



# Amendment C241wsea, Shenstone Park Precinct Structure Plan (PSP):

## Expert Witness Report

Prepared for Planning Panels Victoria

Requested by Ponte Business Lawyers for Business on behalf of Barro Group Pty Ltd

5 November 2020

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# 1 Name and address

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Aaron Harvey  
Executive Director  
Biosis Pty Ltd  
38 Bertie Street  
Port Melbourne  
VIC 3207

## 2 Qualifications and experience

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### 2.1 Qualifications and Training

- Bachelor of Science (Hons), Deakin University
- Bachelor of Applied Science, Deakin University
- Diploma Natural Resource Management, Swinburne University

### 2.2 Professional Affiliations and Memberships

- Australian Institute of Alpine Studies
- Environment Institute of Australia and New Zealand
- Victorian Planning and Environmental Law Association

### 2.3 Professional Experience

I am the Executive Director at Biosis Pty Ltd (Biosis), a leading ecology and cultural heritage consulting firm with offices in Melbourne, Ballarat, Wangaratta and interstate. I have worked extensively in a wide range of environments throughout eastern Australia, conducting numerous flora and fauna surveys, preparing rehabilitation and revegetation plans and providing general ecological advice to Commonwealth, State and Local Government, private companies and land managers. I have particular experience in flora and fauna management, habitat hectares assessments and environmental impact studies, especially within Melbourne's growth areas.

From 2008 to 2013, I worked closely with the Growth Areas Authority ((GAA, now the Victorian Planning Authority)) and the Victorian Government Department of Sustainability and Environment ((DSE, now the Victorian Department of Environment, Land, Water and Planning)) on the mapping of vegetation and fauna habitat across approximately 20,000 hectares on the peri-urban fringe of Melbourne. I was also involved in the Sub-regional Survey for the Golden Sun Moth and in revising the Southern Brown Bandicoot Sub-regional Species Strategy (SRSS) for the GAA and DSE respectively (DEPI 2014).

Since 2010, I have worked on a range of major projects across Victoria including large scale peri-urban and regional infrastructure developments, as well as a number of alpine resort projects.

Further details about my qualifications and experience can be found in Appendix 1.

## 3 Area of expertise to make this report

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### 3.1 General expertise

I have worked extensively across eastern Australia for more than 15 years, conducting flora and fauna surveys and providing specialist advice on ecological management in a wide range of environments. Most of this work has been based in Victoria and much of it has been on Melbourne's peri-urban fringe.

### 3.2 Study area-specific expertise

Biosis was commissioned by the Owners of 960 Donnybrook Road to undertake an ecological assessment and provide advice for a proposed boundary adjustment of a conservation reserve (Conservation Area 28) at 960 Donnybrook Road, Donnybrook (Biosis 2019). This boundary adjustment was approved by DELWP as of 1 October 2020 (DELWP 2020).

Biosis was also commissioned by Barro Group Pty Ltd (Barro) to prepare a draft environmental management plan (EMP) to guide revegetation and management of the proposed access road and earthen bund between Woody Hill Quarry and Phillips Quarry (Biosis 2020). The objective of the plan is to minimise the potential for adverse environmental impacts of the access road and bund to Conservation Area 28 (CA28).

I conducted an inspection of the study area on the 14 October 2020.

## 4 Other contributors to this report and their expertise

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I, Aaron Harvey, have researched and written this expert witness report with the assistance of colleagues from Biosis. During my preparation of this expert witness report, I sought advice from the following current colleagues at Biosis:

- John Muchan, Project Botanist, who has expertise in botanical surveys, vegetation mapping, ecological assessments and the application of State and Commonwealth environmental legislation and who assisted me in my review of ecological matters within land affected by the Shenstone Park PSP.



