

**INDEPENDENT PLANNING PANEL**

**APPOINTED BY THE MINISTER FOR PLANNING  
PLANNING PANELS VICTORIA**

IN THE MATTER OF *AMENDMENT C384* TO THE MELBOURNE PLANNING  
SCHEME

***LAND SUBJECT TO INUNDATION & SPECIAL BUILDING  
OVERLAYS***

**PART B SUBMISSION OF THE PLANNING AUTHORITY**

**DATE: 11 OCTOBER 2022**

## Introduction

1. I make this submission on behalf of Melbourne City Council (**Council**) with respect to Melbourne Planning Scheme Amendment C384melb (**Amendment**).
2. In accordance with the panel's directions of 6 September 2022 this submission addresses the following matters:
  - a. Council's response to submissions and evidence, including but not limited to:
    - i. a response to submissions which are seeking a whole of precinct response to flood mitigation;
    - ii. which submissions have been resolved (if any); and
    - iii. the impact of the nominal flood protection level (**NFPL**) on matters such as building heights podium levels, basements etc. and the interplay between the NFPL and the built form overlays;
  - b. any further changes Council proposes to make to the Amendment in response to expert evidence or submissions; and
  - c. Council's final position on the Amendment.
3. I note that the Part A submission of Council and Melbourne Water has already addressed the following:
  - a. identification of the issues raised in submissions;
  - b. the alignment of the Amendment with Amendment C407melb and Amendment C417melb; and
  - c. how Council intends to deal with existing planning permits and endorsed plans issued before exhibition of the Amendment given no transitional provisions are proposed.

## Council's response to submissions and evidence

4. I note that the Part A submission of Council and Melbourne Water identified the following issues arising from submissions received by Council in relation to the Amendment:
  - a. the proposed inundation overlays are not strategically justified/modelling underpinning the Amendment is deficient;
  - b. the proposed overlays ought not apply to specific properties/no history of flooding;
  - c. drainage maintenance and improvement issues affect the extent of the proposed overlays;
  - d. impacts on insurance costs and property values;
  - e. notice of the Amendment was deficient;
  - f. the status and proper role of the *Good Design Guide for Flood Affected Areas in the Fishermans Bend, Arden and Macaulay (Good Design Guide)*;
  - g. the need for transitional provisions;
  - h. specific drafting concerns with the inundation overlays;
  - i. site specific planning and/or building design issues;
  - j. site specific development cost considerations; and
  - k. the Amendment in practice/role between the floodplain manager and the responsible authority.
5. These remain the key issues before the panel. I address these in light of the evidence filed with the panel.

*The proposed inundation overlays are not strategically justified/modelling underpinning the Amendment is deficient*

*The adoption of a whole of precinct response*

*The proposed overlays ought not apply to specific properties/no history of flooding*

*Drainage maintenance and improvement issues affect the extent of the proposed overlays*

*Specific drafting concerns with the inundation overlays*

6. These are the principal issues in dispute with respect to the Amendment. Having regard to the evidence and submissions filed and served since the Amendment was exhibited, the criticisms of the mapping of potential flood-affected areas and the NFPL can be summarised under the following categories:
  - a. tidal tailwater levels are too high because of an assumption that the 1% AEP maximum high tide will occur at the same time as a 1% AEP rain event;
  - b. the hydrological model was not informed by, and its results are inconsistent with, actual flood events in the modelled catchments;
  - c. flood levels are too high because of an assumption that peak flows will arrive at the same time as peak stormwater runoff and maximum tide levels;
  - d. modelling has paid insufficient attention to the impact of flood storage and attenuation measures available in the modelled catchments; and, as a consequence
  - e. the land subject to the proposed Land Subject to Inundation (LSIO) and Special Building Overlay (SBO) controls is too large, and the indicated NFPLs are too high.
7. I note that the hydrology experts are due to meet for an expert conclave. This submission thus allows for the prospect that their evidence will evolve and presents Council's position on these issues in general terms.
8. Council relies on the evidence of Luke Cunningham and supports the evidence of Warwick Bishop. In summary, therefore, Council:

- a. supports the modelling of the catchments for the reasons given by Mr Bishop, and hence supports the exhibited mapping of the proposed LSIO and SBO controls and the flood areas indicated by the modelling;<sup>1</sup>
- b. supports the inclusion of the land at:<sup>2</sup>
  - i. 17 Park Drive, Parkville, 34 Newton Street, Kensington,
  - ii. 15 Park Drive, Parkville,
  - iii. 11 and 25 Park Drive, Parkville,
  - iv. 13 Park Drive, Parkville,
  - v. 12 Curran Street, North Melbourne;
  - vi. 127 Leveson Street, North Melbourne,
  - vii. 117 Drummond Street, Carlton,
  - viii. 35 Ireland Street, West Melbourne,
  - ix. 458 and 460 Abbotsford Street, North Melbourne,
  - x. 57 Ireland Street, West Melbourne,
  - xi. 133 Leveson Street, North Melbourne;
  - xii. 61 Ireland Street, West Melbourne;
  - xiii. 93 Park Drive, Parkville;
  - xiv. 19 O'Shanassy Street, North Melbourne;
  - xv. 800-810 Lorimer Street, Port Melbourne;
  - xvi. 402-434 and 434-444 Macaulay Road, Kensington;
  - xvii. 2a O'Shanassy Street, North Melbourne; and

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<sup>1</sup> Expert Evidence of Warwick Bishop at 29 to 31.

