



Amendment C385 to the Melbourne Planning Scheme

David Barnes — Planning Evidence

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1. Introduction

1. My name is David Barnes. I am a Director of Hansen Partnership Pty Ltd, Urban Planning, Urban Design and Landscape Architecture located at Level 4, 136 Exhibition Street, Melbourne.
2. I hold the following qualifications:
 - Bachelor of Town and Regional Planning (Hons), University of Melbourne, 1980.
 - Master of Business Administration, Royal Melbourne Institute of Technology, 1993.
3. I have practiced as a town planner since the 1980s, working in the public and private sectors. I am both a statutory and strategic planner. My planning experience covers many aspects of the planning approvals process on a range of projects, including residential, commercial, industrial, retail, mixed use and rural developments. I have also worked overseas in Vietnam on a variety of statutory planning, strategic planning, institutional strengthening and tourism projects.
4. I have been engaged by Melbourne City Council. My instructions are to consider planning issues in respect to Amendment C384 to the Melbourne Planning Scheme. Specific questions I have been asked to address relate to the following matters:
 - The appropriateness of considering design outcomes when assessing planning permit applications triggered by a LSIO or a SBO.
 - The drafting of the proposed planning controls (namely the LSIOs and SBOs).
 - The role and contents of the *Good Design Guide for Flood Affected Areas in Fishermans Bend, Arden and Macaulay* (referred to as the Good Design Guide).
 - Submission numbers 9, 13, 14, 16, 20, 29, 30, 37 and 44, as relevant to my expertise as a planner.
5. My assessment of the amendment is based on my expertise as a town Planner. It is limited to the specific instructions I have received. I have not reviewed the background reports that provide the technical details and findings of flood modelling that underlies boundaries of the schedules contained in the amendment.
6. Whilst I know the areas to which the amendment applies well, given my previous experience throughout the City of Melbourne, given the scope of my evidence I have not undertaken a site inspection specifically for the purpose of preparing this report.
7. Documents I have reviewed in preparing my statement are referenced throughout my report.
8. I have been provided with and have prepared my evidence in accordance with Planning Panels Victoria's Guide to Expert Evidence.
9. I have made all enquiries I believe are desirable and appropriate, and no matters of significance which I regard as relevant have to my knowledge been omitted from my report.
10. A copy of my Curriculum Vitae has been provided in Appendix 1.

2. Summary

11. A summary of my opinions in relation to the amendment follow:

- It is critical that the urban design and equitable access implications of built form outcomes that respond to flooding, are taken into consideration in planning permit applications for buildings and works in flood prone areas, within the central parts of the City of Melbourne.
- The introduction of more detailed urban design and equitable access considerations in assessing applications in areas affected by flood overlays, is a logical and appropriate evolution, and an improvement in the way in which flood provisions are considered in the City of Melbourne.
- It is not beyond the scope of the parent provisions of the LSI0 and SBO to include urban design and equitable access considerations in the schedules to the LSI0 and SBO.
- There is strong policy support in the planning scheme for design excellence and for good urban design generally within the City of Melbourne, particularly within the Central City and its surrounds.
- There is evolving policy support for the link between urban design and built form responses to flooding throughout the planning scheme.
- The Good Design Guide is a critical part of the amendment and is essential to realising good urban design and equitable access outcomes, when considering built form responses to flooding.
- The Practitioner's Guide clearly states that only incorporated documents should be referred to as decision guidelines.
- If the document is listed as an incorporated document, reference within the document to its use as a background document would need to be changed.
- It would be a poor and regressive planning outcome to dismiss the important link between built form responses to flooding and good urban design and equitable access considerations from the amendment, by removing those provisions from the proposed schedules.
- There is an inconsistency in the geographic area to which the Good Design Guide is proposed to apply and the title of the document. The title of the document and its introductory paragraphs should be modified to remove this inconsistency.
- Clarification should be sought from Melbourne Water and the City of Melbourne about the need for both the SBO2 and the SBO3, given the similarity between the schedules.
- Confirmation should be sought from Melbourne Water and the City of Melbourne about the intent of modifying the wording of the objective in LSI03, in relation to minimising / protecting life and property etc, varying from the purpose statement of the LSI0.
- The requirement for a *Flood Risk and Design Statement* to be lodged with a planning permit application is particularly relevant, given the ambition of the amendment to require consideration to be given to good urban design responses and equitable access.
- It is appropriate to require all development to appropriately respond to known flood risks and is not appropriate to provide transitional provisions as part of the amendment.
- It is not appropriate to include exemptions from building height requirements within the schedules proposed in the amendment.
- Any additional exemptions from the need for a permit in LSI03, should be determined by Melbourne Water.
- In the Arden Precinct, for which a precinct-based mitigation strategy is required, it remains appropriate to include the land in an LSI0(3) and to potentially require a site-by-site response to flooding, until such time as a precinct-wide strategy has been confirmed and is certain to be implemented.

3. The amendment

12. As outlined in the explanatory report for this amendment:

The Amendment updates the LSI0 and SBO extents in certain catchments in the Melbourne Planning Scheme to reflect updated flood modelling to the Australian Rainfall and Runoff (ARR) 1987 standards with the inclusion of criteria defined in the ARR 2019 standard to model for the effects of climate change. The modelling was prepared on behalf of Melbourne City Council and Melbourne Water.

The Amendment applies to land identified as being subject to inundation from riverine flooding (Land Subject to Inundation Overlay) (LSIO) in the Moonee Ponds Creek and Lower Yarra River waterways, and drainage flooding (Special Building Overlay) (SBO) in the Arden, Macaulay and Moonee Ponds Creek, Elizabeth Street, Fishermans Bend, Hobsons Road and Southbank catchments.

The mapping extent of the existing LSI01 (generally along the Maribyrnong River, Childers Street and Dynon Road) and LSI02 (Flemington Racecourse) are not proposed to be amended as the modelling for these catchments has not yet been updated. The format of the existing LSI01 and LSI02 schedules are proposed to be amended to comply with the Ministerial Direction Form and Content of Planning Schemes which is correctional in nature and not transformative.

The mapping extent of the existing SBO in the planning scheme (outside the catchments included in this Amendment) is not proposed to be amended as the modelling for these catchments has not been updated. The existing SBO maps require deletion and have been renamed SBO1 to comply with new naming convention of the Schedule which is a correctional change.

The Amendment proposes to change the following in the ordinance:

- *Amends Schedule 1 (Maribyrnong River Environs) and Schedule 2 (Flemington Racecourse) of Clause 44.04 to update the format to comply with the requirements set out in Ministerial Direction Form and Content of Planning Schemes which is an administrative change. The mapping of the existing LSI01 in the planning scheme (generally along the Maribyrnong River, Childers Street and Dynon Road) and LSI02 (Flemington Racecourse) is unchanged.*
- *Introduces a new Schedule 3 'Moonee Ponds Creek and Lower Yarra River Waterways' to Clause 44.04 which includes land subject to inundation objectives to be achieved, a statement of risk, permit requirements, application requirements and decision guidelines.*
- *Introduces a new Schedule 1 'Melbourne Water Main Drains' to Clause 44.05 to update the format to comply with the requirements set out in Ministerial Direction Form and Content of Planning Schemes which is an administrative change. The mapping extent of the existing SBO in the planning scheme (outside the catchments included in this Amendment) is unchanged. The existing SBO maps require deletion and identical maps have been prepared which are named SBO1 to comply with the new naming convention of the Schedule which is a form and content change.*
- *Introduces a new Schedule 2 'Melbourne Water Main Drains - Elizabeth Street, Arden, Macaulay and Moonee Ponds Creek, Fishermans Bend and Southbank catchments' to Clause 44.05 which includes flood management objectives to be*

achieved, statement of risk, permit requirements, application requirements and decision guidelines.

- *Introduces a new Schedule 3 'Council Drains - Elizabeth Street, Arden, Macaulay and Moonee Ponds Creek, Hobsons Road, Fishermans Bend and Southbank catchments' to Clause 44.05 which includes flood management objectives to be achieved, statement of risk, permit requirements, application requirements and decision guidelines.*
- *Amends the Schedule to Clause 72.03 (What does this planning scheme consist of?) to update the list of maps that form part of the planning scheme.*
- *Amends the Schedule to Clause 72.08 (Schedule to Background Documents) to introduce new background documents.*

13. The following diagrams show the extent of existing and proposed inundation overlays and the amount by which the proposed amendment will increase the coverage of existing flood overlays.

