

**Draft Planning Scheme Amendment C124cola  
Referral 38: 130-154 Sinclair Street South, Colac**

**Priority Projects Standing Advisory Committee Report**

*Planning and Environment Act 1987*

**19 February 2024**

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Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

*Planning and Environment Act 1987*

Priority Projects Standing Advisory Committee Report pursuant to section 25 of the PE Act

Draft Planning Scheme Amendment C124cola

Referral 38: 130-154 Sinclair Street South, Colac

**19 February 2024**

Sarah Raso, Chair

Adam Terrill, Member

## Contents

	<b>Page</b>
<b>1 Overview .....</b>	<b>5</b>
1.1 Referral summary .....	5
1.2 Findings .....	6
1.3 Recommendation .....	6
<b>2 Introduction.....</b>	<b>7</b>
2.1 Terms of Reference and letter of referral.....	7
2.2 Subject land and surrounds.....	7
2.3 Draft Amendment .....	8
2.4 Background .....	8
2.5 The Committee’s approach .....	11
<b>3 Strategic issues .....</b>	<b>12</b>
3.1 Planning context .....	12
3.2 Strategic justification .....	12
<b>4 Flooding issues .....</b>	<b>14</b>
4.1 Background .....	14
4.2 The issue .....	14
4.3 Evidence and submissions .....	14
4.4 Discussion .....	19
4.5 Findings and recommendation .....	20
<b>Appendix A Terms of Reference .....</b>	<b>21</b>
<b>Appendix B Letter of referral .....</b>	<b>24</b>
<b>Appendix C Document list.....</b>	<b>26</b>
<b>Appendix D Committee preferred version of the Development Plan Overlay, Schedule 9 ...</b>	<b>28</b>

## List of Tables

	<b>Page</b>
Table 1 Planning context .....	12

## List of Figures

	<b>Page</b>
Figure 1 Subject land .....	7
Figure 2 Proposed Plan of Subdivision .....	9
Figure 3 Melbourne Water’s Guidelines and Technical Specifications (November 2016) .....	15
Figure 4 CCMA principles to define the Floodway Overlay and LSIO .....	15
Figure 5 One per cent AEP existing conditions flood modelling results .....	17
Figure 6 One per cent AEP flood depth different due to developed conditions .....	18

## Glossary and abbreviations

Ablut	Ablut Pty Ltd
AEP	Annual Exceedance Probability
ARR 2019	Australian Rainfall and Runoff Guidelines, 2019
CCMA	Corangamite Catchment Management Authority
Colac Flood Amendment	Planning Scheme Amendment C90cola
Council	Colac Otway Shire Council
D	Document
DPO9	Development Plan Overlay, Schedule 9
draft Amendment	Draft Planning Scheme Amendment C124cola
Flood Study	Deans Creek and Barongarook Creek Flood Study, August 2017
LSIO	Land Subject to Inundation Overlay, Schedule 1
PE Act	<i>Planning and Environment Act 1987</i>
Planning Application	Planning permit application seeking approval for subdivision of the subject land
Planning Scheme	Colac Otway Planning Scheme
subject land	130-154 Sinclair Street South, Colac
SWMS	Stormwater Management Strategy <sup>1</sup> prepared by Engeny dated October 2018

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<sup>1</sup> D3q

# 1 Overview

## 1.1 Referral summary

Referral summary	
Referral	38
The Amendment	Draft Planning Scheme Amendment C124cola
Brief description	<ul style="list-style-type: none"> <li>- Delete the Floodway Overlay, Schedule 1</li> <li>- Apply the Land Subject to Inundation Overlay, Schedule 1</li> <li>- Apply the Development Plan Overlay, Schedule 9</li> </ul>
Subject land	130-154 Sinclair Street South, Colac
Municipality	Colac Otway Shire
Responsible Authority	Colac Otway Shire Council
Planning Authority	Minister for Planning
Landowner	Ablut Pty Ltd
Submissions	Number of Submissions: 3 Opposed: 1 <ul style="list-style-type: none"> <li>- Corangamite Catchment Management Authority</li> <li>- Country Fire Authority</li> <li>- Graham Garner</li> </ul>

Committee process	
The Committee	Sarah Raso (Chair) and Adam Terrill
Supported by	Gabrielle Trowse, Project Officer, Planning Panels Victoria
Directions Hearing	By video, 20 December 2023
Panel Hearing	Colac Otway Performing Arts & Cultural Centre, 95-97 Gellibrand St, Colac and by video, 5 February 2024
Site inspections	Unaccompanied, 4 February 2024
Parties to the Hearing	<p><b>Colac Otway Shire Council</b> represented by Darren Rudd</p> <p><b>Ablut Pty Ltd</b> represented by John Cicero of Best Hooper Lawyers, who called drainage and flood modelling evidence from Scott Dunn of Engeny Pty Ltd</p> <p><b>Graham Garner</b></p> <p><b>Corangamite Catchment Management Authority</b> represented by Penny Reid</p>
Citation	Priority Projects Standing Advisory Committee Referral 38 [2024] PPV
Date of this report	19 February 2024

## 1.2 Findings

The purpose of the draft Amendment is to facilitate the subdivision of the land for housing through the removal of the Floodway Overlay and the application of the Land Subject to Inundation Overlay.

Specifically, the draft Amendment proposes to make the following changes to the planning provisions which apply to 130-154 Sinclair Street South, Colac:

- delete the Floodway Overlay, Schedule 1
- apply the Land Subject to Inundation Overlay, Schedule 1
- apply the Development Plan Overlay, Schedule 9.

The Minister for Planning has requested the Committee constrain its advice to the following themes:

- technical assumptions and calculations relating to floodplain modelling
- concerns with local flooding and inadequate drainage infrastructure in the local area.

The Committee finds:

- The flood modelling and evidence demonstrates the mitigation measures proposed through the Stormwater Management Strategy will adequately manage stormwater on the subject land and will not worsen flooding on surrounding properties.
- It is appropriate and justified to replace the Floodway Overlay with the Land Subject to Inundation Overlay, Schedule 1 on the land at 130-154 Sinclair Street South, Colac.

