

**Hepburn Planning Scheme Amendment C77hepb
Land Subject to Inundation Overlay controls**

Panel Report

Planning and Environment Act 1987

26 July 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 PE 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 PE 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 PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Hepburn Planning Scheme Amendment C77hepb

26 July 2021



Mandy Elliott, Chair

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Glossary and abbreviations

AEP	Annual Exceedance Probability
Council	Hepburn Shire Council
HPS	Hepburn Planning Scheme
HPSR	Hepburn Planning Scheme Review
LSIO1	Land Subject to Inundation Overlay Schedule 1
LSIO2	Land Subject to Inundation Overlay Schedule 2
LSIO3	Land Subject to Inundation Overlay Schedule 3
MSS	Municipal Strategic Statement
MPS	Municipal Planning Strategy
NCCMA	North Central Catchment Management Authority
PE Act	<i>Planning and Environment Act 1987</i>

Overview

Amendment summary	
The Amendment	Hepburn Planning Scheme Amendment C77hepbhepb
Common name	Land Subject to Inundation Overlay controls
Brief description	<p>The Amendment affects flood-prone land in Creswick and Clunes and certain rural localities and small settlements across the Hepburn Shire. The Amendment proposes to:</p> <ul style="list-style-type: none"> - apply the Land Subject to Inundation Overlay (LSIO) controls for the following: <ul style="list-style-type: none"> - Clunes: applies new LSIO controls (LSIO1 and LSIO2) to 105 properties and deletes the existing LSIO from 17 properties - Creswick: applies a new LSIO1 and LSIO2 to 174 properties. - Rural localities and small settlements: deletes the existing LSIO and applies a new schedule LSIO3 to these same properties using updated mapping. - implements the recommendations and flood mapping of the <i>Creswick Flood Mitigation and Urban Drainage Plan, Feb 2012</i> (Water Technology) and the <i>Clunes Flood Mitigation and Urban Drainage Plan, June 2013</i> (Water Technology) through inclusion of these reports as background documents at Clause 21.09 (Environment and Heritage).
Subject land	Numerous properties, particularly in the townships of Clunes and Creswick.
The Proponent	North Central Catchment Management Authority
Planning Authority	Hepburn Shire Council
Authorisation	2 July 2019
Exhibition	13 August to 14 September 2020
Submissions	<p>Number of Submissions: 6 Opposed: 3</p> <p>Submitters to the Amendment are:</p> <ul style="list-style-type: none"> - Mr Hunt, Mount Rommel Mining Ltd - Environment Protection Authority - Central Highlands Water - Ms de Deugd, Timmermans Furniture - Goulburn Murray Water - Ms Potter and Mr Phillips

Panel process

The Panel	Mandy Elliott, Chair
Directions Hearing	By video conference, 29 April 2021
Panel Hearing	By video conference, 23 June 2021
Site inspection	No site inspection was conducted
Parties to the Hearing	<ul style="list-style-type: none">- Hepburn Shire Council and North Central Catchment Management Authority represented by Paul Buxton of Plan2Place- Ms de Deugd, Timmermanns Furniture- Ms Potter
Citation	Hepburn PSA C77hepb [2021] PPV
Date of this report	26 July 2021

Executive summary

As a result of flood events in 2010 and 2011 in and around the townships of Clunes and Creswick, the Hepburn Shire Council and the North Central Catchment Management Authority jointly engaged consultants to undertake flood modelling and prepare reports to inform them on appropriate flood mitigation and planning controls to minimise flood risk to life, property, community infrastructure and the environment.

Hepburn Planning Scheme Amendment C77hepbhepb (the Amendment) seeks to include three new Schedules to the LSIO in the Hepburn Planning Scheme.

The LSIO controls are proposed for the townships of Clunes (applies new LSIO controls (LSIO1 and LSIO2)) to 105 properties and deletes the existing LSIO from 17 properties and Creswick (applies a new LSIO1 and LSIO2 to 174 properties). The Amendment deletes the existing LSIO from various rural localities and small settlements (including Coomora, Drummond, Kooroocheang, Smeaton, Mount Beckworth, Yandoit, Mount Cameron and Evansford) and applies a new Schedule (LSIO3) to these same properties using updated mapping.