<sup>2</sup> Expert Evidence of Luke Cunningham at 9 to 23.

xviii. 129 Leveson Street, North Melbourne.

9. Further, Council continues to rely on the responses to submissions made in the report to the Future Melbourne Committee of Council dated 2 August 2022. I do not repeat them here.
10. There is, however, a broader point to be made. The purpose of the proposed LSIO and SBO controls is not to prevent the future use and development of land for urban purposes. It is, rather, to require that a flood risk assessment be undertaken to ensure that the design of the proposed use and development will be safe to an acceptable standard. As I discuss later in this submission, the proposed LSIO and SBO controls are consistent with – and, most certainly, do not clash with – existing built form controls that apply to land subject to the Amendment.
11. It follows that it is appropriate for the Amendment to take a properly cautious approach to the risk to human health and safety posed by flooding in a changing climate with due allowance for the failure of existing and future flood attenuation and drainage infrastructure, especially where such infrastructure – like levees – is intended to operate across a precinct. Adopting this approach enhances the future resilience of the municipality by ensuring that the use and development of land is not reliant upon realising optimistic assumptions as to future climactic conditions, environmental events, or the operation of existing and future flood attenuation and drainage infrastructure over which any one land owner or occupant may have little control.
12. Council will address the technical disputes between the hydrology experts in greater detail in its Part C submission at the conclusion of the evidence. It is enough now to say that Council considers that the approach to risk, evident in the assumptions adopted for the purpose of modelling the catchments the subject of the Amendment, was and is appropriate in the circumstances.

*The status and proper role of the Good Design Guide*

*Site specific planning and/or building design issues*

*Site specific development cost considerations*

13. There has been little criticism in the evidence or the submissions of the content of the Good Design Guide or, more generally, of the objective of considering urban design outcomes when assessing an application under the proposed LSIO or SBO controls. What criticism there is appears to be directed at two related targets:
  - a. first, the standing of the Good Design Guide in the proposed LSIO and SBO controls, and its role as a decision guideline; and
  - b. second, the consequence of applying the type of design responses to land identified as flood affected.
14. Council supports the evidence of David Barnes and Alastair Campbell and does not support the evidence of Colleen Peterson on the standing of the Good Design Guide and its role as a decision guideline. Put simply, given the purpose and objectives of the proposed LSIO and SBO controls, urban design considerations are central to the effective operation of the proposed controls. Consideration of such matters will enhance rather than undermine the key objectives of protecting human life and safety in flood events by ensuring that land is specifically designed for that purpose whilst still making a positive contribution to the public realm and the wellbeing of its occupants.
15. I note that the Department of Environment, Land, Water and Planning supported the Amendment as exhibited, and therefore did not and has not required the Good Design Guide to be incorporated into the Scheme. This position should carry weight. But even if it were not accepted, for the reasons given by Mr Barnes, the Good Design Guide is a suitable document for incorporation into the Scheme.
16. As certain hydrological experts and submitters note, Melbourne Water, as a referral authority, would not be required to consider the Good Design Guide were it to exercise its functions as a determining referral authority. The responsible authority, however, would be required to consider it when determining a permit application under the proposed LSIO and SBO controls. To the extent that there are criticisms, therefore, of the ambit or flexibility of Melbourne Water's decision making process or posture when exercising its discretion as a determining referral authority, these are addressed, in whole or part, by the broader role of the responsible authority.