## 1.3 Recommendation

The Committee recommends the Minister:

**Prepare, adopt and approve draft Colac Otway Planning Scheme Amendment C124cola as exhibited, subject to revising Development Plan Overlay, Schedule 9 as provided in Appendix D.**

## 2 Introduction

### 2.1 Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference dated 9 September 2023:

... provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (DFP), or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

This is Referral 38. The Minister for Planning's letter of referral was dated 25 November 2023. It asked the Committee for advice and recommendations on whether to prepare, adopt and approve draft Planning Scheme Amendment C124cola (draft Amendment).

The Minister requested the Committee constrain its specific advice to the following themes:

- technical assumptions and calculations relating to floodplain modelling
- concerns with local flooding and inadequate drainage infrastructure in the local area.

The members of the Committee that considered Referral 38 are:

- Ms Sarah Raso, Chair
- Mr Adam Terrill, Member.

The Committee was assisted by Ms Gabrielle Trowse, Project Officer from the Office of Planning Panels Victoria.

### 2.2 Subject land and surrounds

The Amendment applies to 130-154 Sinclair Street South, Colac (subject land) shown in Figure 1.

**Figure 1** Subject land



Source: Explanatory Report, D3c

The subject land is 6.55 hectares and is located approximately 1.8 kilometres southwest of the Colac town centre. It is an L shaped parcel of land, with a western frontage of 142.15 metres to

Sinclair Street South, a northern frontage of 198.28 metres to Hearn Street, and a southern frontage of 168.51 metres to Pound Road.

The surrounding land is currently utilised for farming purposes with residential development to the west and east of the subject land.

## **2.3 Draft Amendment**

The draft Amendment proposes to make the following changes to the planning provisions which apply to 130-154 Sinclair Street South, Colac:

- delete the Floodway Overlay, Schedule 1
- apply the Land Subject to Inundation Overlay, Schedule 1 (LSIO)
- apply the Development Plan Overlay, Schedule 9 (DPO9).

The purpose of the draft Amendment is to facilitate the subdivision of the land for housing through the removal of the Floodway Overlay and the application of the LSIO.

## **2.4 Background**

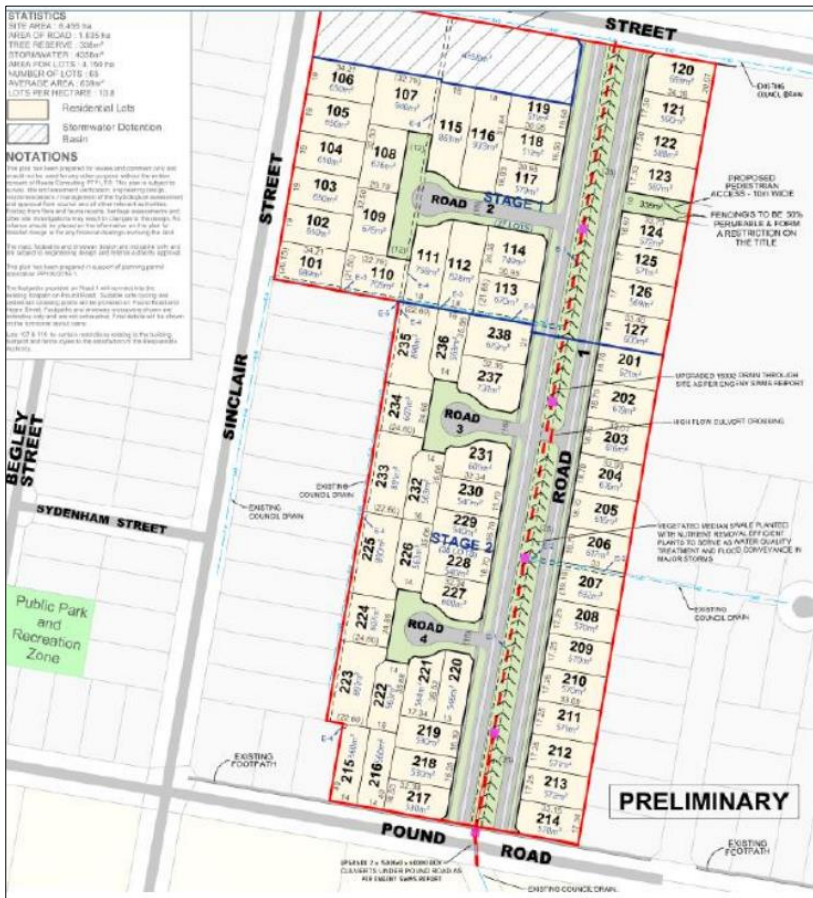
The subject land is subject to the General Residential Zone, Schedule 1 of the Colac Otway Planning Scheme (Planning Scheme) and is affected by the Land Subject to Inundation Overlay and the Floodway Overlay.

In May 2016, a planning permit application (Planning Application) was lodged with Colac Otway Shire Council (Council) seeking approval for subdivision of the subject land.

The most recent plan of subdivision submitted to Council as part of the Planning Application is shown in Figure 2. It contemplates a staged 65 lot subdivision of the subject land, with lots ranging in size between 511 – 940 square metres.



Figure 2 Proposed Plan of Subdivision



Source: D3p

The Planning Application was supported by a Stormwater Management Strategy<sup>2</sup> (SWMS) prepared by Engeny dated October 2018. The SWMS outlined the measures that would be implemented to mitigate the impacts of flooding on the subject land and to the surrounding properties. These included a stormwater detention basin to the northern boundary of the subject land and the provision of a 35 metre road reserve to provide sufficient capacity to convey peak one per cent annual exceedance probability (AEP) flow.

During the assessment of the Permit Application, Planning Scheme Amendment C90cola (Colac Flood Amendment) was introduced into the Planning Scheme on 30 July 2021 which significantly expanded the distribution of the Floodway Overlay over the subject land.

Under clause 43.03-3 of the Floodway Overlay, subdivision is not permitted where privately owned lots would be wholly contained in a Floodway Overlay.

Notwithstanding the Colac Flood Amendment, matters relating to flooding and drainage on the subject land were resolved to the satisfaction of the Corangamite Catchment Management Authority (CCMA) to the extent that it would allow a permit to be issued, if it were not for the Floodway Overlay being present.