The Amendment amends the overview, key issues, objectives and strategies to address flood risk in the Hepburn Shire and to include the *Creswick Flood Mitigation and Urban Drainage Plan, February 2012* and the *Clunes Flood Mitigation and Urban Drainage Plan, June 2013* as background documents within Clause 21.09 (Environment and Heritage).

There were six submissions to the Amendment with three of these opposing, or raising issues. Key issues raised in submissions included:

- the extent of the LSIO mapping
- the proposed permit triggers in the Schedules.

Other matters were raised such as potential waterway contamination, environmental weeds and protection of creek habitat however, although these are important issues to be addressed, these are not matters that form part of the scope of the Amendment.

The Amendment implements the flood studies undertaken for Clunes and Creswick that resulted from the 2010-11 flood events that significantly impacted both townships. The Panel agrees with the Hepburn Shire Council and the NCCMA that the Amendment is necessary to assist in the protection of life, property and community infrastructure from flood hazard and to maintain the natural flood carrying capacity of the Creswick Creek and its tributaries.

The Amendment gives appropriate effect to the State planning policy for floodplain management at Clause 13.03-1S of the Hepburn Planning Scheme and has incorporated the guidance from Planning Practice Note 12 - *Applying the Flood Provisions in Planning Schemes* as relevant.

The Panel concludes:

- The Amendment is well founded and strategically justified.
- Implementation of flooding controls such as the LSIO and Schedules is necessary to assist in the protection of life, property, community infrastructure and the environment from the hazards associated with floods.
- Mapping and data used to determine the one per cent (1%) Annual Exceedance Probability flood extent is robust and follows a tested methodology for flood modelling in Victoria.

- There is merit in changing the property at 67 Fraser Street, Clunes (Timmermans) from the exhibited LSIO2 to the LSIO1.
- There is a net community benefit of implementing flooding controls in areas subject to inundation.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that:

- 1. Hepburn Planning Scheme Amendment C77hepb be adopted as exhibited subject to the following:**
 - **Apply the Land Subject to Inundation Overlay Schedule 1 instead of Schedule 2 to 67 Fraser Street, Clunes.**

1 Introduction

1.1 The Amendment

(i) Amendment description

Amendment C77hepb to the Hepburn Planning Scheme proposes to update the application of the LSIO across the Hepburn Shire.

In particular, the Amendment proposes LSIO controls for the townships of Clunes (applies new LSIO controls (LSIO1 and LSIO2)) to 105 properties and deletes the existing LSIO from 17 properties and Creswick (applies a new LSIO1 and LSIO2 to 174 properties). The Amendment deletes the existing LSIO from various rural localities and small settlements (including Coomora, Drummond, Kooroocheang, Smeaton, Mount Beckworth, Yandoit, Mount Cameron and Evansford) and applies a new schedule LSIO3 to these same properties using updated mapping.

Specifically, the Amendment proposes the following changes:

- Clause 21.09 (Environment and Heritage): Amends the overview, key issues, objectives and strategies to address flood risk in the Shire and to include the *Creswick Flood Mitigation and Urban Drainage Plan, February 2012* and the *Clunes Flood Mitigation and Urban Drainage Plan, June 2013* as background documents.
- Creswick: Inserts new Planning Scheme Maps 20LSIO, 21LSIO, 22LSIO and 23LSIO to apply new flood mapping.
- Clunes: Amends Planning Scheme Maps 11LSIO and 12LSIO to apply updated flood mapping.
- Rural localities and small settlements: Amends Planning Scheme Maps 1LSIO, 2LSIO, 3LSIO, 5LSIO, 6LSIO, 7LSIO, 9LSIO, 10LSIO, 13LSIO, 14LSIO, 15LSIO, 17LSIO, 18LSIO, 26LSIO, 34LSIO, 35LSIO, 36LSIO and 37LSIO by deleting the LSIO and replacing it with the LSIO3 and updated flood mapping.
- Schedule to Clause 44.04 (LSIO): Deletes the existing clause which has no content.
- Introduces three new Schedules that outline planning permit exemptions for specified buildings and works, and specify planning permit application requirements and decision guidelines based on flood risk. The Schedules provide for:
 - LSIO1: Flooding from waterways (depths up to and including 350 millimetres) in the localities of Clunes and Creswick
 - LSIO2: Flooding from waterways (depths greater than 350 millimetres) in the localities of Clunes and Creswick
 - LSIO3: Remaining rural localities and small settlements currently covered by the existing LSIO controls that are liable to inundation. These localities include Coomorra, Drummond, Kooroocheang, Smeaton, Mount Beckworth, Yandoit, Mount Cameron and Evansford.
- Amends Schedule to Clause 72.03 to update the list of maps forming part of the planning scheme with 4 new maps in the Creswick area.

