

Planning and Environment Act 1987

Panel Report

**Southern Grampians Planning Scheme Amendment C058sgra
Coleraine Flood Investigation**

22 February 2021

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the Planning Scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Southern Grampians Planning Scheme Amendment C058sgrasgra

Coleraine Flood Investigation

22 February 2021



Geoff Underwood, Chair

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Council	Southern Grampians Shire Council
DoT	Department of Transport
FO	Floodway Overlay
GHCMA	Glenelg Hopkins Catchment Management Authority
LSIO	Land Subject to Inundation Overlay
Planning scheme	Southern Grampians Planning Scheme
PPF	Planning Policy Framework
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Southern Grampians Planning Scheme Amendment C058sgra058sgra
Common name	Coleraine Flood Investigation 2018
Brief description	The Amendment proposes to implement the findings of the Coleraine Flood Investigation 2018 by introducing the Floodway Overlay and the Land Subject to Inundation Overlay to control development within areas subject to flooding.
Subject land	The Amendment applies to land within the Coleraine township and nearby locations.
The Proponent	Southern Grampians Shire Council
Planning Authority	Southern Grampians Shire Council
Authorisation	Granted under delegation on 4 August 2020
Exhibition	20 August to 21 September 2020
Submissions	One objecting submission was received from private landowners. Two submissions, one from Wannon Water and one from the Department of Transport were received commenting on impacts of provisions within the Overlays.

Panel process

The Panel	Geoff Underwood
Directions Hearing	A Directions Hearing was held online on 25 January 2021
Panel Hearing	No Hearing was conducted – matter considered ‘on the papers’
Site inspections	No physical inspection of the Coleraine area took place. The Panel is familiar with the Coleraine township and used google maps and aerial photographs to refresh that awareness.
Parties to the Hearing	The objecting submitters elected not to appear at the Hearing and to rely on their written submission. Wannon Water advised through Council that its issues were clarified and its submission withdrawn. The Department of Transport did not seek to appear but relied on its submission to alert Council that public transport assets, railway lines for example, must not be affected by the flow of flood water.
Citation	Southern Grampians PSA C058sgra [2021] PPV
Date of this Report	22 February 2021

Executive summary

Southern Grampians Planning Scheme Amendment C058sgra (the Amendment) seeks to update and correct the flood controls for the Coleraine township. The Amendment implements the Coleraine Flood Investigation 2018 which identified areas within and around the township that are affected by flooding. The study also reported locations where the current overlay controls inaccurately identify the extent of water flows.

Coleraine has a history of flooding. The Amendment seeks to implement and apply the recommendations of an expert study, the *Coleraine Flood Investigation 2018*, by correcting inaccurate flood maps and updating the Planning Scheme on the basis of the report.

The Amendment makes the necessary changes to the Planning Scheme by applying overlays over newly identified flood areas, by revising current maps and controls, as well as changing the administrative arrangements for the current Floodway Overlay (FO) maps and maps for the Land Subject to Inundation Overlay (LSIO).

Importantly, the Amendment inserts the Coleraine Flood Investigation 2018 as an Incorporated Document. Along with the provisions of a detailed outline of the purpose and controls of the flood controls, the provisions of the Incorporated Document included at Clause 72.04 will assist affected property owners with making permit applications that may be triggered by the changes in the Amendment.

One landowner submission opposed the Amendment. The submitters' reasons related to negative impacts on land values and a lack of compensation for loss of development opportunities because of the flood controls. The submitter considered the mitigation works should be trialled in the local creek as a first step to solving flood problems rather than imposing planning controls over the township.

The Amendment proposed to apply the LSIO to the submitter's property and the FO to a small part of the property. Council resolved in December 2020 to remove the FO from the property and put that to the Panel.

The Explanatory Report exhibited with the Amendment explained the strategic justification for the Amendment, considered the environmental, social and economic effects of the changes, compliance with Ministerial Directions, and considered the Amendment against State and Local Planning Policy. The Panel accepts this assessment.

The Panel commends Council for taking action to update and improve the flooding overlay maps to better identify risk to properties and life. The Amendment faithfully translates empirical evidence in flood studies into planning provisions in the Planning Scheme that will help guide future permit applications.

