

*Planning and Environment Act 1987***MORNINGTON PENINSULA PLANNING SCHEME****AMENDMENT C105****EXPLANATORY REPORT****Who is the planning authority?**

This amendment has been prepared by the Mornington Peninsula Shire which is the planning authority for this amendment.

The part of the amendment proposing the Floodway and Land Subject to Inundation Overlays has been made at the request of Melbourne Water.

Land affected by the amendment.

The amendment affects land within the Flinders township and in the vicinity of Tanti Creek, Mornington.

Mornington:

Esplanade, Marchington Avenue, Shelbourne Court, Tanti Avenue, Morell Street, Bath Street, Barkly Street, Caldwell Street, Herbert Street, Nepean Highway, Richardson Drive, Creek Road, Yuilles Road.

Flinders:

Bass Street, Barker Street, Bluff Avenue, Coastal Drive, Coastal Court, Panton Road, Northcote Street, Crossman Court, Double Creek Road, Bass Street, Bennie Court, Cook Street, Cove Lane, Wood Street, Darley Court, Glen Road, Gordon Street, The Esplanade, Hopetoun Street, King Street, Rest Drive, Spindrift Avenue, Young Street, Glenvale Road, Boneo Road, Vale Street

Maps 1 and 2 show the general locality of the affected land but reference should be made to the maps forming part of Amendment C105 to view further details of the affected land as it affects a large number of properties along Tanti Creek, Mornington and in the Flinders township.

The amendment relates to land that has been identified as being:

- liable to inundation from an open watercourse during a severe storm of 1 in 100 year intensity; and/or
- erosion prone.

Map 1: Tanti Creek - Locality**Map 2: Flinders locality****What the amendment does.**

The amendment is one step in having the Planning Scheme updated to better address land management matters, in particular erosion and flooding, following the availability of new evidence regarding the study areas.

The amendment introduces the following additional planning controls (See ordinance documents forming part of Amendment C105 for further detail):

- A new Local Policy (Landslide Susceptibility) at Clause 22.20 dealing with erosion matters.
- A new Floodway Overlay and Schedule.
- For land in vicinity of Tanti Creek:
 - Application of an Erosion Management Overlay (Schedules 4 and 5) (EMO);
 - Application of the Land Subject to Inundation Overlay (LSIO);
 - Application of a new Floodway Overlay (FO); and
 - The extension and widening of the existing Environmental Significance Overlay Schedule 17 (ESO17 – Streamlines).
- For select land in Flinders township:
 - Erosion Management Overlay (Schedules 4 and 5).

Associated technical amendments are made to the planning scheme including changes to the Municipal Strategic Statement to recognise the above measures and Clause 61.03 to refer to new planning scheme maps.

Strategic assessment of the amendment

Why is the amendment required?

Flooding controls:

The amendment is required to identify land within or close to the Tanti Creek that warrants protection from flood controls, which will enable the consideration of flooding in the planning approvals process, with input from Melbourne Water as a Referral Authority. It will serve to control development in areas subject to the Overlays so that the free passage and storage of floodwaters is maintained. Introduction of the amendment will also minimise damage caused by flooding, by allowing only those buildings and works that would not create significant rise in flood level or flow velocity.

The amendment represents the culmination of studies of the Tanti Creek including the following:

- Tanti Creek Management Plan, Leigh Hale Consulting Services, 2002;
- “Geotechnical Investigation of Stability of Creek Banks, Tanti Creek”, Piper and Associates, 2006 (Creek Banks Report); and
- Melbourne Water Floodplain Study.

Both Melbourne Water and the Council are undertaking further drainage studies in other parts of the Shire and it is also expected that amendments similar to the current proposals will be required to implement the outcome of these studies.

Erosion controls:

The amendment is based on a geotechnical field assessment of the Flinders township and the outcomes of this, in terms of the categorisation of landslide risk, are expected be consistent with a Shire-wide study of landslide susceptibility that is yet to be completed. The proposed Erosion Management Overlay Schedules 4 and 5, applied to Flinders and the Tanti Creek under this amendment, have been drafted with a view to them also being applicable to other areas that may be identified through the outcomes of further studies. A new and separate

Planning Scheme Amendment would be required to apply the new Overlay Schedules to such other areas.

The amendment implements the work undertaken for Flinders in the:

- Geotechnical Assessment for Landslip Risk, Flinders Foreshore, Piper and Associates 2007.

How does the amendment implement the objectives of planning in Victoria?