The CCMA reviewed the underpinning assumptions used in the flood modelling for the subject land and found there were unique factors which indicated the flood depth in this location would

<sup>2</sup> D3p

not be as significant as the Deans Creek and Barongarook Creek Flood Study (Flood Study) (which underpinned the Colac Flood Amendment) had anticipated. The CCMA concluded it was justified to review of the flood mapping for the subject land considering more recent flood modelling undertaken by the permit applicant.

The CCMA determined to support the Permit Application and recommended the deletion of the Floodway Overlay and application of the LSIO<sup>3</sup>.

The CCMA said:

Based on the results shown and the modelling presented by Engeny in the Stormwater Management Plan for the development, it is recommended that the development permit be permitted to proceed with conditions. There are a number of ways this can proceed, including:

1. Updating the planning scheme mapping to be consistent with the mapping presented above in Figure 4



Figure 4. Draft LSIO and FO mapping (modified roughness)

2. Change all Floodway Overlay on the property to Land Subject to Inundation Overlay. This option represents a deviation in the CMA's approach to the application of flood related overlays in the Corangamite region. To address this inconsistency, the CMA requires mitigation works prior to the amendment, or a planning mechanism which ensures mitigation will occur prior to subdivision such as a Development Plan Overlay. The CMA understands that a development plan already exists for this property and therefore should be able to be modified to address this requirement. Given the existing flood risk on the property, it is not recommended to completely remove flood related overlays until as constructed modelling of mitigation works demonstrates that the land is flood free in a 1% AEP event.

The draft Amendment was prepared, consistent with the recommendations of the CCMA.

The draft Amendment was submitted to the Development Facilitation Program within the Department of Transport and Planning in June 2022.

The draft Amendment was exhibited in March 2023. Three submissions were received by the Minister for Planning and referred to the Committee for consideration.

<sup>3</sup> See d3u

## 2.5 The Committee's approach

The Committee has complied with and reported on all relevant matters in accordance with its Terms of Reference, in particular Clauses 11, 15, 18, 20 and 21.

The letter of referral makes it clear that the Committee is to only consider these matters referred. This means that the Committee has confined its review to these issues only. In doing so, the Committee considered all written submissions received during the consultation period as well as submissions and evidence presented to it during the Hearing. The Committee has been assisted by the information provided to it as well as its observations from an unaccompanied inspection of the subject land.

Clause 20 of the Terms of Reference of the Committee require it to provide a 'concise written report' to the Minister for Planning. This report is concise in that it focuses on the key determinative issues only. All materials have been considered by the Committee in reaching its conclusions, regardless of whether they are mentioned in the report.

## 3 Strategic issues

### 3.1 Planning context

Table 1 Planning context

	Relevant references
<b>Victorian planning objectives</b>	- section 4 of the PE Act
<b>Municipal Planning Strategy</b>	- Clause 2
<b>Planning Policy Framework</b>	- Clauses 11.01-1S (Settlement), 11.01-1R (Settlement- Geelong G21), Clauses 11.01-1L (Colac Urban Growth), 11.02-1S (Supply of urban land), 11.02-2S (Structure planning), 11.03-3S (Peri-urban areas) - Clause 13.03-1S (Floodplain management) - Clauses 14.02-2S (Water quality), 14.02-2L (Lake Colac water quality) - Clauses 15.01-3S (Subdivision design), 15.01-4S (Healthy neighbourhoods) - Clauses 16.01-1S (Housing supply), 16.01-1L (Colac Housing supply) - Clause 19.03-2S (Infrastructure design and provision), 19.03-3S (Integrated water management)
<b>Planning scheme provisions</b>	- General Residential Zone, Schedule 1 - Environmental Significance Overlay - Floodway Overlay
<b>Planning scheme amendments</b>	- Colac Otway Planning Scheme Amendment C90
<b>Ministerial directions</b>	- Ministerial Direction 11 (Strategic Assessment of Amendments) - Ministerial Direction 19 (Ministerial Direction on the Preparation and Content of Amendments that may Significantly Impact the Environment, Amenity and Human Health)
<b>Planning practice notes</b>	- Planning Practice Note 46: Strategic Assessment Guidelines, September 2022 - Planning Practice Note 12: Applying the Flood Provisions in Planning Schemes, June 2015

### 3.2 Strategic justification

#### (i) Evidence and submissions

There was no dispute amongst the parties that the draft Amendment is strategically justified.

The Explanatory Report provides a clear strategic basis for the Amendment:

The Amendment is required to facilitate the subdivision of the land for housing, following further flood modelling undertaken since the implementation of the Colac Flood Study that resulted in the current application of the Floodway Overlay on the land. This updated flood analysis commissioned by the developer of the land indicates that with the installation of a new centralised drainage channel, the land can be safely developed for residential purposes

and the Land Subject to Inundation Overlay is the correct control for the site. The Corangamite Catchment Management Authority has been consulted and agrees with this approach.

The efficient use of the land for residential purposes facilitated by the amendment is consistent with the strategic directions of the Colac Otway Planning Scheme to direct growth in areas suitable for sustainable and environmentally appropriate development.

The application of the Development Plan Overlay Schedule 9 will provide additional detailed guidance for the future use of the land for residential purposes, including drainage works.

The surrounding area is conventional residential housing and is consistent with the proposed planning scheme amendment changes and residential use of the land enabled by the amendment.

Council submitted the Amendment is strategically justified, is supported by, and implements, the relevant sections of the Planning Policy Framework.

## **(ii) Discussion**

The Committee finds there is support under the PE Act, the Planning Scheme and other strategic reports and documents that justifies the strategic basis for the draft Amendment. The draft Amendment reflects revised flood analysis and drainage works proposed for the subject land to enable its safe use for residential purposes. The risk of flooding to both the subject land and surrounding properties has been assessed as acceptable and is supported by the flood plain manager. The Land Subject to Inundation Overlay is the correct planning tool in such circumstances.

As with all planning matters, policy objectives must be balanced to determine what an appropriate outcome or decision is. In this case, the Committee finds the draft Amendment will result in a net community benefit by facilitating the subdivision of the subject land that will continue to meet the community's need for residential housing.

## **(iii) Finding**

The Committee finds:

- The draft Amendment is well founded and strategically justified and is supported by, and implements, the State and local planning policy framework and strategic imperatives.
- The draft Amendment should be progressed, subject to further recommendations.

