Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Stonnington Planning Scheme Amendment C221

Land Subject to Inundation Overlay and Special Building Overlay

20 November 2018

Trevor McCullough, Chair
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List of Abbreviations

- the Act  Planning and Environment Act 1987
- AEP  Annual Exceedance Probability
- ARI  Average Recurrence Interval
- DELWP  Department of Environment, Land, Water and Planning
- LiDar  Light Detection and Ranging
- LSIO  Land Subject to Inundation Overlay
- PPN  Planning Practice Note
- SBO  Special Building Overlay
## Overview

### Amendment summary

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### Subject land

Amendment applies to land within the City of Stonnington which has been identified by Council and Melbourne Water as being liable to inundation by overland flows from the urban drainage system (closed pipes) and open drainage system (waterways).

### The Proponents

Stonnington City Council and Melbourne Water

### Planning Authority

Stonnington City Council

### Authorisation

A03722 authorised on 19 February 2018 (no conditions)

### Exhibition

8 March to 23 April 2018

### Submissions

A total of 44 submissions were received on the exhibited Amendment including several late submissions. See Appendix A.

### Panel process

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###Appearances

Stonnington City Council represented by Mr Austin Cram and Mr John Gowans

Melbourne Water represented by Mr Mike Kearney and Mr Ruwan Jayshingha

Mr Xionghao Shan

Mr Graham Wines

Ms Sheila Sheehan

Mr Harold Shafer

### Citation

Stonnington PSA C221 [2018] PPV

### Date of this Report

20 November 2018
Executive summary

(i) Summary

Stonnington Planning Scheme Amendment C221 (the Amendment) as exhibited proposes to update the application of the Land Subject to Inundation Overlay (LSIO) and the Special Building Overlay (SBO) in the Stonnington Planning Scheme to reflect updated flood modelling data as identified by Council and Melbourne Water.

The Amendment proposes two new schedules to the SBO that distinguish between areas subject to inundation in relation to the ‘main’ drainage system (SBO1 - Melbourne Water drains) and the ‘local’ drainage system (SBO2 - Council drains).

The proposed SBO1 schedule includes a number of additional permit exemptions beyond those normally provided for in the SBO at the request of Melbourne Water. The proposed SBO2 schedule does not include any additional exemptions, consistent with the existing SBO schedule in the Stonnington Planning Scheme.

The Overlays are based on modelling of the extent of flooding resulting from a 1 in 100 year Average Recurrence Interval (ARI) storm event.

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

- the overlays are not strategically justified
- objection to the extent of the overlays that apply to specific properties
- drainage maintenance and improvement issues affect the extent of the overlay
- impacts on insurance costs and property values.

The Panel agrees with Council that the Amendment is strongly strategically supported by state and local policy and has been prepared consistent with ministerial directions and planning practice notes. The use of the projected 1% Annual Exceedance Probability (AEP) flood event as the base for modelling the extent of flood overlays is well established.

The Panel has reviewed the flood modelling approach taken by Council and Melbourne Water and concludes that it is appropriate and fit for the purpose of applying planning controls. The Panel also supports the process of refining the extent of the proposed overlays undertaken by Council and Melbourne Water in response to submissions.

The Panel concludes that the Amendment should proceed subject to:

- adopting the policy neutral changes to the LSIO1, SBO1 and SBO2 as proposed by Council in response to VC148, and
- removing or modifying the extent of the overlays on several properties.

The Panel was not convinced that the application of the LSIO of SBO would have any effect on property values or insurance premiums, and in any case, adopts the position of previous panels that there is no justification for setting aside planning scheme amendments of this type on the basis that property values might be affected, or insurance premiums might increase.
(ii) **Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Stonnington Planning Scheme Amendment C221 be adopted as exhibited subject to the following changes:

1. Adopt the revised Land Subject to Inundation Overlay Schedule 1, Special Building Overlay Schedule 1 and Special Building Overlay Schedule 2 as shown in Appendix D of this report.

2. Remove the Special Building Overlay Schedule 2 along Coppin Street, George Street, and Beaver Street in Malvern East as shown in Appendix C.

3. Remove 7 Merriwee Crescent, Toorak from the Special Building Overlay Schedule 2.

4. Remove the following properties from the Special Building Overlay Schedule 1:
   - 255 Tooronga Road, Glen Iris
   - 20 Weir Street, Glen Iris
   - 113 Claremont Avenue, Malvern
   - 54 Aintree Road, Glen Iris
   - 270 Tooronga Road, Glen Iris

5. Modify the extent of the Special Building Overlay Schedule 1 on 13 Lambert Road, Toorak as shown in Figure 5 of this report.
1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment proposes to update the application of the Land Subject to Inundation Overlay (LSIO) and the Special Building Overlay (SBO) in the Stonnington Planning Scheme to reflect updated flood modelling data as identified by Council and Melbourne Water.

More specifically, the Amendment proposes to make the following changes to the Stonnington Planning Scheme:

- Replace the LSIO and SBO maps with updated maps to reflect the revised flood extent (land subject to flooding in a 1 in 100 year storm event).
- Amend the Schedule to Clause 44.04 (LSIO) consistent with the Ministerial Direction on the Form and Content of Planning Schemes.
- Replace the Schedule to Clause 44.05 (SBO) with two new schedules that distinguish between areas subject to inundation in relation to the ‘main’ drainage system (Melbourne Water drains) and the ‘local’ drainage system (Council drains).

SBO1 and SBO2 are proposed to be applied as follows:

- SBO1 - to the Melbourne Water ‘main’ drainage system, with Melbourne Water nominated as the determining referral authority.
- SBO2 - to the ‘local’ drainage system, with Council nominated as the responsible authority.

The proposed SBO1 schedule includes a number of additional permit exemptions beyond those normally provided for in the SBO at the request of Melbourne Water. The proposed SBO2 schedule does not include any additional exemptions, consistent with the existing SBO schedule in the Stonnington Planning Scheme.

Council advised that the proposed revisions to the overlays will result in approximately 1:

- 27 sites no longer being covered by the LSIO
- 142 sites being covered by the LSIO for the first time
- 132 sites remaining in the LSIO (noting this may include some revision to the extent of the LSIO over an individual site)
- 202 sites remaining in the LSIO with no change to the extent
- 371 sites no longer being covered by the SBO
- 849 sites being covered by the SBO for the first time
- 2258 sites remaining in the SBO (noting this may include some revision to the extent of the SBO over an individual site)
- 2204 sites remaining in the SBO with no change to the extent.

---

1 From the Explanatory Report. Does not include post-exhibition changes.
(ii) Purpose of the Amendment

The Amendment is required to update the existing boundaries of the LSIO and SBO in the Stonnington Planning Scheme. The Amendment is part of delivering on key actions contained in Council’s Flood Management Plan (2013) to incorporate revised flood extents in the Stonnington Planning Scheme. The Overlays are based on the extent of flooding resulting from a 1 in 100 year Average Recurrence Interval (ARI) storm event.

The Land Subject to Inundation Overlay (LSIO) identifies land affected by mainstream flooding. This occurs when there is a large amount of run-off and water overflows the banks of waterways onto adjacent low-lying land.