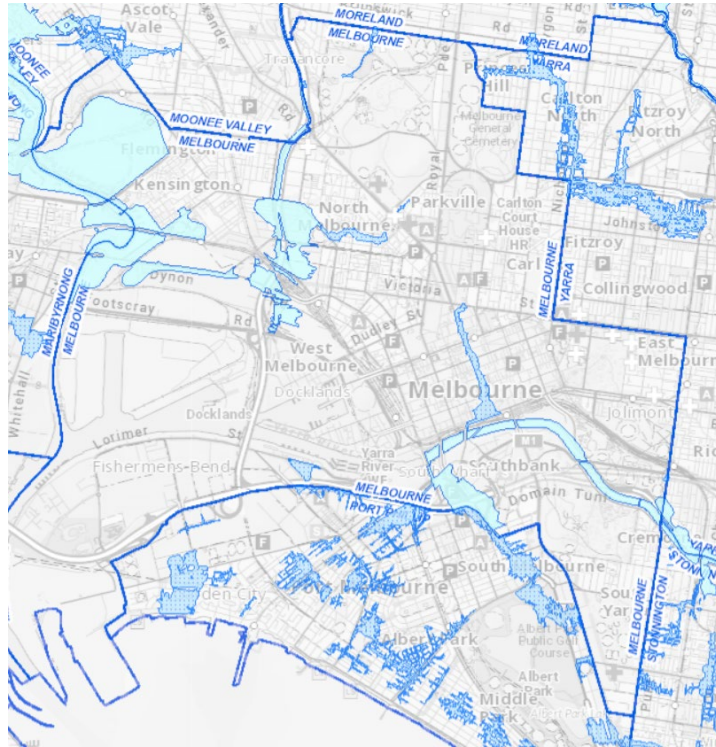


Figure 2 – Existing extent of overlays

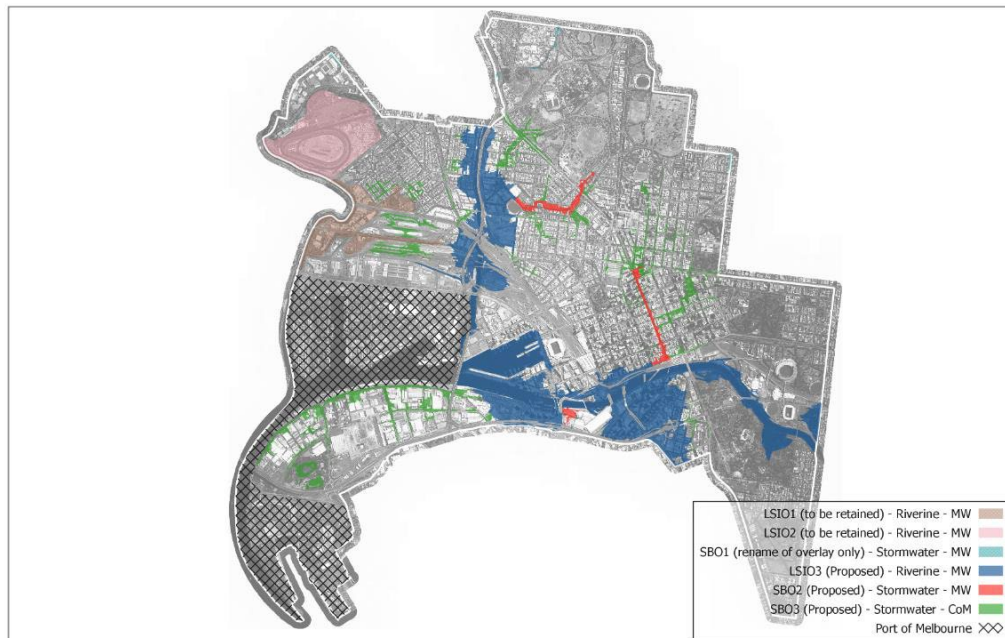


Figure 1 – Proposed extent of overlays

4. The appropriateness of considering design outcomes when assessing planning permit applications triggered by a LSIO or a SBO

4.1. My instructions

14. My instructions include commenting on the appropriateness of considering urban design outcomes when assessing planning permit applications triggered by a LSIO or a SBO.

15. I note the following submissions that have raised issues relevant to this question:

- Submission 29, in relation to 24-78 Laurens Street, North Melbourne. Raised the issue that the consideration of urban design considerations for a permit application triggered by an LSIO was beyond scope:

Refers to matters 'outside the purpose or scope of the LSIO', which should not be included in the LSIO3.

Suggested deletion of purpose relating to safe access and egress, good urban design and equitable access.

Suggested deletion of decision guidelines relating to urban design and equitable access, physical and visual connection of ground floor design, and activation of street edge and frontage.

Referred to Practice Note 12 and Rule 5 of the 'Rules for writing a planning scheme'.

Stated that when the LSIO3 is considered, regard must be had to existing site conditions and how they can respond to built form requirements

- Submission 13 requested the deletion of the first three dot points from the decision guidelines of the schedule, or alternatively that the documents be made incorporated documents.

16. Council's response to these submissions did not support the view that reference to urban design considerations were beyond scope. In relation to Submission 13, Council saw merit in the suggestion that the guideline documents be incorporated into the scheme, and recommended that such an approach be put to the Panel for consideration:

In relation to the submitter's request to delete the first two decision guidelines, the Victorian Government's guide for the preparation of planning schemes does not generally support, but does not prohibit, the referencing approach taken in the proposed schedules. We note the submitter's alternative suggestion to retain the first two decision guidelines and consider making the referenced documents Incorporated Documents, instead of Background Documents, and this is a relevant matter to be put to the Panel for consideration.¹

¹ Report of the Future Melbourne Committee, 2 August 2022, page 22

17. I am also aware that following the exhibition of the amendment Melbourne Water formed the view that the urban design principles in the objectives to the schedules to LSI03, SBO2 and SBO3, and reference to the Good Design Guide in the decision guidelines, should be removed from the amendment.
18. Council's response to Melbourne Water's approach was that the guidelines be given statutory weight by making them an incorporated document:

Following further review since exhibition of the Amendment, Melbourne Water suggests amending the Schedules to the flood controls to remove reference to urban design principles in the Objectives and in having the Good Design Guide as a Decision Guidelines in the LSI03 and SBO2.

Whilst Melbourne Water note that the document provides urban design guidance to applicants when designing a building in the Arden Macaulay and Fishermans Bend Precincts, urban design principles are not related to the primary purpose of the parent control (Special Building Overlay – Clause 44.05 and Land Subject to Inundation Overlay- Clause 44.04). Management agrees that the status of the Guide within the scheme should be clarified. However, this should not be done by removing reference to urban design principles in the Objectives and removing the Guide from the Decision Guidelines, but rather by considering making the Guide an Incorporated Document.²

4.2. How the Good Design Guide document is referenced in the exhibited amendment

19. The amendment as exhibited, proposes to reference the Good Design Guide in the planning scheme in the following way:
 - By inserting the document into *Clause 1.0 Background Documents* of the schedule to Clause 72.08 of the planning scheme.
 - By inserting a decision guideline into LSI03, SBO2 and SBO3 that states that the guide must be considered, as appropriate, by the responsible authority:

Good Design Guide for Buildings in Flood Affected Areas in Fishermans Bend, Arden and Macaulay (City of Melbourne, Melbourne Water and City of Port Phillip, 2021)
 - The State guidelines for flood affected areas are also proposed to be included as a guidelines in those schedules:

Guidelines for Development in Flood Affected Areas (the Department of Environment, Land, Water and Planning, 2019).
20. The wording of the decision guidelines as exhibited, gives greater weight to the document(s) in the assessment of planning permit applications, than would be the case if the document(s) were merely listed in Clause 72.08 as background documents.

² Report of the Future Melbourne Committee, 2 August 2022, page 29

4.3. The need to consider urban design and equitable access matters

21. In my opinion, it is critical that the urban design and equitable access implications of built form outcomes that respond to flooding, are taken into consideration in planning permit applications for buildings and works in flood prone areas within the central parts of the City of Melbourne. The reason for this is due to the potential adverse impacts that a response that involves raising the ground floor level of a building, can have on achieving good urban design and equitable access outcomes. The issue is particularly relevant in active, mixed use, central city locations, in which planning policy seeks to ensure good urban design outcomes are achieved to activate street frontages at ground level, and which place emphasis on the design of buildings and streets, particularly at the interface between the public and the private realms.
22. There is a strong and expanding policy base within the Melbourne Planning Scheme regarding good urban design and the link between urban design and built form responses to flooding.
23. Traditionally, the most common response to flooding has been to increase the floor level of a building to a height above a designated flood level. This is a crude response, but is nevertheless a built form response that has urban design implications.
24. I consider the introduction of more detailed urban design and equitable access considerations, to be a logical and an appropriate evolution, and an improvement in the way in which flood provisions are considered in the City of Melbourne. The need for more detailed consideration of built form and equitable access responses to flooding becomes more important as climate change results in increased risk due to sea level rise and more extreme rain and storm events. These events increase the possibility of poor urban design and accessibility outcomes in flood affected areas.

4.4. Is urban design out of scope?

25. Reference was made in submissions to Rule 5 of the *Practitioner's Guide to Victorian Planning Schemes*. That rule states:

RULE 5: A provision must be consistent with the operational provisions of the scheme, any parent provision and any relevant Ministerial Direction.³

26. In explaining that rule the Guide states that:

A provision must ... Not include a function that is not enabled by the relevant state standard provision.⁴

27. It goes on to explain and provide examples as to what that means:

Local provisions derive their power and scope from parent state standard provisions. A state provision may limit the functions a local provision can perform. To maintain the benefits of statewide consistency and ensure that local provisions are legally effective,

³ A Practitioner's Guide to Victorian Planning Schemes, page 26

⁴ Ibid., page 26

they must be drafted so that their scope and functions do not exceed those of their parent provision.