## 5 Scope of this report

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I have been requested by Leon Ponte, Jr. of Ponte Business Lawyers for Business (Ponte), counsel for Barro, to advise on and prepare an expert witness report for the panel hearing of Amendment C241wsea, Shenstone Park Precinct Structure Plan (PSP) and in doing so consider:

- The use of the Southern Access Road & Bund Area for the development and use of the Earthen Bund, conveyors, access road, services and other access, use and way outlined in 'Use of Total Access Road & Bund'.
  - This includes consideration of Section 3.5 and Plan 09B – Conservation Area 28B Concept Plan of the PSP.
- The use of the proposed Northern Bund Area for the Earthen Bund.
- The appropriateness of local park LP-01 shown on Plan 7 – Open Space of the PSP.
- The application of Plan 8 – Native Vegetation Retention and Removal of the PSP (Ponte 2020a).

## 6 Facts and assumptions

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### 6.1 Study area

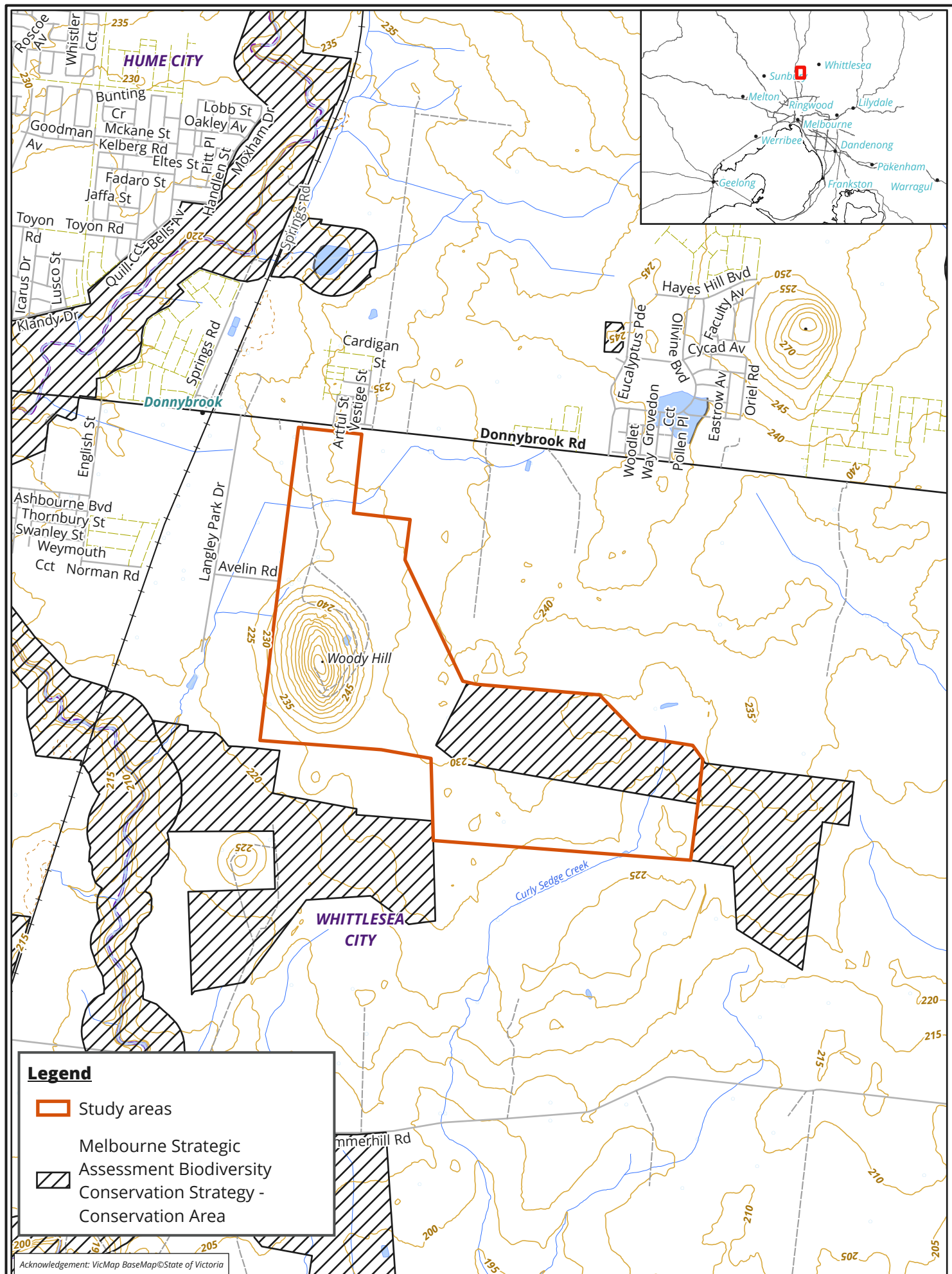
This expert witness statement focuses on the Barro Group landholdings (Woody Hill and Phillips Property) within the Shenstone Park PSP and any land immediately adjacent to these landholdings (the study area) as shown in Figure 1.