The Special Building Overlay (SBO) identifies land in urban areas that is liable to inundation (flooding) by overland flows from the drainage system.

The purpose of the SBO and the LSIO is to ensure that new development is designed to maintain the free passage and temporary storage of floodwaters, to minimise flood damage and not cause any significant rise in flood level or flow velocity that may adversely affect existing properties. It also seeks to protect water quality.

Council submitted that including the SBO and the LSIO in the planning scheme enables drainage and flooding issues to be addressed early in the development process (through triggering a planning permit for buildings and works) rather than only at the later building permit stage.

Implementation of the Overlays can influence the siting of buildings and set appropriate conditions, such as raised floor levels, to address any flood risk to new development.

1.2 Background to the proposal

The LSIO was first identified with the introduction of the new format Stonnington Planning Scheme in 2000. The current SBO was introduced into the Scheme in 2005 through Amendment C18. Amendment C18 identified land affected by overland flows from drains that are administered by Council (local drains) and Melbourne Water (main drains) in the SBO. The Amendment affected approximately 8,900 properties.

Amendment C221 was originally authorised in 2015 but was not finalised. Between October 2015 and November 2017, Council and Melbourne Water continued to undertake flood studies and updates to flood maps, including an update to flood maps for Gardiners Creek and the Yarra River by Melbourne Water. In November 2017, Council requested advice from DELWP on re-using the existing C221 amendment number and revising the amendment to include updates to flood mapping since the previous authorisation.

Melbourne Water has recently developed more advanced methods of mapping and modelling to determine land susceptible to flooding. The same mapping and modelling methods have been used by Council to model local drains. This review of the flood extent is now proposed to be reflected in the Stonnington Planning Scheme via the revised LSIO and SBO.
1.3 Procedural issues

Council and Melbourne Water were requested in the Panel Hearing to provide any information from the Stonnington Amendment C18 process relating to 1 Dalriada Street, Toorak. This information was provided after the Hearing by email on 30 October (Melbourne Water) and 5 November 2018 (Council). Mr Shafer responded to the further information on 12 November 2018. The issues relating to this property are discussed in section 4.3.2 of this report.

1.4 Summary of issues raised in submissions

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

- the Overlays are not strategically justified
- objection to the extent of the overlays that apply to specific properties
- drainage maintenance and improvement issues
- impacts on insurance costs and property values.

Council and Melbourne Water reviewed submissions and as a result agreed to make a number of post-exhibition changes to the extent of the proposed overlays. The proposed changes are detailed in Chapter 4 of this report.

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

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

This Report deals with the issues under the following headings:

- Planning context
- Flood modelling
- Site specific submissions
- Other issues
  - Drainage maintenance and upgrade
  - Property values and insurance premiums
  - Permit exemptions in SBO2.
2 Planning context

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

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

2.1 Strategic and policy framework

Council submitted that the Amendment is well supported by the Planning Policy Framework and supports or gives effect to the following State planning policies:

**Clause 11.02-1S** (Supply of urban land), which states that planning for urban growth should consider the limits of land capability and natural hazards and environmental quality.

**Clause 13.03-1S** (Floodplain management), which aims to protect life, property and community infrastructure and environmental assets from flood hazards by:

- Identifying land affected by flooding, including floodway areas, as verified by the relevant floodplain management authority, in planning scheme maps.
- Avoiding the intensification of impacts of flooding through inappropriately located uses and developments.

**Clause 14.02-1S** (Catchment planning and management), which contains strategies to minimise the quantity and retard the flow of stormwater runoff from developed areas.

**Clause 14.02-2S** (Water quality), which aims to discourage incompatible land uses in areas subject to flooding to ensure minimum impact on downstream water quality or flow volumes.

**Clause 19.03-4S** (Stormwater), which aims to reduce the impact of stormwater on catchments through a range of strategies, including reductions in run-off and peak flows.

Council submitted that, in relation to the above strategies, the Amendment will assist in the protection of life, property and community infrastructure from flood hazard, the natural flood carrying capacity of rivers, streams and floodways, and will protect the flood storage functions of floodplains and waterways. The Planning Policy Framework places a clear onus on Responsible Authorities to ensure that flooding and drainage information is clearly shown in planning schemes and taken into consideration as part of the planning process. The proposed Amendment will assist in achieving this intent.

In relation to the Local Planning Policy Framework, including the Municipal Strategic Statement, Council submitted that the following sections are considered relevant:

**Clause 21.07-4** (Flooding) is given effect by this Amendment. Specifically, the Amendment gives effect to the sole objective under this heading:

> To identify areas within the municipality which are liable to flooding damage, so as to take into account the health and safety of residents and flood protection of properties.
The SBO and LSIO identifies these areas which are liable to flood damage and implements strategy 1.1 which seeks to ensure that the siting of buildings and their floor levels take into account the flood depths and overland flow paths for 100-year ARI events.

The SBO and LSIO ensure new development is protected from flooding and has safe access arrangements, consistent with Strategy 1.2.

The SBO further works to ensure the continuity of natural valleys and overland flow paths is maintained consistent with Strategy 1.3.

The SBO and LSIO identifies areas subject to flooding and in this way assists in implementing Strategy 1.4 in ensuring adequate drainage in and around flood areas.

The Amendment gives effect to Clause 21.08-4 (Drainage and Utility Services). One of the identified key issues reads as follows:

\[
\text{Ensuring future use and development occurs in appropriate locations and at an appropriate scale and density taking into account the capacity of local infrastructure.}
\]

Council has an ongoing program of upgrading drainage infrastructure to the following standards:
- Easement drainage with a capacity to a 5-year ARI event, and
- Road drainage with a capacity to a 10-year ARI event, and
- Drains in higher risk flood areas with a capacity to 20-year ARI.

Clause 21.09 of the Stonnington Planning Scheme includes Guidelines for Development in Flood-Prone Areas, Melbourne Water (2003) as a reference document under the heading ‘Open Space and Environment’. This document primarily provides guidelines to owners and developers for developing in areas subject to a 100-year ARI flood.

Council submitted that the City of Stonnington Flood Management Plan (April 2013) identifies a series of actions to improve flood management in the municipality. Action 1 in the improvement plan seeks to update the SBO in the planning scheme to incorporate revised flood extents. Action 2 of this plan sought to have these flood levels reviewed.

### 2.2 Ministerial Directions and Practice Notes

**Ministerial Directions**

Council submitted that the proposed Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes, as required by section 7(5) of the *Planning and Environment Act 1987*.

The proposed Amendment is consistent with Ministerial Direction No. 9 – Metropolitan Strategy and the relevant directions and initiatives of Plan Melbourne, as follows:

\[
\text{Direction 6.2 – Reduce the likelihood and consequences of natural hazard events and adapt to climate change, through, among other things, using land use planning to identify at-risk areas.}
\]
Direction 6.3 – Integrate urban development and water cycle management to support a resilient and liveable city. Specifically, an integrated water management approach can minimise the impacts of flooding.

The proposed Amendment is consistent with Minister’s Direction No. 11 Strategic Assessment of Amendments.

