

GREATER GEELONG PLANNING SCHEME

AMENDMENT C335

RESOLUTION TO REFER SUBMISSIONS TO A PANEL APPOINTED BY THE
MINISTER FOR PLANNING

UNDER DELEGATION FROM COUNCIL I HEREBY RESOLVE:

That having considered all submissions to Amendment C335 to the Greater Geelong Planning Scheme to:

- 1) Request the Minister for Planning to appoint an Independent Panel under Part 8 of the Planning and Environment Act, 1987;**
- 2) Refer all submissions to the Panel; and**
- 3) Submit to the Panel its response to the submissions generally as outlined in this report.**

SIGNED:.....

DATE:..... 22/4/2016

**PETER BETTESS
GENERAL MANAGER, PLANNING & DEVELOPMENT**

GREATER GEELONG PLANNING SCHEME

DELEGATED AUTHORITY REPORT

AMENDMENT C335 – HIGHTON FLOOD AND DRAINAGE STUDY AND SPECIAL BUILDING OVERLAY - CONSIDERATION OF SUBMISSIONS

To: Peter Bettess – General Manager Planning & Development
From: Peter Smith – Coordinator Strategic Implementation
Subject: Consideration of Submissions under Delegation
File number: C335

Purpose

The purpose of this report is to consider submissions (under delegation) as a result of exhibition of Amendment C335.

Summary

- Amendment C335 seeks to extend coverage of the Special Building Overlay (SBO) to reflect the findings of the Highton Drainage and Flood Study recently undertaken and adopted by Council.
- This study identifies the nature and extent of flooding in the Kardinia Creek catchment.
- Following the exhibition of Amendment C335 between 27th August 2015 and 28th September 2015, sixty two (62) submissions were received from individuals objecting to the amendment.
- Subsequently, Council Planners and Engineers have undertaken a review of each submission, assisted by a review of the flood modelling by the expert consultants who prepared the study. As a result of this work and some additional mitigation works which have been undertaken by Council, it is recommended that the SBO not be applied to six properties identified as affected in the exhibited amendment.
- As the Amendment has been exhibited and submissions received, Council must decide to adopt changes consistent with the submissions, abandon the Amendment or request the Minister to appoint an Independent Panel to consider and make recommendations to Council.
- It is considered that the application of the SBO as proposed is consistent with State and Local policies and the principles of orderly planning, and will result in a net community benefit. Accordingly, it is recommended that Council considers the submissions and refers all of them to an Independent Panel to be appointed by the Minister for Planning.
- As part of the Panel process all submitters will be notified and given the opportunity to appear before the Panel.

Recommendation

That Council:

Having considered all submissions to Amendment C335 to the Greater Geelong Planning Scheme resolves to:

- 1) Request the Minister for Planning to appoint an Independent Panel under Part 8 of the Planning & Environment Act 1987;**
- 2) Refer all submissions to the Panel; and**
- 3) Submit to the Panel its response to the submissions, generally as outlined in this report.**

Background

Amendment C335 seeks to apply the Special Building Overlay (SBO) to land subject to overland flow in the Kardinia Creek Catchment, within the suburbs of Highton, Wandana Heights and Belmont.

Each instance of the proposed application of the SBO has previously been the matter of public consultation at the time the respective drainage studies were adopted by Council.

The SBO identifies land that may be subject to flooding when heavy rains cause the capacity of the underground drainage system to be exceeded and overflow. The SBO currently applies to many properties across the municipality; this amendment seeks to extend the coverage to additional areas that have been identified Highton Drainage/Flood Study, adopted by Council on 12th May, 2015.

Application of the SBO will ensure that flooding and drainage issues and the potential affects of new development are considered and addressed at an early stage in the development approvals process. The application of the SBO means that a planning permit is required for most new buildings and works (including some fences) in the area covered by the SBO. Circumstances where a planning permit is not required are specified in the Overlay.

The application of the SBO will also ensure that the flood risk is disclosed to potential purchasers of affected properties on any Planning Certificate issued by Council and through the provision of this information as part of the Section 32 Statement at the time of purchase.

Discussion

A total of 62 objecting submissions were received to the amendment, the submissions related to 9 properties in Belmont, 42 properties in Highton, and 11 properties in Wandana Heights. All submissions were from individuals, objecting to the proposed amendment as exhibited.