## 4 Flooding issues

### 4.1 Background

On 21 December 2023, the Committee wrote to all submitters and indicated it would be assisted by more information on the following issues:

1. Why the Deans Creek and Barongarook Creek Flood Study (BMT WBM, 2017) formed a different conclusion with respect to the Flood Overlay over the subject site than the flood modelling in the exhibited Engeny Stormwater Management Plan (Document 3q).
2. The appropriateness, with reference to precedents and standards, of the modified hydraulic roughness of 0.045 for the subject site in the updated CCMA flood modelling.
3. Why it is proposed to remove the Floodway Overlay completely from the subject site when the CCMA's updated modelling with modified roughness (Figure 4 CCMA letter dated 3 November 2022 as attached to Council's Part A submission) still shows small areas of Floodway Overlay on the site.
4. Why the exhibited LSIO map differs from the CCMA's updated modelling with modified roughness (Figure 4 CCMA letter dated 3 November 2022 as attached to Council's Part A submission);
5. The 'stormwater initiatives' that may 'have a positive effect on resolving the issues quicker' as discussed with Council and as referred to in Submitter 3's email to Planning Panels Victoria dated 14 December 2023 (Document 6)

All parties addressed these matters through the Hearing in both submissions and expert evidence.

### 4.2 The issue

The issue is whether it is appropriate and justified to replace the Floodway Overlay with the LSIO on the subject land, having regard to:

- technical assumptions and calculations relating to floodplain modelling
- local flooding and existing drainage.

### 4.3 Evidence and submissions

The CCMA, in supporting the draft Amendment, provided a useful summary of the various flood and stormwater studies that have been undertaken in relation to the subject land. Of particular interest was the:

- Flood Study – the study that led to the Floodway Overlay over the subject land
- SWMS.

The CCMA noted the different objectives and conclusions of the Flood Study and SWMS models. It highlighted (Committee's emphasis):

the BMT model focused on mapping riverine flooding. The areas of Colac draining to Lake Colac, and Council's underground drainage network draining the major waterways were not assessed or mapped ... the 825mm pipes running south to north through the site in addition to other Council drains were excluded from the BMT model, resulting in more overland flows within the BMT model.

...

The BMT hydraulic model's roughness coefficients are based on the assumption that development across the study area is in line with development allowed by the respective

planning zones ... this particular property's development status was not picked up during the review.

The CCMA highlighted the roughness coefficient used in the Flood Study model was 0.25, corresponding to a standard density residential use. Conversely, the SWMS used a much lower coefficient of 0.035, a figure used for undeveloped land equivalent to an open paddock. As a result, the CCMA submitted, the Flood Study figure of 0.25, that led to the Floodway Overlay being applied to the subject land, was incorrect.

This is important, the CCMA explained, because a lower coefficient means greater water flow, leading to shallower flooding (and a stronger case for the LSIO). It submitted:

In developing the hydraulic model, a surface roughness coefficient is applied throughout the catchment to define how much resistance there is to overland flow as it passes over different land use types. Surface roughness values will be higher in residential properties due to the presence of structures that impede the flow of water (i.e., houses, fences, etc.), while flow through a paddock will have a lower surface roughness value to reflect the relative lack of impediments to flow.

The CCMA cited Melbourne Water's Guidelines and Technical Specifications (November 2016) – see Figure 3.

**Figure 3 Melbourne Water's Guidelines and Technical Specifications (November 2016)**

Land Use	Roughness Coefficient (Manning's n)
Standard density residential property	0.25
Low density residential property	0.045
Public use – Local Government / Cemetery	0.045
Farm zone	0.04
Parks, Recreational, Public Conservation and Resource Zone	0.035

Source: CCMA Submission, D11

Whilst the CCMA used a coefficient of 0.045 in its model, it also considered the SWMS's figure of 0.035 was appropriate given the undeveloped, open nature of the subject land.

In supporting the removal of the Floodway Overlay entirely when the CCMA's modelling showed some areas of Floodway Overlay on the subject land might still be necessary, the CCMA submitted:

- the pockets of Floodway Overlay were 'small'
- the DPO9 required flood mitigation works to be undertaken as part of the development, providing sufficient assurance that flooding would be adequately controlled.

The CCMA provided the following table (see Figure 4) which it used to determine which overlay to adopt.

**Figure 4 CCMA principles to define the Floodway Overlay and LSIO**

Land Subject to Inundation Overlay (LSIO)	Floodway Overlay (FO)
a. Depth of flooding $\leq$ 0.3 metres; and b. Velocity $\leq$ 3 metres per second; and c. Depth multiplied by Velocity $\leq$ 0.3m <sup>2</sup> /s	a. Depth of flooding $\geq$ 0.3 metres; and b. Velocity $\geq$ 3 metres per second; and c. Depth multiplied by Velocity $\geq$ 0.3m <sup>2</sup> /s

Source: CCMA Submission, D11

In assessing the projected flooding across the subject land, the CCMA concluded the LSIO would be the best fit.

In providing overall support for the draft Amendment and development, the CCMA submitted a Flood Impact Assessment was ordinarily required to show no adverse hydraulic impacts between pre and post development modelling, updated in line with Australian Rainfall and Runoff Guidelines, 2019 (ARR 2019) methodology. When questioned, the CCMA agreed that this was

already addressed in the draft DPO9 which requires a ‘stormwater management plan’, provided the DPO9 is amended to reference ARR 2019. The CCMA also recommended:

- the first dot point under clause 3 of the DPO9 be amended to reference both Council and CCMA as responsible for approving the SWMS
- the first dot point under Clause 4 is amended to:  
hydraulic flood modelling to ~~demonstrate~~ determine the depth, velocity and hazard of flooding under existing and proposed ~~developed~~ flood conditions.

Graham Garner (submitter 3), a neighbour to the subject land, objected to the Amendment on the basis that it would exacerbate flooding in the area and on his property. He tabled a series of emails, photos and videos that show a long history of dispute with the Council over flooding and drainage issues and a series of recent floods impacting his property and surrounding streets. Mr Garner was concerned about the effectiveness of flood mitigation measures used in comparable subdivisions nearby, submitting they led to an increased severity of flooding.