Planning Practice Notes

Council provided a detailed assessment of Planning Practice Note 12 – Applying the Flood Provisions in Planning Schemes June 2015 (PPN12) in its Part A submission:

In relation to defining the extent of flooding, the practice note acknowledges that it is not practical or economical to institute land use planning controls up to the “Probable Maximum Flood”, which defines the maximum probable extent and level of flooding. A lesser standard is adopted, which is a 100-year ARI flood event, defined as a “Design Flood Event”.

The 100-year ARI flood event is also the “Design Flood Event” for determining what is considered flooding under the Water Act 1989 and Building Act 1993.

As detailed in the methodology section of this submission, the flood information which forms the basis of this amendment is based on flood management best practice which requires the continual updating and review of flood maps, giving priority to areas with higher flood risks.

According to the Practice Note, the LSIO should be applied to mainstream flooding in urban areas. The SBO should be applied to stormwater flooding in urban areas.

It is submitted that the amendment gives effect to Planning Practice Note 12 and the Planning Policy Framework including the Municipal Strategic Statement and therefore implements the objectives of the Planning & Environment Act 1987.

2.3 Amendment VC148

Planning Scheme Amendment VC148 was gazetted 31 July 2018 and now forms part of the scheme. Amendment VC148 makes significant changes to the structure and operation of the Victoria Planning Provisions. Specifically, the changes affecting Amendment C221 are:

- The structure of the State Planning Policy Framework has been altered and has moved the location of several objectives and policies. The Strategic Context and Assessment uses the updated Planning Policy Framework for its assessment.
- Changes have been made to the LSIO and SBO that now allow a “Statement of Risk” and “Objectives” to be included in the schedule to these overlays. These changes are also reflected in the revised Ministerial Direction on ‘The Form and Content of Planning Schemes’.
- Amendment VC148 also makes changes to the structural layout of the schedules to include these new headings alongside the existing “Permit requirement”, “Application requirements” and “Decision guidelines”. The revised Ministerial Direction on the Form and Content of Planning Schemes shows that these three
headings, alongside the two new headings described above, must be included even where nothing is specified under those headings.

Council tabled a policy-neutral revision to the exhibited schedules consistent with the revised Ministerial Direction. The revised LSIO1, SBO1 and SBO2 are attached as Appendix D to this report.

The Panel agrees with Council that the revised schedules are policy-neutral and brings the schedule in line with the ministerial direction.

2.4 Strategic justification submissions

Several submissions (including Mark and Elaine Robins, Geoff Reynolds and Cassandra Bartosiewicz\(^2\)) challenged the strategic justification of the Amendment and the application of the SBO in general.

Mark and Elaine Robins submitted that as all properties contribute in some way to the path of overland flow, it is not appropriate to “selectively” apply the overlay requirements to only some properties within a catchment or flow path.

Mr Reynolds and Ms Bartosiewicz generally questioned the desirability of using the 1 in 100 year flood event as a benchmark for mapping the SBO. Specifically, Ms Bartosiewicz questioned the benefit in applying any controls at all, given it does not plan for the Probable Maximum Flood.

Council responded that:

> The 1% AEP flood (or 1-in-100 year) is the standard metric adopted as the “Design Flood Event”, which describes the level of flooding that should be planned for by the Water Act 1989, the Building Act 1993, and the Victorian Planning Provisions as an instrument of the Planning and Environment Act 1987.

Council submitted that the strategic basis is sound, well supported by the PPF and MSS and consistent with ministerial directions and practice notes.

2.5 Discussion and conclusion

The Panel agrees with Council that the Amendment is strongly strategically supported by state and local policy and has been prepared consistent with ministerial directions and planning practice notes. The use of the projected 1% AEP flood event as the base for modelling the extent of flood overlays is well established. The Panel makes separate comments on the appropriateness of the flood modelling methodology in the next chapter.

The Panel concludes that the Amendment should proceed subject to:

- adopting the policy neutral changes to the LSIO1, SBO1 and SBO2 as proposed by Council in response to VC148
- addressing the more specific issues raised in submissions as discussed in the following chapters.

\(^2\) Submissions 15, 20 and 36.
2.6 **Recommendation**

The Panel recommends:

1. **Adopt the revised Land Subject to Inundation Overlay Schedule 1, Special Building Overlay Schedule 1 and Special Building Overlay Schedule 2 as shown in Appendix D of this report.**
3 Flood modelling

3.1 The issue

Is the flood modelling that has been undertaken suitable for the purposes of applying the proposed planning controls?

3.2 Modelling methodology

Melbourne Water’s updates to the LSIO and SBO1 rely on background documents that include, but are not limited to:

- City of Port Phillip Main Drain Catchment Drainage Survey, September 1997
- Melbourne Water City of Stonnington Drainage Survey 1996/7
- Flood Mapping of Gardiner’s Creek, October 2010
- Flood Mapping: Tooronga Road Main Drain Catchments, October 1996
- Report for Murrumbeena Drain Catchment Flood Mapping, July 2010
- Prahran Main Drain Flood Mapping, April 2008
- Scotchmans Creek Flood Mapping, March 2018
- Tooronga Road/Creswick Street Main Drains Catchment, October 2016

The primary basis for the updates to the Council SBO2 relies on the GHD Report, Stonnington Special Building Overlay Review 2017. It provides a high-level summary of a number of changes, both physical (within the local area) and technical, in the modelling of 1 in 100 year floods (or 1% AEP), which form the basis for the extent of the SBO. These local and technical changes amount to improvements in modelling technology, data gathered from recent storm activity, capital works to drainage infrastructure as well as construction activity.

Council advised that it is continually updating its stormwater mapping on an iterative basis, rather than as a single large package. Council has worked with GHD Engineering Consultants to undertake the hydrological survey on Council’s behalf.

The SBO2 mapping was undertaken through a number of methods. Some sections of earlier mapping were undertaken using 1D hydraulic modelling with constant flow rates. The more recent modelling (largely undertaken in 2008/09) was undertaken using 2D TUFLOW modelling. The report acknowledges that hydrological technology is continually evolving, and that the mapping may be further refined in future.

In determining the criteria for formulating the flood maps, GHD Engineering referred to published guidelines including Flood Mapping Guidelines & Technical Specification (Melbourne Water 2012). The SBO has been mapped to a 1% AEP flood, which represents a flood for which there is a 1% chance of being exceeded in a given year. For the purposes of the mapping, all flood depths of 50 millimetres or more were included within the mapping boundaries.
Melbourne Water advised that it adopted a similar mapping and modelling methodology for SBO1 and added:\(^3\):

*The flood modelling methodology adopted by Melbourne Water and Council is considered to be industry best practice. RORB software has been used to estimate flood discharges since the mid 1970’s. The TUFLOW modelling software is well established and internationally recognised as being amongst the world’s most powerful 1D/2D hydrodynamic computational software. Melbourne Water and Council have complete confidence that the flood extents generated to inform the boundaries of the SBO and LSIO are fit for their purpose, which is to identify, at a high level, flood prone areas that need to be taken into account when development occurs. The flood extents were determined using the best available LiDAR data and Digital Terrain Modelling techniques.*

Melbourne Water did ‘filter out’ some properties from the SBO1 extent where there were no data points on the property with depths greater than 50 millimetres, or where the area of the property affected is very small and the modelled flooding did not impact the street frontage of properties. Melbourne Water submitted that where the modelled flooding affected the street frontage (even if to a very minor degree), the overlay should be retained so that any proposals for (for example) underground car parks would be referred for assessment.