Section 4 of the *Planning and Environment Act 1987* includes the following relevant objectives and the amendment is considered to be consistent with these because it will ensure that water and erosion management issues are considered during the development process:

“to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;” (Section 4(2)(c))

“to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;” (Section 4(2)(d))

“to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes;” (Section 4(2)(e))

How does the amendment address the environmental effects and any relevant social and economic effects?

Social and Economic Effects

- *Erosion management*

The amendment does not prohibit further development in the area but does require that any land changes be first investigated by a geotechnical engineer. This will bring about financial costs and may extend the time taken for planning approvals for development in affected areas.

Additional application requirements are likely to increase costs for permit applicants in areas affected by Erosion Management Overlays. However, a diligent land owner could be expected to face similar costs to investigate potential geotechnical risks in these areas in the course of obtaining a building permit whether or not a planning permit were required.

Positive economic effects are likely to accrue in the long term with the prevention of inappropriate development that could lead to slope failure and its associated economic costs.

Socially, the general community will benefit from a safer, aesthetically pleasing and environmentally cleaner waterway. People looking to purchase homes alongside the Tanti Creek will be made aware of erosion management issues in the area before they make a decision. The community is expected to benefit from improved understanding of local environmental issues and the impact that development has on the environment, and vice versa.

- *Flooding controls*

The amendment will have positive social and economic effects by ensuring that issues relating to flooding and drainage are identified at an early stage in the development approval process.

Additional application costs are not likely to be incurred by developers as Melbourne Water indicated that they are unlikely to be expected to provide flood risk reports as required by the FO and LSIO.

The amendment will minimise damage caused by a 1 in 100 year flood by requiring a permit for buildings and works located within areas subject to inundation. The controls will assist in minimising the personal, social, community and financial losses that result from the affects of flooding.

Environmental Effects

The amendment should have positive environmental effects. The application of an erosion management overlay will address several environmental issues. It should assist in preventing further land degradation in Flinders and along Tanti Creek. This in turn would result in less siltation and sediment flowing into Port Phillip. The extension of the ESO is also intended to trigger further emphasis on protecting the stream environment. The proposed FO and LSIO are likely to have a beneficial effect in the achievement of these positive environmental effects.

The affected land holds significant flooding and/or life and property risks in relation to use and development. These potentially adverse effects are proposed to be prevented by this proposed amendment.

Does the amendment comply with the requirements of any Minister's Directions applicable to the amendment?

The amendment is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* under section 7(5) of the Act.

Ministerial Direction No.9: Metropolitan Strategy:

- What aspects, if any, of the Metropolitan Strategy are relevant? How does the Metropolitan Strategy affect the amendment? Is the amendment consistent with any directions and policies in the Metropolitan Strategy?

The amendment relates to land which is predominantly within the Urban Growth Boundary. The following Metropolitan Strategy policies are considered most relevant to the amendment:

Direction 9 requires that Planning Scheme Amendments must have regard to the Metropolitan Strategy (*Melbourne 2030 – Planning for Sustainable Growth*). The proposed amendment is considered to be consistent with the relevant directions and policies of *Melbourne 2030* and the relevant Clauses of the State Planning Policy Framework as discussed below.

Direction 5 – A Great Place to Be

Policy 5.8 - *Improve the environmental health of the bays & their catchments*, aims to protect the environmental health of Melbourne's bays and catchments through reducing environmental pressures, such as sediment load and pollutants from sources such as construction sites, in order to improve the quality of stormwater entering Melbourne's waterways and bays.

To facilitate the implementation of this policy, initiative 5.8.3 states the following:

“Complete land capability and natural resource mapping for the region, compile an inventory and provide education and training to help local planning authorities use this information for land-use planning decisions”.

Consistent with this initiative, Amendment C105 will update the boundaries of ESO17, EMO and LSIO planning controls in the Mornington Peninsula Planning Scheme, together with the introduction of the FO, to enable both Council and Melbourne Water to better manage development on land subject to flooding and erosion, and to help protect Melbourne's water quality.

Direction 7 - A Greener City

Policy 7.4 - *Reduce the impact of stormwater on bays and catchments*, focuses on the quality and quantity of stormwater entering Melbourne's waterways and bays.

To facilitate the implementation of this policy, initiatives 7.4.2 - 7.4.4 state the following:

“Support integrated planning of stormwater quality at all scales, through a mix of on-site measures and developer contributions”;

“Promote measures to achieve more effective mitigation of stormwater pollution from construction sites in line with the EPA Victoria's Environmental Guidelines for Major Construction Sites”; and

“Work with local government to develop and implement stormwater management plans that incorporate integrated drainage management principles consistent with the BPEM (Best Practice Environmental Management), and include measures for annual monitoring and reporting”.