The exception is 66 Whyte Street Coleraine, where the Panel agrees with Council that the FO should not be applied.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Southern Grampians Southern Grampians Planning Scheme Amendment C058sgra be adopted as exhibited subject to the following:

- 1. Delete the Floodway Overlay from 66 Whyte Street, Coleraine**

- 2 Rename Map Nos. 1LSIO-FO, 3LSIO-FO, 15LSIO-FO, 23LSIO-FO, 24LSIO-FO, 40LSIO-FO and 41LSIO-FO from “LSIO” to LSIO2”.**

1 Introduction

Council and the Glenelg Hopkins Catchment Management Authority (GHCMA) have worked together to carry out flood studies for Coleraine and Hamilton:

- Coleraine Flood Investigation 2018
- Hamilton & Coleraine Local Floodplain Development Plan 2020.

1.1 The Amendment

(i) Amendment description

The Amendment will change the Planning Scheme to implement the findings of the Coleraine Flood Investigation 2018 by:

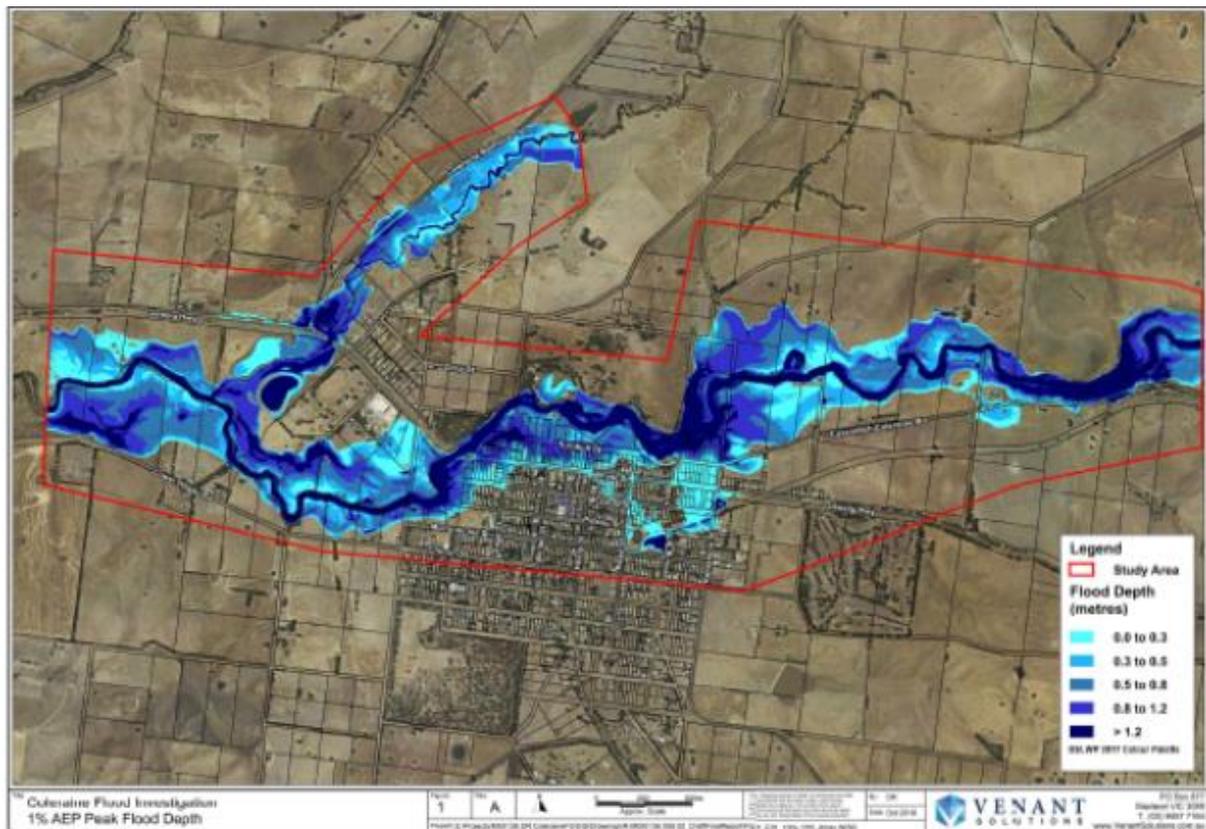
- applying the Floodway Overlay (FO) to land identified with the risk of flooding, of active water flows and deep storage of water
- applying the Land Subject to Inundation Overlay (LSIO) to land in the fringe flood areas or which have a lower risk of flooding
- incorporating the *Hamilton & Coleraine Local Floodplain Development Plan 2020 Incorporated Document* into the Planning Scheme through Clause 72.04
- making associated administrative changes.