In response to submissions, Melbourne Water reviewed the application of the overlay on a number of properties, and in some cases conducted a more detailed ground survey. The specific properties that were reviewed are discussed in Chapter 4 of this report.

Council advised that no ‘filtering out’ of properties with minimal flood extents was carried out for the SBO2.

### 3.3 Submissions

A total of 20 submissions\(^4\) challenged the accuracy of the SBO2 mapping in some way. Concerns are raised regarding the methods used to create the maps and their accuracy in depicting actual stormwater flows. Many submissions included anecdotal evidence of previous flood events.

Council submitted that, while anecdotal information is important in informing reviews of the flood mapping, it should not be relied upon to inform the boundaries of the SBO2. Where the SBO2 mapping was challenged, the submission was further reviewed by Council’s Infrastructure Projects Unit and in some cases to GHD for review.

Submissions 1, 4, 17 and 37 submitted that flooding to the extent identified by the SBO2 map hasn’t occurred during their tenure on the property. Council submitted that “just because a property hasn’t flooded recently, it does not mean it never has or never will. The likelihood of flooding is predicted by the mapping methodology in line with Practice Note 12 described in the methodology section.”

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\(^3\) Melbourne Water Part B submission.

\(^4\) Submissions 1, 4, 5, 7, 10, 11, 15, 17, 18, 20, 22, 27, 31, 32, 35, 36, 37, 38, 39 and 41.
Submissions 4, 11 and 32 submitted that the coverage on their properties is either very minor or very shallow and they therefore should be removed. Council responded that, while flooding may be shallow or across only minor sections of a property, the mapping represents a 1% AEP flood event and triggers the requirement for a permit for many types of buildings and works. As part of any such permit application, it is critical to carefully consider the particular depth, speed or location of the flooding in determining how any development should occur. Council submitted that even small flooding extents should trigger a permit due to the highly urbanised nature of properties in Stonnington.

3.4 Discussion

It has been well established in previous panel hearings that modelling of approximate or theoretical flood behaviour is appropriate and acceptable for the purposes of applying planning controls. The Panel notes that the application of an overlay is simply a means to identify areas that may be at risk of flooding, and to trigger the need to apply for a planning permit for some buildings and works that may be impacted by, or impact on, overland flood paths.

The Panel notes that Council and Melbourne Water have reviewed, and in some cases reduced, the extent of the proposed overlays in response to submissions. The Panel supports this refinement where there is evidence to support a change. Where there is not clear evidence to support a reduction or removal of the overlay, the Panel believes that planning authorities should err on the conservative side and apply the overlay. The Panel is satisfied that Melbourne Water and Council have followed this approach on this Amendment.

The Panel notes that there is some inconsistency in the approach taken by Melbourne Water and Council to ‘filtering out’ of properties that are affected by the overlays only to a minimal extent. Melbourne Water has taken a similar approach in other municipalities and has removed properties or reduced the extent of coverage as mentioned above.

Council has done no ‘filtering’. This has resulted in some properties with very minimal overlay coverage. The Panel accepts Council’s approach to this. The Panel notes that flood overlays are not a prohibition on use of land but rather a trigger that a permit may be required for certain types of works. The trigger only operates in relation to works on the affected parts of the land.

3.5 Conclusion

The Panel concludes:

- The flood modelling approach taken by Council and Melbourne Water is appropriate and fit for the purpose of applying planning controls.
- The process of refining the extent of the proposed overlays undertaken by Council and Melbourne Water is supported.
4 Site specific submissions

4.1 Post-exhibition changes

4.1.1 Coppin Street and surrounds

Timothy and Jacqueline Burke (Submission 31) raised concerns with the application of the SBO2 on their property in Coppin Street, Malvern East. The Amendment seeks to extend the SBO onto several properties on Coppin Street, George Street and Beaver Street in Malvern East.

Council investigated the issues raised and identified that infrastructure improvement works were undertaken in the area in 2005. These infrastructure improvements works have not informed the exhibited SBO map as part of Amendment C221, and Council has agreed to further review the extent of the overlay.

Council therefore submitted that the SBO boundary should not be extended as exhibited at this time, and the existing mapping (Applied through Amendment C18) should be maintained until the flooding in the area is re-modelled. Council’s Infrastructure Projects Unit have committed to undertaking this work in the near future.

The extent of the proposed changes to the mapping compared to the exhibited version is shown in Appendix C.

4.1.2 7 Merriwee Crescent, Toorak

Rebecca Fyson (Submission 38) raised concerns about the inclusion of her property at 7 Merriwee Crescent, Toorak in the SBO2.

Council advised that the property is not currently within the SBO and, as there have been no changes to the mapping in the surrounding area, the Amendment does not propose to include 7 Merriwee Crescent into the overlay.

The inclusion of the property on the online interactive map and in the exhibition mail out was an error resulting from a tolerance allowance in calculating the extent of the flooding.

4.1.3 Recommendations

The Panel recommends that the following post-exhibition changes be adopted as proposed by Council:

2. Remove the Special Building Overlay Schedule 2 along Coppin Street, George Street, and Beaver Street in Malvern East as shown in Appendix C.

3. Remove 7 Merriwee Crescent, Toorak from the Special Building Overlay Schedule 2.
4.2 Broader issues affecting submitters

The more substantive broader issues raised by submitters are addressed in this report as follows:

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<tbody>
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<tr>
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</table>

4.3 Unresolved site specific submissions

The following submitters raised more detailed, site specific issues either at the Panel Hearing or in written submissions.

4.3.1 Malvern Meadows Estate

(i) Submissions

Sheila Sheehan (Submission 39) and Mr Mentiplay (Submission 18) raised several concerns relating to the 'Malvern Meadows Estate', a residential area in Malvern East bounded to the south by Holmesglen Railway station, to the west and north by Malvern Valley Golf Course and to the east by Warrigal Road.

Council noted that, in this area, the extent of the LSIO is proposed to change (generally reduced) and additional coverage of both the SBO1 and SBO2 is proposed.

Council usefully summarised the issues raised in the submissions as follows:

- there is significant flooding at the corner of The Boulevard and Warrigal Road through to Argyll Street and this is partly due to earthen mounds installed at the Malvern Valley Golf Course
- earthen mounds along Lomond Terrace also result in flood impacts
- flooding along The Boulevard between Stirling and Ambrose Avenues occurs and the LSIO should not be removed from this location
- a further restriction on development should be placed on sites in the area arising from public safety and access concerns for both residents and rail patrons.

Mr Mentiplay further submitted that:
- the extension of Stirling Avenue south of Argyll Street experiences flooding during storm events and should be included within the SBO
- water from the rail easement flows into the rear of properties at 94-108 Argyll Street partly due to the open drain at the rear of 88-94 Argyll Street being poorly designed
the buildings at 90, 92 and 94 Argyll Street have been designed in such a way as to impact the proper flow of water.

