catchment. Determining referral authority status is consistent with their statutory responsibilities for the catchment under the *Catchment and Land Protection Act 1994* and the *Water Act 1989*.

As Council pointed out, the responsible water authorities are always determining referral authorities for permit applications within their catchments. It is important that the referral requirements in the Macedon Ranges Planning Scheme remain consistent with other planning schemes (and other statutory requirements).

Submitters who raised concerns about inappropriate development being allowed as a result of Coliban Water being a determining referral authority provided no basis for their assertions. In any event, as Council pointed out, Council (as responsible authority) remains the ultimate decision maker in relation to permit applications, and may refuse an application even if Coliban Water supports the application.

Regarding Mr Rush's concern that Coliban Water would 'block' permit applications within the catchment that are not 'in their interests', the PE Act requires Coliban Water to act reasonably and within the purposes for which it is the referral authority. If it acts improperly in refusing permit applications, appeal rights exist.

The Panel supports the corrections to the Schedule to Clause 66.04 proposed in Council's and Coliban Water's post-exhibition versions (see Chapter 1.2 for more detail).

(iv) Conclusion and recommendation

The Panel concludes:

- it is appropriate for Coliban Water (and Goulburn Murray Water) to be specified as determining referral authorities for all permit applications under the ESO4.

The Panel recommends:

Amend the exhibited Schedule to Clause 66.04 as follows:

- amend the Table in Clause 1.0 to read 'relevant water ~~authority~~ authorities' in column 3 and determining referral authority' in column 4.**

4.4 Background documents

(i) The issues

The issues are whether the following documents should be background documents to the Planning Scheme:

- the CMP
- the Waterway Identification Guidelines.

(ii) Background

Clause 72.08 (Background documents) states:

A background document may:

- Have informed the preparation of, or an amendment to, this planning scheme.
- Provide information to explain the context within which a provision has been framed.
- Assist the understanding of this planning scheme.

A background document does not form part of this planning scheme.

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) states that background documents:

- provide information that helps to understand why a particular policy or provision has been included in the planning scheme
- must not be directly relied on for decision making (if it contains content necessary for decision making these must be extracted and placed in the relevant control).

(iii) Should the CMP be a background document?

The authorisation for the Amendment included a condition that the CMP be included as a background document. Coliban Water supported including the CMP as a background document, noting that it:

- informed the preparation of the Amendment
- provides information to explain the context within which the Amendment has been framed
- assists the understanding of the Amendment, particularly the proposed ESO4.

While the Panel does not disagree that the CMP informed the preparation of the Amendment, it does not consider that the CMP needs to be listed as a background document. The ESO4 is clear on its face, and there is no need to refer to the CMP to understand the ESO4, or the context in which it has been framed.

Further, the CMP does not apply to the whole of the catchment – it only applies to that part within the Upper Coliban River sub-catchment. Including it as a background document may cause confusion.

Finally, the CMP is not included as a background document in the Hepburn Planning Scheme, despite having informed the preparation of the ESO1. The Panel considers it preferable to have a consistent approach.

The Panel therefore recommends that the CMP not be included as a background document.

(iv) Should the Waterway Identification Guidelines be a background document?

The exhibited Schedule to Clause 72.08 did not include the Waterway Identification Guidelines. This was proposed as a post-exhibition change by Coliban Water, to “bring the existence of the [Guidelines] to the attention of users of the Macedon Ranges Planning Scheme”. Coliban Water submitted that the Waterway Identification Guidelines:

- guide Coliban Water’s interpretation of the definition of a ‘waterway’ in section 3 of the *Water Act 1989*
- informed the preparation of the ESO4
- would assist users of the Planning Scheme to understand the operation of the proposed ESO4.

The Panel considers a better approach is to directly reference the Waterway Identification Guidelines in the ESO4, rather than including them as a background document. While they may have informed the preparation of the Amendment, and may explain the context in which the ESO4 was framed, their primary purpose is to guide decision making on the operation of the control. Consistent with the Practitioner’s Guide, they should therefore be directly referenced in the control.