Following exhibition and consideration of submissions Council can now resolve in one of three ways:

- to change the amendment in the manner suggested in the objecting submissions;
- to request the Minister for Planning to appoint an Independent Panel; or
- to abandon the amendment.

The submissions primarily related to:

- impacts on specific properties;
- observations by the submitters that led them to believe that their property would not be affected in a flood event;
- observations by the submitter to the effect that, when flooding has occurred, it has been in a manner contrary to that represented by the proposed mapping changes to the SBO;
- alleged adverse impacts on property values and development potential;
- the need for drainage works to be undertaken by Council to address the drainage issues;
- queries relating to the methodology and accuracy of the flood and drainage studies on which the amendment is based.

Explanation of the modelled study event.

The study modelled a rainfall event with a 1 percent probability of being exceeded in any one year. This is referred to as a 1% Annual Exceedance Probability, or 1% AEP.

In topographical locations such as those in the study area, which are generally 'hilly' in nature, as distinct from being located in a river valley, the model is based on a short duration high intensity rain event equivalent to 100mm of rain in an hour, based on 25mm of rainfall in 15 minutes.

In such events, in addition to any potential for drains to bank up due to their capacity being exceeded, it is usual for shallow overland flow to occur, including between and across properties.

While a minority of the worst affected properties have the potential to be impacted to the extent that habitable rooms might be inundated, the vast majority of properties are only subject to shallow external overland flows which at a level which would not result in inundation of dwellings.

It is the understanding of Council officers that, in the case of each of the objecting submitters, their properties are only impacted by shallow overland flows, and are not potentially subject to flooding impacts within their dwellings.

The key purpose of applying the SBO is to ensure that the floor areas of any future development on the land remains above a level with the potential to be inundated in a 1% AEP event.

Consultation with objecting submitters

Council officers subsequently met with 19 submitters, including meetings on-site and at the Brougham Street office, to clarify the basis of application of the overlay in relation to each of those submitter's properties.

In particular, it was explained to submitters that the application of the SBO was not an indication that their dwellings would be subject to flooding in a 1% AEP event.

Subsequent to this consultation process, a heavy storm occurred across parts of the City on 27th January 2016, which reinforced the perceptions of several property owners that the study did not accurately reflect the experience of significant rain events in relation to their properties. However, as indicated below, there is no credible Bureau of Meteorology (BOM) compliant data to support the argument that a 1% AEP critical storm occurred in the study area on 27th January, 2016.

Review of Flood Modelling

In addition, Council's Engineering Design Unit requested the consultants who prepared the drainage and flood study to review the flood modelling in relation to all properties in relation to which submissions had been received. In addition, Council also requested the consultants to review the inflow assumptions for two sub catchments on the border of the study area to verify the modelling.

Following the review, as a result of some additional drainage works that have been undertaken by Council, recommendations will be made to the Planning Panel that six properties be excluded from the SBO.

Subsequent to the consultation process and review of the flood modelling, a heavy storm occurred across parts of the City on 27th January 2016. While the Bureau of Meteorology (BOM) has been quoted as saying that the rainfall at Avalon Airport was 'equivalent to a one in one hundred year event' (i.e. 1% AEP), there is no credible BOM compliant data to support the argument that a 1% AEP critical storm occurred in the study area on 27th January, 2016. This is consistent with the anecdotal information provided by a number of affected property owners that their properties were not affected by the 27th January event.

Written advice to submitters

As a result of the advice from the consultant firm that undertook the study, Council's Co-ordinator of Infrastructure Management has written to all submitters responding to their submissions and advising of the outcome of the review. This includes the properties that are not now proposed to be included in the SBO.

These letters have been forwarded to submitters by Council's Strategic Implementation Unit, together a plan showing the area to which the SBO is to be applied and other, shallower, affected sites not included in the SBO.

Where possible the documents have been forwarded attached to an e-mail containing advice regarding the time line for consideration of the Amendment by Council and the subsequent appointment of a Planning Panel to hear and recommend on the submissions.

Consideration of issues raised in submissions.

- Flooding and drainage issues

All issues relating to the flooding and drainage issues in relation to the proposed application of the SBO have been directly addressed in the letters from the Co-ordinator of Infrastructure Management.