Sheila Sheehan appeared at the Hearing on behalf of herself and Mr Mentiplay. She elaborated on the issues listed above and supplied an excellent set of photographs of previous flooding events in the local area.

Council and Melbourne Water responded to the submissions as follows:

- In relation to the earthen mounds constructed on the Malvern Valley Golf Course, Melbourne Water was unaware of the earthworks proposed at the time of construction. When Melbourne Water became aware of the earth mounding that was occurring, it worked closely with the City of Stonnington to reduce the impact of filling on the Gardiners Creek Floodplain on the creek. Some 300 cubic metres was removed along the edge of Gardiners Creek at the Warrigal Road Bridge to reinstate the Gardeners Creek floodplain behaviour. Any flooding occurring in this area will be caused by local drainage systems.

- While Council acknowledged that there is significant flooding at the corner of The Boulevard and Warrigal Road, the area has not yet been mapped for inclusion in an SBO and therefore has not been included in Amendment C221. Most of the drainage catchment is on the east side of Warrigal Road, in the City of Monash. Preliminary discussions have been held with Monash Council officers and Stonnington Council’s mapping consultants. A proposal to pursue a flood mapping study of this area has been included in Stonnington Council’s Infrastructure Budget for 2018/2019. The results of the flood mapping may indicate the need for new drainage works and revised flood mapping of the area. If a future flood mapping study determines that revisions to flood mapping is warranted, Council may consider progressing a future amendment to the planning scheme to revise the flood mapping in this area.

- Melbourne Water added that the LSIO in this area was first introduced into Stonnington Planning Scheme in approximately 2002. Mapping methodologies and survey data have greatly improved over this period and the new flood shape reflects this new information.

- Melbourne Water maintained that the flood extents were determined using the best available LiDAR data and Digital Terrain Modelling techniques.

- In response to the submitters’ proposal that development restrictions should be in place because of the potential public safety risk, Council submitted that it is not appropriate to restrict development prior to undertaking a flood study in the area. Through the flood study process Council will consider any impacts on public safety. Council submitted that it would not be practical or reasonable to delay this Amendment until a flood mapping study has been undertaken for this area.

- In response to the concerns raised at Lomond Terrace, existing flood studies do not show flooding from Council’s drainage system in this area. Council deferred to Melbourne Water on this matter as the potential flooding in this area is related to the Scotchman’s Creek and Gardiners Creek floodplain behaviour, rather than Council’s local drainage system. The nearby SBO2 on Thurso Street and Argyll
Street are related to a nearby Council drain but are not considered to impact Lomond Terrace.

- In relation to concerns raised by the submitter in relation to the reduction of the LSIO on The Boulevard between Ambrose Avenue and Stirling Avenue, Council defers to Melbourne Water. The application of the SBO2 in this area represents the outcome of Council flood mapping in this area and the LSIO is managed by Melbourne Water.

- In response to the submissions regarding 88-108 Argyll Street, Council submitted that a local drain runs from the railway land to Argyll Street through a drain on the boundary between 92 and 94 Argyll Street and then down Argyll Street before turning northerly onto Stirling Avenue. Flooding on the Stirling Avenue extension and the associated drains is related to VicTrack assets. Nevertheless, Council is currently undertaking design for a “cut-off” drain to run directly from the VicTrack land along the Stirling Avenue extension and connect with the existing drain at the intersection of Argyll Street and Stirling Avenue.

- This new construction will result in changes to the 1% AEP flood extent over 88-96 Argyll Street which can be considered as part of a future flood study.

(ii) Discussion

The Panel notes the detailed responses to the issues raised in submissions. The Panel believes that the issues raised by Ms Sheehan and Mr Mentiplay are valid concerns about issues that impact flooding in the area. The Panel accepts that Council and Melbourne Water have taken appropriate action to mitigate the impact of flooding from new earthworks and is taking appropriate action to address other issues. The responses provided by Council and Melbourne Water address all issues raised, and the Panel is not convinced that any of the issues raised by the submitters justify changes to the exhibited overlays in this area. In making this comment the Panel notes that additional engineering works and further flood studies have been undertaken or are proposed that address the majority of the issues raised.

(iii) Conclusion

The Panel concludes that no changes should be made to the exhibited Amendment arising out of the submissions of Sheila Sheehan and Mr Mentiplay.

4.3.2 1-2 Dalriada Street, Toorak

(i) Submissions

Harold Shafer (Submission 41) raised several concerns relating to 1-2 Dalriada Street, Toorak as follows:

- The owner of the property was not notified of the exhibition of Amendment C18 which originally applied the SBO in 2005.
- The SBO does not visibly cover his property in the Planning Property Report, and therefore it does not apply to his property.
• The property is not and has not previously been within the SBO. He claimed that there was a verbal agreement between himself and a Council officer that his property is only abutting the SBO and that it does not apply to his property.
• The lot and title details and the property address referenced by Council are incorrect.

Council responded as follows:
• The overlay was applied to 1-2 Dalriada Street, Toorak through planning scheme Amendment C18 on 12 May 2005. According to Council’s standard processes all affected parties were notified of Amendment C18.
• Amendment C221 does not seek to update the extent of the SBO on the subject property, and only seeks to change the label of the overlay from SBO to SBO2 on the planning scheme maps. Council submitted that as it has not undertaken new flood mapping in this particular area, it would be inappropriate to alter this flood shape.
• In response to the verbal agreement, Council advised that the officer in question could not recall such an agreement being made.
• In response to the visible coverage of the property in the Planning Property Report, Council submitted that the diagram is indicative only, and the listing of the overlay under the heading ‘Planning Overlays’ indicates the site’s inclusion in the overlay.
• The concerns relating to the title and lot details are not relevant to the Amendment and should be taken up with the titles office.

Council concluded that no changes should be made to the SBO2 at 1-2 Dalriada Street, Toorak as part of the Amendment.

Council did concede that further investigation of the SBO mapping of this catchment should be undertaken. This would determine if any changes to this and other properties in this area should be made which may form part of a future amendment to the planning scheme.

The Panel directed in the Hearing that Melbourne Water and Council review any documents prepared for Amendment C18 to see if there was anything that may shed light on whether the overlay was intended to apply to 1-2 Dalriada Street.

Melbourne Water did provide two related documents but advised that they were not helpful.

Council provided two documents:
• Stonnington Flood Plain Mapping Revision 2003 Report
• Map of 1 Dalriada Street, Toorak and Surrounds (data from Stonnington Flood Plain Mapping Revision 2003).

Council submitted that the report “indicated that no additional smoothing of the flood shape took place in relation to property boundaries” and the map showed that “the shape partially covered 1 Dalriada Street, Toorak indicating flood levels above the 50mm threshold were recorded as part of the mapping process.”

In relation to the new material, Mr Shafer responded in a letter dated 12 November 2018 that the Stonnington Flood Plain Mapping Revision 2003 report:
• does not specifically mention 1 or 2 Dalriada Street, Toorak
• does not provide any comment on whether the property was intended to be included in the overlay.

He also noted that the drawing provided was unsigned and undated, and he submitted that it was not clear on whether the overlay was intended to apply to the property.

