

# COLAC OTWAY PLANNING SCHEME AMENDMENT C116COLA

## EXPLANATORY REPORT

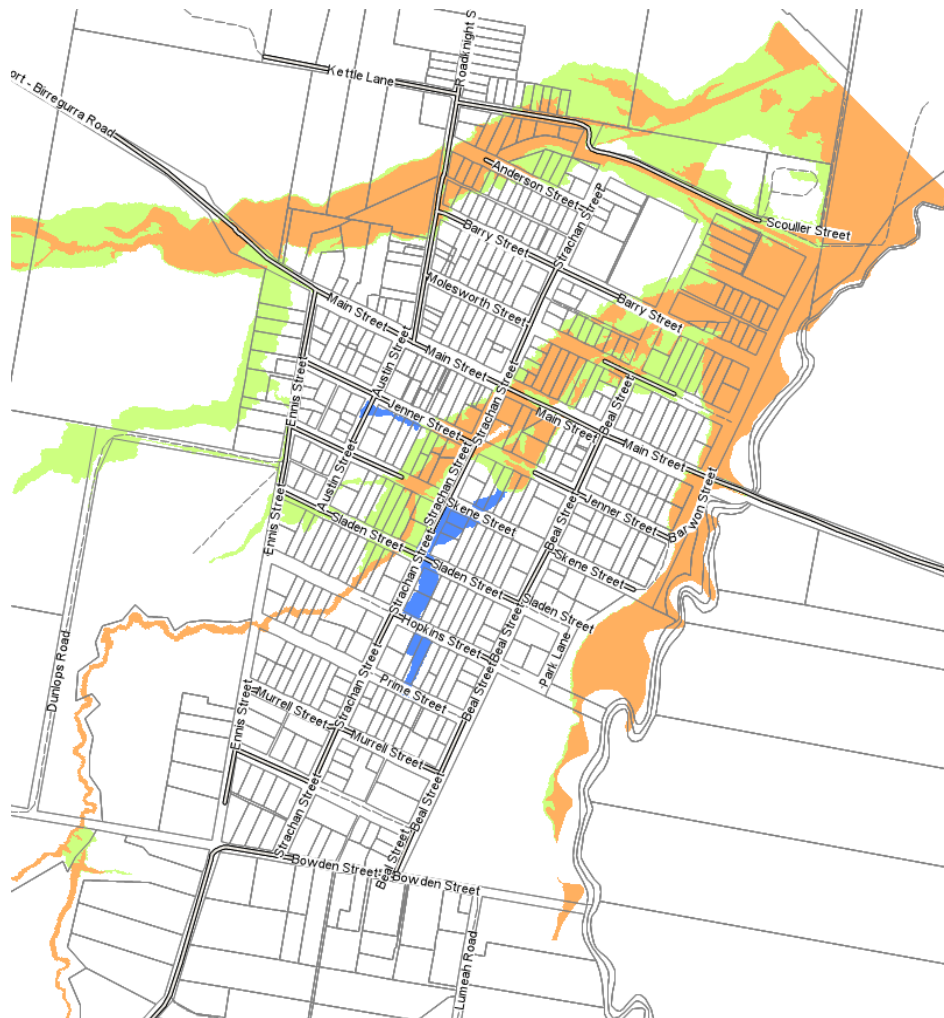
### Who is the planning authority?

This amendment has been prepared by the Colac Otway Shire, which is the planning authority for this amendment.

The amendment has been made at the request of Colac Otway Shire and the Corangamite Catchment Management Authority.

### Land affected by the amendment

The amendment applies to land in Atkin Creek and an unnamed tributary of the Barwon River (known locally as Kettles Creek) within and around the township of Birregurra affected by floodwaters during a 1 in 100-year average recurrence interval flood event. This land has been identified in the *Birregurra Flood and Drainage Strategy 2021* (Engeny Pty Ltd).



Specific details of the land affected by the new controls and modifications to existing controls are shown on maps that form part of the amendment.