(ii) The subject land

The Amendment proposes to apply the LSIO to properties that are likely to be inundated in the one per cent (1%) Annual Exceedance Probability (AEP) flood event such as waterways and open drainage systems, which affects flood-prone land in the Hepburn Shire.

The Amendment applies to land shown in Figures 1, 2 and 3. This includes various rural localities and small settlements (including Coomora, Drummond, Kooroocheang, Smeaton, Mount Beckworth, Yandoit, Mount Cameron and Evansford) where new schedule LSIO3 is proposed to replace the existing LSIO at these same properties using updated mapping.

Figure 1 Proposed Additional LSIO Maps for Clunes



Figure 2 Proposed Additional LSIO Maps for Creswick

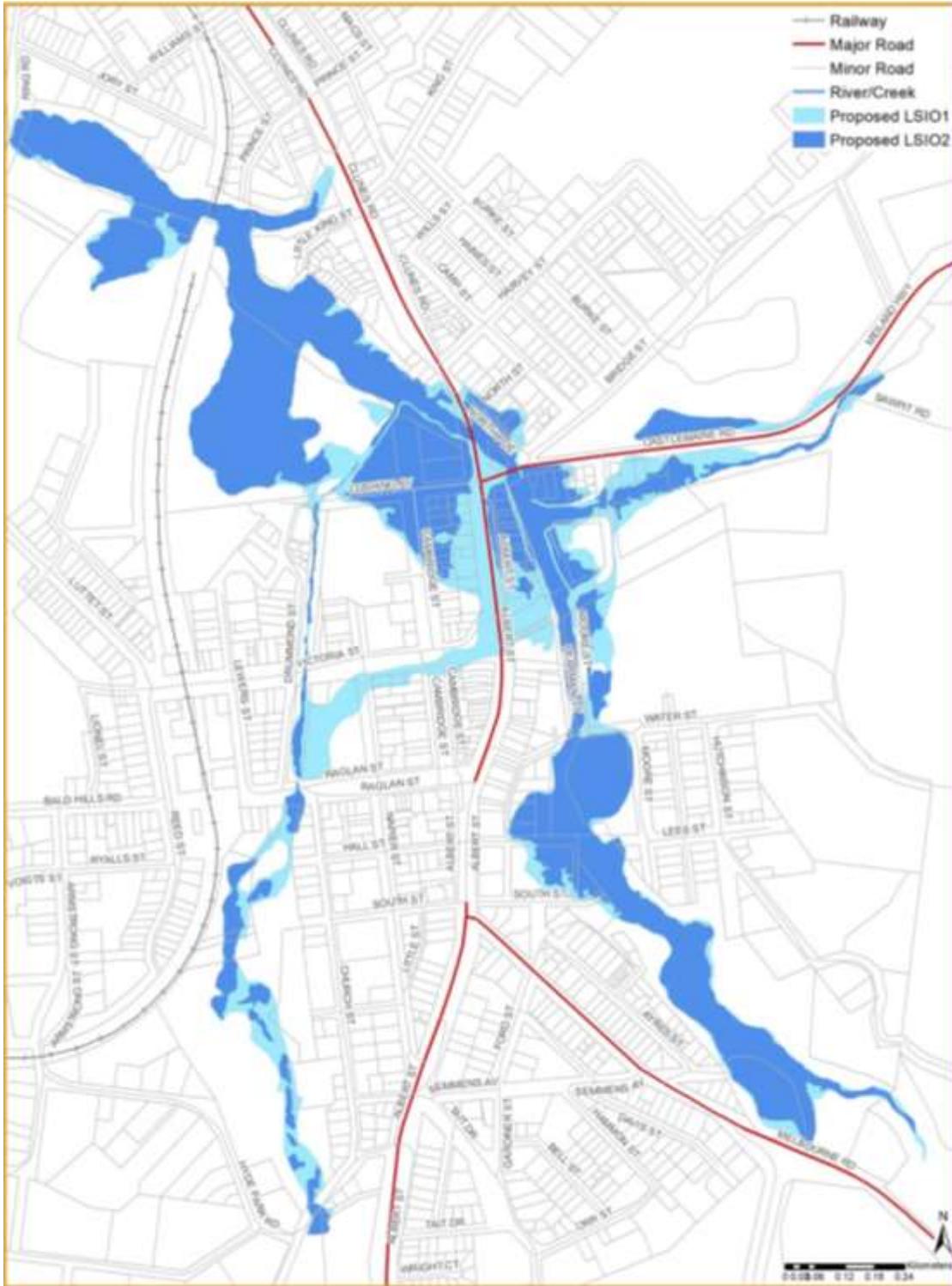
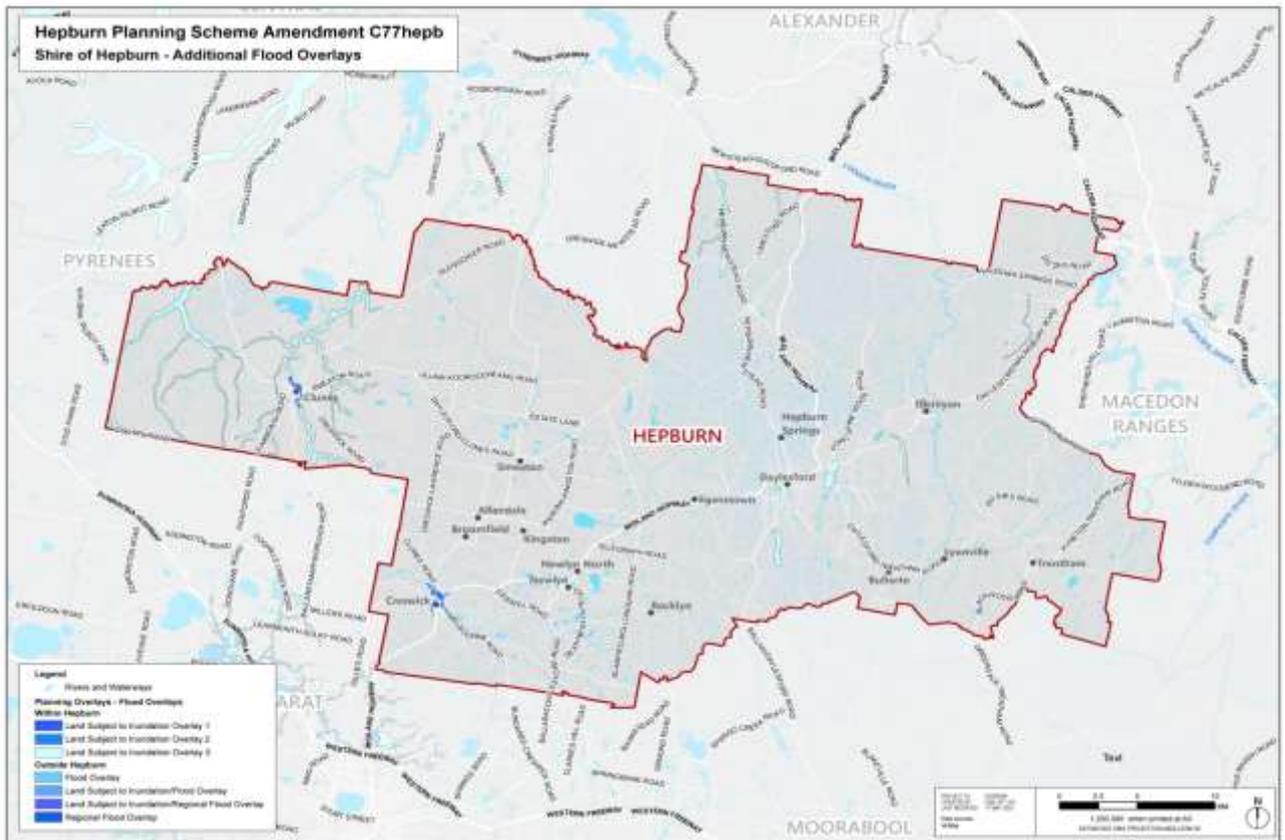