(ii) Discussion

In relation to Mr Shafer’s concerns about notification of Amendment C18, the Panel comments that it is not the purpose of this Panel to review the process or application of Amendment C18. The Panel accepts Council’s advice that it tried to contact all landowners and also accepts Mr Shafer’s submission that he did not receive notification. These are not matters for the Panel to review and the Panel simply notes the fact that the SBO introduced in Amendment C18 is in place now.

The Panel found it difficult to interpret from the overlay mapping in the planning scheme whether the SBO applies to 1-2 Dalriada Street. It is only on extreme magnification that it appears that the edge of the overlay may cover a small portion of the property. Council officers estimated that the overlay applies to 2.1 square metres of the site.

The Panel thinks that it would be reasonable to conclude from the map in the Planning Property Report that the overlay does not apply to 1-2 Dalriada Street and in fact follows the property line. The Panel notes, however, that the list of overlays in the Planning Property Report does list the SBO as applying to the property. The documents provided by Council post-hearing could be interpreted to support Council’s conclusion that the overlay does apply to a small portion of the property, although Mr Shafer does not agree.

In any case, the Panel notes that the Amendment does not propose any change to the SBO as it relates to 1-2 Dalriada Street, save for applying a schedule that does not change the operation of the overlay in any way for that site. There are, therefore, no issues arising from the Amendment as it applies to the property that the Panel needs to consider. The issues raised by Mr Shafer about the incorrect designation of the property are likewise not material to consideration of this Amendment.

It appears that Mr Shafer may have been given conflicting advice about the application of the overlay. That is regrettable, but ultimately these are matters for resolution between Council and Mr Shafer outside this Amendment process.

The Panel notes Council’s conclusion that further flood mapping could be undertaken to review flood mapping in the area around 1-2 Dalriada Street, Toorak. That review, with an opportunity for Mr Shafer to participate, may assist in resolving the matters.

(iii) Conclusion

The Panel concludes that no changes should be made to the exhibited Amendment arising out of the submission of Mr Shafer.
4.3.3 255 Tooronga Road, Glen Iris

(i) Submissions

Graham Wines (Submission 2) submitted that 255 Tooronga Road, Glen Iris should not be included in the SBO1 as the modelling was inaccurate in this location.

Melbourne Water submitted that site photos and detailed survey work have confirmed that the entrance of the property abuts the footpath, is raised and undercover hence preventing LiDar picking up ground levels. The detailed survey indicates the LiDar is consistent with ground survey adjacent to the property.

Melbourne Water recommended that the above property is removed from the SBO1 and the exhibited flood shape will be amended to reflect these results.

Mr Wines expressed his concern at the Hearing that Melbourne Water had frustrated his attempts to have the property reviewed. He advised that he had engaged his own surveyor and engineering consultant to assess the property and submitted that this was an unnecessary expense had Melbourne Water done its job properly and promptly responded to his submission. He requested the Panel direct that Melbourne Water pay the costs of the expert engineering advice ($1,732.50). He submitted that the Planning and Environment Act 1987 (the Act) provides for costs to awarded. He quoted page 11 of Planning Panels Victoria – Frequently Asked Questions:

“if the costs claimed would not otherwise have been incurred and they are the direct result of another party’s actions” ... they can be claimed.

Melbourne Water did not accept that the Panel had the power to direct costs. It also referred to the Planning Panels Victoria – Frequently Asked Questions, but pointed out that the particular quote refers only cost in the event of an adjournment caused by a party. Mr Kearney in closing referred to section 165 of the Act:
Adjournment of hearings

A panel may from time to time adjourn a hearing to any times and places and for any purposes it thinks necessary and on any terms as to costs or otherwise which it thinks just in the circumstances.

Mr Kearney submitted that this is the only power in the Act for panels to award costs.

(ii) Discussion

The Panel accepts that it has ultimately been agreed to remove 255 Tooronga Road, Glen Iris from the overlay.

The Panel agrees with Mr Kearney’s submission that the references in the Planning Panels Victoria – Frequently Asked Questions and in the Act relate only to costs in the event of an adjournment.

The Panel understands Mr Wines’ frustration that he has incurred expenses in resolving his submission, but has no power to award costs and makes no comment on whether the costs were reasonable or not.

(iii) Conclusion

The Panel concludes that the SBO1 should be removed from 255 Tooronga Road, Glen Iris.

4.3.4 43 Aintree Road, Glen Iris

(i) Submissions

Mr Shan (Submission 44) questioned why the SBO1 had been applied to his property on the basis that it has never flooded, and the modelling shows only minor impact on his property. He made comparisons with several properties considered in the recent Manningham flood overlays, where a number of properties were removed if only affected to a minor degree.

Melbourne Water reviewed the flood overlay for the property and provided the plan below showing the modelled flood depths on the property in metres.

**Figure 2** Flood mapping for 43 Aintree Road, Glen Iris
Melbourne Water submitted that the property did not meet the requirements for removal of the overlay. Whilst it acknowledged that the property is only affected to a minor extent, there are data points on the property that show flooding of greater than 50 millimetres and the flooding affects the street frontage of the property. Melbourne Water maintained that it wishes to retain the capacity to review any permit applications and the overlay should remain to enable such referrals.

Melbourne Water provided a response to the circumstances relating to each of the Manningham properties cited by Mr Shan and concluded that none of the excluded properties in Manningham exhibited the same conditions as 43 Aintree Road, Glen Iris.

Melbourne Water maintain that the SBO1 should continue to apply to 43 Aintree Road, Glen Iris as exhibited.

(ii) Discussion

The Panel agrees with Melbourne Water that the SBO1 should apply to this property. The modelling for the property clearly shows flood depths of greater than 50 millimetres and the Panel accepts Melbourne Waters position that where the flooding affects the street frontage of a property the permit referral requirement triggered by the overlay should apply.

The forensic comparisons with a large number of sites in Manningham was not particularly helpful to the Panel but, in any case, the Panel accepts that there is no inconsistency in Melbourne Water’s application of the overlay.

(iii) Conclusion

The Panel concludes that the SBO1 should apply to 43 Aintree Road, Glen Iris as exhibited.

4.3.5 20 Weir Street, Glen Iris

(i) Submissions

Samuel Snipe (Submission 6) requested a review of the SBO1 on 20 Weir Street, Glen Iris on the basis that the extent of flooding was very minor.

Melbourne Water agreed to the removal on the basis that the flooding was minor, and also at the rear of the property. It noted that there was no mapping point data greater than 50 millimetres.

Figure 3 20 Weir Street, Glen Iris
(ii) Discussion and conclusion
The Panel accepts Melbourne Water’s proposal to remove the SBO1 from this property.

4.3.6 113 Claremont Avenue, Malvern

(i) Submissions
Fergus Crawford (Submission 8) requested a review of the SBO1 on 113 Claremont Avenue, Malvern on the basis that the extent of flooding is very minor.

Melbourne Water agreed to the removal on the basis that the flooding was minor, and also at the rear of the property. It noted that there was no mapping point data greater than 50 millimetres.

(ii) Discussion and conclusion
The Panel accepts Melbourne Water’s proposal to remove the SBO1 from this property.
4.3.7 13 Lambert Road, Toorak

(i) Submissions

Simon & Philippa Dickie (Submission 21) requested a review of the extent of the SBO1 that applies to 13 Lambert Road, Toorak.