Mr Garner detailed a series of faults with the existing drainage system, submitting Council’s maintenance regime was insufficient. However, he noted that recent discussions with Council had been fruitful, and that several improvements and maintenance activities had been recently carried out, with more planned.

Whilst not addressing the draft Amendment directly, Mr Garner said he *“didn’t have a problem with the development as long as stormwater works were undertaken and actually worked”*, and that there should be a moratorium on new developments until the drainage issues had been resolved. He did not consider the proposed drainage mitigation measures for the development would be effective.

Ablut Pty Ltd (Ablut), the landowner, whilst sympathising with Mr Garner, submitted that in relation to flooding the development cannot *“make matters worse”* and was not responsible for the existing flooding issues of the area.

The primary question, Ablut asked, was whether the DPO’s controls were appropriate and provided for an acceptable response to flooding. Ablut submitted the DPO9 *“does what Mr Garner wants”* in providing an obligation for stormwater management along with mitigation measures to ensure no offsite impact.

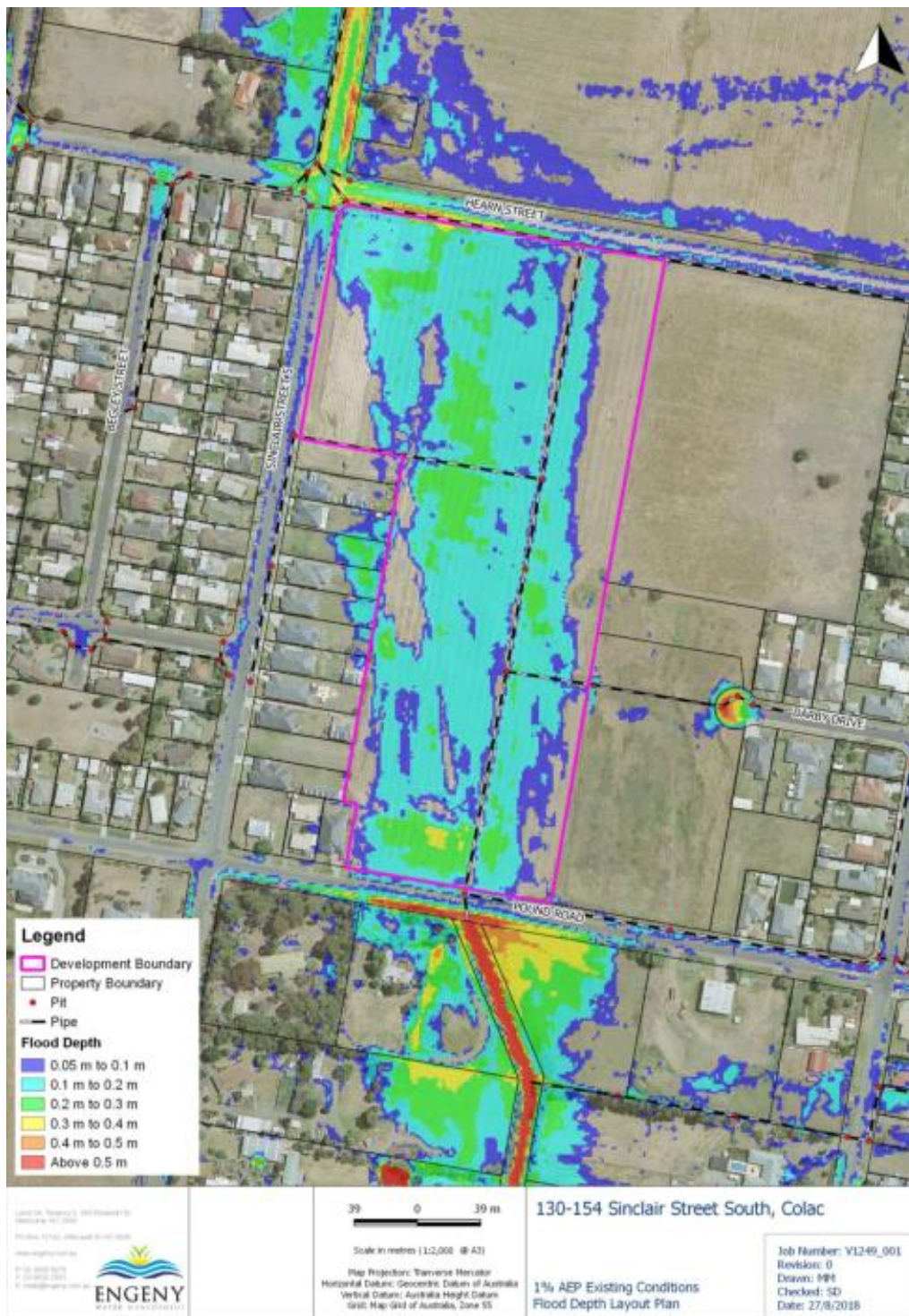
In terms of drafting, Ablut agreed with the CCMA’s suggested drafting changes to the DPO9.

Ablut called drainage and flood modelling evidence from Scott Dunn of Engeny Pty Ltd. Mr Dunn referred to the *“significant flood depth differences”* between the Flood Study and the SWMS, attributing this to the *“incorrect application of a manning’s roughness value”* and the exclusion of Council drains in the Flood Study.

Mr Dunn’s statement contained an updated map of flood depth, which he said *“displays a more accurate representation of the existing conditions”* (see Figure 5).