For example, a schedule to an overlay should not include a requirement to give notice to third parties where the parent provision excludes third party notice and review. A provision that exceeds its lawful scope creates uncertainty for the decision maker and stakeholders in planning processes and will result in unnecessary cost and delay.⁵

28. I do not consider that the parent provisions of the LSI0 and SBO specifically “limit” the overlays in relation to the consideration of urban design considerations. In the example provided, it explained that it would be beyond scope for a local provision to require third party notice, where the state provision specifically excluded third party review. The parent provisions of the LSI0 and SBO, do not specifically exclude consideration of urban design matters.
29. A key purpose of the proposed amendment as exhibited, is to align the planning permit triggers for buildings and works contained in these two overlays, with urban design and equitable access considerations.
30. Neither the purpose statements, the objectives and statements of risk, or the decision guidelines of the parent provisions of the LSI0 or the SBO, specifically refer to urban design and equitable access considerations. Neither do they exclude the potential for such matters to be considered as part of a planning permit application, especially where they are confined to built form responses to flooding.
31. Both overlays provide the opportunity for specific objectives and statements of risks, application requirements and decision guidelines, to be included within schedules.
32. The decision guidelines for both overlays contain a guideline that allows other decisions guidelines to be listed in a schedule:
Any other matters specified in a schedule to this overlay.
33. The amendment as exhibited, proposes to include specific objectives and decision guidelines into the LSI03, SBO2 and SBO3, to make it clear that urban design and equitable access considerations are relevant when considering planning permit applications triggered by the schedules.
34. I do not consider this is beyond the scope of the parent provisions of the overlays, provided the urban design and equitable access assessment is restricted to urban design and access matters that are directly related to built form responses to flooding. This largely relates to issues at basement level and at the ground floor level of a building, at the interface to the street. It would be beyond scope to consider urban design matters relevant to other aspects of a building that are unrelated to flooding, such as urban design issues relevant to the full height of a building. Such matters are appropriately considered under other permit triggers in the planning scheme, contained in either zone provisions or the provisions of DDOs etc.

⁵ A Practitioner’s Guide to Victorian Planning Schemes, page 26

4.5. Policy context

35. There is strong policy support in the planning scheme for design excellence and good urban design generally within the City of Melbourne, but particularly within the central city and its surrounds.

36. *Clause 15 Built Environment and Heritage* provide the basis for good urban design in all aspects of planning:

Planning is to recognise the role of urban design, building design, heritage and energy and resource efficiency in delivering liveable and sustainable cities, towns and neighbourhoods.

Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.

Planning should promote excellence in the built environment ...

Planning should facilitate development that ... is adapted and resilient to climate related hazards.

37. There is evolving policy support for the link between urban design and built form responses to flooding throughout the planning scheme. Policies have recently been inserted into the planning scheme for planned urban renewal areas such as Fishermans Bend and Arden, that establish a clear link between responding to flood risk and the need for good urban design outcomes.

38. *Clause 11.03-6L-06* includes objectives and strategies about flooding for Fishermans Bend. Policy seeks to avoid built form responses to flooding that comprising urban form at ground level, that raise internal ground floor levels except as a last resort, or if floor levels have to be raised that a strong physical and visual connection to the street is maintained:

To build resilience against the impacts of sea level rise and flooding from storm events without compromising the urban form at the ground level.

Raise internal ground floor level above street level as a last resort, except where the implementation of other measures coupled with an evidence based approach to risk management reasonably necessitates raising internal floor levels above street level. Where internal floor levels are raised, maintain a strong physical and visual connection between the street and internal floor levels through building design.

39. The DDOs that have been applied to facilitate urban renewal within the Arden Precinct include similar provisions, which link flood mitigation with urban design considerations. For example, DDO80, which applies to the Arden Precinct – Arden Central Innovation Precinct, contains the following guidance:

Arden Precinct - Arden Central Innovation

2.9 Public interface and design detail

Built form details

Design the street interface where finished floor levels are raised in response to flooding, including direct connections at grade to usable space within the ground level with level transitions contained within the building envelope.⁶

40. Under the heading *Built Form Requirements*, include the following requirement in relation to Active Street Frontages:

In flood prone areas, transitions in floor levels should not rely on external stairs, ramps or platform lifts which disconnect interior spaces from the public realm unless otherwise agreed by the relevant floodplain management authority.⁷

41. DD01 sets out urban design objectives for the Central City and Southbank areas. The objectives emphasise: the importance of good design; development integrating with streets and laneways; promoting legible, walkable and attractive pedestrian environments; ensuring that the internal layout of buildings has a strong relationship to the public realm; and ensuring that development provides a visually interesting human scale edge to the public realm:

To ensure that all development achieves high quality urban design, architecture and landscape architecture.

To ensure that development integrates with, and makes a positive contribution to, its context, including the hierarchy of main streets, streets and laneways.

To ensure that development promotes a legible, walkable and attractive pedestrian environment.

To ensure that the internal layout including the layout of uses within a building has a strong relationship to the public realm.

To ensure that development provides a visually interesting, human scaled and safe edge to the public realm.⁸

⁶ Melbourne Planning Scheme, DDO Schedule 80, Arden Precinct, Clause 2.9 Public Interface and design detail

⁷ Ibid

⁸ Melbourne Planning Scheme, DDO Schedule 1, Urban Design in Central Melbourne, Design objectives.

42. The schedule to DD01 includes specific design requirements as to how buildings in flood prone areas (and on sloping sites) should be designed to achieve these objectives:

2.8 Public Interfaces

Design requirements

In flood prone areas or on sloping sites, a direct connection should be established at grade to usable space within ground level tenancies, with level transitions contained within the building envelope.

In flood prone areas, transitions in floor levels should not rely on external stairs, ramps or platform lifts which disconnect interior spaces from the public realm.

43. The importance of active frontages to streets in those parts of the municipality outside the Capital City Zone, is identified in local planning policy (Clause 15.01-1L-05):

To ensure that building design at the ground floor frontages creates and improves pedestrian interest and engagement.

44. Further policies contained within Clause 15.01-1L-05 relate to *Street level frontage activation*:

Design street frontages to directly engage with the street and be visually evident, when located in a commercial or mixed use areas, or where the immediate potential for active use is limited, make provision for the ultimate conversion of ground floor frontages to active uses.

4.6. Background or incorporated documents

45. The Practitioners Guide to the VPPs identifies two ways in which external documents should be referenced in planning schemes:

- As background documents – Documents that provide information that helps understand why a particular policy or provision has been included in the planning scheme. Background documents were previously referred to as ‘reference documents’.
- As incorporated documents – Documents that need to be read in conjunction with the planning scheme for the effect of the scheme to be understood. An incorporated document carries the same weight as the other parts of the planning scheme. An incorporated document can only be changed by a planning scheme amendment.

46. The amendment as exhibited, proposes to include both guideline documents as background documents, not as incorporated documents. The documents are also proposed to be specifically referred to in the decision guidelines of LSI03, SBO2 and SBO3. This gives them greater weight compared to what I would normally consider would be given to background documents, as it specifically requires the documents to be considered in making a decision on a planning permit application.

47. I note that the Practitioner’s Guide for planning schemes in Victoria, specifically states that decision guidelines may refer to a document, but only if the document is incorporated in the scheme. It states that decision guidelines should not refer to a background document:

Decision guidelines should relate to the schedule objectives that they serve and any statement of significance, if one is present. They may refer to a document but only if the

*document is incorporated in the scheme. A decision guideline should not refer to a background document.*⁹

48. Based on the above, both guideline documents should be incorporated into the planning scheme, rather than be referred to as background documents, if they are to be listed as decision guidelines.
49. Other options to include the contents of the Good Design Guide into the scheme, other than by reference to them as background documents or incorporated documents, would be to translate their contents into policies or other controls contained in the planning scheme. This is the approach that was adopted when the *Central Melbourne Urban Design Guide*, which was generally translated into DD01 of the planning scheme.
50. I favour incorporating the document into the planning scheme rather than translating it into a provision in the scheme. This would retain the integrity of the document as a high quality visual guide, that illustrates the design principles and design considerations it contains.
51. Comments made throughout the Practitioner's Guide that inform when and how external documents should be referred to in the VPPs include the following:
 - Where possible avoid incorporating documents.
 - It is preferable to extract specific planning requirements from a document and state them directly in the scheme rather than to incorporate documents.
 - A document should only be incorporated when there is no suitable alternative in the scheme to achieve the required outcome.
 - Only incorporate a document if it is essential to the administration of the scheme.
 - A background document explains why a particular policy or provision is in the planning scheme.
 - If a document gives useful information that will help a user understand the planning scheme, it may be suitable for mention as background document.
 - A background document must relate directly to a specific policy or provision. A document that includes a lot of information that is not directly relevant to the specific provision of the scheme will not generally be suitable for mention as a background document.
 - Do not make a document a background document if the substantive elements of the document have been included in the scheme and require no further explanation.
 - Where a background document has directly informed the creation of a provision, then it may be referenced directly by that provision as well as being listed in the Clause 72.08 schedule.
 - Where a background document has informed numerous provisions, such as a regional growth plan or a housing strategy, then the document only needs to be listed in the Clause 72.08 schedule rather than being repetitively referenced throughout a series of provisions.
 - If a document has already been referenced by the VPPs, it does not have to be referenced again at the local level in a policy or a schedule.¹⁰

⁹ Practitioner's Guide to Victoria's Planning Schemes, page 114

¹⁰ A Practitioner's Guide to Victorian Planning Schemes, Chapters 6.6 and 6.7, pages 119 to 122