![Figure 5 13 Lambert Road, Toorak](image)

Melbourne Water reviewed the ground and floor levels on the property and has agreed to modify the SBO1 as shown in red on Figure 5 above.

(ii) Discussion and conclusion

The Panel accepts Melbourne Water’s proposal to modify the extent of the SBO1 on 13 Lambert Road, Toorak as shown in Figure 5.

4.3.8 54 Aintree Road, Glen Iris

(i) Submissions

Chris Paranthoiene (Submission 30) submitted that the SBO1 should be removed from 54 Aintree Road, Glen Iris on the basis that the extent of flooding is very minor.

Melbourne Water agreed to this request on the basis that there are no data points with flooding greater than 50 millimetres on the property.
(ii) Discussion and conclusion

The Panel accepts Melbourne Water’s proposal to remove the SBO1 from this property.

4.3.9 270 Tooronga Road, Glen Iris

(i) Submissions

Natalie and Kieren O’Leary (Submission 43) submitted that the SBO1 should be removed from 270 Tooronga Road, Glen Iris on the basis that the extent of flooding is very minor and a brick wall would impede any flood water.
Melbourne Water agreed to remove the SBO1 on this property on the basis that there are no data points with flooding greater than 50 millimetres on the property.

(ii) Discussion and conclusion

The Panel accepts Melbourne Water’s proposal to remove the SBO1 from this property.

4.3.10 Recommendations

The Panel makes the following recommendations in relation to the application of the overlay to specific properties:

4. Remove the following properties from the Special Building Overlay Schedule 1:
   - 255 Tooronga Road, Glen Iris
   - 20 Weir Street, Glen Iris
   - 113 Claremont Avenue, Malvern
   - 54 Aintree Road, Glen Iris
   - 270 Tooronga Road, Glen Iris.

5. Modify the extent of the Special Building Overlay Schedule 1 on 13 Lambert Road, Toorak as shown in Figure 5 of this report.
5 Other issues

5.1 Drainage maintenance and upgrade

(i) The issue

Several submissions raised concerns that:

- Flood mapping does not consider recent upgrades to drainage infrastructure
- The extent of flooding would be less if drains were property maintained.

(ii) Evidence and submissions

Several submissions contended that drainage improvements or more regular maintenance would reduce or negate the need for the exhibited SBO extent.

Council submitted that the timing and extent of upgrades was considered in the modelling, and that any upgrades which had occurred in the time between the modelling and consideration of submissions was also considered.

Council noted that upgrades may not necessarily benefit all properties, depending on the location and flood paths impacting the property.

Council submitted that, in any case, it is correct to proceed with the modelling using drainage infrastructure existing at that time. To do otherwise would delay the work in perpetuity and put lives and property at risk.

Council and Melbourne Water acknowledged that lack of proper maintenance can cause more extensive flooding but advised that both organisations will continue to ensure that local drains under their control are maintained to the appropriate standard.

Council submitted that it has a program for upgrading existing infrastructure to mitigate flood impacts, which gives priority to areas with overland flood risk and those that pose a high risk to public safety. However, it would not be practical or reasonable to design and construct drains for the 100-year ARI storm event as the benefits would be limited in comparison to the cost of construction.

Melbourne Water submitted that, as part of its capital works program, it allocates approximately $116 million per annum to drainage improvement works. These works are identified through the drainage survey program and prioritised according to frequency and severity of flooding and maximum community benefit.

(iii) Discussion

The Panel agrees that the most up to date information on the current condition of drains should be used for flood mapping. It is recognised that drainage infrastructure is continually upgraded and so it could be argued that flood mapping should be altered.

The Panel agrees with Council and Melbourne Water that it is appropriate to expeditiously manage the risk associated with flooding and implement the food controls in a timely manner. Further delays to further refine the controls are not justified.
5.2 Property values and insurance premiums

(i) The issues
Several submissions raised concerns regarding the impact of the Amendment on property values and insurance premiums.

(ii) Evidence and submissions
Several submissions\(^5\) raise concerns relating to the financial implications of the Amendment in relation to property values and insurance costs.

Council acknowledged the concerns but submitted that these are matters not directly relevant to the merit and strategic justification for the Amendment and are outside the scope of the Panel’s consideration.

Council and Melbourne Water submitted that the value of a given property is a result of a complex interplay of many different factors such as location, streetscape and amenity and it would be difficult to assign what effect, if any, the identification of land liable to flooding may have on the value of a property. Council submitted that the application of the SBO does not cause or change the likelihood of flooding on a property but recognises the existing condition of the land for the purposes of managing development.

Council and Melbourne Water further submitted that insurance premiums are based on the most up-to-date available flood studies, rather than the Planning Scheme controls. The insurance industry operates its own National Flood Database where this information is kept. In line with recommendations of previous panels, Council submitted that this issue is beyond the scope of the amendment.

Council noted that previous panels have consistently found that there is no justification for refusing an amendment to apply the SBO or LSIO on the basis of property values, insurance premiums or the administrative requirements associated with a potential planning permit trigger.

(iii) Discussion and conclusion
Submitters have not provided any evidence that the application of an overlay will impact property values or insurance costs.

Previous panels have consistently found that there is no justification for setting aside planning scheme amendments of this type on the basis that property values might be affected, or insurance premiums might increase. This Panel adopts the same position.

5.3 Permit exemptions in SBO2

(i) Submissions
Geoff Reynolds (Submission 20) submitted that as the exhibited schedule to the SBO does not include any additional permit requirement exemptions, the proposed control is invalid.

\(^5\) Submissions 1, 17, 20 and 37
Council responded that “while Schedule 2 of the SBO does not include any additional exemptions, the parent clause of the SBO continues to prescribe a number of permit requirements and exemptions”. Council noted that it did not seek any further exemptions than those already provided. On receipt of the submission, Council revised the content on its webpage to provide a more detailed explanation of how the schedules operate.

VicTrack (Submission 25) requested a specific exemption for “buildings and works for railway purposes” to be inserted into SBO2. Council submitted that an exemption within the schedule is not the appropriate instrument to implement this exemption across the municipality. Instead, Council suggested that VicTrack approach DELWP and request such an exemption be placed within the parent clause. Council noted that this position is consistent with the panel for Banyule Amendment C101, which found that the SBO schedule was not the appropriate avenue for such exemptions.

(ii) Discussion

The Panel agrees with Council’s assessment of Mr Reynolds’ submission. The absence of any further permit exemptions in SBO2 does not make the control invalid.

In relation to the VicTrack submission the Panel notes that the Banyule C101 panel made the following observations:

> The proposed exemption has implications that extend beyond Banyule’s SBO2 and is likely to be a reoccurring theme for various planning scheme amendments. The exemption sought is broad and covers a wide scope of buildings and works.

> Amendment C101 flags stormwater risks to VicTrack in defined locations only. Council submitted that stormwater and associated drainage infrastructure issues, affecting VicTrack land, are best addressed through the application of the SBO2. This proposed ordinance gives flexibility for VicTrack to discuss future works, and pursue agreement with Council so that pre-approval is achieved for any routine matters.