## **What the amendment does**

The amendment proposes to implement the findings of the *Birregurra Flood and Drainage Strategy 2021* (Engeny Pty Ltd) by introducing and amending planning controls that seek to improve the performance of the Colac Otway Planning Scheme in responding to flood events in Birregurra.

The Flood Overlay (FO) is applied to areas that are likely to convey active flood flows and/or store floodwaters to hazardous depths.

The Land Subject to Inundation Overlay (LSIO) is applied to land affected with waterways and open drainage systems. Such areas are commonly known as floodplains. These floodplain areas have a lower flood risk than areas in the FO.

The Special Building Overlay (SBO) is applied to land affected by overland flow from the urban drainage network.

These overlays may trigger planning permits for development, works and subdivision on land affected by flooding.

The amendment proposes to change the Colac Otway Planning Scheme in the following ways;

### Mapping changes

- Delete Planning Scheme Map No 13LSIO-FO
- Insert new Planning Scheme Maps No 13LSIO-FO and 13SBO
- Amend Planning Scheme Maps No 12LSIO-FO

### Ordinance changes

- Insert Clause 44.05 Special Building Overlay into the Colac Otway Planning Scheme
- Insert Schedule to Clause 44.05 Special Building Overlay into the Colac Otway Planning Scheme
- Amend the Schedule to Clause 72.03 to list the new flood overlay map
- Amend the Schedule to Clause 72.08 – Background Documents – to insert the *Birregurra Flood and Drainage Strategy 2021* as a Background Document in the Colac Otway Planning Scheme

## **Strategic assessment of the amendment**

### **Why is the amendment required?**

The flood extent reflected in the Colac Otway Planning Scheme's current overlay for Birregurra is inaccurate.

The Amendment is required to implement the findings of the *Birregurra Flood and Drainage Strategy 2021* (Engeny Pty Ltd), providing best available information. Modelling used in preparing the Strategy identified areas within Atkin Creek and an unnamed tributary of the Barwon River to be affected by flooding. These areas have been mapped as either Floodway Overlay (FO) or Land Subject to Inundation Overlay (LSIO). Land within Birregurra likely to be impacted by overland flow from the urban drainage network has also been included in the Special Building Overlay (SBO).

The Strategy seeks to respond to local flood events, including in September 2016, and ongoing pressure for development in Birregurra. The purpose of the Strategy is to update the existing flood mapping in Birregurra so that it more accurately reflects the geographical extent and depth of flood waters in Birregurra associated with both riverine inundation and the drainage network. The Strategy also proposes a basis for future infrastructure investment in Birregurra to alleviate or mitigate the risk from flooding.

The proposed amendment seeks to update the existing LSIO mapping to reflect the latest flood data. It also identified land that has a greater risk of flooding and/or the implications of flooding are more severe. This land has been included in the Floodway Overlay. Areas at risk of inundation by overland flows associated with the existing town drainage network have been included in a Special Building Overlay.

The Amendment will result in net community benefit, by more accurately reflecting the true flood risk in Birregurra.

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

The amendment implements the following objectives of planning in Victoria as outlined in Section 4(1) of the *Planning and Environment Act 1987*:

- 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.

Furthermore, Section 6 of the Planning and Environment Act 1987 identifies what planning schemes can provide for, including (among other things) the ability to: "Regulate or prohibit any use or development in hazardous areas or in areas which are likely to become hazardous areas."

The amendment applies overlays to identify land that is flood prone in Birregurra and consequently responds to this requirement by providing a safe environment for all and ensuring that new development is designed and located with flood risk in mind.

## **How does the amendment address any environmental, social and economic effects?**

The proposed Amendment addresses the potential environmental, social and economic effects in the following ways;

### Environmental effects

The amendment is expected to have a positive environmental effect, as it will give enhanced recognition to the environmental significance of naturally flood-prone areas. These areas provide valuable habitats for plants and animals and serve as natural water storage areas. They may include swamps, billabongs and wetlands, all of which have an important role to play in supporting biodiversity, recycling nutrients and maintaining water quality. The Amendment contributes to protecting these by better identifying flood-prone areas and extents of probable flooding. Flood paths are likely to be kept free from obstruction and areas that provide temporary storage of floodwaters are expected to be better protected. The protection of the drainage network will reduce the potential for contamination of drains associated with overland flows through urban development.