52. Generally, I consider that the incorporation of the Good Design Guide would be consistent with the above guidance.

4.7. Conclusion

53. In my opinion there is significant planning merit and planning policy support, for taking into consideration urban design and equitable access matters when assessing planning permit applications triggered by an LSI0 or SBO.
54. I do not consider that having regard to urban design considerations related to built form responses to flooding, is out of scope of the intent of those two overlays.
55. I consider that the Good Design Guide is a critical part of the amendment and is essential to realising good urban design and equitable access outcomes, when considering built form responses to flooding. It needs to be and should be included in the scheme in an appropriate manner.
56. My initial impression upon my first reading of the Good Design Guide, was that it would be appropriate to include as a background document in the planning scheme. Many guideline documents are referred to as background documents, rather than being incorporated documents. For example:
- *Maribyrnong River Valley Design Guidelines*, Clause 11.02-1S.
 - *Planning for Sea Level Rise Guidelines, Port Phillip and Westernport Region*, (Melbourne Water, 2017) Clause 13.01-2S.
 - *Urban Design Guidelines for Victoria*, Clause 15.01-1S.
 - *Apartment Design Guidelines for Victoria*, Clause 15.01-2s.
57. Initially, I was comfortable with the way in which the Good Design Guide had been referenced in the amendment as exhibited. However, I note that the Practitioner's Guide clearly states that only incorporated documents should be referred to as decision guidelines. As a consequence, to be consistent with the guide, I consider that the guidelines should be an incorporated document in the scheme.
58. If the Panel formed the view that urban design matters were "out of scope" and not appropriate to be included in the schedules to the overlays, I consider an alternative approach would be justified to ensure that the intent of the amendment is not lost. This might involve including equivalent provisions in other policies or controls throughout the planning scheme, which are deemed to provide an appropriate tool to enable urban design and equitable access considerations to be given due regard. This would involve a complex review of existing policies, zone provisions, DDOs and the like. I consider this would be a cumbersome and unnecessarily complex task.
59. I consider that it would be a poor and regressive planning outcome to dismiss the important link between built form responses to flooding and good urban design and equitable access considerations from the amendment.

5. The role and contents of the Good Design Guide for Flood Affected Areas in Fishermans Bend, Arden and Macaulay

5.1. Area to which the Guide applies

61. There is an inconsistency in the geographic area to which the Guide is proposed to apply and the title of the document.
62. The Guide is titled as relating to *Fishermans Bend, Arden and Macaulay*. It includes a map showing the areas to which it relates (Figure 3).
63. However the Guide is listed as a decision guideline in:
 - Schedule 3 to the LSIO – Moonee Ponds Creek and Lower Yarra River Waterways
 - Schedule 2 to the SBO – Melbourne Water Main Drains – Elizabeth Street, Arden, Macaulay and Moonee Ponds Creek, Hobsons Bay Road, Fishermans Bend and Southbank Catchments.
 - Schedule 3 to the SBO – Council Drains – Elizabeth Street, Arden, Macaulay and Moonee Ponds Creek, Fishermans Bend and Southbank Catchments.

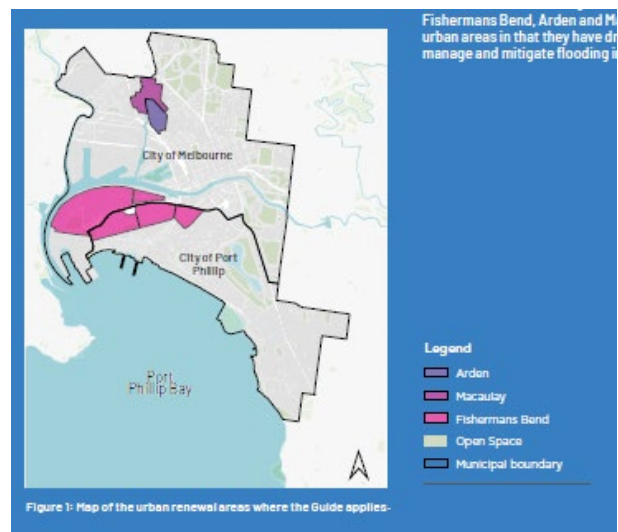


Figure 3 - Areas to which Good Design Guide applies (page 5 of Guide)

64. Figure 2, showed the area covered by these schedules. It can be seen that the three schedules cover land well beyond the Fishermans Bend, Arden and Macaulay areas.
65. I assume the Good Design Guide is intended to apply to all of the areas covered by the schedules. I consider that it is appropriate for it to do so. If that is the case, the title of the document and its introductory paragraphs should be modified to avoid this confusion.

5.2. The role of the decision guidelines

66. Submissions were made questioning the role of the decision guidelines and how they would be applied.

67. The way in which decision guidelines are to be applied is stated in relevant clauses to the schedules:

The following decision guidelines apply to an application for a permit under Clause 44.04, in addition to those specified in Clause 44.04 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority: ...

68. As explained in *A Practitioner's Guide to Victoria's Planning Schemes*, decision guidelines are not policies, policy guidelines or controls. They are statements that require the responsible authority to give consideration to a particular issue or fact, in addition to any relevant decision guidelines stated elsewhere in the planning scheme. They are to be expressed in a neutral way. They set a 'test' for the decision and do not present an answer or a solution to be achieved:

Decision guidelines and application requirements are not policy guidelines. Practitioner's guide.

Decision guidelines should relate to the schedule objectives that they serve and any statement of significance, if one is present. They may refer to a document but only if the document is incorporated in the scheme. A decision guideline should not refer to a background document.

A decision guideline should not include an informal referral requirement.¹¹

69. The Guide itself explains its purpose and how it is to be used:

The purpose of the guide is to support the building design process to respond to the challenges of managing flood risk and create engaging human-centred spaces. The guide seeks to support the delivery of the established visions for these state significant urban renewal areas and provide a 'one government approach'.

The role of the Guide is to provide guidance on how development can achieve flood responsive design, good design and equitable access and universal design.

Part 2: Design Guidelines, identifies design principles that should be used to assess whether the proposed design achieves good design and equitable access in flood affected areas, while also minimising hazards and property damage from flooding.¹²

70. The decision guidelines contained in the schedules do not require the Guide to be complied with. Rather they require the design principles and the design considerations contained in the document, to be 'considered' in determining whether a proposed design response is appropriate.

71. Concern was expressed in submissions, that Council planning officers would apply the guidelines as requirements that must be complied within all cases. It is clear that decision guidelines are not intended to be applied in this way. If they were, an applicant would have recourse to VCAT.

¹¹ A Practitioner's Guide to Victoria's Planning Schemes, pages 84 and 114

¹² Good Design Guide for Buildings in Flood Affected Areas in Fishermans Bend, Arden and Macauley, pages 7 and 8

5.3. How the Guide will be applied

72. The agencies involved in assessing planning permit applications triggered by the overlays are:
- Melbourne water, as a determining referral authority for applications in both the LSIO and the SBO (Clause 66.03).
 - The responsible authority, which may be either the Melbourne City Council or the Minister for Planning, depending on the scale of a development.
73. Melbourne Water is the floodplain management authority. It is not a planning or an urban design authority. Melbourne Water will be responsible for determining flood levels and nominal flood protection levels for development sites. It will also ultimately need to be satisfied that the design response advanced in an application meets its requirements for safety and protection of buildings etc, as the floodplain management authority.
74. The responsible authority will be responsible for assessing the urban design implications of the built form response to flooding proposed by an applicant.
75. Ideally, an applicant should hold pre-application discussions with both Melbourne Water and the responsible authority. The flood risk and flood levels would be determined by Melbourne Water. Discussions with the responsible authority should resolve an appropriate urban design and equitable access outcome. Plans submitted with a permit application would ideally show a design that responds to both the flood risks identified by Melbourne Water and urban design and equitable considerations discussed with the responsible authority. If ongoing discussions were required with the responsible authority to agree on an appropriate urban design response, confirmation of the final design from Melbourne Water would be required before giving its consent as a determining referral authority.
76. I consider that the guidelines are sufficiently flexible that other innovative or creative means of achieving good urban design outcomes not identified in the document will be able to be considered.

5.4. Contents

77. The Guide is divided into two parts:
- Part 1 Setting the scene for design in flood affected areas.
 - Part 2: Design Guidelines.
78. Part 1 provides background and a context to the guidelines. The guidelines themselves are presented in Part 2. The guidelines contained in Part 2 are generally expressed as design principles and design consideration. Part 2 will be most relevant to consider in assessing a planning permit application.
79. Key headings contained in Part 2 include:
- Section 1 - Design principles
 - Section 2 - Urban Structure
 - Section 3 - Site planning
 - Section 4 - Public interface
 - Section 5 - Design details and management

80. The principles contained in Section 1 include a number of overarching design principles and more detail design considerations.
81. The following four sections contain an introductory discussion about the issue, followed by a discussion of more specific design considerations that should be taken into account in relation to each heading. Each section is illustrated with photographs and sketches.
82. The document contains a number of definitions. Generally, the definitions aid in understanding the meaning of terms used throughout the document and in the proposed schedules to the overlays.
83. I do not comment on the design merits of the document. I understand that Council is calling urban design evidence in relation to the content of the guide.
84. My comments are more concerned with how the document will be interpreted and used. I consider that the document is clear in its intent and is well illustrated in terms of the principles and considerations it presents.
85. I note that the Guide itself, states that it is designed to be listed as a background document in planning schemes:
- The guide may be listed as a background document in the Melbourne Planning Scheme and City of Port Phillip Planning Scheme and provides information to assist in designing private development in the flood affected areas of Fishermans Bend, Arden and Macaulay. It is a shared resource for councils and the private development sector to be used to explore design solutions at the start of the design process.*¹³
86. If the document was to be listed as an incorporated document, reference to its use as a background document would need to be changed.