It is considered that the update and addition of erosion and flood control overlay boundaries in the Mornington Peninsula Planning Scheme, as proposed in this amendment, will facilitate this policy objective.

Overall, the economic, social and environmental outcomes of this amendment are considered to be consistent with the principles of *Melbourne 2030*, in particular, Direction 5 (A Great Place to Be) and Direction 7 (A Greener City), which aim to create a better quality urban environment and improve the quality and quantity of stormwater entering Melbourne's waterways and bays.

- Does the amendment support, give effect to or assist the implementation of the Metropolitan Strategy or can it be reasonably modified to do so?

As outlined above, the amendment supports and assists the implementation of the Metropolitan Strategy and does not require modification to do so.

- Will the amendment compromise the implementation of the Metropolitan Strategy?

The amendment is not seen to compromise the implementation of the Metropolitan Strategy and actively seeks to build on its implementation mechanisms.

Minister's Direction 13: Managing Coastal Hazards and the Coastal Impacts of Climate Change:

The amendment affects development on land within one kilometre of the coastline. The amendment is consistent with Clause 13.01 of the State Planning Policy Framework.

The amendment addresses the current and future risks and impacts associated with projected sea level rise, coastal erosion and creek flooding. It is based on an evaluation of potential risks and presents an outcome that seeks to avoid or minimise exposing future development to projected coastal hazards.

The amendment considers the views of Melbourne Water as the relevant floodplain manager and the comments of the Department of Sustainability and Environment will be sought during the exhibition process.

How does the amendment support or implement the State Planning Policy Framework?

- State Planning Policy Framework Clause 13 Environmental Risk states:
“Planning should adopt a best practice environmental management and risk management approach which aims to avoid or minimise environmental degradation and hazards.”
- This is supported by the State Planning Policy Framework Clause 14.02-1 Catchment Planning and Management which has the objective: *“To assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.”*

The strategies to achieve this objective are:

- Retain natural drainage corridors with vegetated buffer zones at least 30m wide along waterways to maintain the natural drainage function, stream habitat and wildlife corridors and landscape values, to minimise erosion of stream banks and verges and to reduce polluted surface runoff from adjacent land uses.
 - Undertake measures to minimise the quantity and retard the flow of stormwater runoff from developed areas.
- The State Planning Policy Framework clearly calls for the protection of waterways, such as Tanti Creek, that are suffering human-induced environmental problems that can be addressed through the implementation of an erosion management overlay. The phrase in Clause 13.03-2 Erosion and Landslip “to protect areas prone to erosion, landslip or other land degradation processes” is particularly relevant to this amendment.
- The State planning policy for floodplain management (Clause 13.02-1) provides the broad framework for the integration of flood policy and provisions into planning schemes. It brings together various strands of policy and strategic planning from all areas of government that have a bearing on floodplain management. It also aims to provide consistency in planning controls for flood affected areas of the State.

The objective of the State planning policy for floodplain management is to assist in the protection of:

- life, property and community infrastructure from flood hazard
- the natural flood-carrying capacity of rivers, streams and floodways
- the flood storage function of floodplains and waterways
- floodplain areas of environmental significance.

The policy states that flood risk must be considered in the preparation of planning schemes and in land use decisions, so as to avoid intensifying the impact of flooding through inappropriately located uses and developments.

The policy also states that land affected by flooding should be shown on planning scheme maps and recognises that land affected by flooding is land inundated by the 1-in-100-year flood event or as determined by the floodplain management authority.

Planning authorities are also to have regard to the following documents when preparing planning schemes for areas affected by flooding:

- *State Environment Protection Policy (Waters of Victoria)*.
- Regional catchment strategies and special area plans approved by the Minister for Environment and Climate Change.
- Any floodplain management manual of policy and practice, or catchment management, river health, wetland or floodplain management strategy adopted by the relevant responsible floodplain management authority.
- Any best practice environmental management guidelines for stormwater adopted by the Environment Protection Authority.
- *Victoria Floodplain Management Strategy* (Department of Natural Resources and Environment, 1998).

Regard has been had to all these matters and it is considered that the amendment is consistent with the State Planning Policy Framework for the environmental risks under Clause 13.02 of the Scheme in relation to floodplain management, in that it will assist in the protection of life, property and community infrastructure from flood hazard, the natural flood carrying capacity of rivers, streams and floodways, and will protect the flood storage function of floodplains and waterways.