The immediate and broader landscape has been altered by current and past land use. There is evidence of significant disturbance as a result of quarry activities as well as localised surface modification, including the removal of surface rock associated with the establishment of fences and the excavation of dams. Much of the adjacent land is currently grazed by cattle with compaction around gates and dams. The Phillips Property is currently grazed by goats.

The landscape comprises a mixed native and introduced grassy coverage, with much of the surface rock retained. Basalt knolls are common throughout the landscape and often support a higher coverage of native species. Large expanses of open River Red Gum woodland extend to the south and east.

The study area is within the:

- City of Whittlesea.
- Yarra River basin.
- Port Phillip and Westernport Catchment Management Authority area.
- Victorian Volcanic Plain bioregion.



**Figure 1 Location of the Study Area - Donnybrook Road, Donnybrook,**

## 7 Documents and materials considered

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The following is a list of the documents and materials that I have been instructed to consider or that I have otherwise used in preparing this report.

### 7.1 Legislation and subordinate instruments

- City of Whittlesea Planning Scheme.
- *Conservation, Forests and Lands Act 1987* (Vic).
- *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (Cth).
- *Flora and Fauna Guarantee Act 1988* (FFG Act) and *Flora and Fauna Guarantee Amendment Act 2019* (Vic).
- *Planning and Environment Act 1987* (Vic).

### 7.2 Government publications

- DEPI 2013. Biodiversity Conservation Strategy for Melbourne's Growth Corridors. Department of Environment and Primary Industries. East Melbourne, Victoria. DELWP 2017a. Guidelines for the removal, destruction or lopping of native vegetation, Department of Environment, Land, Water, and Planning. East Melbourne, Victoria.  
[https://www.environment.vic.gov.au/\\_data/assets/pdf\\_file/0021/91146/Guidelines-for-the-removal,-destruction-or-lopping-of-native-vegetation,-2017.pdf](https://www.environment.vic.gov.au/_data/assets/pdf_file/0021/91146/Guidelines-for-the-removal,-destruction-or-lopping-of-native-vegetation,-2017.pdf).
- VPA 2020. Shenstone Park PSP – October 2020. Victorian Planning Authority, Melbourne.

### 7.3 Past reports

- Biosis 2019. Boundary adjustment application for Conservation Area 28: 960 Donnybrook Road. Report for the Owners of 960 Donnybrook Road. Authors: Cutler, S & Tate, J. Biosis Pty Ltd, Melbourne. Project no. 28597.
- Biosis 2020. Boundary adjustment for Conservation Area 28: Draft Environmental Management Plan for the earthen bund. Report for Barro Group Pty Ltd. Muchan, J. Biosis Pty Ltd. Melbourne. Project no. 33371.
- EHP 2016. Ecological Assessment: Conservation Area 28, Donnybrook Road, Donnybrook, Victoria. Report for Donnybrook JV Pty Ltd & Donnybrook Road Unit Trust. Organ, A, Vivian, L & Tucker, K. Ecology & Heritage Partners Pty Ltd, Melbourne. Project no. 7908 / 7939 / 8016.

### 7.4 Other materials

- Contour 2019. Amendment C241WSEA Shenstone Precinct Structure Plan. Letter to Paul Cassidy, Victorian Planning Authority. 15 November 2019. Contour Town Planners, Melbourne.
- DELWP 2017. Approved Boundary Change – Biodiversity Conservation Strategy Conservation Area 28 Summerhill Road (Wollert). Victorian Government Department of Environment, Land, Water & Planning, Melbourne.