¹³ Good Design Guide for Buildings in Flood Affected Areas in Fishermans Bend, Arden and Macaulay, page 7

6. The drafting of the proposed planning controls (namely the LSIOs and SBOs)

6.1. The purpose and structure of the two overlays

88. The amendment modifies and introduces two types of overlays that manage flooding and drainage in the City of Melbourne:

- The Land Subject to Inundation Overlay - *This overlay applies to land in either rural or urban areas that is subject to inundation but is not part of the primary floodway. The identification of these areas should be established in consultation with the relevant floodplain management authority. Clause 44.04 and schedules*¹⁴
- The Special Building Overlay - *This overlay applies to urban land that is subject to overland flow resulting from stormwater flooding where the capacity of the drainage system is exceeded during heavy rainfall. This land is not part of a primary floodway from a river or stream. (Clause 44.05 and schedules)*¹⁵

89. The parent provisions of the overlays generally contain:

- An overarching purpose statement.
- A statement of objectives and risks.
- Triggers for planning permits for buildings and works (with some general exemptions) and for subdivision.
- The potential for local flood plain development plans.
- Exemptions from notice and review.
- Referral of applications.
- Decision guidelines.

90. The parent provisions provide the opportunity for schedules to the overlays to be introduced to include area based provisions in relation to matters such as:

- Objectives and a statement of risks for particular areas.
- Permit requirements – essentially exemptions from specified types of buildings and works.
- Application requirements.
- Decision guidelines.

¹⁴ Using Victoria's Planning System, page 20

¹⁵ Ibid., page 20

91. There are presently two schedules to the LSIO in the Melbourne Planning Scheme. These include:

- LSIO1 – Which applies to all land subject to flooding in the municipality, other than Flemington Racecourse. The schedule does not contain any content, meaning the standard provisions of the parent control apply.
- LSIO2 – Which applies to the Special Use 1 Zone at Flemington Racecourse. The schedule contains a considerable number of permit exemptions, which are appropriate in the circumstances of the racecourse, given its zoning and existence of flood levies.

92. There is presently only one schedule to the SBO applying in the City of Melbourne. The schedule does not contain any content, meaning that the parent provisions of the SBO apply.

93. The framework of LSIO and SBO schedules that will result as a consequence of the amendment are summarised in the following table.

Summary of Overlay Schedules						
Provision	LSIO1	LSIO2	LSIO3	SB01	SB02	SB03
Location / area	Maribyrnong River Environs	Flemington Racecourse	Moonee Ponds Creek and Lower Yarra River Waterways	Melbourne Water Main Drains	Melbourne Water Main Drains – Elizabeth Street, Arden Macaulay and Moonee Ponds Creek, Fishermans Bend and South Bank Catchments	Council Drains – Elizabeth Street, Arden, Macaulay and Moonee Ponds Creek, Hobsons Road, Fishermans Bend and Southbank Catchments
Schedule includes content	No	Yes	Yes	No	Yes	Yes
Permit requirements	No	Yes	Yes	No	Yes	Yes
Application requirements	No	Yes	Yes	No	Yes	Yes
Design Guidelines	No	No	Yes	No	Yes	Yes
Good Design Guidelines listed as Decision Guideline	No	No	Yes	No	Yes	Yes

6.2. The difference between the overlays

94. The following are the main differences between an LSI0 and an SBO:

- The purpose statements of the two overlays identify that the LSI0 relates to flood prone land in riverine or coastal areas, whereas the SBO relates to land in urban areas that is liable to inundation by overland flows from the existing drainage system.
- The purpose statement of the LSI0 includes reference to minimising risk to life, health and safety etc, whereas the SBO does not.
- The permit requirements are generally the same in both overlays.
- The SBO contains a considerably greater range of permit exemptions than the LSI0. Exemptions in the LSI0 are limited to public works such as roadworks, paths, flood mitigation works, utilities undertaken by a public authority etc. Permit exemptions in the SBO apply to many forms of private development, particular ground level works, smaller extensions to existing buildings, extensions to the upper level of existing buildings, open sided buildings and the like.
- Application requirements – None within the LSI0. Some within the SBO.
- VicSmart – Is applicable in the SBO but not in the LSI0.

6.3. The need for multiple schedules

95. I pose the question regarding the need for multiple overlays in the planning scheme in the context of simplifying the amendment and minimising the number of overlays within the planning scheme.

LSI0

96. Three schedules are proposed for the LSI0:

- LSI01 – Applies to land in docks area along Kensington Road, Dynon Road and Footscray Road.
- LSI02 – Applies to Moonee Valley Racecourse.
- LSI03 – Applies to Land in the Arden and Macaulay Areas along the Moonee Valley Creek, Docklands, Fishermans Bend, Southbank and along the Yarra River.

97. The objectives of LSI03 specifically relate to revised flood modelling that includes increased rainfall intensity due to climate change. Therefore, it is not appropriate to apply that schedule to land covered by an existing LSI0 where the flood modelling has not been updated, such as the Dynon Road, Kensington Road and Footscray Road area, which area remains in Schedule 1.

98. The Moonee Valley Racecourse is to be retained in LSI02, as it is protected from flooding by levees and contains site specific exemptions from the need for a permit that are less restrictive than those proposed in LSI03.

99. I see no issue with the application of three separate schedules for the LSI0.

SBO

100. Three schedules are proposed for the SBO:

- SBO1 – Applies to a land along the Maribyrnong River, Childers Street and Dynon Road.
- SBO2 – Applies to Melbourne Water drains.
- SBO3 – Applies to Melbourne City Council drains.

101. As flood in the area covered by SBO1 has not be reviewed as part of the background to this amendment, it is not appropriate to apply either SBO2 or SBO3 to that area, as they include reference to updated modelling.

102. Schedules 2 and 3 contain the same provisions, other than for their titles:

- Schedule 2 relates to Melbourne Water Main Drains.
- Schedule 3 relates to Council drains and also includes the additional locality of “Hobsons Road” in its title.

103. The titles distinguish between drains managed by Melbourne Water and drains managed by Council. However, the planning provisions of the overlays do not make any practical distinction between the operation of the two schedules based on this difference.

104. I would have thought the difference between the two schedules would be based on which agency was the referral authority. However, this is not the case. The schedules do not include any referral requirements. The referral requirements are contained Clause 44.05-6 of the parent provisions of the SBO and apply in the same way to both schedules.

105. *Clause 66.03 Referral of Permit Applications Under Other State Standard Provisions*, identifies Melbourne Water as the only referral authority for the SBO. It does not make a distinction between drains managed by Melbourne Water and those managed by Council.

106. The parent provisions of the overlay provide the opportunity for a written agreement between the floodplain manager and the responsible authority, to adopted pre-determined requirements and conditions to avoid the need for the referral of an application:

*An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority, the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.*¹⁶

107. Melbourne Water is the relevant floodplain management authority. Either Melbourne City Council or the Minister for Planning will be the responsible authority. I am not aware of an existing written agreement between Melbourne Water and the responsible authority (either Melbourne City Council or the Minister).

¹⁶ Melbourne Planning Scheme, LSIO Clause 44.04-7 and SBO Clause 44.05-6

108. Having two schedules may aid internal administrative arrangements between Melbourne Water and the responsible authority, if such an agreement was reached. It is also likely to reflect current internal operating procedures between the two agencies and make it clear to the public which agency is responsible for which drains. Although this difference is not reflected in the operation of the overlay and the identification of the referral authority.
109. Having two or more schedules is not technically incorrect and will not lead to poor planning outcomes. However, the I consider the reasons for the two schedules could be further clarified by Council and Melbourne Water.

6.4. Wording of the schedules

110. The key issues relevant in terms of the wording of the schedules relate to:
- Objectives
 - Statement of risk
 - Permit requirements
 - Application requirements
 - Decision guidelines
111. The comments I make in relation to the wording of the schedules are only relevant to LSI03, SB02 and SB03.

Objectives

112. The proposed objectives for LSI03, SB02 and SB03 are the same. They generally add to the purpose statements contained within the parent provisions, without replicating them. They:
- Refer to the level of risk associated with the revised modelling that has been undertaken.
 - Include objectives regarding safe access and egress, good urban design and equitable access.
113. I note that all three schedules include an objective in relation to life and property etc:
- To protect life, property, public health, assets and the environment from flood hazard.¹⁷*
114. I note that the parent provisions of the LSI0 includes a purpose statement in relation to life and property etc that has a slightly different wording:
- To minimise the potential flood risk to life, health and safety associated with development.¹⁸*
115. The subtle difference exist in the meaning of protect life and property, and minimise the flood risk to life etc. I am not certain whether this difference is deliberate or incidental. If it is deliberate, then the objective should be retained in LSI03. If it is incidental, it could be deleted and the purpose statement

¹⁷ Proposed LSI03, SB02 and SB03, Flood management objectives to be achieved

¹⁸ Melbourne Planning Scheme, LSI0, Clause 44.04, Purpose

contained in the parent provision could be relied upon. I suggest the Panel seeks confirmation from Council and Melbourne Water about the intent of this change.