How does the amendment support or implement the Local Planning Policy Framework?

The Local Planning Policy Framework endorses environmentally sustainable land use management. In particular, planning authorities should ensure that developments do not adversely affect waterways within the Mornington Peninsula's precinct. The relevant Local Planning Policy Framework clauses can be summarised as follows:

- Clause 22.13-2 ensures that construction activities do not adversely impact on the regional drainage functions of waterways and drains.
- Clause 22.14-2 promotes the sustainable use of land and the protection of streamlines and wetlands.
- Clause 22.14-4 calls for the monitoring of any development with regards to the environmental values, the landscapes or the continuation of established rural activities in the area.

The amendment enhances the Local Planning Policy Framework by introducing new erosion management provisions for township areas in general, which apply to the Tanti Creek and Flinders township to begin with and will progressively cover other areas once studies are finalized.

The amendment is consistent with the Local Planning Policy as it provided Melbourne Water, as the Floodplain Management Authority, the opportunity to comment on development and subdivision proposal in areas that are affected by flooding.

Does the amendment make proper use of the Victoria Planning Provisions?

The form of the amendment, utilising the Erosion Management Overlay, is consistent with that approved in relation to comparable proposals. The proposed introduction of the Erosion Management and Floodway Overlays to these areas represents the culmination of strategic project work, identifying specific land management issues and the chosen overlays are the most appropriate amongst the VPPs in terms of addressing these issues. The existing controls affecting these areas offer inadequate protection of the waterways against inappropriate development.

The Floodway Overlay has not been previously utilised within the Mornington Peninsula Planning Scheme. The Floodway Overlay is somewhat similar in intent to the Land Subject to Inundation Overlay, which is currently a feature of the Mornington Peninsula Planning Scheme.

The Floodway Overlay applies to mainstream flooding in both rural and urban areas. Mainstream flooding occurs when a large amount of run-off after heavy rainfall causes water overflows from river or creek banks onto adjacent low-lying land.

The Land Subject to Inundation Overlay does not prohibit uses and only applies to development. The LSIO is designed to be applied to both urban and rural environments to identify land with a lower potential flood risk, or as an interim measure for areas where accurate flood mapping to identify the flood mapping is yet to be carried out.

The Urban Floodway Zone and Special Building Overlay were not considered appropriate as they do not specifically respond to the land management issues affecting these areas. There is no need for land use controls (the Urban Floodway Zone prohibits most uses and development where there is a high potential flood risk) or for stormwater flooding mitigation of highly built up environments as provided by the Special Building Overlay.

The flood provisions do not address the cause of flooding, but the way future land uses or development will impact on the flooding problem or be impacted themselves by flooding. The cause needs to be dealt with by separate means. This may include other actions of Council and/or Melbourne Water such as flood mitigation measures, that may be linked to a corporate plan or a floodplain management strategy.

On the bases of the above discussion, it is considered that the amendment makes proper use of the Victoria Planning Provisions.

How does the amendment address the views of any relevant agency?

Melbourne Water is satisfied with the amendment provisions. It has advised that, although there are provisions in the amendment for preparation of Floodplain Management Plan, it did not consider such plan as warranted at this stage.

Is the amendment likely to have a significant impact on the transport system, as defined by section 3 of the *Transport Integration Act 2010*?

The amendment is not expected to have a significant impact on the transport system.

Are there any applicable statements of policy principles prepared under section 22 of the *Transport Integration Act 2010*?

There are no applicable statements of policy principles prepared under section 22 of the *Transport Integration Act 2010*.

What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?

The provision on resources and administrative costs to the responsible authority will be minimal. This is due to the overlay requirements that any private owner wanting to develop on their property in the overlay area will have to fund their own geotechnical report and/or flood risk assessment. However an increase in the number of planning applications received as a result of the introduction of these controls is expected, leading to additional administrative costs but these should not be beyond the scope of the existing budget.

Where you may inspect this Amendment.

The amendment is available for public inspection, free of charge, during office hours at the following places.

Department of Planning and Community
Development
www.dpcd.vic.gov.au/planning/publicinspection

Mornington Peninsula Shire Council
www.mornpen.vic.gov.au
Hastings Office – Marine Parade, Hastings
Mornington Office – Queen Street, Mornington
Rosebud Office – Besgrove Street, Rosebud

Further information regarding the proposed
flooding controls can be obtained from
Melbourne Water. Ph: (03) 9235-7070

Written submissions should be sent to:
The Manager – Strategic Planning, Mornington Peninsula Shire Council, Private Bag 1000,
Rosebud 3939.