- DELWP 2020. Change to Conservation Area 28 Northern Growth Corridor, Summerhill Road (East) Wollert. Letter to Aaron Harvey, Biosis. 1 October 2020. Victorian Government Department of Environment, Land, Water & Planning, Melbourne.
- Ponte, L 2020a. Brief to Conservation Expert. Letter to Aaron Harvey, Biosis. 5 August 2020. Ponte, Melbourne. Ref: LWP: 940371.
- Ponte, L 2020b. Barro Group Pty Ltd. (Submitter 24) Whittlesea Planning Scheme Amendment C241WSEA: Shenstone Park PSP Directions 6 & 7. Letter to Planning Panels Victoria, Victorian Government Department of Environment, Land, Water & Planning. 2 October 2020. Ponte, Melbourne. Ref: LWP: 940371.
- Ponte, L. 2020c. Barro Group Pty. Ltd. (Submitter 24) Whittlesea Planning Scheme Amendment C241WSEA: Shenstone Park PSP October 2, 2020 Direction: Site Visit/Aerial Photography. Letter to Planning Panels Victoria, Victorian Government Department of Environment, Land, Water & Planning. 15 October 2020. Ponte, Melbourne. Ref: LWP/JR: 940371.

## 8 Summary of expert opinion

### 8.1 Ecological values

The study area has been found to support two Ecological Vegetation Classes (EVCs) including Heavier-soils Plains Grassland (PG; EVC 123\_61) and Stony Knoll Shrubland (SKS; EVC 649). PG and SKS have a Bioregional Conservation Status of endangered within the Victorian Volcanic Plain bioregion (Biosis 2019; EHP 2016). The study area is characterised by open woodland grading into grassland with occasional low open shrubland associated with higher stony knolls. Evidence of dead trees as stumps and fallen individuals scattered along the eastern margin of the study area suggests that the study area would previously have been a mosaic of grassland, woodland and stony knoll shrubland.

Plains grassland patches are dominated by a mix of native grass species including Kangaroo Grass *Themeda triandra*, Weeping Grass *Microlaena stipoides*, Wallaby Grasses *Rytidosperma* spp. and Spear Grasses *Austrostipa* spp. Areas of stony knoll shrubland have a low cover of Hedge Wattle *Acacia paradoxa* (Biosis 2019; EHP 2016). A number of fallen dead trees were observed close to the two patches of SKS, suggesting the woodland canopy extended further west in the past.

Outside of the identified patches of native vegetation are areas of predominantly introduced vegetation which do not meet the thresholds for classification as a patch of native vegetation. These are dominated largely by Canary Grass *Phalaris* spp. and Rat's-tail Fescue *Vulpia myuros*, with scattered native grasses including Weeping Grass, Wallaby Grasses and Spear Grasses. Two populations of the State Prohibited weed Lobed Needle Grass *Nassella charruana* were identified by Biosis (2019).

Several scattered large River Red Gums *Eucalyptus camaldulensis* trees are located in close proximity to the proposed earthen bund in areas of predominantly introduced vegetation. These trees are all scattered trees under the Guidelines. A number of the trees were hollow bearing.

#### 8.1.1 Significant ecological communities

Plains Grassland is recognised under the Flora and Fauna Guarantee Act 1998 (FFG Act) as the Western (Basalt) Plains Grassland community, which carries the listing of threatened.

Higher quality patches of Plains Grassland meet the criteria for the critically endangered Natural Temperate Grassland of the Victorian Volcanic Plains (NTGVVP) community listed under the EPBC Act.

Patches of SKS within the study area meet the criteria for the EPBC Act listed Grassy Eucalypt Woodland of the Victorian Volcanic Plain ecological community, representing a treeless form of the community within or adjacent to an area which was formerly part of a woodland/grassland mosaic.