The Amendment affects land not previously identified for flood protection; corrects incorrect maps as they currently appear in the Planning Scheme and makes subsequent changes to provisions for the administration of permit applications. The Amendment revises the triggers for permit applications and applies the Coleraine Flood Investigation 2018 as an Incorporated Document in a new Clause 72.04 to guide permit applications and decision making.

The *Hamilton & Coleraine Local Floodplain Development Plan 2020 Incorporated Document* is relevant to Amendment C054sgra for the Hamilton township. Council adopted Amendment C54sgra in December 2020 and submitted it to the Minister for Planning for approval. Council advised the Panel that Amendment C54sgra would be considered with Amendment C58sgra as a package.

(ii) The area covered by the Amendment

The Amendment applies to land within the Coleraine township and nearby, as shown in Figure 1. The affected areas include Whyte Street, the main street of Coleraine. Figure 1 which follows is (coincidentally) Figure 1 in the 2018 Flood Study. It shows the study area and the extent of the FO and LSIO that it recommends.

Figure 1 The study area and proposed overlays from the 2018 Flood Study

1.2 Background

The Executive Summary to the 2018 Flood Study by the consultant Venant Solutions Pty Ltd, gives good background and justification to the study that led to the Amendment. The report states:

Coleraine has a known history of flooding with records of at least 7 significant events occurring since settlement in 1870, 1893, 1946, 1975, 1983, 1991 and most recently in 2016 which inundated 24 buildings (residential, commercial and industrial). Of these, the 1870 event was particularly significant with 11 recorded deaths. The only flood mapping for the town prior to this investigation was derived by the 2001 flood data transfer project (FDTP). This provided an inadequate “guestimate” of the potential 1% AEP flood extent and level of hazard in the centre of town.

The flood investigation has (for the first time) produced a range of reliable flood mapping information for Coleraine covering the full suite of design flood events (20%, 10%, 5%, 2%, 1%, 0.5%, 0.2% AEP & probable maximum flood (PMF)) commonly considered in contemporary floodplain management practice. The 1% AEP flood extent and depth map produced by this investigation is presented in Figure 1. This body of information is a prerequisite for the effective implementation of measures to reduce the impact of flooding on the Coleraine community into the future.

1.3 Procedural issues

None of the three submitters to the Amendment requested to be heard at the Hearing. To ensure appropriate directions could be issued, the Panel asked Council to establish the position with each submitter. At the Directions Hearing, Council advised:

- Wannon Water withdrew its submission after being satisfied there was no impact on its ability to carry out works in areas covered by the FO or the LSIO

- the Department of Transport (DoT) did not wish to pursue its submission which was meant as a note about protecting its assets
- the landowner submitter did not wish to appear at a Hearing and would rely on their written submission.

In noting the submitter did not wish to appear, the Council confirmed it proposed a change to the exhibited form of the FO to remove it from the submitters' property. The matter is discussed in chapter 3 of this report.

As there was no need for a formal Hearing, the scheduled date of 22 February 2021 was vacated.

1.4 Summary of issues raised in submissions

(i) Council as the proponent and the planning authority

Council has worked with the GHCMA to undertake studies into flood issues in Coleraine and Hamilton. The 2018 study is the guiding document behind this Amendment for Coleraine, and the companion Amendment for Hamilton. For Council, it is critical that, having established the true extents of flooding in Coleraine that it moves to update the Planning Scheme. The consultant study highlights past flooding as reason to act, so too does the Explanatory Report give good reason to change the planning controls:

The application of these updated overlays will assist Local Government, Catchment Management Authority and the community in carrying out more effective planning and management of flood prone land within Coleraine

(ii) Relevant agencies

The agencies who submitted are DoT and Wannon Water. As recorded, the DoT submission was for noting. The Wannon Water submission sought to clarify how the terms of the Amendment could affect the authority's ability to carry out works, especially urgent repair works and maintenance.