(v) Conclusion and recommendation

The Panel concludes:

- neither the CMP nor the Waterway Identification Guidelines need to be included as background documents.

The Panel recommends:

Amend the exhibited Schedule to Clause 72.08 as follows:

- a) delete the reference to the *Upper Coliban Integrated Catchment Management Plan, North Central Catchment Management Authority and Coliban Region Water Corporation, 2019*.

4.5 General drafting improvements

Coliban Water’s preferred version of the ESO4 (Document 12) included a number of general drafting improvements which the Panel supports. These have been included in the Panel’s recommended version of the ESO4 in Appendix D.

Appendix A Submitters to the Amendment

No	Submitter
1	Department of Environment, Land, Water and Planning (former)
2	Stephen Daunt
3	Peter Crabbe
4	James Walsh
5	Ben Gill
6	Nicholas Rush for P Rush and M Holt
7	V B Puta
8	Helen Buchanan
9	Macedon Ranges Residents Association
10	Karan Hayman
11	Denis Buttler
12	Graham Connell
13	Department of Transport (former)
14	Goulburn Murray Water
15	Lenka Thompson
16	Victorian Farmers Federation

Appendix B Document list

No.	Date	Description	Provided by
1	26 Apr 23	Panel Directions and Hearing Timetable (version 1)	Planning Panels Victoria (PPV)
2	28 Apr 23	Post-exhibition version of the Environmental Significance Overlay Schedule 4 (ESO4)	Council
3	11 May 23	Hearing Timetable (version 2)	PPV
4	16 May 23	Council Part A submission with attachments: a1. Riparian Land and Bushfire resource document a2. Upper Coliban Integrated Catchment Management Plan b. Macedon Ranges Statement of Planning Policy c. Agenda and minutes of Council meeting on 9 March 2023 d. Post-exhibition version of the ESO4 (duplicate of Document 2) e. Submissions received in response to exhibition	“
5	18 May 23	Expert witness statement – Duncan Wallis, RM Consulting Group, catchment water quality	Coliban Water
6	19 May 23	Coliban Water submissions with attachments: a. Strategic assessment report for the ESO4, Tract, 28 Oct 2021 b. proclaimed land use categories in the Eppalock Water Supply Catchment c. Panel report Hepburn PSA C80hepb [2021] PPV d. various VCAT cases	“
7	“	Coliban Water preferred version of the ESO4	“
8	“	Coliban Water preferred version of the Schedule to Clause 66.04 (referral authorities)	“
9	“	Coliban Water preferred version of the Schedule to Clause 72.08 (background documents)	“
10	22 May 23	Council Part B submission with attachments: a. Macedon Ranges Shire Council Biodiversity Strategy 2018 b. Waterway Identification Guidelines, DELWP, 2022	Council
11	“	P Rush and M Holt submissions	N Rush
12	23 May 23	Coliban Water final preferred version of the ESO4, tracked against Document 7	

Appendix C Planning context

C:1 Planning policy framework

Council's Part A submission comprehensively outlined the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The State policy objectives are set out in section 4 of the PE Act. They include to:

- provide for the fair, orderly, economic and sustainable use, and development of land
- provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity
- secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community
- facilitate development in accordance with the above objectives
- balance the present and future interests of all Victorians.

Statement of Planning Policy

The Macedon Ranges region has been declared as a Distinctive Area and Landscape under the *Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018*, and a Statement of Planning Policy has been prepared and implemented for the region.

Section 4AB of the PE Act sets out the obligations of the Head of the Department of Transport and Planning in relation to a declared area. The Department Head:

- must not act inconsistently with any part of a Statement of Planning Policy that is expressed to be binding on the Department Head
- must have regard to those parts of the Statement of Planning Policy not expressed to be binding on the Department Head
- must have regard to the principles set out in section 46AZL, which are:
 - consult with all relevant levels of government and government agencies when making planning decisions
 - use best practice measures to protect and conserve the unique features and special characteristics of the declared area
 - undertake continuous improvement to enhance the conservation of the environment in declared areas.