Following the amendment, new developments and works will be appropriately located and designed to satisfy the requirements of the new SBO and the revised LSIO and FO, likely preventing damaging changes to flood flows. As a consequence, flood waters are not expected to be diverted significantly from their natural course, minimising resultant impacts on flora and fauna communities, animal habitats, and the quality of waterways.

The Amendment will create a regulatory environment that will help to facilitate the free passage of floodwaters in active floodways. The new controls will also assist in preventing inappropriate development from occurring in the floodways that could reduce the capacity of the floodplain to store and convey floodwater, or divert floodwater to other land not normally inundated by floodwater. By managing development on flood-prone land, the Amendment will assist in improving the health of the riverine ecological systems and the biodiversity, habitat value, species and genetic diversity it supports.

### Social and Economic Effects

Flooding has the potential to severely disrupt communities and, in extreme cases, cause extensive damage to public and private property, agricultural losses, personal and community hardship and loss of life.

Birregurra has a known history of flooding with recent flood events occurring in November 1995, September 2016 and September 2017. By more effectively identifying areas prone to flooding and applying appropriate controls, the amendment helps to manage new development so that future flood impacts are minimised. Therefore, the amendment has significant social and economic benefits for the community.

The amendment does not prohibit all development. The flood overlays provide discretion for Council and the Catchment Management Authority to ensure that new development is appropriately located and designed to achieve positive social and economic outcomes. The Schedules to the Overlays also contain numerous exemption for new works.

The amendment provides information to current and future owners alerting them to the flood risk. This will allow the community to make more fully informed choices prior to purchasing and developing land.

**Does the amendment address relevant bushfire risk?**

There is no additional bushfire risk that will be caused as a result of the proposed amendment. The views of the relevant fire authority have not been sought at this stage.

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

The amendment is consistent with the Ministerial Direction – Form and Content of Planning Schemes as identified at section 7(5) of the Planning and Environment Act 1987.

The amendment is consistent with the Ministerial Direction No.11 - Strategic Assessment of Amendments pursuant to Section 12(2) (a) of the Planning and Environment Act 1987.

No other Ministerial Directions apply to the amendment.

**How does the amendment support or implement the Planning Policy Framework and any adopted State policy?**

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, Clause 14.02-1S Catchment Planning and Management and Clause 19.03 Infrastructure 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.

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

The Amendment implements policy by proposing that land affected by flooding as identified by the *Birregurra Flood and Drainage Strategy 2021* be recognised and updated on planning scheme maps accompanied by suitable planning controls. This contributes to the protection of public and private properties from damage, as well as the identification of potential risks to the lives, health and safety of floodplain residents and visitors.

Specifically, the inclusion of this information in the scheme may trigger the need for planning permits, which help ensure approved development is consistent with the local flood hazard and does not cause damage by altering flood flows and/or the temporary storage of floodwaters.

Additionally it is critical that areas with no current flood controls or outdated flood controls be properly recognised in the planning scheme based on current known information.

**How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

Not applicable.

**How does the amendment support or implement the Municipal Planning Strategy?**

The proposed Amendment is consistent with and supports the Municipal Strategic Statement, particularly Clause 02.02 Vision and 02.03 Strategic Directions by updating 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.

The Strategy states that there is a need to ensure development responds to environmental risks such as flooding.

The Amendment seeks to protect life and property in areas at risk of flooding. The amendment proposes to apply development controls in areas that are affected by flooding, to effectively mitigate against risk to life and property. The new controls will create a safer

living and working environment for the occupants of the properties concerned. This contributes to the protection of public and private properties from damage, as well as the identification of potential risks to the lives, health and safety of floodplain residents.