116. I note the parent provisions of the SBO do not include a purpose statement in relation to life and property etc. The amendment proposes to add such an objective to SBO2 and SBO3.

117. I note that Planning Policy Framework of the Melbourne Planning Scheme contains strategies in relation natural hazards and climate change that reference the risk to life and property etc.¹⁹ Those policies are relevant to land affected by an SBO. Regardless of the fact that the parent provisions of the SBO do not refer to risk to life and property etc, I consider it is appropriate to include such an objective in the schedules. I do not consider that such to be beyond the scope of the SBO.

Statement of risk

118. The statement of risk contained in each schedule is generally specific to the location to which each schedule is proposed to be applied. It includes:

- The catchment and location to which the schedule applies.
- The source of the risk i.e. riverine flooding associated with various rivers or creeks, or flooding due to poor drainage etc.
- The types of risks – to life, property infrastructure etc.
- The basis of the flood modelling that has been undertaken.

119. I have no issue with the wording of the statement of risk identified in the relevant schedules.

Permit requirements

120. The permit requirements section of the schedules is where permit exemptions are listed.

121. LSI03, SBO2 and SBO3 contain the same four exemptions, which apply in addition to the standard exemptions contained in the parent provisions of each overlay. As identified previously, the standard exemptions contained in the LSI0 are considerable fewer than those contained in the SBO.

122. I raise no issue in relation to the additional exemptions proposed.

Application requirements

123. The application requirements are the same for all three schedules. They include the requirement for the following information to be submitted with a planning permit application:

- Survey plans.
- Development plans showing ground and finished floor levels and the nominated flood protection level of all new structures.
- A written Flood Risk and Design Statement.

¹⁹ Melbourne Planning Scheme, Clause 13.01-1SNatural hazards and climate change

124. I consider that these requirements are appropriate additional requirements to those contained in the parent provisions of the SBO, noting that no application requirements are contained in the parent provisions of the LSIO.
125. I consider that the *Flood Risk and Design Statement* is particularly relevant, given the ambition of the amendment to require consideration to be given to good urban design responses and equitable access when accessing applications triggered by the overlays.
126. The fact that the introductory sentence to the application requirements includes the phrases “*to the satisfaction of the responsible authority*”, provides discretionary to vary stated requirements, where appropriate. I consider this to be appropriate.

Decision guidelines

127. In addition to matters regarding flood risk, the decision guidelines refer to urban design and equitable access considerations.
128. In addition to the guideline documents proposed to be listed, the decision guidelines also make reference to specific urban design considerations such as:
- Achieving good urban design and equitable access.
 - Maintaining good physical and visual connection between the street and internal ground floor.
 - Activating street edge and frontages.
 - Resilience of materials and finishes to flood damage.
129. Whilst there may be some overlap between the specific decision guidelines proposed to be listed in the schedules and the principles and guidelines contained in the Good Design Guide, I consider it is appropriate to retain the decision guidelines as exhibited. This is required to reinforce the intention of the amendment and of the new schedules, that urban design and equitable access matters are to be considered when an application is lodged in a flood overlay.
130. I consider it important that the decision guidelines reference urban design and equitable access considerations, given an aim of the amendment is to ensure these matters are considered as part of a permit application triggered by the overlays.

7. Submissions

131. I have been instructed to consider the following submissions made to the amendment: 9, 13, 14, 16, 20, 29, 30, 37 and 44, as applicable to my evidence as a planner.

132. Issues raised in submissions not addressed previously in my report are addressed in this section. Outstanding issues I address in this section include the following:

- Transitional provisions.
- Mandatory building height.
- LSI03 should include additional permit exemptions.
- Consistency with Amendment C407, which applies to the Arden Urban Renewal Precinct.
- Local floodplain development plans.

7.1. Transitional provisions

133. Transitional provisions exempt proposed or approved developments from the need to comply with proposed new planning controls, once they are approved as part of the planning scheme.

134. The amendment as exhibited, does not include transitional provisions.

135. A number of submissions have requested transitional provisions be included in the amendment for developments that are either at an advanced stage in the planning process (i.e. application lodged but no determination) or for which planning permits have been approved, but for which a permit may be sought to change or modify an approved development in the future.

136. The response of these submissions by the City of Melbourne was as follows:

If a property is affected by a proposed inundation overlay, landowners with existing planning approvals, or active planning or building applications, are advised to approach Melbourne Water or Council (depending on the overlay) to discuss implications of the Amendment for their development.²⁰

137. The general planning principle in terms of the impact of new planning controls on development proposals and approvals, is that the new provisions apply from the date they are approved, regardless of where an application is at in the planning approvals process. All applications that have not yet been determined, must comply with the new provisions. All future applications must comply with the current day approved planning scheme provisions.

138. Examples of existing transitional provisions throughout the VPPs include:

- Transitional provision in residential zones, for planning permit applications lodged before the introduction of the garden area requirement and the new standards for apartment developments.

²⁰ Future Melbourne Committee Agenda, 2 August 2022, page 8 and other pages throughout document

- Transitional provisions contained in DD010, which covers parts of Central Melbourne, upon the introduction of new built form control by Amendment C262 and Amendment C270.
139. Situations in which transitional provisions are commonly applied in the VPPs at present, generally relate to matters that have involved a change of planning policy or controls, frequently in relation to built form and often relating to design and or amenity considerations.
140. In my opinion, issues associated with flooding can be distinguished from issues for which transitional provisions are commonly applied, as the risks are more critical and are concerned with risks to life and health, and physical damage to buildings.
141. In my opinion, once a flood risk is known, there is an obligation on floodplain management authorities and planning authorities to:
- draw the risk to the attention of the public (via flooding overlays); and
 - make planning decisions that minimise or protect the public from the associated flood risk (via the assessment of planning permit applications).
142. I consider it is appropriate to require all new development that has not yet been approved or constructed, to appropriately respond to known flood risks.
143. Not providing transitional provisions may add to the cost of redesigning a development, may delay a development and could potentially change the yield and viability of development. These are short term costs that should be balanced against longer term savings and a reduction in the potential for risk to life and property, if a building is approved or constructed in an area known to be affected by flooding.
144. Accordingly, I do not consider that it is appropriate to provide transitional provisions as part of this amendment.

7.2. When height controls exist

145. A number of submissions have been made regarding the impact of the proposed amendment on the development potential of sites that are subject to building height controls, particularly mandatory height controls.
146. If the introduction of an LSI0 or a SBO requires a response that increases the height above ground of the ground floor area of a building, the consequence is that the building may not be able to accommodate the same number of storeys as it could have, prior to an overlay being implemented. This has the potential to impact on the gross floor area of a building and the development yield of a site.
147. Council's response to this issue was as follows:

The purpose of this Amendment is to update the LSI0 and SBO extents in certain catchments in the Melbourne Planning Scheme to reflect updated flood modelling and current and future flooding risk in these areas. Interactions with separate height controls

and other mandatory controls are not relevant considerations in the context of the introduction of updated flood controls²¹.

148. The basis of Council's response is that the amendment is not changing the planning principle inherent in the way the application of flood overlays to sites that presently have height controls. At present, exemptions to height controls due to flood overlays are contained in the other planning control that contains the height restriction.
149. Accordingly, if an existing provision of the planning scheme includes an exemption from a specified height due to the existence of a flood overlay, that exemption will continue to apply upon approval of this amendment.
150. I consider it is appropriate that exemptions from building height requirements be located in the specific clause that contains the building height requirement, rather be expressed as a generic exemption within a flood overlay.
151. An existing example of an exemption is in relation to residential zones, which contain the following clause:

Building height if land is subject to inundation

If the land is in a Special Building Overlay, Land Subject to Inundation Overlay or is land liable to inundation the maximum building height specified in the zone or schedule to the zone is the vertical distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point.²²

152. Where built height is mandatory and an exemption does not exist, this may affect the development potential of a site. Where discretionary building heights exist, flexibility exists to consider a building that may exceed a designated height, due to the existence of a flood overlay, as part of the assessment of an application.

7.3. LSI03 should include additional permit exemptions

153. Submission 29 suggested that LSI03 should include additional exemptions from permit requirements for minor buildings and works. The types of exemptions sought include:

- (a) A non-habitable building or an extension of a non-habitable building.*
- (b) An open style building with no walls.*
- (c) Upper storey extensions or alterations to existing buildings.*
- (d) North Melbourne Flour Mill related buildings including maintenance workshops and amenities for staff.*
- (e) Process equipment and plant.*
- (f) Footpaths and bicycle paths.*

²¹ Ibid, page 8 and other pages

²² VPPs clause contained in residential zones

(g) Car park.

154. The parent provisions of the LSIO and SBO both contain exemptions from the need for a planning permit. The exemptions contained in the LSIO are considerably more restrictive than those contained in the SBO.