Figure 5 One per cent AEP existing conditions flood modelling results



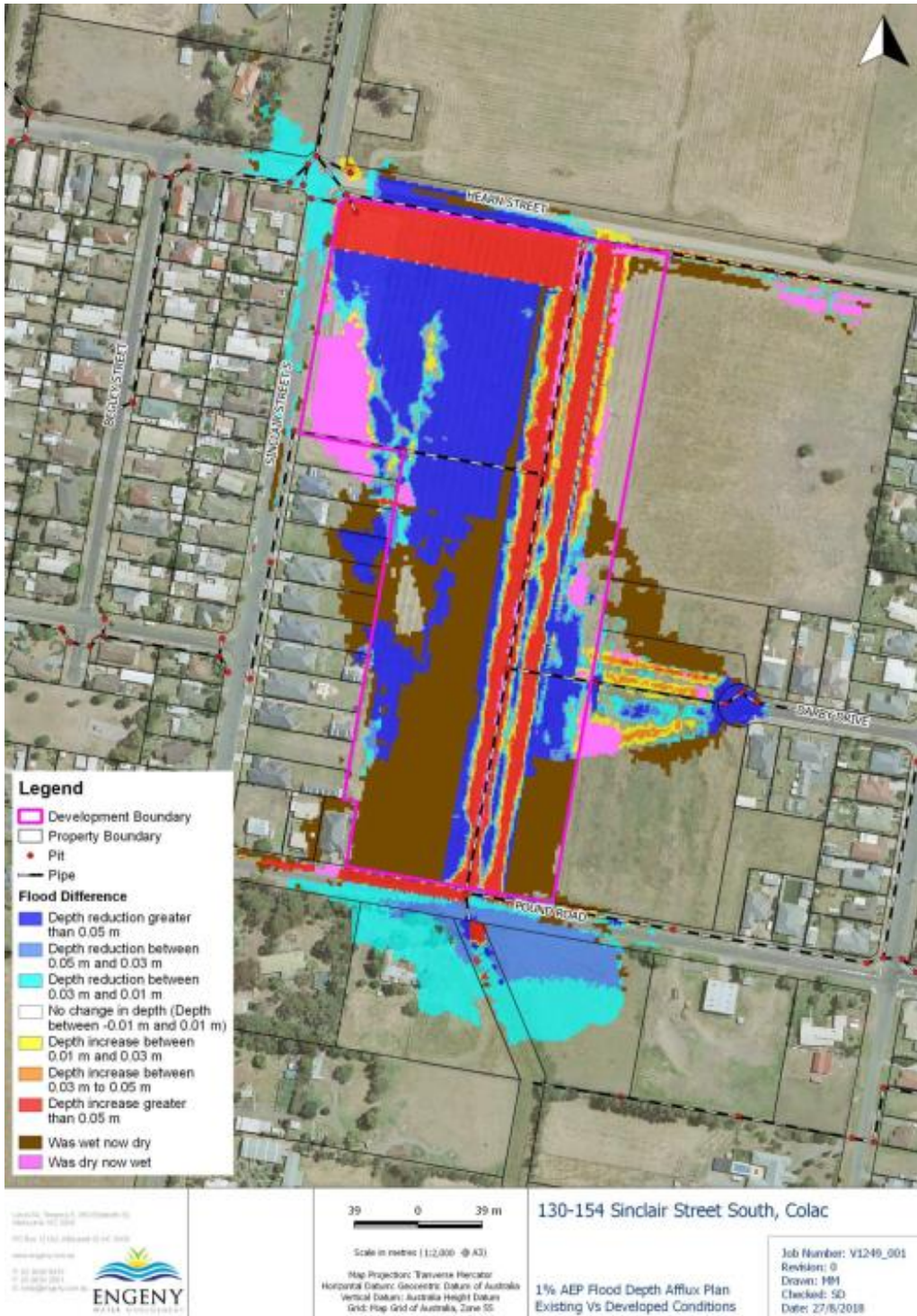
Source: Mr Dunn's Statement of Evidence, D9

Mr Dunn pointed to the multiple mitigation measures proposed as part of the development, including:

- a 3000 cubic metre retarding basin in the north-west corner
- an enlarged drainage pipe running north-south through the subject land
- a wider main road reserve providing overland flood storage and passage
- assorted culvert upgrades on surrounding streets.

The result of these mitigation measures was shown on a plan prepared by Mr Dunn comparing pre and post developed conditions (see Figure 6).

**Figure 6** One per cent AEP flood depth different due to developed conditions



Because of the proposed mitigation measures, Mr Dunn said that outside the subject land, and particularly along Hearn Street, the projected flood depths would be reduced. Mr Dunn said the “technical assessment of flooding for the subject site is of sufficient rigour and accuracy to confidently support Planning Scheme Amendment C124COLA”.

Council supported CCMA's position on flooding and the expert views of Mr Dunn. Council agreed that the SWMS model was preferred because it considered the existing drainage system and used a more accurate roughness coefficient.

Council acknowledged the issues with the existing drainage system and committed to an improved maintenance and monitoring regime. It cited the works recently undertaken and a future program of works to improve the performance of the local drainage system. However, Council did not agree with Mr Garner that development of the subject land will exacerbate flooding issues.

Council submitted the subject land offers the opportunity for much needed residential development, and the Amendment should be favourably considered.

## 4.4 Discussion

The Committee is tasked with making recommendations to prepare and approve or abandon the draft Amendment. It is not charged with approving the proposed subdivision.

It is also outside this Committee's powers to rectify historical drainage problems or improve maintenance of existing assets. Nor can the Committee approve Stormwater Management Plans. Whilst the Committee is sympathetic of Mr Garner's position, its role is more limited than what Mr Garner was seeking.

Council, Ablut, and the CCMA presented a compelling case for replacing the Floodway Overlay with the LSIO. The Flood Study that led to the Floodway Overlay used an incorrect roughness coefficient and did not consider the existing drainage system in its modelling. Whilst these are understandable decisions given the broader scale of the Flood Study, a closer investigation of the subject land allowed Engeny to use a more accurate roughness coefficient and take into account the existing drainage system in the SWMS. The adopted roughness coefficient of 0.035 is consistent with industry standards. It is compelling that both Council and the CCMA endorse the SWMS model and approach.

This updated modelling reduced the projected flood depth and velocity across the subject land, such that the LSIO is the appropriate tool given the CCMA's Flood Overlay criteria, and Planning Practice Note 12: Applying the Flood Provisions in Planning Schemes, June 2015.

Mr Garner's main concerns lay with performance of the existing drainage system – an issue this Committee cannot address. The Committee does note, however, that Council has undertaken a series of improvements in recent months and that discussions with Mr Garner have become more productive. These efforts were acknowledged by Mr Garner whose presentation at the Hearing and submissions hinted at a pathway to resolve the issues.

In relation to the proposed development, the question for this Committee is whether the proposed DPO9 adequately addresses flooding and ensures no additional flood impacts compared to the predevelopment stage.

The main function of the DPO9 is to require a Stormwater Management Plan, that, amongst other things, "*demonstrates there will be no flood impact to surrounding properties as a result of the proposed development...*". It also requires a condition on permit that requires land to be developed in accordance with the approved Stormwater Management Plan.