In this instance it is appropriate for Council's Planners and Councillors to rely on the expert advice of Council's qualified and experienced Engineers and expert flooding consultants.

It is appreciated that the views expressed by submitters are genuinely held, and in particular, that many submitters have difficulty equating the passage of shallow sheet flows, with little or no capacity to cause damage to habitable rooms of houses, with 'flooding' of the properties concerned.

However, in the absence of sound supporting technical evidence, the submissions do not provide a basis to alter the extent of application of the SBO as exhibited, other than in the six instances identified in the advice from Council's Drainage Planning Engineer.

- Non-engineering/planning issues.

A number of submitters raised concern in relation to matters such as the perceived risks regarding reduction in property values and increases in insurance costs.

As has been advised verbally to a number of submitters, the SBO has been applied extensively as a planning tool in residential areas in Geelong and Melbourne, as well as in other regional cities and towns across the state. As such, the extent of its application militates against it having an exceptional effect on property values.

With respect to insurance costs, in the majority of instances where the SBO in fact provides supporting evidence that dwellings would not be inundated in a 1% AEP event, the SBO can reasonably be argued to provide assistance in demonstrating that no increase in the insured risk in fact exists.

While it is understood that the views of submitters are strongly held on these matters, ultimately they are not planning considerations, and cannot be regarded as providing a legitimate basis for not applying the SBO to affected properties.

Environmental Implications

The application of the SBO will have no adverse environmental implications.

Financial Implications

The application of the SBO will have no adverse financial implications for Council. While the amendment will generate additional planning permit applications, these will be at least partially off-set by a corresponding decrease in applications under the Building Act for the specification of minimum floor heights.

Any increase in the number of permit applications is not likely to be of a significant magnitude, relative to the total resources of Council's Statutory Planning unit.

Policy/Legal/Statutory Implications

The amendment is considered to be consistent with State and Local planning policies as set out in the Explanatory report which forms part of the Amendment documentation.

The application of flood mapping consistent with the adopted flood and drainage studies will limit the potential for affected property owners to seek redress against Council, in the event that their property is adversely affected by flooding or inundation.

Alignment to City Plan

This Amendment supports the Sustainable Built and Natural Environment Strategic direction of City Plan by recognising the environmental constraints on future built form. Drainage and flood management strategies are specifically referred to in City Plan as assisting in delivering Sustainable and Natural Environment priorities.

Officer Direct or Indirect Interest

No Council officers have a direct or indirect interest, in accordance with Section 80(c) of the Local Government Act, to which this Amendment relates.

Risk Assessment

There are no risks to Council associated with the application of the SBO, as proposed.

Until such time as the extent of the mapped flood areas are identified in the planning scheme there is a risk that prospective purchasers of land may not be aware of the potential flood issues. The application of the SBO to affected land will significantly reduce this risk

Social Considerations

The amendment is expected to result in net community benefit, in that extension of the accurate identification of land affected by flooding through the application of the SBO will reduce community exposure to damage and loss of property due to flooding.

Human Rights Charter

The Amendment will not impact on any basic rights, freedoms and responsibilities as set out in the Charter. Planning legislation ensures an open community consultation process occurs, enabling people to freely express their views and if necessary obtain a fair hearing before an Independent Panel. Submitters had that opportunity in this case.

