



Mr Justin Harding  
Senior Strategic Planner  
Mitchell Shire Council  
113 High Street  
Broadford Vic 3658

By email: [REDACTED]

By copy: All Councillors

Thursday, 8 August 2024

Dear Justin and Mitchell Shire Councillors

### **Protect Our Farms Incorporated Formed to Oppose Mitchell Shire's Proposed Significant Landscape Overlays**

Protect Our Farms Incorporated represents a growing group of landholders and farmers from the Mitchell Shire, predominantly from Pyalong, Tooborac and Tallarook as shown in the figure below.

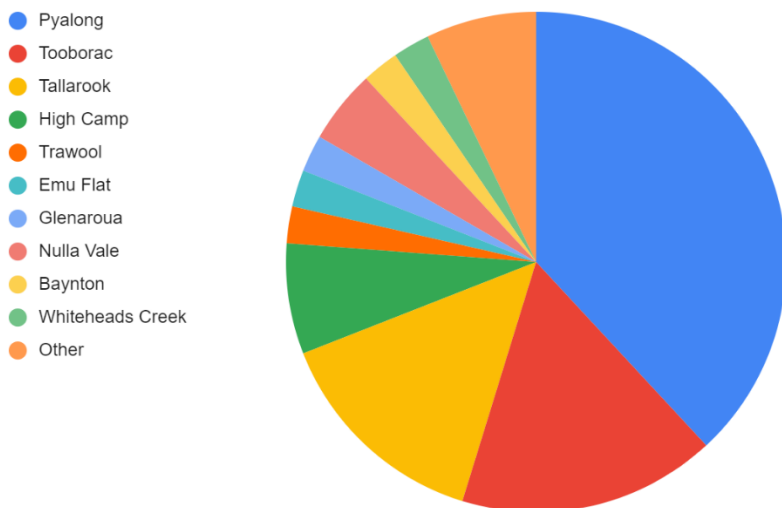


Figure 1 Location of Protect Our Farms Members

We are writing to express our strong concerns regarding the proposed Significant Landscape Overlays (SLOs) as outlined in the Council's Landscape Assessment Study and urge you not to proceed with implementing the recommendations contained in the Landscape Assessment Study.

## **Key Concerns and Issues**

### **Conflict with Farming Zones**

Protect Our Farms estimates that 94% of the proposed SLOs cover land that is zoned as Farming Zone under the Mitchell Planning Scheme. The purpose of Farming Zone land is described by the Victorian State Government, as follows:

*“The main feature of the Farming Zone is its recognition of agriculture as the dominant land use in rural Victoria. The purpose of the zone articulates the encouragement of agriculture as a future sustainable land use. Most agricultural uses do not need a planning permit. Agricultural uses that require a permit will need to consider the environmental effects and potential land use conflicts with surrounding agricultural uses.”* (Department of Sustainability and Environment (June 2004) New Zones for Rural Victoria, Advisory Note)

The introduction of SLOs in these areas is contrary to their existing use and the intended primary purpose of the land as demonstrated by their “Farming Zone” zoning under the Mitchell Planning Scheme and the more than 140 years of farming activity.

### **Restrictions on farming practices and livelihood**

The proposed SLOs impose restrictive measures that will significantly impact the livelihood of farmers within the designated areas. These overlays introduce stringent requirements for permits related to common farming activities, such as the removal of vegetation, construction of agricultural infrastructure, and land modifications necessary for efficient farming operations. The necessity for permits, accompanied by the need for detailed impact assessments, places an undue financial and administrative burden on farmers. For instance, the cost of obtaining these permits, including fees and professional assessments, can be prohibitively high. This is not only a direct financial strain but also a time-consuming process that delays essential farm improvements and adaptations and is contrary to Mitchell Shire's Principles for Rural Land Use.

The farming community relies on the ability to manage their land effectively and responsively, a necessity that is hindered by the overly restrictive SLO provisions. The constraints imposed on essential farming practices, such as erecting silos, sheds, and other necessary infrastructure, compromise the operational flexibility required to maintain and grow agricultural businesses. The potential requirement for multiple permits for routine farm activities not only incurs substantial costs but also risks reducing the economic viability of these enterprises. This situation is particularly concerning given the critical role that agriculture plays in the Mitchell Shire, supporting numerous families and contributing significantly to the local economy.

### ***Lack of Justification and Clarity***

We are concerned about the lack of justification for the new SLO areas and the arbitrary inclusion and exclusion of properties. Local farmers have maintained the landscape's agricultural character without additional regulation. Reactions to the current landscape are overwhelmingly positive, indicating that many people value it in its present state. This suggests that local farmers and residents have done an excellent job of preserving its agricultural character, planting treelines, and maintaining its unique features.

Coupled with the existing planning controls, this ongoing care and maintenance by the custodians of this agricultural landscape effectively preserve it. Therefore, there is no justification for restrictive overlays to protect a scenic rural landscape that has been successfully managed by local farmers. As such, the grounds for extending the SLO are extremely weak. Furthermore, the effect of forcing re-growth of native vegetation will greatly diminish the visual attractiveness of the agricultural landscapes the SLOs purport to seek to protect.

### **Misleading Information Provided by the Council**

Mitchell Shire Council's communications regarding the proposed SLOs have been misleading. For example, the council's description of SLO2 as an "extension" inaccurately suggests continuity with the current SLO, omitting any description of the substantial changes to the content of the SLO.