Properly implemented, this satisfies the parts of Mr Garner's concerns that are relevant to the draft Amendment.

The Committee is comforted in the comprehensive SWMS already prepared, and notes the extensive mitigation measures proposed, including a large retarding basin, drainage pipe enlargements, and a specially designed road reserve to accommodate overland flow. The modelling in the evidence of Mr Dunn, which the Committee accepts, shows this will appropriately manage flooding and stormwater on the subject land, and not worsen flooding outside the site, including on Mr Garner's property. However, the final say on the SWMS and its initiatives will lay with Council and the CCMA as part of the subdivision permit.

Given the CCMA's agreement to replace the Floodway Overlay with the LSIO was conditional on additional hydraulic modelling and a Flood Impact Assessment, it is reasonable to apply the DPO9 to solidify this position and provide additional assurances. Upon questioning, the CCMA confirmed that a Stormwater Management Plan, as required under the DPO9, would constitute a Flood Impact Assessment, as it requires.

The Committee agrees with Ablut and the CCMA that the DPO9 be updated to include reference to the ARR 2019, and with Ablut that both the responsible authority and the floodplain management authority should both approve the SWMS to their satisfaction.

## 4.5 Findings and recommendation

The Committee finds:

- The flood modelling and evidence demonstrates the mitigation measures proposed will adequately manage stormwater on the subject land, and will not worsen flooding on surrounding properties.
- It is appropriate and justified to replace the Floodway Overlay with the Land Subject to Inundation Overlay, Schedule 1 on the subject land.

The Committee recommends:

**Prepare, adopt and approve draft Colac Otway Planning Scheme Amendment C124cola as exhibited, subject to revising Development Plan Overlay, Schedule 9 as provided in Appendix D.**

## Appendix A Terms of Reference

Version 2: Amended June 2023

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

### Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
  - a. statutory and strategic land use planning
  - b. land development and property economics
  - c. urban design and architecture
  - d. heritage
  - e. civil engineering and transport planning
  - f. social impacts
  - g. environmental planning
  - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

### Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (DFP), or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

### Background

5. The Victorian Government is committed to streamlining the assessment and determination of projects that inject investment into the Victorian economy, keep people in jobs and create homes for people. The planning system is an important part of supporting investment and economic growth in Victoria.
6. The DFP focusses on new development projects in priority sectors and/or projects that are in the planning system that face undue delays. These can include (but are not limited to) housing, mixed use, retail, employment, tourism, industrial and other opportunities.

### Method

7. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
8. The referral letter must specify:
  - a. the specific issues the Minister for Planning seeks advice about
  - b. the mechanism of intervention being considered (for example, but not limited to, draft planning scheme amendment, call-in from the Victorian Civil and Administrative Tribunal, planning permit application)
  - c. whether submissions are to be considered by the Committee, and if so, how many are being referred, and

- d. how the costs of the Committee will be met.
9. The letter of referral will be a public document.
10. In making a referral, the Minister for Planning or delegate must, either:
  - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
  - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
11. The Committee may inform itself in anyway it sees fit, but must consider:
  - a. The referral letter from the Minister for Planning
  - b. referred submissions
  - c. the comments of any referral authority
  - d. the views of the project proponent
  - e. the views of the relevant Council and
  - f. the relevant planning scheme.
12. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority, or government agency.
13. The Department of Transport and Planning (DTP) will be responsible for any further notification required. New submissions, if required, will be collected by DTP.
14. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
15. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
16. The Committee may:
  - a. assess any matter 'on the papers'
  - b. conduct discussions, forums, or video conferences when there is a quorum of:
    - i. a Chair or Deputy Chair, and
    - ii. at least one other member.
17. The Committee may apply to vary these Terms of Reference in any way it sees fit.

### **Submissions are public documents**

18. The Committee must retain a library of any written submissions or other supporting documentation provided to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
19. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

### **Outcomes**

20. The Committee must produce a concise written report to the Minister for Planning providing the following:
  - a. a short description of the project
  - b. a short summary and assessment of issues raised in submissions
  - c. a draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral

- d. any other relevant matters raised during the Committee process
- e. its recommendations and reasons for its recommendations
- f. a list of persons or authorities/agencies who made submissions considered by the Committee and
- g. a list of persons consulted or heard, including via video conference.

### Timing

- 21. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
  - a. the date of receipt of referral, if no further submissions or information are to be sought, or
  - b. receipt of the final submission of material or final day of any public process in respect of a referral.

### Fee

- 22. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
- 23. The costs of the Committee will be met by each relevant proponent.



**Sonya Kilkenny MP**  
**Minister for Planning**

Date:

9/9/2023

## Appendix B Letter of referral



The Hon Sonya Kilkenny MP

Minister for Planning  
Minister for the Suburbs

1 Spring Street  
Melbourne, Victoria 3000 Australia

Ref: BMIN-1-23-4696

Kathy Mitchell AM  
Lead Chair  
Priority Projects Standing Advisory Committee  
Planning Panels Victoria  
[Planning.panels@delwp.vic.gov.au](mailto:Planning.panels@delwp.vic.gov.au)

Dear Ms Mitchell

### **DEVELOPMENT FACILITATION PROGRAM – 130-154 SINCLAIR STREET SOUTH, COLAC**

I refer to draft Planning Scheme Amendment C124cola to the Colac Otway Planning Scheme affecting land at 130-154 Sinclair Street South, Colac. The proposal, requested by Colac Otway Shire Council on behalf of Mondous Property, has been considered by the Development Facilitation Program (DFP), which has deemed that it meets relevant criteria and should be prioritised for accelerated assessment and determination.

I am considering whether to prepare, adopt and approve draft Amendment C124cola to the Moyne Planning Scheme and exempt myself under section 20(4) of the *Planning and Environment Act 1987* (PE Act) from the requirements of section 17, 18 and 19 of the PE Act and the Regulations.

Draft Amendment C124cola proposes to:

- Delete the Floodway Overlay Schedule 1 (FO1).
- Apply the Land Subject to Inundation Overlay Schedule 1 (LSIO1).
- Development Plan Overlay (DPO).