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

The Amendment uses the flood-specific controls within the Victoria Planning Provisions (VPPs) to provide guidance for future development of flood affected land in Birregurra.

The VPPs includes a number of planning controls to ensure that risks associated with the development and subdivision of floodplain land are recognised and responded to appropriately via the planning permit application process.

The Floodway Overlay (FO) and Land Subject to Inundation Overlay (LSIO) are based on the degree of hazard identified in different parts of the floodplains. They consider factors such as flood depth, velocity, natural storage, flood duration and warning time during the 1% AEP design flood event.

The Floodway Overlay denotes floodway land. A floodway is the component of the floodplain required to provide adequate flood conveyance and storage and should remain free from obstruction during major flood events. Floodway land is generally the high hazard portion of the floodplain where deep and fast flowing floodwater can be expected. Placement of buildings and other structures on floodway land substantially increases risk to life and community wellbeing and should therefore be avoided.

The Land Subject to Inundation Overlay generally denotes the fringe of the floodplain where flooding is shallower than the FO and slower moving during a flood event. The level of hazard in this part of the floodplain is lower relative to the FO. Development (buildings and works) and subdivision on land within the overlay can be considered provided a permit application meets the requirements of the Responsible Authority and the flood plain manager.

The Special Building Overlay applies where there is a likelihood that the local urban drainage network fails to manage stormwater flows.

The use of Schedules to the flooding overlays allow a Planning Authority to modify permit triggers.

It is considered that the combination of these controls are the most appropriate use of the available VPP tools as they are specifically aimed at protecting life and property, helping to ensure the free flow of floodwaters and promoting environmental protection. These controls have been applied according to level of risk, consistent with the Practice Note '*Applying the Flood Provisions in Planning Schemes – A Guide for Councils*'.

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

The Amendment has been prepared in partnership with the Corangamite Catchment Management Authority (CCMA) and is representative of the views of the Authority. Other relevant agencies will be consulted via the exhibition process of this amendment.

### **Does the amendment address relevant requirements of the Transport Integration Act 2010?**

The Amendment will not result in any negative impact on the transport system as defined by Section 3 of the Transport Integration Act 2010. Inasmuch as the Amendment reduces the risk of flood hazards, it is consistent with Section 13 of the TIA which seeks to improve the safety of the transport system.

## Resource and administrative costs

The proposed planning provisions will improve the application and administration of the Colac Otway Planning Scheme by providing greater certainty for Council, Corangamite CMA, land owners, developers and the general community.

Some increased impact on Council resources may be experienced due to more planning permits being triggered in newly identified FO, LSIO and SBO areas within and surrounding Birregurra.

Any resource impact from increased permit activity is negligible when compared with the benefits associated with ensuring development appropriately responds to flood hazards. Furthermore, as the mapping has been completed, that mapping will inform building permit processes, regardless of the planning amendment. It is less costly to address flood risk via appropriate zone overlay controls than to modify planning permits that are based on incorrect information concerning flood risk.

## Where you may inspect this amendment

Amendment C116cola is available for public inspection, free of charge, during office hours at the following place:

**Colac Otway Shire Council**

2-6 Rae Street,  
COLAC VIC 3250

Website: [www.colacotway.vic.gov.au](http://www.colacotway.vic.gov.au)

Amendment C116cola can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at [www.delwp.vic.gov.au/public-inspection](http://www.delwp.vic.gov.au/public-inspection).

## Submissions

Any person who may be affected by Amendment C116cola may make a submission to the planning authority. Submissions about the Amendment must be received by 22 October 2021.

A submission should be titled "Amendment C116cola Submission" and emailed to;

*inq@colacotway.vic.gov.au*

or mailed to:

Strategic Planning  
Colac Otway Shire Council  
PO Box 283  
COLAC VIC 3250

## Panel hearing dates

In accordance with clause 4(2) of Ministerial Direction No.15, the following panel hearing dates have been set for this amendment:

- Directions hearing: 1 February 2022
- Panel hearing: 3 March 2022