155. I note that Schedule 2 to the LSIO, which relates to Flemington Racecourse, includes considerably more exemptions than proposed in LSIO3. I note Council commented that this was because the racecourse is protected by a levy, which reduces the flood risk and provides the opportunity for more exemptions:

In respect of planning permit exemptions, the Schedule for LSIO2 is a defined precinct, notably Flemington Racecourse (Special Use Zone Schedule 1). Flemington Racecourse is predominantly protected from flooding by a gabion levee wall around the Maribyrnong River. This protection allows for a greater number of planning permit exemptions for proposals associated with a reduced risk of property damage by flooding.²³

156. The submission is made in relation to a site on the east side of Laurens Street, North Melbourne, which includes existing heritage buildings and which is located on the outer edge of proposed LSIO3. In considering the merits of additional exemptions in the LSIO3, it is relevant that the overlay will apply across a wider area, including locations with a higher flood risk than the Laurens Street site. Accordingly, any additional exemptions proposed must be appropriate to apply across the full extent of the area covered by the schedule.

157. From a planning perspective, I would have no issue with additional exemptions being included, provided they were supported by the floodplain management authority.

158. Given that most buildings and works within affected areas will require a planning permit due to the zone requirements and requirements of DDOs and other overlays in which they are located, I do not consider that an additional permit trigger linked to an LSIO, is likely to unreasonably add to the burden of obtaining a planning permit for development on the land.

7.4. Consistency with Amendment C407

159. Submissions raised issues regarding consistency with Amendment C407. Amendment C407 implements the Arden Structure Plan into the planning scheme and has recently been approved. The Arden precinct is a major urban renewal precinct that is planned for very significant redevelopment.

160. The precinct is subject to significant flooding from the Moonee Ponds Creek. Specific policies regarding flood management for the Arden Precinct are contained in Clause 11.03-6L-01 of the planning scheme. The policies are grouped under the headings of Flood Mitigation Objectives, Strategies and Guidelines. Strategies recognise that precinct-wide mitigation infrastructure will be required in the area to enable it to develop. They also acknowledge that it will be necessary for development to respond to flooding ahead of the delivery of that infrastructure:

²³ Report to Future Melbourne Committee, 2 August 2022, Page 28

Ensure the redevelopment potential of the precinct through the delivery of, and development contributions towards, precinct-wide drainage and flood mitigation infrastructure to address flooding.

Ensure development responds to flooding ahead of the delivery of the precinct-wide flood management strategy and associated infrastructure being delivered.

161. Clause 11.03-6L-01 includes a policy document called the *Arden Precinct Flood Management Policy*, prepared by Melbourne Water. The policy identifies that a site-by-site approach to flood protection is not practicable in Arden and that a precinct-based mitigation strategy is needed:

*The nature of flood risk combined with the scale and nature of planned re-development means that a site-by-site approach to flood protection, such as raising floor levels, is not practicable in Arden. Precinct-scale flood mitigation infrastructure (**Infrastructure**) is needed to enable the planned re-development of Arden with an acceptable level of risk due to flooding.²⁴*

162. The policy identifies that precinct-wide flood mitigation works will need to be user funded. I am not aware whether the detailed design, costing, funding, timing and implementation of such a strategy has as yet been determined.
163. Application of a precinct-based approach to flooding, raises the question of the appropriateness of the applying an LSI0 to the Arden Precinct, which initiates a site-by site response and reference the Good Design Guide.
164. As a planner, I consider it is appropriate to include the land in an LSI0 and to potentially require a site-by-site response to flooding, until such time as a precinct wide flood mitigation strategy has been confirmed, funded and is certain to be implemented. At such time, I consider that it would be appropriate for the floodplain management authority to review the need to retain the overlay or to modify the provisions of the overlay, in response to the flood risk that would remain, if any, in response to the proposed precinct-wide strategy.
165. Proposed LSI03 which will apply in the Arden precinct, will trigger the need for a planning permit for most buildings and works. The schedule to the overlay includes an application requirement for a *Flood Risk and Design Statement* to be prepared and submitted with an application. Such a statement should logically include a discussion about any proposed or existing precinct-wide flood mitigation works, the timing and implementation of such works, and the resultant flood risk (if any) that would remain on a site once the strategy was implemented.
166. Sufficient flexibility exists in the application of the overlay to determine the need for site-by-site mitigation responses, as outlined in the Good Design Guide, with knowledge of and anticipation of potential precinct-wide responses.
167. At present there appears to be uncertainty about the degree to which development within the Arden area should include site-by-site mitigation responses, compared to relying on precinct-wide mitigation. This uncertainty is likely to be clarified over time as further work on implementing a precinct-wide

²⁴ Arden Precinct Flood Management Policy, Page 4

approaches progress. In the meantime, I consider it is appropriate to apply an LSIO to land affected by Amendment 407 and to reference the Good Design Guide in the decision guidelines.

7.5. Local Floodplain Development Plan

168. Submission 30 referred to the need for a local flood plain development plan to be prepared for areas within the City of Melbourne.

169. *PPN12 Applying the Flood Provisions in Planning Schemes*, outlines the function of a local flood plain development plan:

A local floodplain development plan enables the council and local floodplain management authority to include specific local requirements in the planning scheme. It has two purposes:

- to provide a set of requirements and guidelines for development in a particular area. It should address local circumstances and record local flooding information.*
- to simplify and streamline the consideration of planning permit applications and avoid the need to prepare a flood risk report.*

170. I understand that Melbourne Water does not generally prepare floodplain development plans to manage flooding within the Melbourne metropolitan area.

171. A key purpose of a flood plain development plan is to streamline the permit approvals process, by identifying situations in which a planning permit for development within flood affected areas may be either exempt from the need for referral, or may result in a permit being granted with standard pre-determined conditions. The preparation of a local floodplain development plan may also avoid the need for an applicant to prepare a flood risk report.²⁵

172. A key feature of this planning scheme amendment is the interaction between built form responses to flooding and good urban design outcomes. Given the complexity of the issue and the myriad of urban design responses available to respond to flooding issues in a positive manner, I consider that it is appropriate to trigger the need for a planning permit by an LSIO, to enable a detailed assessment to be undertaken of the urban design implications of the design response proposed. The amendment as exhibited, enable this to occur.

²⁵ PPN12 Applying the Flood Provisions in Planning Schemes, page 7

8. Conclusion

173. A summary of my findings in relation to this amendment are contained in Section 2 of this report. A summary of my recommendations are as follows:

- To be consistent with A Practitioner's Guide for Victorian Planning Schemes, if the Good Design Guide is to be referenced in the decision guidelines of the schedules, it should be an incorporated document.
- If the Good Design Guide is listed as an incorporated document, reference within the document to its use as a background document would need to be changed.
- There is an inconsistency in the geographic area to which the Good Design Guide is proposed to apply and the title of the document. The title of the document and its introductory paragraphs should be modified to remove this inconsistency.
- Clarification should be sought from Melbourne Water and the City of Melbourne about the need for both the SBO2 and the SBO3, given the similarity between the schedules.
- Confirmation should be sought from Melbourne Water and the City of Melbourne about the intent of modifying the wording of the objective in LSIO3, in relation to minimising / protecting life and property etc, varying from the purpose statement of the LSIO.



David Barnes

BTRP (Hons), MBA, FPIA

Appendix 1 - CV

David Barnes

Managing Director

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Summary of Experience

David has been a town planner since 1980. With an MBA to supplement his planning qualifications, David is both a strategic planning specialist and an experienced statutory planner. As a statutory planner, David has been involved in obtaining planning approvals for a wide range of projects including residential, retail, commercial, industrial, rural, tourism, entertainment, sports, recreation and community development projects. He has extensive experience representing clients at planning appeals and panel hearings as both an advocate and as an expert witness.

As a strategic planner, David's experience encompasses policy formulation and implementation; preparation of strategy plans, structure plans, urban design frameworks, development plans, planning schemes and amendments; community consultation; preparation of infrastructure funding strategies and development contributions plans; and preparation of commercial, industrial and residential market assessments.

In addition, David has experience in Asia, preparing urban management plans, strategy plans, structure plans, master plans and detailed plans, planning and development controls, and in relation to institutional strengthening programs and professional training programs.