Council's letter to landholders dated 31 October 2023, accompanying Information Flyer and the Frequently Asked Questions on Council's website, contain deceptive statements. The letter incorrectly states that "*It is proposed to extend the existing Significant Landscape Overlay that covers parts of Tallarook into parts of Trawool and Whiteheads Creek.*" The proposed SLO is not the same as the current SLO that applies to the Tallarook Ranges. It is false and misleading to state that the current SLO Tallarook Ranges will be extended to cover those further areas. The proposed SLO is substantially different to the current SLO Tallarook Ranges;

Moreover, the frequently asked questions on Council's websites poses the question: *"Will the SLO stop me from constructing buildings such as a dwelling or shed on my property or from farming my land?"* and provides the answer that *"No. The SLO cannot prohibit development or change how land is currently being used."* However, the fact is that the proposed SLOs will restrict and prohibit agricultural development and the current use of the land by enforcing an unrealistic need for a planning permit to remove native re-growth. They will change how land is currently being used, whereas the current SLO recognises the existing use of the land and allows normal agricultural development.

### **Inadequate Community Consultation**

The consultation process has been inadequate, with many of our members reporting that they had not been informed about the proposed changes. This indicates a significant gap in Council's engagement with affected landholders.

### **Inadequate Engagement with Landholder Concerns**

Council's Senior Strategic Planner prepared a purported summary of submissions for Councillors in advance of the meeting held 3 June 2024. That 'summary' failed to reflect the breadth and depth of concerns expressed by affected landholders regarding the proposed SLOs. The submissions made by landholders were superficially considered and grouped, with many significant factors and nuanced points omitted from the summary. This approach has resulted in a distorted view of the community's feedback, neglecting the objections raised by farmers in relation to the increased complexity of operations brought on by the proposed SLOs.

Effective consultation involves not only collecting feedback but also genuinely listening, thoroughly considering, and being responsive to the concerns presented. Unfortunately, the Council's engagement process has been largely tokenistic, with little evidence of a meaningful commitment to understanding the realities of farming. The summary provided to the Councillors was an inadequate representation of the submissions, suggesting a lack of willingness to engage deeply with the issues at hand. This superficial handling of landholder submissions indicates an unwillingness to consider the legitimate concerns of farmers, whose livelihoods depend on the ability to manage their land effectively.

Such an approach not only disregards the voices of those most affected by the proposed changes but also suggests a concerning disconnect between the Council's decision-making processes and the everyday experiences of the farming community.

## **Serious Implications for Residents' Livelihoods, both farmers and suppliers**

The proposed new SLOs fail to recognize the serious implications for residents' livelihoods. Council staff need to understand that the affected areas encompass a wide range of land users, as well as a substantial number of long-established commercial businesses that are 100% reliant upon farming activities for their income. These businesses have been integral to the local economy for generations and have every intention of continuing their operations within our productive landscape for the long term. However, imposing additional requirements and restrictions through new SLOs threatens to undermine the viability of the farmers that rely upon these enterprises, jeopardizing the livelihoods of the families and communities who depend on them. It is essential for the Council to consider the economic impact of these regulations and to support, rather than hinder, the sustainable agricultural practices that have long sustained our region.

## **SLOs create a conflict between the terms of the Mitchell Planning Scheme**

The proposed new SLOs include the statement: *"A permit is required to remove, destroy, or lop any native vegetation."* Despite this clear statement, the Council continues to argue that the removal of native vegetation regrowth for fire safety, grazing, and cropping will remain permitted in areas under SLO due to other provisions of the Mitchell Planning Scheme. However, this new SLO wording directly conflicts with other provisions, creating an inconsistency within the Mitchell Planning Scheme. This contradiction leaves landholders in a state of uncertainty about what actions are permissible and what Council's ultimate objective might be for including a requirement in the SLO in direct conflict with another part of the Mitchell Planning Scheme. In *North Australian Aboriginal Legal Aid Service Inc v Bradley (2002) 122 FCR 204* it was noted that *"Finally, one should never forget that bureaucratic oversight is often a more plausible explanation for a poor decision than cunning subterfuge."* However, given that Council has been repeatedly alerted to the conflict between the above quoted wording of the SLO and the rest of the Mitchell Planning Scheme, left uncorrected, it cannot be seen as mere oversight, and subterfuge or improper purpose may be inferred.

## **Visibility from Public Roads and Corridors**

A stated objective of the Landscape Study is to prioritise "scenic outviews from key road corridors." However, large areas proposed to be covered by the SLOs and the topography of that land is such that tens of thousands of acres of that land are not visible from to view from public roads and paths.

We note that in relation to a proposed SLO on the Surf Coast, the Planning Panels Advisory Committee said in their report that:

*“The Committee observes that there are significant parts of the O’Brien’s land that are not visible from key viewpoints”*

In that instance the Committee found that the application of the proposed SLO was *“neither warranted nor strategically justified”*. (25 June 2021, Advisory Committee Report Part 1, Surf Coast Statement of Planning Policy Distinctive Areas and Landscapes Standing Advisory Committee)

Despite the explanations offered by the Council that one of the key functions of the SLO is to preserve view lines, the proposed area seems to be defined by title areas and fencelines, resulting in many properties that are not viewable being included and others, that are very visible, excluded. We propose that defining any SLO area by title maps is absurd, and that incorporating land contours or sight lines would be a far more effective delineation of areas with significant landscapes.

In light of these concerns, we urge the Mitchell Shire Council to reject the Landscape Assessment Study to the extent that it proposes SLOs over Farming Zone land. It is imperative to protect the rights of farmers and ensure that land use policies are fair and supportive of agricultural production.

Sincerely,



Rae Clark

Secretary

Protect Our Farms Incorporated

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