#### 8.1.2 Significant species

The Victorian Biodiversity Atlas (VBA) (DELWP 2019) has recorded one nationally significant (EPBC Act) flora species within five kilometres of the study area (Biosis 2019). A record for the endangered Matted Flax-lily (MFL) *Dianella amoena* was submitted for 2011 approximately 2.5 km south-west. The species has not been recorded from CA 28 (EHP 2016; Biosis 2019) however areas of plains grassland, stony knoll shrubland and predominantly introduced vegetation all provide potentially suitable habitat for the species. Higher quality habitat is associated with patches of PG and SKS with a high proportion of embedded rock, where competition from weeds and past disturbance are reduced.

The VBA has recorded three nationally significant (EPBC Act) fauna species within five kilometres. Records have been submitted for the vulnerable Striped Legless Lizard (SLL) *Delma impar* (1.5km south-east; 1991), the

critically endangered Golden Sun Moth (GSM) *Synemon plana* (3km north-west; 2015) and the vulnerable Growling Grass Frog (GGF) *Litoria raniformis* (1.5km east; 2002).

The Biosis 2019 assessment identified areas of potential habitat for both SLL and GSM within the study area. SLL require undisturbed surface rock for habitation, foraging and basking. The composition of the grassland community is not critical to the persistence of SLL, so long as basking sites are available. Sections of the study area with embedded surface rock, both within CA28 and outside of it is considered suitable habitat for SLL. GSM require an open structured grassland with the preferred food plants, Spear Grasses *Austrostipa* spp. and Wallaby Grasses *Rytidosperma* spp. Patches of plains grassland, stony knoll shrubland and areas of predominantly introduced vegetation within the study area were considered suitable habitat for GSM. Higher quality habitat is associated with patches of PG and SKS where the cover of food source plants is higher relative to areas of predominantly introduced vegetation where Canary Grass dominates. No suitable habitat was identified for GGF.

## 8.2 Conservation Area 28

### 8.2.1 Updates to boundary of CA28

In accordance with the recent decision by DELWP to alter the boundary of CA28 to facilitate the construction of the Southern Access Road & Bund Area to link Phillips Quarry with Woody Hill Quarry, the Shenstone Park PSP should be updated to reflect this boundary change.

### 8.2.2 Implications of R16

According to R16 of the PSP:

*“Development with a direct interface to BCS conservation areas or local conservation reserves must seek to enhance and protect the viability of the conservation area or reserve to the satisfaction of the responsible authority or the Department of Environment, Land, Water and Planning, as appropriate. A cross-section demonstrating the relationship of the proposal with the conservation area will be required to be submitted as part of any application proposal.” (VPA 2020)*

I consider this requirement to be valid. Annexure D (from Annexure 6 (f) Ponte 2020b) shows the proposed cross section (AA') and the Biosis (2020) draft EMP has been prepared to guide revegetation and management of the proposed access road and earthen bund between Woody Hill Quarry and Phillips Quarry (Biosis 2020). Construction of the bund as per AA' of Annexure D (from Annexure 6 (f) Ponte 2020b) and implementation of the EMP would enhance and protect the viability of CA 28.

### 8.2.3 Implications of R44

R44 in the PSP states:

*“Development abutting a BCS conservation area must be in accordance with the corresponding relevant Conservation Interface Plan unless otherwise agreed to by the Department of Environment, Land, Water and Planning.” (VPA 2020)*

It is my understanding that a Conservation Interface Plan for CA 28 has not been prepared. In light of this, I recommend that Plan 09B be updated to remove the requirement for a Conservation Interface Plan for the land covered by the earthen bund. The proposed management and configuration of this land has been sufficiently detailed in Annexure D (from Annexure 6 (f) Ponte 2020b), and through the proposed boundary change and in the draft EMP (Biosis 2020) to provide the necessary protection for CA 28.



## 8.2.4 Implications of R45

R45 in the PSP states:

*“Development must provide for a minimum public land buffer of 20 metres between Conservation Area 28 boundary and the nearest residential, commercial, or industrial lot. The public land buffer area may include roads, paths, open space and drainage infrastructure.” (VPA 2020)*

The requirement for a public land buffer around CA28 is not currently reflected in any Plans within the PSP. It is my understanding that DELWP do not require this land to be necessarily ‘public land’ if it is ‘publicly managed’.