Current Position

Hansen Partnership

Managing Director

January 2012 – present

Past Positions

Hansen Partnership

Director (September 1997 – December 2011)

Henshall Hansen Associates

Director (July 1995 – Aug 1997)

Associate Director (1992 – July 1995)

Senior Planner (April 1988 – November 1989)

Associate (1989-1992)

WBCM Consultants Limited

Senior Urban Planner (July 1985 – April 1988)

Melbourne and Metropolitan Board of Works

Statutory Planner (February – June 1985)

Planning Officer (April 1982 – February 1984)

Estate Office, Victorian Railways

Town planner (November 1980 – April 1982)

Qualifications

- Master of Business Administration, RMIT University (1993)
- Bachelor of Town and Regional Planning (hons), University of Melbourne (1980)

Affiliations

- Property Council of Australia, Victoria Division (2012 – 2016; 2009-2010) - Member of planning committee
- Planning Institute of Australia (PIA) (2007 – present) - Fellow
- Victoria Planning and Environmental Law Association (2009 – present) - member
- Planning Institute of Australia (PIA) (1996-2007) - Member
- Royal Australian Planning Institute - Vice President and Treasurer (1996-1997)

Specialisations

- Strategic planner
- Statutory planner
- Town planning advocate
- Town planning expert witness
- Infrastructure funding and development contributions
- International planning – urban management, institutional strengthening, training



Key Project Experience

Structure Planning

- Review of Bayswater / Bayswater North Industrial Precinct, with the AEC Group, State Development Business and Innovation (2014)
- Bendigo Hospital Surrounds Structure Plan, the City of Greater Bendigo (2013)
- Birregurra Structure Plan Review, Otway Shire Council (2013)
- Chapel Vision Structure Plan Review, Stonnington City Council (2013)
- Warrnambool – North Dennington Structure Plan and Development Control Plan, Warrnambool City Council (2012)
- Hamilton Structure Plan and Town Centre Urban Design Framework, for South Grampians Shire (2010)
- Traralgon Town Centre Structure Plan and Urban Design Framework, for Latrobe Valley Shire (2010)
- Ringwood Transit City Development Contributions Plan, for Maroondah City Council (2009)
- Frankston Safe Boat Harbour Planning Scheme Amendment, for Frankston City Council (2008)
- Clifton Springs Town Centre Structure Plan, for the City of Greater Geelong (2008)
- Warrnambool and Moyne Development Program, for Warrnambool City Council and Moyne Shire Council (2008)
- Spring Creek Urban Growth Framework Plan and Precinct Structure Plan, for the Surf Coast Shire (2008)
- Newhaven, Cape Woolamai and San Remo Structure Plan, for Bass Coast Shire Council (2007)
- Ocean Grove Structure Plan, for the City of Greater Geelong (2006)
- Jackass Flat Structure Plan, Greater Bendigo City Council (2006)
- Burwood Heights Activity Centre Structure Plan, Whitehorse City Council, (2004)
- Torquay / Jan Juc Population and Residential Development Review, (2004)
- West Melbourne Structure Plan, for the City of Melbourne (2003)
- Highett Structure Plan, for the Cities of Bayside and Kingston (2002-2003)

Character Studies

- Barwon Heads Residential and Landscape Character Study (2017)
- Birregurra Neighbourhood Character Study, Otway Shire Council, (2011)
- Romsey Neighbourhood Character Study, for Macedon Ranges Shire, (2010)
- Boroondara My Neighbourhood – Prized Residential Character Areas, for

Boroondara City Council (2008)

- Dandenong Neighbourhood Character Study, for the City of Greater Dandenong (2007-2008)
- Queenscliffe Urban Character Study, for the Borough of Queenscliffe (2000)

Strategy Planning and Studies

- Mitchell Rural Land and Activities Review, for the Shire of Mitchell (2019)
- Eastern Region Metropolitan Land Use Framework Plan, for the Department of Land Water Environment and Planning (2017-2019)
- Garden Area Review, for the Department of Land, Water Environment and Planning, (2018)
- Avalon Corridor Framework Plan, for the Cities of Greater Geelong and Wyndeham, and the Department of Environment Land Water and Planning (2017)
- Baw Baw Rural Land Use Strategy, for the Baw Baw Shire Council (2016)
- Community Plans for Nerrim South, Labatouche, Jindivik and Trafalgar, for the Shire of Baw Baw (2016)
- Ballarat Growth Areas Review, for the Greater City of Ballarat (2016)
- Frankston Native Vegetation Control Review, for the City of Frankston (2015)
- La Trobe University Bendigo Campus Vision, for La Trobe University (2014)
- La Trobe University Boroondara Campus Vision, La Trobe University (2012)
- Mildura Settlement Strategy, Mildura Rural City Council (2013)
- New Gisborne Development Plan, Macedon Ranges Shire Council, (2011)
- Traralgon Growth Areas Review, for LaTrobe City Council (2011)
- Sweetwater Creek, Strategic Justification for Development / Environmental Overlays, for Frankston City Council (2010)
- Shepparton East Outline Development Plan, for the City of Greater Shepparton (2009)
- Fishermans Bend Industrial Land Review, with Charter Keck Cramer, for Port Phillip City Council (2009)
- Melbourne Industrial Land Supply and Demand Study, with Charter Keck Cramer, for Melbourne City Council (2009)
- LaTrobe University Strategy Planning Review, for LaTrobe University (2008/2009)
- Review of Referral Requirements under the Victoria Planning Provisions, for the Department of Planning and Community Development (2008)
- Whitehorse Student Accommodation – Strategic Review and Planning Scheme Amendment, for Whitehorse City Council (2007)
- Geelong Region Strategy Plan, for the G21 Geelong Regional Alliance (2005-2006)

- Bell Street Strategy Plan and Urban Design Framework, Darebin City Council (2005)
- Kingston Retail and Commercial Development Strategy, with Charter keck Cramer, for the City of Kingston (2004)
- Willoughby Industrial Strategy, Willoughby City Council (2003)
- Yarra Industrial Strategy, for Yarra City Council (2003)
- Moorabool Rural Housing Study, for Moorabool Shire Council (2003)
- Ballan Township Strategy Plan, for Moorabool Shire Council (2003)
- Blackrock Shopping Centre Study, for the Cities of Bayside and Kingston, (2002-2003)
- Geelong Western Wedge Strategic Framework Plan and Railway Station Master Plan, for the Department of Infrastructure (2002)
- Bayside Industrial Areas Study, for the City of Bayside (2002)
- Moreland Industrial Areas Review, for the City of Moreland (2002)
- Geelong Industrial Land Use Study, for the City of Greater Geelong, with MacroPlan (2001)
- Anglesea Population Review and Review of Township Boundaries, for Surf Coast Shire Council (2000)
- Torquay Population and Residential Strategy Review, for Surf Coast Shire Council (2000)
- Torquay Industrial Area Review, for Surf Coast Shire Council (2000)
- Bayside Height Control Study, for the City of Bayside (1999)
- Geelong CAA Revitalisation Program, for the Greater City of Geelong (1998)
- Sydenham Activity Area Policy Review, for the City of Brimbank (1998)

Management plans

- Melton North Green Wedge Management Plan, Melton Shire Council (2014)

Infrastructure reviews

- Ringwood Transit City Development Contributions Plan, for the Maroondah City Council (2007)
- Development Contributions Plan for Plenty and Yarrambat, for the Nillumbik Shire Council (1998-1999)
- Car Parking Rate Review, for the Department of Infrastructure (1999)

Sustainability

- Port Phillip Bay Coastal Climate Change Planning Project, for the Municipal Association of Victoria (2017 to 2019)
- Strengthening Victoria's Food Bowl, with PSI Delta, for Moira Campaspe, Swan Hill and Mildura councils (2011)
- Utilising Victoria's Planning Framework to Support Sustainability, Municipal Association of Victoria (2009-2010)
- Sustainability in the Planning Process, for the municipalities of Moreland, Port Phillip and Darebin (2007-2008)
- Doncaster Hill Energy Plan, for Manningham City Council and Sustainability Victoria (2008)

Urban Design Frameworks

- Torquay Town Centre Urban Design Framework and Investment Facilitation Plan, for Surf Coast Shire (2017)
- Urban Design Frameworks for Longwarry, Nerrim South and Trafalgar, for the Shire of Baw Baw (2016)
- Ringwood Town Centre Urban Design Framework, for the City of Maroondah (2002-2003)
- Knox Central Urban Design Framework, for the City of Knox (2002-2003)

Design Guidelines

- Yarra Ranges Residential Design Guidelines, for Yarra Ranges Shire (2018 / 2019)
- Knox Residential Capacity and Design Guidelines Project, Knox City Council (2010)
- Aireys Inlet Activity Centre Urban Design Guidelines, for Surf Coast Shire, (2008-2009)
- Kingston Residential Design Guidelines, for the city of Kingston (2000)
- Kingston Residential Design Guidelines, for the city of Kingston (2000)
- Miller Street and Gilbert Street Preston Design Guidelines, for Darebin City Council (2009)
- Station Street Fairfield Design Guidelines, for Darebin City Council (2008)
- Victoria Street Urban Design Framework and Streetscape Plan, for the City of Yarra (2002)
- Hastings Foreshore Urban Design Framework, for Mornington Peninsula Shire (2000)
- Carrum Urban Design Framework, for the City of Kingston (2000)

International planning

- Thai Binh Economic Zone Master Plan, with the Vietnam Institute for Urban and Rural Planning, for a private development company (2019)
- Con Dao Tourism Master Plan, for the Ba Ria Vung Tao People's Committee, Vietnam (2014 to 2016)
- Ben Dam Detailed Master Plan and Urban Management System, for the Ba Ria Vung Tao People's Committee, Vietnam (2013)
- Long Thanh International Airport Master Plan – Vietnam, with the Vietnamese Institute of Architecture Urban and Rural Planning, for the Dong Nai People's Committee (2009-2012)
- Three Delta Towns Water Supply and Sanitation Project – Vietnam, with Gutteridge Haskins and Davey, for AusAide, (2002-2003)
- Capacity 21 Project – Environment Issues in Investment Planning in Vietnam – Quang Ninh Provincial Pilot Project, Ha Long Bay Vietnam, UNDP Project VIE 97/007, prepared for Colenco~Holinger (2000)
- HCMC UNDP Public Administration Reform Project, preparation of Proposal for Consultancy Team, (1999)
- Hanoi Planning and Development Controls, Hanoi, Vietnam, as part of Hanoi Planning and Development Control Project (1995-1997)