17. The consequences of the application of the design responses identified in the Good Design Guide are evident in Nicky Drobis' report and certain submissions. These complain, principally, about the modelled NFPLs. Nonetheless, Ms Drobis' report addresses design consequences specifically and so warrants a specific response.
18. I do not make any submission about the merit of the design response identified by Ms Drobis. That will, properly, be a matter for consideration at the permit application stage by the responsible authority. This submission addresses only the general themes raised by Ms Drobis. Council submits that Ms Drobis' report highlights the importance of both:
  - a. assessing the appropriate NFPLs for the future modelled 1% AED flood event on the basis of a prudent approach to assessing the likely risk to human health were such an event to occur; and
  - b. the central role that urban design plays in responding to that risk.
19. Ms Drobis highlights the design and hence the public and private tradeoffs involved in making the ground level of the Southgate site safe from a modelled flood event. Council is not blind to those tradeoffs. The role of the Good Design Guide is to ensure that they are minimized – that the resultant urban design response is to the highest possible standard – despite the need to make them. In circumstances where there is a reasonable prospect that the ground level of the Southgate site could be subject to a 1% AED flood event the appropriate response – the response with the greatest prospect of achieving a net community benefit – is not to relegate design considerations to a subordinate role in the decision making process but to emphasise their importance in achieving an acceptable outcome for a site having regard to the objectives of protecting human life and making liveable neighbourhoods.
20. In short, I submit that Ms Drobis' evidence and submissions complaining about the cost of adopting the design measures identified in the Good Design Guide demonstrate the importance of, at least, retaining the exhibited form of the Amendment and, at most, accepting Mr Barnes' recommendation that the Good Design Guide be an incorporated document in the Scheme.



**The impact of the NFPL on matters such as building heights podium levels, basements etc. and the interplay between the NFPL and the built form overlays**

21. What consideration of Ms Drobis' evidence, and like submissions, does demonstrate is that application of the proposed LSIO and SBO controls, as exhibited, will not clash with other built form controls applying to land the subject of the Amendment.
22. No expert or submitter has identified any land that would be blighted were the NFPL to be applied.
23. The exception is Mr Swan's evidence as to the need to achieve a safe access objective, and the constraint on achieving this posed by existing street infrastructure. Council acknowledges Mr Swan's evidence on this topic, but has not adopted a precinct-specific approach to this issue in the absence of evidence that the guidance for Fishermans Bend should be replicated in any other precinct.

***Notice of the Amendment was deficient***

***Impacts on insurance costs and property values***

24. I note that both of these topics are properly outside the ambit of the panel process. Nonetheless, it is sufficient to confirm that all:
  - a. owners of property were expressly notified of the exhibition of the Amendment in writing and have now had a significant period of time to file a submission with respect to it. There is no suggestion now that any person who wishes to be heard on the Amendment has been denied the opportunity to do so; and
  - b. there is no evidence before the panel to draw any conclusions about whether the application of the proposed LSIO and SBO controls will have any impact at all on insurance costs and property values.

***The Amendment in practice/role between the floodplain manager and the responsible authority***

25. This issue was raised by some submitters and is also addressed, independently, in Mr Barnes' evidence.

26. The proposed SBO2 will apply to Melbourne Water drains, and the proposed SBO3 will apply to Council drains. Accordingly, while the two schedules are for all practical purposes identical they are intended to control the use and development of land affected by different drainage infrastructure and hence allocate different roles to Melbourne Water and Council with respect to that infrastructure. It is for this reason that the two schedules to the SBO are proposed and should be implemented.

### ***Transitional provisions***

27. As indicated in the Part A submission, and as explained in Mr Barnes' report, transitional provisions are not necessary given Council's conduct of its role as a reporting authority under the *Building Act 1993* for land subject to the Amendment and the importance of ensuring that all new development responds to the modelled flood risk.

### **Information relating to Melbourne Water's refinement work to the flood plain modelling following the Arden Advisory Committee - what is this and how it will impact the Amendment**

28. Council understands that Melbourne Water will address this topic in their Part B submission. Accordingly, Council will defer to Melbourne Water on this topic.

### **What submissions have been resolved (if any)**

29. With the exception of the withdrawn submission #10, no submissions have been resolved.
30. I note that a further submission was received by the panel on 11 October 2022. As it raises very similar issues to those already considered by Council on 2 August 2022, in the Part A submission, and in this submission, no further specific response to it is necessary at this stage.

**Any further changes Council proposes to make to the Amendment in response to expert evidence or submissions**

**Council's final position on the Amendment**

31. Council remains supportive of the Amendment, in its exhibited form. If the panel is minded to make any changes to the wording of the proposed LSIO and SBO controls then Council contends that Mr Barnes' and Mr Campbell's<sup>3</sup> recommended adjustments would be appropriate.
32. The position of the Good Design Guide is subtly different. Council supports Mr Barnes'<sup>4</sup> and Mr Campbell's proposed revisions to that document.

**Conclusion**

33. For the reasons given in Council's response to submissions on 2 August 2022, the Part A submission, this submission and in Mr Barnes', Mr Campbell's and Mr Cunningham's evidence, I submit that the Amendment is strategically well-supported and respectfully requests that the Panel recommend adoption of the Amendment.

IAN MUNT  
Castan Chambers  
11 October 2022

For and on behalf of Council

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<sup>3</sup> Statement of Expert Urban Design Evidence prepared by Alastair Campbell at 26 and 27.

<sup>4</sup> David Barnes – Planning Evidence at 14.