In the interests of public safety and to ensure consistent environmental management of the earthen bund I recommend that the requirement for a public land buffer under R45 be removed where the boundary of CA28B is adjacent to the earthen bund. The current design (see Annexure D AA') and proposed management (see Draft EMP Biosis 2020) of the earthen bund provide sufficient detail for the protection and enhancement of CA 28. To provide DELWP with additional comfort regarding management of this land I would suggest that an appropriate security mechanism (e.g. S. 173 agreement or S.69 agreement) could be entered into between Barro and DELWP.

## 8.3 Open Space – Local Park LP-01 & Merri Creek Tributary

### 8.3.1 Implication of R10 and R11

R10 in the PSP states that:

*Except with the written consent of Council, a minimum of 80 per cent of River Red Gums classified as Medium, Large, or Very Large (per DSE publication ‘Guide for Assessment of Referred Planning Permit Applications’) must be retained on each parcel for their landscape and amenity value. The trees identified as “to be retained” and “scattered trees” on Plan 08, and those identified in any site-specific Arborist Report submitted with any application will contribute to the attainment of this requirement. Where multiple contiguous parcels are owned or controlled by a single entity and planned to be developed in an integrated manner, this Requirement may be applied and met across those contiguous parcels.*

• *Note: trees shown as “native vegetation to be removed” on Plan 08 are excluded from the total number of trees used to determine tree retention calculations by parcel. However, where voluntarily retained, these trees will contribute to retention percentage. Trees located within a Public Acquisition Overlay, future arterial road or intersection flaring as shown on Plan 04 – Land Budget, are considered as ‘native vegetation to be removed’ in the context of Plan 08, at the discretion of the responsible authority.” (VPA 2020)*

The creation of Local Park LP-01 and the retention of the River Red Gums within, is likely to exceed these requirements for parcel 9.

R11 in the PSP states that:

*“Retained River Red Gums, tree rows and significant trees must be located within the public domain, including parks and street reserves, unless otherwise agreed by the responsible authority.” (VPA 2020)*

The PSP states in Table 7 that the intention of LP-01 is to protect a group of trees. These trees are mapped both as existing significant trees on Plan 5 and as scattered native trees on Plan 8 of the PSP. The haulage road and weigh bridge associated with the Woody Hill Quarry currently utilise land that is identified in Plan 7 of the PSP for the local park LP-01 as credited open space and Merri Creek Tributary as other uncredited open space (VPA 2020).



Public access to LP-01 is proposed via a public road crossing Barro land travelling east-west along the southern boundary of the park. Given the existing use of the land identified for LP-01 by heavy vehicles and the desire to protect significant / scattered native trees there is some conflict and it seems inappropriate to consider this area for open space. The key concept in this area should be focused on retaining and protecting these trees which have successfully existed alongside the quarry operations for many years.

### **8.3.2 Merri Creek Tributary**

It is unclear in the PSP what requirements, if any, apply to the Merri Creek Tributary. Aside from being identified as 'other uncredited open space' in Plan 7 of the PSP, the tributary is also identified in Plan 12 as a 'waterway and drainage reserve' (VPA 2020). There are no further details in the PSP on requirements for 'uncredited open space' or 'waterway and drainage reserves'. The PSP should be updated to clarify if any requirements apply.

It should also be noted that there is a discrepancy between the Merri Creek Tributary shown in Plan 2 of the PSP and Barro Plan 1 (Ponte 2020c) and the location of the Merri Creek Tributary shown on Plans 3, 5, 7 and 12 (and other plans). The location of Merri Creek Tributary shown in Plans 3, 5, 7 and 12 (and other plans) conflicts with the Endorsed Extraction Boundary Area for WA 6437 (Ponte 2020c). As a result the location of the Merri Creek Tributary shown on Plan 2 should be evaluated for its suitability to provide the same outcome (i.e. 'other uncredited open space' and 'waterway and drainage reserve') as the proposed location shown on Plans 3, 5, 7 and 12 (and other plans) thus avoiding the potential future conflict.