Figure 3 Proposed LSIOs



1.2 Background

Amendment C77hepb updates a previous Amendment (Amendment C64) that the Hepburn Shire Council resolved to exhibit in April 2016. However, due to a change of scope and updated mapping subsequently provided by the NCCMA, Amendment C64 was abandoned by Hepburn Shire Council (the Planning Authority).

The Creswick and Clunes community and outlying rural properties experienced three separate flooding events during late 2010 and early 2011 causing significant property damage and hardship to residents. In response, the NCCMA and Hepburn Shire Council engaged consultants (Water Technology) to undertake the *Clunes Flood Mitigation and Urban Drainage Plan, June 2013* and the *Creswick Flood Mitigation and Urban Drainage Plan, February 2012*. These studies show the distribution, extent levels and velocity of floodwaters across sections of the floodplain for a range of different flood events, including the 1-in-100 year flood event (or the 1% AEP).

Amendment C77hepb was then initiated by the Council as requested by the NCCMA to reflect the updated flooding work undertaken for Clunes and Creswick by the NCCMA between 2012 and 2013, after flood events in these townships in 2010 and 2011.

Extensive community consultation was undertaken during the preparation of the flood studies and Amendment documentation. This included a series of community meetings and opportunity for the community to comment on the draft flood studies and associated mapping.

The studies found that:

- The existing LSIO within Hepburn Shire is insufficient to manage flood risk.

- That some flood-prone areas within Clunes are not covered by the existing LSIO.
- There are currently no controls to manage development within flood-prone areas within Creswick.

The flood studies also recommended updates to the existing planning controls in the Hepburn Planning Scheme based on the flood data and flood modelling that was undertaken. These updates, and the two flood studies, are included in the Amendment.

1.3 Procedural issues

The original Hearing date of 2 June 2021 was postponed due to the COVID lockdown restrictions in Victoria. As one of the submitters required access to Council operated facilities to participate in the Hearing process, the Hearing was changed to Wednesday 23 June 2021 after consultation with all parties to the Hearing, to accommodate all submitters having access to participate in the Hearing process.

The Panel wishes to thank the Hepburn Shire Council for its willingness to accommodate such a request and for ensuring hard copies of all relevant documents were provided to the submitter.

1.4 Summary of issues raised in submissions

The key issues raised in the submissions and during the hearing process included:

- the extent of the LSIO mapping
- the proposed permit triggers in the Schedules.

Other issues raised included impacts to property values, access to mining operations, works already undertaken to resolve flooding issues, potential for flood waters from the Council waste transfer station to contaminate downstream waterways, management of environmental weeds and protection of the creek habitat.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, submissions and other material presented to it during the Hearing. It has reviewed the material, and has been selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Extent of LSIO controls

1.5 Limitations

Property values resulting from the application of planning controls to land is not a relevant planning matter to be considered by the Panel.

The approvals process for gold mining is not before this Panel and the Panel notes that the proposed introduction of flood controls through the LSIO does not prohibit the use and development of existing gold mining operations.

2 Planning context

2.1 Planning policy framework

The Council and the NCCMA submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

(i) Victorian planning objectives

The following objectives of planning in Victoria are relevant to the Amendment:

- Providing for the fair, orderly, economic and sustainable use, and development of land by identifying areas that are subject to flooding and introducing appropriate guidelines for new development.
- Providing for the protection of natural and man-made resources by ensuring that development occurs in ways that will maintain flood storage and active flow paths.
- Securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria by establishing a planning framework that will minimise risks to life and property.
- Protecting public utilities and other assets by ensuring that development does not exacerbate flood risks to these assets.
- Facilitating development by establishing clear provisions that allow for different solutions to address flooding issues.