Council responded to the request from the Panel, conveyed in writing before the Directions Hearing, that the two bodies confer about the submission. Subsequently, Wannon Water withdrew its submission as it is satisfied:

- its concerns around the need for a planning permit when undertaking works under the banner of a minor utility installation within the new Floodway and Land Subject to Inundation overlays at Coleraine
- works requirements under the banner of minor utility installation are exempt from requiring a planning permit including for:
 - sewerage or water mains installation or maintenance;
 - flow measurement device or a structure to gauge waterway flow;
 - siphons, water storage tanks, disinfection booster stations and channels;
 - a sewerage treatment plant, and any associated disposal works, required to serve a neighbourhood;
 - a pumping station required to serve a neighbourhood;
- the exemption would be on the basis that the installation/works would not impact the flood path or cause additional flood impacts to nearby properties.

The Panel makes no further comment on the agency submissions.

(iii) Individual submitter

The one submission opposing the Amendment was from the owners of 66 Whyte Street, Coleraine. The subject land is in the commercial strip of main street, on the north side of the street, between Henry and Winter Streets. Figure 2 is from the officer report to Council in December 2020. The plan shows the overlay situation for the property as proposed in the Amendment. Most of the land is covered by the LSIO (the lighter coloured stipple); the FO is applied over a small area in the north-west corner of the lot (the darker coloured area).

Figure 2 66 Whyte Street, Coleraine



Figure 3 shows the current situation in the Planning Scheme. The subject land is unaffected by either overlay.

Figure 3 Current extent of the Floodway Overlay and the Land Subject to Inundation Overlay

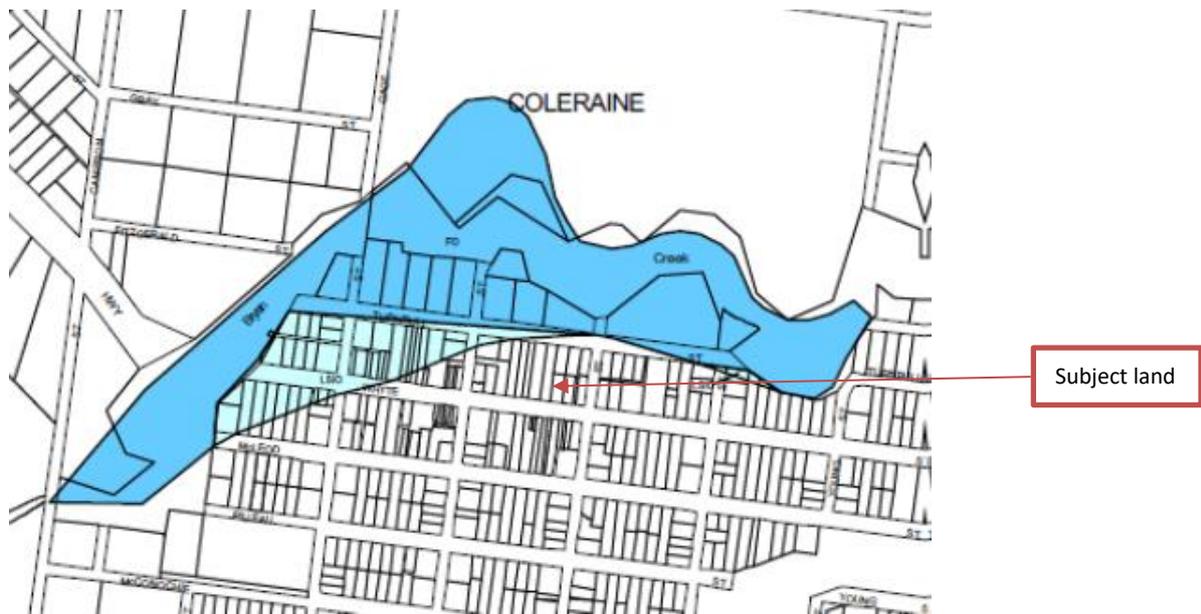
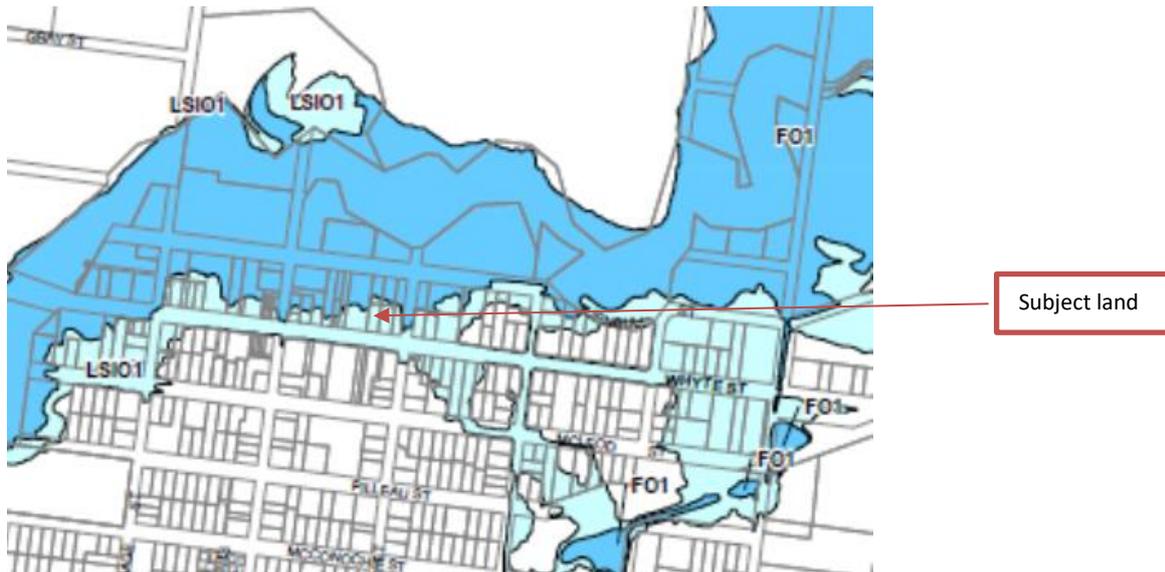