The Vision set out in the Statement of Planning Policy includes:

Strategic water resources flow from the many mountainous and forested areas of the declared area. These form impressive riparian landscapes and biodiversity corridors, and they also provide drinking water for local people, regional and metropolitan Melbourne use.

Objective 3 in the Statement is:

To prioritise the conservation and use of the declared area's water catchments to ensure a sustainable local, regional and state water supply, and healthy environment.

Strategies to implement this objective include:

- Protect water quality and natural systems by discouraging development that contributes to the degradation of water quality and quantity.

- Manage land use and development, including dams, in Declared Water Supply Catchments to retain and improve water quality and improve yield to support regional water needs and to increase system-wide capacity to respond to demand.
- Reinforce the role of waterways as biodiversity linkages and as corridors for native plants and animals.
- Ensure water supply and land use planning policies are integrated, to realise efficiencies in regional catchment management and best practice, water-sensitive urban design.
- Address the expected impacts of climate change, including changes in the duration and frequency of rainfall events and changes in the intensity and frequency of bushfire events.
- Review and improve regulation and monitoring of groundwater licences and surface water diversions.

Other objectives and strategies in the Statement of Planning Policy emphasise the following themes:

- conserving and enhancing native vegetation and revegetation, particularly along riparian areas
- supporting and encouraging agricultural land uses that strengthen the area's economy and contribute to the rural landscape
- encouraging and supporting innovations in agricultural practices such as sustainable farming and water reuse
- encouraging measures to ensure agricultural practices protect and enhance soil quality, water quality, biodiversity and native plants and animals
- managing growth of settlements consistent with protection of the area's catchments, biodiversity, ecological and environmental values.

State planning policy

The planning policy framework includes the following policy objectives:

- **Clause 12.03-1S (River and riparian corridors, waterways, lakes, wetlands and billabongs)**, the objective of which is to protect and enhance waterway systems including river and riparian corridors.
- **Clause 12.05-1S (Environmentally sensitive areas)**, the objective of which is to protect and conserve environmentally sensitive areas with significant recreational value (including the Macedon Ranges) from inappropriate development.
- **Clause 12.05-2S (Landscapes)**, the objective of which is to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.
- **Clause 13.03-1S (Floodplain management)**, the objective of which is to assist the protection of:
 - life, property and community infrastructure from flood hazard, including coastal inundation, riverine and overland flows
 - the natural flood carrying capacity of rivers, streams and floodways
 - the flood storage function of floodplains and waterways
 - floodplain areas of environmental significance or of importance to river, wetland or coastal health.
- **Clause 14.02-1S (Catchment planning and management)**, the objective of which is to assist the protection and restoration of catchments, waterways, estuaries, bays, water bodies, groundwater, and the marine environment.

Strategies in Clause 12.03-1S include:

- designing and siting development to maintain and enhance the waterway system and hydrological systems
- addressing the impacts of use and development on drought and flooding events at a catchment and site scale to protect the health and natural function of waterway systems and their surrounding landscape and environment
- protecting geomorphology, bank stability and flood management capacity to strengthen the environmental value and health of waterway systems
- considering locating development and earthworks, including dams, a minimum of 30 metres from waterway systems
- considering the views of floodplain and waterway managers.

Strategies in Clause 13.03-1S include:

- locating use and development that involve the storage or disposal of chemicals or wastes (including intensive animal industries and sewage treatment plants) outside floodplains.

Strategies in Clause 14.02-1S include:

- ensuring the continued availability of clean, high-quality drinking water by protecting water catchments and water supply facilities
- considering the impacts of catchment management on downstream water quality and freshwater, coastal and marine environments
- retaining natural drainage corridors with vegetated buffer zones at least 30 metres wide along each side of a waterway to:
 - maintain the natural drainage function, stream habitat and wildlife corridors and landscape values
 - minimise erosion of stream banks and verges, and
 - reduce polluted surface runoff from adjacent land uses
- requiring appropriate measures to filter sediment and wastes from stormwater prior to its discharge into waterways
- ensuring development at or near waterways provides for the protection and enhancement of the environmental qualities of waterways and their instream uses
- ensuring use and development minimises nutrient contributions to water bodies and the potential for the development of algal blooms
- requiring appropriate measures to restrict sediment discharges from construction sites
- ensuring planning is coordinated with the activities of catchment management authorities
- ensuring water quality infrastructure is designed to minimise risk of harm to surface waters and groundwater.