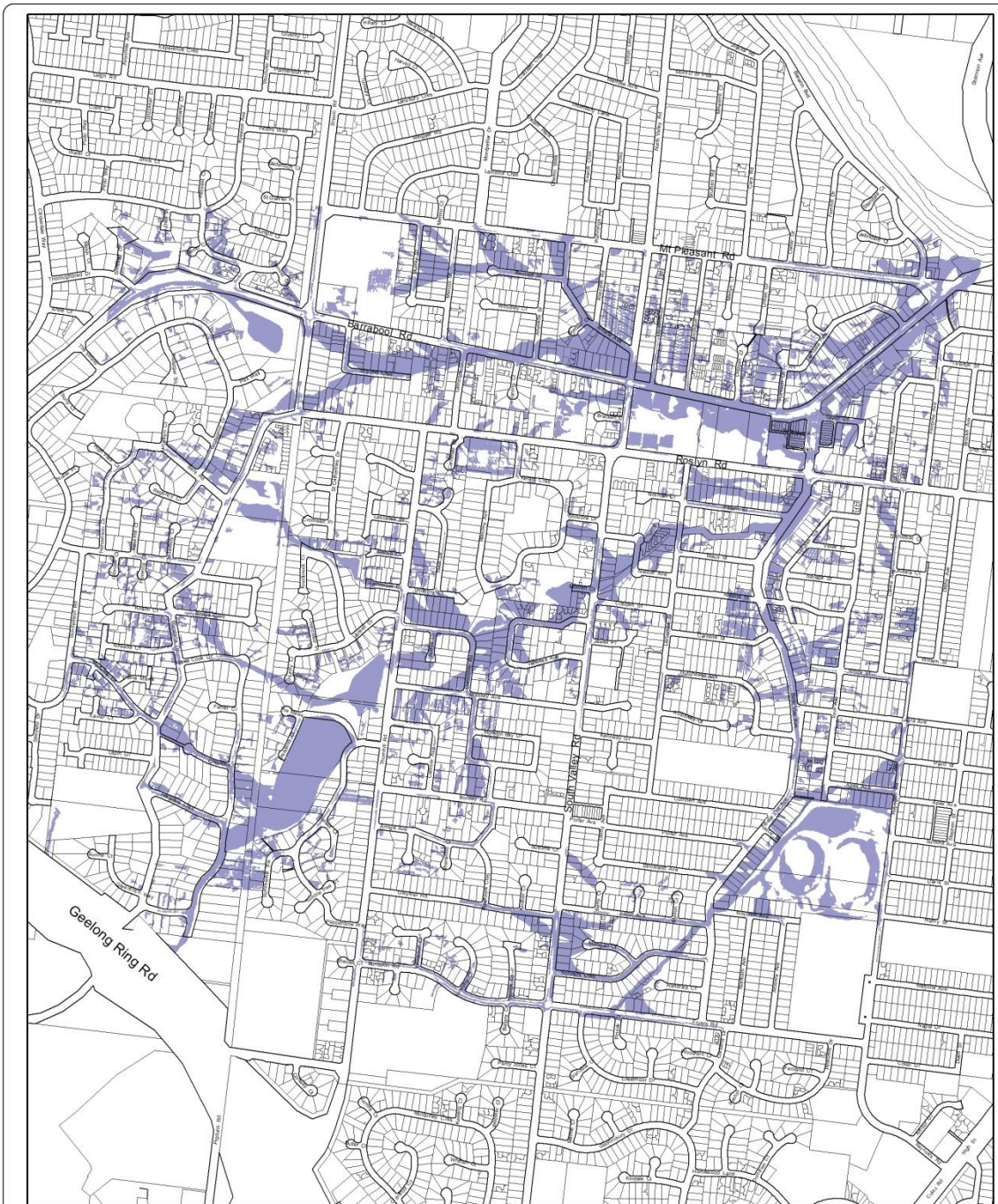
Consultation and Communication

Amendment C335 has been subject to full public notification in accordance with the provisions of the *Planning and Environment Act*. This included the mailing of notice of the Amendment to the owners and occupiers of affected properties.

Considering the extent of the areas affected by Amendment C335 of the number of objecting submissions received is considered to be relatively small, which is attributed to affected property owners having been previously notified of the findings of the respective studies, prior to them being adopted by Council.

All submitters will be advised of the appointment of a Planning Panel by Panels Victoria and will be offered the opportunity to appear at the Panel Hearing, in accordance with the requirements of the *Planning and Environment Act*.

Appendix 1 Extent of proposed SBO as exhibited.



Part of Planning Scheme Maps 47SBO, 52 SBO & 66SBO

LEGEND

SBO SPECIAL BUILDING OVERLAY

AMENDMENT C335

Prepared by City of Greater Geelong - 15 June 2015
Although all due care has been taken to ensure that this document is correct, no warranty is expressed or implied by the City of Greater Geelong or Barwon Water in its use.