(ii) State Planning Policy Framework

The Amendment proposes to support the State Planning Policy Framework through:

- Clause 11.02-1S which states that planning for urban growth should consider the limits of land capability and natural hazards and environmental quality
- Clause 13.03-1S which aims to protect:
 - life, property and infrastructure from flood hazard;
 - the natural carrying capacity of rivers, streams and floodways;
 - the flood storage function of floodplains and waterways, and
 - floodplains areas of environmental significance and importance to river health
 - through the identification and management of development upon flood-prone land.
- Clause 14.02-1S which assists the protection and restoration of catchments by various strategies, including ensuring that planning is coordinated with the activities of catchment management authorities.

(iii) Local Planning Policy Framework

The Amendment proposes to support and implement the Local Planning Policy Framework through:

- Clause 21.03-2 (MSS) – by providing controls for development to ensure that future development is compatible with the quality, character, amenity and lifestyle of rural and urban communities
- Clause 21.09 (MSS) – by introducing updates to the overview, key issues, objectives and strategies to address flood risk and floodplain management, and by including the

Creswick Flood Mitigation and Urban Drainage Plan, February 2012 and the Clunes Flood Mitigation and Urban Drainage Plan, June 2013 as background documents.

- Clause 22.01 – by ensuring that land use and development is consistent with approved regional land and water catchment strategies.

2.2 Other relevant planning scheme amendment and policies

(i) Amendment C80hepb

Hepburn Shire Council has undertaken a review of the Hepburn Planning Scheme (HPS) which began in July 2019. The review aimed to provide sound, strategic and coordinated planning of land use and development based on section 12B of the PE Act. Amendment C80hepb proposes to update the HPS and the comprehensive changes to the scheme are generated from the following elements:

- Translation of the Local Planning Policy Framework incorporating the Municipal Strategic Statement (MSS) to the Planning Policy Framework which incorporates a new Municipal Planning Strategy (MPS).
- Implementation of the Hepburn Planning Scheme Review (HPSR), February 2020 by strengthening the strategic framework, policies, zone and overlay schedules and particular provisions for the municipality.
- Implementation of recent reforms to the Victoria Planning Provisions and the Ministerial Direction on the Form and Content of Planning Schemes into the HPS.

The HPSR is implemented by Amendment C80hepb to the HPS. The Planning Authority submitted that Amendment C80hepb has been exhibited, considered by a Panel, adopted with changes by the planning authority and submitted to the Department of Environment Land Water and Planning and the Minister for Planning for approval and gazettal. There are changes proposed in Amendment C80hepb that impact on the drafting of the proposed Amendment documentation in Amendment C77hepb, particularly the MPS content and associated mapping, as well as the three new LSIO schedules.

The changes to reflect flooding hazards in the Shire as detailed in Amendment C80hepb constitute strategy and provision neutral changes that will not impact on the substantive strategic directions and statutory provisions proposed by Amendment C77hepb.

(ii) Central Highlands Regional Growth Plan

The Amendment supports the Central Highlands Regional Growth Plan by seeking to deliver a *“productive, sustainable and liveable region for its people”*.

2.3 Planning scheme provisions

A detailed description of the existing zones and overlays is not provided in this report as the Amendment covers a wide area of Clunes, Creswick and other rural land and small settlements within the Shire boundary.

However, the Council submitted that the land use zonings within the Hepburn Shire are predominantly rural (73%), National Parks, Forests or Reserves (21.5%) and townships or settlements (5.5%).

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46) and Ministerial Direction 15 in respect to The Planning Scheme Amendment Process. That information is not repeated here.

Planning Practice Notes

The use of the LSIO in the Amendment is consistent with Planning Practice Note 12 – *Applying the Flood Provisions in Planning Schemes*. The application of the LSIO best represents the flooding characteristics, provides transparency about the actual flood risk to the community and enables flexibility in decision making within Hepburn Shire.