Clauses 12.03-1S and 14.02-1S require consideration of regional catchment strategies and catchment management plans.

Local planning policy

Clause 21.07-3 (Water) is the key part of the Municipal Strategic Statement that is relevant to the Amendment. The overview states:

The protection of water quality is a significant issue in the Shire. Extensive areas of the Shire fall within proclaimed local and regional water catchments (Special Water Supply Catchments) which supply drinking water. Water supply within the Shire is subject to increasing demand and development pressures which can affect quality through the

intensification of wastewater and septic discharges, and changing land management practices. A number of the Shire's unsewered settlements are in catchment areas, which also contributes to water quality issues.

Inappropriate management may cause a decline in water quantity and quality, leading to increased treatment costs (and higher water tariffs) as well as a loss of recreation opportunities in reservoirs and watercourses.

Relevant objectives include:

- To retain and improve water quality and yield in the Special Water Supply Catchments, waterways and groundwater.
- To ensure the development and use of agricultural land does not adversely impact water quality in the catchments.

There are many strategies that support this objective, key themes of which are:

- discouraging use and development in Special Water Supply Catchments that have the potential to reduce water quality (including septic systems and intensive animal husbandry)
- requiring on site property works that enhance water quality, such as fencing and revegetation of gullies and waterways.

The clause states it is policy to not support the clearance of vegetation within 20 metres of a watercourse without the consent of the relevant water authority.

Clause 21.07-3 specifically supports the application of the ESO4 to protect and maintain water quality and yield in the Eppalock Proclaimed Catchment.

Other relevant parts of the Municipal Strategic Statement include:

- **Clause 21.01 (Municipal Profile)** notes that:
 - the Shire is within the catchments of the Campaspe and Coliban Rivers and that extensive areas are declared Special Water Supply Catchments
 - a significant portion of the Shire is designated for agricultural purposes, and that farming areas make a valuable contribution to the Shire's economy
 - traditional farming activities are declining in favour of more intensive agriculture, such as vineyards and other horticultural pursuits.
- **Clause 21.02-2 (Environmental and Landscape Values)** notes the presence of open potable water catchments in the Shire, and highlights the need for planning to address the important regional issue of maintenance of and improvement to water quality and quantity.
- **Clause 21.03-2 (Land use vision):**
 - describes agriculture as an important part of the character and economy of the Shire
 - states that effective land management is a key priority
 - states that protection of water quality, especially potable water supply, is fundamental
 - states that it is policy to:
 - minimise land use and development, particularly un-serviced development, in open water supply catchments
 - manage land use and development to ensure water quality is not compromised
 - retain native vegetation (balanced with fire protection considerations).
- **Clause 21.04 (Settlement)** states that development will be restricted and discouraged in the rural areas and small, unsewered settlements in order to protect water quality, agricultural activities and environmental and landscape values.

- **Clause 21.06-2 (Soil degradation and contamination)** seeks to avoid significant land disturbance, and includes a strategy to ensure wastewater management systems are only located on land with appropriate capability.
- **Clause 21.09-2 (Rural residential)** discourages the creation of rural residential lots in catchment areas due to the potential impact on water quality.
- **Clause 21.12-3 (Rural infrastructure)** seeks to protect rural and agricultural infrastructure such as roads and water supply, and to ensure rural use and development does not adversely impact on the water supply network.

Strategic framework plans

Clause 21.03-3 (Strategic framework plans) sets out a vision and strategic direction for rural areas shown on the rural framework plan, which includes the following:

- **Living forests:** Enhance the significant and sensitive environmental assets – including Mount Macedon, forested areas around Woodend, the Cobaw Ranges and special water supply catchments. Limit residential development on existing lots where positive environmental outcomes are achieved and existing vegetation will not be compromised by requirements for dwelling sites, fire protection buffers and other associated infrastructure.
- **Northern and southern catchments:** Protect water quality and quantity, agricultural productivity in the northern catchment and encourage rural residential only in the more fragmented southern catchment where detailed land capability studies demonstrate there is no negative impact on water quality or agricultural uses.