Figure 4 shows a large portion of the revised extent of the FO and LSIO across the township. Figure 2 shows the subject land at a larger scale and detail but in Figure 4, the subject land can be seen covered by the LSIO with minimal coverage by the FO.

Figure 4 Revised extent of the Floodway Overlay and the Land Subject to Inundation Overlay



The submission raised legal, administrative and technical issues. All those matters were addressed in the officer report. The resolution from the meeting was to refer the submission to a Panel. The Panel's position on the submission is presented in chapter 3.

1.5 The Panel's approach

There was no need for a formal Hearing and the Panel has considered the Amendment on the basis of material provided to it. The material includes:

- the three submissions
- the officer report to Council in December 2020 in response to submissions
- the Coleraine Flood Investigation 2018.

Chapter 3 of this Report deals with the issues raised by the landowner submitter.

2 Planning context

2.1 Planning policy framework

(i) Victorian planning objectives

Council submitted the Amendment implements the objectives of planning in Victoria as outlined in section 4(1) of the *Planning and Environment Act 1987* (the Act):

To provide for the fair and orderly, economic and sustainable use, and development of land;

To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;

To balance the present and future interests of all Victorians.

Council advised the Amendment addresses section 6 of the Act which identifies that planning schemes can provide for the ability to *Regulate or prohibit any use or development in hazardous areas or in areas which are likely to become hazardous areas*.

Council submitted the Amendment responds to this requirement by providing a safe environment and ensuring that new development is designed and located with flood risk in mind.

The Explanatory Report set out matters of policy Council said were addressed by the Amendment. It stated:

The amendment supports and implements the Planning Policy Framework (PPF) by supporting Clause 13.03 Floodplains, Clause 13.03-1S Floodplain Management, Clause 14.02 Water and Clause 14.02-1S Catchment Planning and Management by introducing appropriate flood protection measures in areas of known flood risk. The controls are being applied in order to protect life and property from flood hazard and to ensure the natural flood capacity of waterways remain relatively unencumbered.

(i) Municipal Planning Strategy

Council submitted that the Amendment supports the Municipal Planning Strategy because:

The Strategy states that there is a need to protect floodplains from inappropriate development and the protection of life and property from flood events. Clause 02.03-3 stipulates that the urban development seeks to mitigate flooding risks, apply the precautionary principle to development within flood prone areas, and implement a plan for the protection of life, property and community infrastructure from flood hazard.