The Panel agrees with the findings of the Banyule C101 panel that the exemptions proposed by VicTrack are too broad. The Panel sees benefit in requiring VicTrack to liaise with Council on any works that may interfere with overland flow paths as defined by the overlays. It will be up to Council to consider any exemptions on a site by site basis as it sees fit.

(iii) Conclusion

The Panel does not support any changes to the Amendment in response to the submissions from Mr Reynolds or VicTrack.

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## Appendix A  Submitters to the Amendment

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<td>1.</td>
<td>Brook Logan</td>
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<td>2.</td>
<td>Graham Wines Second Comet Pty Ltd</td>
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<td>3.</td>
<td>H Zhang &amp; A Zhong</td>
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<td>4.</td>
<td>Louise Thompson</td>
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<td>Sue &amp; Richard Palmer</td>
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<td>6.</td>
<td>Samuel J Snipe</td>
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<td>7.</td>
<td>Alan Munn Pontigny Pty Ltd</td>
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<td>8.</td>
<td>Fergus Crawford</td>
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<td>Michael Kaminaris</td>
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<td>12.</td>
<td>Andrew Tong</td>
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<td>Thelma Clarke</td>
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<td>Mark &amp; Elaine Robins</td>
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<td>G &amp; F Bruce</td>
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<td>17.</td>
<td>Kim Waddell</td>
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<td>18.</td>
<td>D R Mentiplay</td>
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<td>19.</td>
<td>Best Hooper Lawyers for Little Projects Pty Ltd</td>
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<td>20.</td>
<td>Geoff Reynolds</td>
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<td>Simon &amp; Philippa Dickie</td>
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<td>Patrick &amp; Marian Naidoo</td>
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<td>Mark Vulling</td>
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<td>Robert Taylor &amp; Anne Moore</td>
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<td>25.</td>
<td>VicTrack</td>
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<td>Malcolm &amp; Carolyn Jack</td>
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<td>Jethro &amp; Jacqueline Salmon</td>
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<td>Robert Ryan</td>
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<td>29.</td>
<td>Caroline King &amp; Neil Appleton</td>
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<td>30.</td>
<td>Chris Paranthoiene</td>
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<td>Submission Number</td>
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<tr>
<td>31.</td>
<td>Timothy &amp; Jacqueline Burke</td>
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<td>32.</td>
<td>Urbis on behalf of the owners of 52 -54 Argo Street, South Yarra</td>
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<td>33.</td>
<td>Roark &amp; Kim Muhlen-Shulte</td>
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<td>34.</td>
<td>Dannika White</td>
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<td>John Shawley</td>
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<td>Cassandra Bartosiewicz</td>
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<td>Gavin Berkowitz &amp; Dany Merkel</td>
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<td>Rebecca Fyson</td>
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<td>Sheila Sheehan</td>
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<td>41.</td>
<td>Harold Shafer</td>
</tr>
<tr>
<td>42.</td>
<td>Tayissa Slipetsky</td>
</tr>
<tr>
<td>43.</td>
<td>Natalie &amp; Kieren O’Leary</td>
</tr>
<tr>
<td>44.</td>
<td>Xionghao &amp; Alice Shan</td>
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</table>
## Appendix B  Document list

The following documents were tabled at the Panel Hearing:

<table>
<thead>
<tr>
<th>No.</th>
<th>Date</th>
<th>Description</th>
<th>Provided by</th>
</tr>
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<tr>
<td>1</td>
<td>17/10/2018</td>
<td>Part A submission</td>
<td>Council</td>
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<tr>
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<td></td>
<td>Part B submission</td>
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<tr>
<td>3</td>
<td></td>
<td>Extract of Stonnington Flood Management Plan</td>
<td>Council</td>
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<tr>
<td>4</td>
<td></td>
<td>Planning Practice Note 12</td>
<td>Council</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Schedule 1 to the LSIO (post VC148 version)</td>
<td>Council</td>
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<tr>
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<td>Schedule 1 to the SBO (post VC148 version)</td>
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<tr>
<td>7</td>
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<td>Schedule 2 to the SBO (post VC148 version)</td>
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<td></td>
<td>Part B submission</td>
<td>Melbourne Water</td>
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<td>9</td>
<td></td>
<td>Hearing submission</td>
<td>Graham Wines</td>
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<td>10</td>
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<td>Hearing submission</td>
<td>Sheila Sheehan</td>
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<tr>
<td>11</td>
<td></td>
<td>Hearing submission</td>
<td>Mr Mentiplay</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>Hearing submission</td>
<td>Harold Shafer</td>
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<tr>
<td>13</td>
<td></td>
<td>Closing submission</td>
<td>Council</td>
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<td>14</td>
<td></td>
<td>Further information on 1 Dalriada Street, Toorak</td>
<td>Council</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td>Special Building Overlay – parent clause</td>
<td>Council</td>
</tr>
<tr>
<td>16</td>
<td></td>
<td>Map of proposed changes in Coppin Street area</td>
<td>Council</td>
</tr>
</tbody>
</table>
Appendix C  Council proposed changes to Coppin Street area
This extended S80 area was exhibited as part of C221.

Council submits that this area should be removed from the Amendment.
Appendix D  Council proposed LSIO and SBO Schedules
SCHEDULE 1 TO CLAUSE 44.04 LAND SUBJECT TO INUNDATION OVERLAY

Shown on the planning scheme map as LSIO1.

FLOODPLAIN MANAGEMENT – MELBOURNE WATER

1.0 Land subject to inundation objectives to be achieved

None specified.

2.0 Statement of risk

None specified.

3.0 Permit requirement

None specified.

4.0 Application requirements

None specified.

5.0 Decision guidelines

None specified.
SCHEDULE 1 TO CLAUSE 44.05 SPECIAL BUILDING OVERLAY

Shown on the planning scheme map as SBO1.

DRAINAGE SYSTEM – MELBOURNE WATER

1.0 Flooding management objectives to be achieved

None specified.

2.0 Statement of risk

None specified.

3.0 Permit requirement

A permit is not required to construct a building or construct or carry out works (if there is no change in natural ground levels) for:

- A domestic shed or animal enclosure no greater than 20 square metres in area.
- An open sided carport, or other open sided structure such as a verandah or pergola.
- A telecommunications tower and associated structures (if the structures are at least 50 per cent permeable up to the applicable flood level).
- A fence that is at least 50 per cent permeable up to the applicable flood level.
- Outdoor advertising sign on a single support pole, or structure that is at least 50 per cent permeable up to the applicable flood level.
- Any buildings, works, fences or road-works where the relevant floodplain management authority has agreed in writing that the flow path is not obstructed.

4.0 Application requirements

None specified.

5.0 Decision guidelines

None specified.
SCHEDULE 2 TO CLAUSE 44.05 SPECIAL BUILDING OVERLAY

Shown on the planning scheme map as SBO2.

DRAINAGE SYSTEM – STONNINGTON CITY COUNCIL

1.0 Flooding management objectives to be achieved

None specified.

2.0 Statement of risk

None specified.

3.0 Permit requirement

None specified.

4.0 Application requirements

None specified.

5.0 Decision guidelines

None specified.