These areas are not mutually exclusive and overlap; where conflicts are present, the catchment provisions prevail.

C:2 Planning scheme provisions

Environmental Significance Overlay

The ESO4 is the primary provision in the Planning Scheme that provides protection for the water catchment.

The ESO4 contains a statement of environmental significance, and environmental objectives.

The current ESO4 states:

1.0 Statement of environmental significance

Lake Eppalock is a major water storage and recreational facility located within the Campaspe River catchment. It is a major source of water for irrigation, stock and domestic and urban water supplies for towns within the municipality.

2.0 Environmental objective to be achieved

To ensure the protection and maintenance of water quality and water yield within the Eppalock Water Supply Catchment Area as listed under Section 5 of the *Catchment and Land Protection Act 1994*.

This is proposed to be updated to state:

1.0 Statement of environmental significance

The cumulative impacts of development in declared special water supply catchments has the potential to gradually diminish the quality and quantity of water in the catchments. Diminished water quality also increases the risk to human health and the health of all communities that rely on water from the catchment.

The protection, restoration and enhancement of all waterways (as defined by section 3 of the *Water Act 1989*) within the catchment is an essential component in ensuring the continued availability of water quantity and quality, while also protecting and restoring the health of the natural resources and environmental systems within the catchment.

The management of land in the catchment must:

- Focus on the long-term protection of the natural resources and environmental systems.
- Encourage the implementation of measures to minimise detrimental impacts on the quality and quantity water within a declared special water supply catchment.

2.0 Environmental objective to be achieved

To ensure development protects, restores and enhances natural resources and environmental systems and minimises detrimental impacts on the quality and quantity of water in the catchment.

Native Vegetation

Clause 52.17 of the Planning Scheme is the primary provision protecting native vegetation. Its purposes are:

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

1. Avoid the removal, destruction or lopping of native vegetation.
2. Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.
3. Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.

To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

Clause 52.17 requires a permit to remove, destroy or lop native vegetation, including dead native vegetation, unless a specific exemption applies.

C:3 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

Planning Practice Notes

Planning Practice Note 55: Planning in open drinking water catchments provides guidance to responsible authorities, water corporations and landowners about how open drinking water catchments are protected through guidelines, codes of practice, legislation, subordinate legislation (planning schemes) and model permit conditions. It provides context, but does not directly influence the selection or drafting of the planning tools proposed to be applied by the Amendment.

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the VPP in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

Appendix D Panel preferred version of the Environmental Significance Overlay Schedule 4

[Tracked Added](#)

~~Tracked Deleted~~

Tracked against the exhibited version

SCHEDULE 4 TO CLAUSE 42.01 ENVIRONMENTAL SIGNIFICANCE OVERLAY

Shown on the planning scheme map as ESO4.

EPPALOCK SPECIAL WATER SUPPLY CATCHMENT

Interpretation

In this Schedule, 'waterway' has the same meaning as in section 3 of the Water Act 1989, as updated from time to time.

Additional guidance is provided in the *Waterway Identification Guidelines 2022*, Department of Environment, Land, Water and Planning, as updated from time to time.

1.0 Statement of environmental significance

The cumulative impacts of development in declared special water supply catchments has the potential to gradually diminish the quality and quantity of water in the catchments. Diminished water quality also increases the risk to human health and the health of all communities that rely on water from the catchment.

The protection, restoration and enhancement of all waterways (~~as defined by section 3 of the Water Act 1989~~) within the catchment is an essential component in ensuring the continued availability of water quantity and quality, while also protecting and restoring the health of the natural resources and environmental systems within the catchment.

The management of land in the catchment must:

- Focus on the long-term protection of the natural resources and environmental systems.
- Encourage the implementation of measures to minimise detrimental impacts on the quality and quantity water within ~~a declared special water supply~~the catchment.

2.0 Environmental objective to be achieved

To ensure development protects, ~~restores and enhances~~ natural resources and environmental systems and minimises detrimental impacts on the quality and quantity of water in the catchment.