2.2 Planning scheme provisions

The Amendment does not rezone any land. It changes the Planning Scheme by extending the locations affected by current and revised FO and LSIO, as well as making administrative changes to parts of the scheme. The purpose of the work is to implement the Municipal Planning Strategy and the PPF so as to identify land subject to flooding and thereby reduce the risk to life from floods in those locations.

The Panel believes the FO and the LSIO are the appropriate overlays in the Victoria Planning Provisions (VPP) for use to identify land subject to flooding. In this instance the overlays are being applied to land identified in an expert study in a proper way and consistent with the directions for their use.

The FO and the LSIO each have a provision to give Council as responsible authority the control to ensure that developments under permit applications achieve the goals of the floodplain plan. In the FO, the provision is Clause 44.03-4; in the LSIO it is Clause 44.04-5. The provision reads:

Local floodplain development plan

If a local floodplain development plan has been developed for the area and has been incorporated into this scheme, an application must be consistent with the plan.

The Clauses apply as this Amendment incorporates the Coleraine Flood Investigation 2018 into Clause 72.04 of the Planning Scheme.

2.3 Strategic justification

No submissions questioned the use of the FO or the LSIO or challenged the approach by Council in the Amendment. Nor was there reason to do so as the Council has made proper use of the VPP and the overlays.

State policy calls for the protection of land from impacts of flooding. The Local policy calls for action for the Planning Scheme to implement appropriate controls to achieve the objective. The Panel accepts the Amendment sets out to fulfill those policy goals.

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report declares the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and Ministerial Direction No.11 - Strategic Assessment of Amendments pursuant to Section 12(2) (a) of the Planning and Environment Act 1987. The Panel accepts that statement.

Planning Practice Notes

The Panel notes and accepts the Council statement in the Explanatory Report that the Amendment complies with *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46).

2.5 Discussion and conclusion

For the reasons set out, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, is consistent with the relevant Ministerial Directions and Practice Notes, and correctly uses the VPP.

The Amendment is well founded and strategically justified, and the Amendment should proceed subject to one change arising from a landowner submission as discussed in the next chapter.

3 The landowner submission

3.1 The issues

The issues are whether:

- the flood controls will negatively affect land values without compensating rate reductions and there is a lack of compensation for loss of development opportunities
- administrative break downs at Council meant the proposal was not properly explained
- mitigation works should be trialled in the local creek as a first step to solving flood problems rather than imposing planning controls over the township,

3.2 Submissions

The officer report to Council has a comprehensive response to the issues raised by the submitter. It set out how the officers dealt with the submission and their response to the issues.

One step was to conduct a meeting between the submitters and Council's expert advisors from Cardno, Pty Ltd (flood investigation consultant) and the GHCMA. The submitters' concerns were addressed with the experts provided their reasoning. The meeting did not bring a change to the submission but it did result in a recommendation for changes to the flood mapping over the property.

The submitters' advocacy for mitigation works to improve the flow of water in the Bryan Creek ahead of imposing new planning controls, was addressed in the officer report. The shape of that officer report was to include a response from the flood consultant from whom Council had sought advice on how to address submissions. After setting out consideration given to a range of physical works on a cost benefit analysis, which did not favour works including creek dredging, the consultant advised *on a number of other constraints were identified with the option to clear vegetation including:*

- Substantial alteration to the aesthetics of the system and parkland and reserves (including along the walking track);
- Reduced environmental habitat for wildlife;
- Potential increase in scour of the waterway and banks (a significant concern when dealing with sandy loam soil conditions); and
- Because of the regenerative abilities of the vegetation (particularly reeds and rushes) the reductions will diminish over time as they regrow – this effect was factored into the economic analysis.

The consultant also commented:

Even if the Study recommended vegetation clearing as a mitigation option, the analysis on the flood model found that the flood levels and extent would not reduce sufficiently such that the property would be flood free in the 1% AEP event. The analysis showed that the rear low-lying area of the property would remain inundated and hence much of the property would still be covered by the LSIO.