Appendix 2 – List of properties in relation to which submissions were received.

| Submission number. | Street Number | Street | Suburb |
|---------------------------|----------------------|-------------------|---------------|
| 1 | 18 | Clarke Avenue | BELMONT |
| 2 | 4/38 | Clarke Avenue | BELMONT |
| 3 | 30 | Elsvern Avenue | BELMONT |
| 4 | 3/32 | Elsvern Avenue | BELMONT |
| 5 | 4 | Fairbrae Avenue | BELMONT |
| 6 | 23 | Helena Street | BELMONT |
| 7 | 63 | Iona Avenue | BELMONT |
| 8 | 65 | Iona Avenue | BELMONT |
| 9 | 114 | Laura Avenue | BELMONT |
| 10 | 7 | Aringa Avenue | HIGHTON |
| 11 | 10 | Aringa Avenue | HIGHTON |
| 12 | 2 | Arkana Avenue | HIGHTON |
| 13 | 9 | Arkana Avenue | HIGHTON |
| 14 | 50 | Belle Vue Avenue | HIGHTON |
| 15 | 24 | Bonsey Road | HIGHTON |
| 16 | 28 | Bonsey Road | HIGHTON |
| 17 | 12 | Caroline Street | HIGHTON |
| 18 | 18 | Caroline Street | HIGHTON |
| 19 | 20 | Caroline Street | HIGHTON |
| 20 | 9 | Cobden Street | HIGHTON |
| 21 | 22 | Ferndale Parade | HIGHTON |
| 22 | 6 | Gwyther Road | HIGHTON |
| 23 | 21 | Hutcheson Avenue | HIGHTON |
| 24 | 3/29 | Hutcheson Avenue | HIGHTON |
| 25 | 9 | Huntley Close | HIGHTON |
| 26 | 3 | Landsell Drive | HIGHTON |
| 27 | 6 | Lascelles Place | HIGHTON |
| 28 | 7 | Lascelles Place | HIGHTON |
| 29 | 4 | Lund Court | HIGHTON |
| 30 | 23 | Moreton Bay Drive | HIGHTON |
| 31 | 29 | North Valley Road | HIGHTON |
| 32 | 37 | North Valley Road | HIGHTON |
| # 33 | 2 | Parkland Court | HIGHTON |
| # 34 | 5 | Parkland Court | HIGHTON |
| # 35 | 6 | Parkland Court | HIGHTON |
| 36 | 10 | Pepperdine Way | HIGHTON |
| 37 | 10 | Rathmines Place | HIGHTON |
| 38 | 18 | Roncliff Road | HIGHTON |
| 39 | 278 | Rosalyn Road | HIGHTON |
| 40 | 347 | Rosalyn Road | HIGHTON |

Identifies properties in relation to which it is recommended that the SBO not be applied.

| Submission Number | Street Number | Street | Suburb |
|--------------------------|----------------------|--------------------|-----------------|
| 41 | 22 | Scenic Road | HIGHTON |
| 42 | 2 | Sherwood Close | HIGHTON |
| 43 | 9 | Shetland Court | HIGHTON |
| 44 | 16 | South Valley Road | HIGHTON |
| # 45 | 11 | Summerhill Terrace | HIGHTON |
| # 46 | 12 | Summerhill Terrace | HIGHTON |
| 47 | 9 | Taylor Court | HIGHTON |
| 48 | 89 | Thornhill Road | HIGHTON |
| 49 | 124 | Thornhill Road | HIGHTON |
| 50 | 7 | Vanessa Avenue | HIGHTON |
| 51 | 30 | Victory | HIGHTON |
| 52 | 5 | Florence Court | Wandana Heights |
| 53 | 13 | Grosvenor Drive | Wandana Heights |
| 54 | 14 | Henderson Drive | Wandana Heights |
| 55 | 19 | Henderson Drive | Wandana Heights |
| # 56 | 41 | James Cook Drive | Wandana Heights |
| 57 | 56 | James Cook Drive | Wandana Heights |
| 58 | 58 | James Cook Drive | Wandana Heights |
| 59 | 60 | James Cook Drive | Wandana Heights |
| 60 | 24 | Nireeda Court | Wandana Heights |
| 61 | 21 | Sunderland Road | Wandana Heights |
| 62 | 62 | Wandana Drive | Wandana Heights |

Identifies properties in relation to which it is recommended that the SBO not be applied.