3.0 Permit requirement

A permit is not required to:

- Construct a building or construct or carry out works that is connected to a reticulated sewerage system and located more than 30 metres from a waterway for:
 - A dwelling.

- An extension to an existing dwelling.
 - Construct a building or construct or carry out works that are located more than 30 metres from a waterway, if all of the following are met:
 - The building and works do not generate any additional wastewater unless it is connected to a reticulated sewerage system,
 - Any site cut required is less than one metre in depth.
 - Any site cut required is less than 300 square metres in area.
 - No stormwater is discharged within 100 metres from a waterway unless it is discharged into the street drainage system or into a legal point of discharge.
 - The buildings and works are an extension to an existing building and the extension does not encroach on the capacity of the existing effluent disposal field.
 - Remove, destroy, or lop vegetation including dead vegetation unless the removal, destruction or lopping involves native vegetation on land within 30 metres of a waterway.
 - Subdivide land for either:
 - An existing building or into two lots connected to a reticulated water and reticulated sewerage system.
 - A lot of 40 hectares or greater.
 - Construct a building, construct or carry out works, ~~construct a fence, the removal, destruction or lopping of~~ remove, lop or destroy any vegetation, or to subdivide land that is undertaken by or on behalf of a Minister, government department, public authority or municipal council.
 - Construct a building or construct or carry out of works associated with any activities conducted on public land by or on behalf of the public land manager under the relevant provisions of the *Crown Land (Reserves) Act 1978*, *Fisheries Act 1995*, *Forests Act 1958*, *Land Act 1958*, *Local Government Act 1989*, *National Parks Act 1975*, *Reference Areas Act 1978*, *Water Act 1989* or *Wildlife Act 1975*.
- ~~▪ Construct a fence.~~

4.0 Application requirements

The following application requirements apply to an application for a permit under Clause 42.01, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- A scaled and dimensioned site context plan showing the site and surrounding land including the location of:
 - all waterways
 - any drainage lines, water bodies or springs that feed directly into a waterway
 - all and vegetation within 30 metres of a waterway.
- A scaled and dimensioned plan showing the location and use of existing and proposed buildings and works, including proposed or existing waste water disposal areas and vehicle access.
- A ~~geotechnical report and~~ land capability assessment prepared by a suitably qualified person(s) demonstrating:
 - Details of degree and direction of slope, soil type, vegetation and drainage systems on the site.
 - That the land is capable of absorbing effluent generated on the lot.

- The likely impact of any on-site wastewater treatment system on surface and ground water resources and how such impact is to be mitigated.
- A plan to be implemented as part of the development outlining measures to protect and enhance the natural environment of the area, including:
 - Stormwater treatment and management including how the development plans reduce the volume and velocity of stormwater exiting the property.
 - Proposed vegetation retention and any revegetation ~~including native vegetation buffers along proposed within 30 metres of a~~ waterways, ~~drainage lines and property boundaries~~.

5.0 Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 42.01, in addition to those specified in Clause 42.01 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The potential impact of the development on the quantity and quality of water in waterways, ~~drainage lines, and~~ water supply reservoirs ~~and springs~~.
- Whether the development provides buffers to and from waterways, any drainage lines, ~~gullies or water bodies or springs that feed directly into a waterway or water supply reservoir~~.
- Whether the development has the potential to impact on the efficient functioning of; ~~property boundaries and~~ any existing or new effluent disposal areas or systems.
- Whether the development minimises the detrimental impacts of nutrient loads, turbidity and siltation in waterways, ~~drainage lines~~ and water supply reservoirs through improving the filtration and infiltration of water.
- How the development decreases or reduces the velocity of stormwater into waterways, ~~drainage lines~~ and water supply reservoirs.
- Whether the development provides measures to prevent erosion of ~~natural features, including~~ banks, streambeds and adjoining land within 30 metres of a waterway.
- Whether sewage, sullage, stormwater and other wastes can be treated on site without polluting waterways or ground water.
- The impacts of the proposed development on the natural environment and on the quality and quantity of water in the catchment.