The proposed amendment would facilitate the determination of a planning permit application before the council for a 65-lot residential subdivision of the land.

To inform my decision about whether to prepare, adopt and approve draft Amendment C124cola, I undertook consultation under section 20(5) of the PE Act. Three submissions have been received, including one objection and two agency submissions in support.





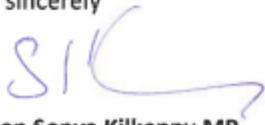
The main submissions relate to technical assumptions and calculations relating to floodplain modelling and concerns with local flooding and inadequate drainage infrastructure in the local area.

I have determined to refer draft Amendment C124cola to the Priority Projects Standing Advisory Committee for advice and recommendations on whether it should be approved. I request the committee's specific advice on the themes summarised above and any suggested improvements. The submissions received will be provided to the committee, along with the draft amendment and documents made available during the consultation period.

The cost of the committee process will be met by the proponent, Colac Otway Shire Council.

If you have any questions about this matter, please contact Vincent Pham, Senior Planner, Priority Projects, Department of Transport and Planning, on email [vincent.pham@delwp.vic.gov.au](mailto:vincent.pham@delwp.vic.gov.au).

Yours sincerely



**The Hon Sonya Kilkenny MP**  
Minister for Planning

Date: / /

25/11/23



## Appendix C Document list

No	Date	Description	Presented by
1	9 Sep 2023	Terms of Reference	Minister for Planning
2	25 Nov 2023	Letter of referral	Minister for Planning
3	1 Dec 2023	Referred material: <ul style="list-style-type: none"> <li>a) Council meeting minutes - 15 June 2022</li> <li>b) Council meeting report - 15 June 2022</li> <li>c) Exhibited Draft C124cola - Draft Explanatory Report</li> <li>d) Exhibited Draft C124cola - Draft Instruction Sheet</li> <li>e) Exhibited Draft C124cola - Draft Development Plan Overlay Schedule 9</li> <li>f) Exhibited Draft C124cola - Draft DPO9 map</li> <li>g) Exhibited Draft C124cola - Draft LSIO1 map</li> <li>h) Council request for Cultural Heritage Management Plan - Planning Permit Application PP1052016 - 19 December 2018</li> <li>i) Advertised Covering Letter for Planning Permit Application PP1052016</li> <li>j) Advertised Cultural Heritage Management Plan for Planning Permit Application PP1052016</li> <li>k) Advertised Copy of Title for Planning Permit Application PP1052016</li> <li>l) Advertised Planning Report 2 for Planning Permit Application PP1052016</li> <li>m) Advertised Planning Report for Planning Permit Application PP1052016</li> <li>n) Advertised Proposed Subdivision Layout for Planning Permit Application PP1052016</li> <li>o) Advertised Stormwater Management Plan for Planning Permit Application PP1052016</li> <li>p) Advertised Traffic Impact Statement for Planning Permit Application PP1052016</li> <li>q) Proposed Subdivision Plan</li> <li>r) Title Information</li> <li>s) CCMA memorandum of advice to Colac Shire Council - 3 November 2022</li> <li>t) Ablut Pty Ltd response to Council RFI - Planning Permit Application PP1052016 - 21 November 2018</li> </ul>	Department of Transport and Planning (DTP)
4	4 Dec 2023	Notification letter	Planning Panels Victoria (PPV)

No	Date	Description	Presented by
5	11 Dec 2023	Directions Hearing notification	PPV
6	14 Dec 2023	Email regarding stormwater initiatives	Graham Garner
7	18 Dec 2023	Part A submission	Colac Otway Shire Council (Council)
8	21 Dec 2023	Directions and Panel Hearing Timetable	PPV
9	20 Jan 2024	Expert witness statement of Scott Dunn of Engeny Pty Ltd (drainage and flood modelling)	Ablut Pty Ltd
10	1 Feb 2024	Version 2 Panel Hearing Timetable and Distribution List	PPV
11	1 Feb 2024	Submission	Corangamite Catchment Management Authority
12	2 Feb 2024	Submission	Ablut Pty Ltd
13	2 Feb 2024	Part B submission	Council
14	2 Feb 2024	Submission, enclosing attachments: <ul style="list-style-type: none"> <li>a) Video 1</li> <li>b) Video 2</li> <li>c) Video 3</li> <li>d) Video 4</li> <li>e) Video 5</li> <li>f) Photographs</li> </ul>	Graham Garner
15	2 Feb 2024	Deans Creek and Barongarook Creek Flood Study	Council

## Appendix D Committee preferred version of the Development Plan Overlay, Schedule 9

### SCHEDULE 9 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO9

#### 130-154 SINCLAIR STREET SOUTH, COLAC

##### 1.0 Objectives

To provide for development of land in accordance with an approved Stormwater Management Plan. To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

##### 2.0 Requirement before a permit is granted

None specified.

##### 3.0 Conditions and requirements for permits

The following conditions and/or requirements apply to permits:

- Land must be developed in accordance with an approved stormwater management plan prepared to the satisfaction of the responsible authority ~~in consultation with~~ and the floodplain management authority.

##### 4.0 Requirements for development plan

A development plan must include the following requirements:

- A stormwater management plan prepared to the satisfaction of the responsible authority and the floodplain management authority. The stormwater management plan must include, but not be limited to:
  - hydraulic flood modelling to ~~demonstrate~~ determine the depth, velocity and hazard of flooding under existing and proposed ~~developed~~ flood conditions
  - detail of flood protection for the proposed lots within the site to provide safe conveyance of flows from upstream catchments, including sufficient freeboard (300mm) for development from the 1% AEP flood level and any other necessary mitigation measures, works or infrastructure
  - detail of how stormwater runoff generated from the development will be treated to reduce pollutants and protect water quality
  - information to demonstrate there will be no flood impact to surrounding properties as a result of the proposed development and confinement of an overland flow path throughout the site
  - the boundaries, dimensions and orientation of the land and any easements affecting it. Proposed levels and contours of the site and the difference in levels between the site and surrounding properties

- indicative proposed subdivision layout, including key stormwater conveyance measures, stormwater treatment assets, open space, pedestrian access, internal street network and access points;
- [methodology in accordance with the \*Australia Rainfall and Runoff Guidelines 2019\*](#).