## **8.4 Native vegetation retention and removal**

Plan 8 of the PSP identifies scattered native trees to be retained and patches of native vegetation that may be removed in the vicinity of the Woody Hill Quarry haul road. As mentioned in Section 8.3.1 these scattered native trees are subject to R10 meaning they must be located in the public domain unless otherwise agreed by the responsible authority. As I have suggested in 8.3.1 above, consideration needs to be given to the practicalities of retaining these trees within the current matrix of uses at that location.

The proposed access road and bund does not travel through any patches of native vegetation, scattered trees, significant trees or tree rows identified in the Shenstone Park PSP (VPA 2020).

## 9 Limitations and qualifications

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### 9.1 Limitations

There are no limitations to my opinion.

### 9.2 Provisional opinions

In relation to the ecological values of areas within the PSP of relevance to Barro (detailed in Section 8 of this report), I have not provided any provisional opinions that have not been fully researched.

### 9.3 Questions

In relation to the ecological values of areas within the PSP of relevance to Barro (detailed in Section 8 of this report), I have no questions that fall outside my area of expertise.

### 9.4 Inaccuracies

To the best of my knowledge, this report is complete and accurate.

## 10 Declaration

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I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

A handwritten signature in black ink, appearing to read 'A. Harvey'.

**Aaron Harvey**

5 November 2020

## Appendices

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## Appendix 1: Curriculum vitae

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## Position

Executive Director

## Qualifications

BSc (Hons), BAppSc, DipNRM



## Professional experience

Aaron has over 20 years' experience, having worked extensively in a wide range of environments throughout south-eastern Australia conducting environmental impact assessments, flora and fauna surveys, preparing rehabilitation and revegetation plans and providing general ecological and cultural heritage advice to Commonwealth and State government, private companies and land managers.

For over 10 years Aaron has worked closely with the Victorian Planning Authority (VPA) and developers on the Melbourne Strategic Assessment including the mapping of vegetation and fauna habitat across more than 10,000 hectares in the Melbourne region. He was also the Project Director responsible for the delivery of Sub-regional Species Strategies for Growling Grass Frog and Southern Brown Bandicoot.

Aaron has specialist skills in negotiation which are particularly well regarded by clients and regulators. His success as Project Director on large scale multi-disciplinary teams demonstrates Biosis' ability to bring together large teams with specialist skills, in environmental approvals, ecology and cultural heritage, who can work closely with clients and Commonwealth and State governments.

Objective, competitive and motivated to contribute to the greater good, Aaron's role as Director-Consulting Services is to challenge our people to be their professional best and to deliver best practise consulting to our broad range of clients.

## Key project experience

### Project Director

Runway Development Program for the third runway at Melbourne Airport. Biosis was commissioned by Australia Pacific Airports Melbourne (APAM) to undertake large scale and detailed ecological and cultural heritage studies to inform the Major Development Plan for the proposed third runway and associated infrastructure at Melbourne Airport. Works included detailed flora and fauna studies including targeted surveys for threatened species and preparation of a Cultural Heritage Management Plan (CHMP) and historical heritage assessment for the proposed development of the new runway.

**Project Director**

Victorian Desalination Project. Biosis completed the ecological and cultural heritage studies for the Environmental Effects Statement (EES) for Major Projects Victoria and the Victorian State Government for the Victorian Desalination Project which included the desalination plant site, water transfer pipeline and associated infrastructure including powerline easement. Works included detailed flora and fauna studies including targeted surveys for threatened species and preparation of Cultural Heritage Management Plans (CHMPs) for the plant and pipeline.

**Project Director**

Esso's Hastings to Longford Gas Pipeline replacement project. Biosis was commissioned by Worley Parsons and Esso to assess the ecological values of a 197km pipeline. This work included detailed vegetation and targeted threatened fauna assessments as well as offsets calculations and strategy development for the entire pipeline.

**Project Director**

Outer Eynesbury Development. Biosis was commissioned to assess the ecological and cultural heritage values of 6,000 hectares on the peri-urban fringe of Melbourne. This work included vegetation assessments, targeted flora and fauna surveys as well as detailed offset calculations and scenario testing for various development footprints associated with the proposed future use of this land.