Dredging was not one of the eight mitigation options raised by the community or the project reference group and hence was not investigated. I have investigated dredging options on a number of other floodplains and on each occasion they have not been a viable option for the following reasons:

- Reduces flooding on some parts of the floodplain but worsens it on other parts:

This occurs because more water is retained within the creek along the reach where the dredging occurs but results in more water spilling out further downstream past where the dredging stops.

The officer report commented:

4. Clearance of vegetation from a waterway is not a consideration in terms of the application of flood related planning controls. Such works do not provide for permanent mitigation of risk due to the ever changing nature of vegetation. Also, it has been shown that vegetation removal from waterways generally provides little or no benefit with regard to floods as large as the 1%AEP event due to the sheer volume of water involved which will exceed the capacity of the waterway in any case. This was assessed as an element of the flood investigation for Coleraine which showed clearly that vegetation clearance from Bryan Creek would have little or no effect on the extent of the 1%AEP flood in Coleraine – which is the flood extent represented by the proposed LSIO.
5. The cost versus benefit of removal of vegetation from Bryan Creek was assessed as an element of the Coleraine flood investigation (see Coleraine Flood Investigation Flood Damages and Mitigation (options) report). This assessment showed that the costs associated with removal of vegetation outweighed the benefits in the context of large floods in Bryan Creek.

The consultant has put an opinion common among flood experts that mitigation works have temporary benefits but do not mitigate the impact of flood waters; the waters just break out somewhere else. The thrust of the consultant advice is that mitigation works, including as advocated by the submitter, would not achieve the stated benefit.

The officer report dealt briefly with the legal question of compensation by stating compensation is not payable for the application of planning controls over land unless there is an associated compulsory land acquisition. The officers rebuffed the effect on land values adding:

The effect on land values – whether real or perceived, isn't a factor in the consideration of application of flood risk related development controls. Local Government is required by Victorian Policy (13c of the Victorian Floodplain Management Strategy) to ensure their planning scheme contains the appropriate zones and overlays to reflect the 1% AEP flood risk.

3.3 Discussion

The Panel notes the submitters complained about administrative processes within Council which created confused communication about proposed works and incomplete information. The officer report did not comment on that issue. The Panel sees any such breakdown as an administrative issue for Council and not a reason to reject the Amendment.

The Panel agrees with the Council response about the legal position with compensation. The legal entitlement to compensation is, as the Council reported, not available under current compensation law.

Council has proposed a change to the FO over a small area the site with the balance covered by the LSIO. Figure 2 shows the details. Council proposes that single change to the Amendment, and seeks the Panel support to adopt the Amendment as otherwise exhibited.

3.4 Conclusions and recommendations

The Panel concludes the issues raised in the submission do not override the need for improvements to the flood controls for Coleraine. The flood studies have identified errors in

the current flood maps and recommended extension of the overlays to recognise the locations of higher risk of flooding, where the FO is to be applied, with the LSIO over locations where the risk is less.

The subject land at 66 Whyte Street is identified for the first time as a site where flooding is possible. The landowners are within their rights to make a submission about how their property is affected. The submission brought a change to remove the FO from the land after the submission was considered by Council and its advisors.

The Panel believes the Amendment has to be measured against the broader objective of protecting the Coleraine township, and nearby locations, than the impact on a single property.

The Panel therefore agrees with the Council that the only change to the Amendment should be to remove the FO from 66 Whyte Street, Coleraine.

The Panel accepts Council's submissions and recommends:

- 1. The Southern Grampians Planning Scheme Amendment C058sgra be adopted as exhibited subject to the following:**
 - a. Delete the Floodway Overlay from 66 Whyte Street, Coleraine**
 - b. Rename Map Nos. 1LSIO-FO, 3LSIO-FO, 15LSIO-FO, 23LSIO-FO, 24LSIO-FO, 40LSIO-FO and 41LSIO-FO from "LSIO" to LSIO2".**

Appendix A Document list

No.	Date	Description	Provided by
1	23/12/2020	Directions Hearing notice to parties	Panel
2	13/01/2021	Details of online Hearing arrangement to parties	Panel
3	21/01/2021	List of issues from Panel for Council	Panel
4	21/01/2021	Council response with letter of authorisation	Council
5	27/01/2021	Directions Hearing outcomes notice to parties	Panel