The Council submitted that as a result of its recent adoption of Amendment C80hepb and the requirements of the Ministerial Direction on the Form and Content of Planning Schemes, Amendment C77hepb can be redrafted to give proper effect to that Ministerial Direction and to include the new proposed content of Clause 21.06 into Clause 02.03-3 of the adopted MPS.

2.5 Discussion and conclusion

The NCCMA and Council submitted that the strategic basis of the Amendment is from a range of State planning policies, but particularly Clause 13.03-1S – Floodplain management and from the two flood studies for Clunes and Creswick being the *Clunes Flood Mitigation and Urban Drainage Plan, June 2013* and the *Creswick Flood Mitigation and Urban Drainage Plan, February 2012*.

The Amendment implements the flood studies undertaken for Clunes and Creswick that resulted from the 2010-11 flood events that significantly impacted both townships. The Panel agrees with the NCCMA and Council that the Amendment is necessary to assist in the protection of life, property and community infrastructure from flood hazard and to maintain the natural flood carrying capacity of the Creswick Creek and its tributaries.

The Amendment gives appropriate effect to the State planning policy for floodplain management at Clause 13.03-1S of the HPS and has incorporated the guidance from Planning Practice Note 12 - *Applying the Flood Provisions in Planning Schemes* as relevant.

The Panel notes Council's submission in relation to the recently adopted Amendment C80hepb, which was a review of the HPS. The Panel understands that the proposed changes to the exhibited Amendment C77hepb provided at Appendix K of the Planning Authority's Part A submission (document 5) as a result would be policy neutral changes and would not impact on the substantive strategic directions and statutory provisions proposed in Amendment C77hepb before this Panel.

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Panel notes that the Victorian Planning Provisions include a number of controls for floodplain management risk in planning schemes and that Amendment C77hepb proposes to revise the HPS by updating the application of the LSIO across the Hepburn Shire.

The Panel concludes that the Amendment C77hepb is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapter.

3 Extent of LSIO controls

3.1 The issues

The issue raised in the submissions is whether the extent of the proposed LSIO schedules is appropriate and whether the controls within the Schedules are too onerous on property owners.

3.2 Relevant policies and practice advice

Relevant policies are detailed in Chapter 2 and are not repeated here however of most relevance is Clause 13.03-1S Floodplain Management and Planning Practice Note 12 – *Applying the Flood Provisions in Planning Schemes*.

3.3 Submissions

The Amendment was prepared by the Hepburn Shire Council at the request of the NCCMA, the relevant floodplain management authority. Council jointly submitted with the NCCMA that the existing LSIO within Hepburn Shire is insufficient to manage flood risk. They stated:

There are currently no controls to manage development within flood-prone areas in Creswick, while flood-prone areas in Clunes are not covered by the existing LSIO.

Council submitted that the Creswick and Clunes community and outlying rural properties experienced three separate flooding events during late 2010 and early 2011 causing significant property damage and hardship to residents. As part of the response to these flooding events, the Council and NCCMA commissioned consultants Water Technology to undertake flood studies. This resulted in two reports: *Creswick Flood Mitigation and Urban Drainage Plan, February 2012* and the *Clunes Flood Mitigation and Urban Drainage Plan, June 2013*.

The Water Technology flood studies recommended that updates to the existing planning controls in the HPS based on updated flood data and flood modelling be undertaken, which are included in the exhibited Amendment documentation.

Council and the NCCMA submitted that the application of the proposed LSIO schedules are based upon the one per cent (1%) AEP flood extent, meaning the flood level each year has a one per cent chance of occurring (previously referred to as the 1-in-100 year flood). They stated '*this is a standard used across the industry for flood planning and management*'. The 1% AEP has been determined through the work undertaken by Water Technology in the two flood studies. Council stated:

In terms of the accuracy of the modelling, the flood model was calibrated to both the September 2010 and January 2011 flood events. Survey work was undertaken by licenced surveyors after each of these flood events to capture actual flood levels. The flood modelling produced for each of these events was checked against these observed flood levels to ensure the accuracy of the modelling. There is a high degree of confidence in the modelling due to the alignment of the modelled and actual flood levels.

The Amendment proposes to apply the LSIO to properties that are likely to be inundated in the 1% AEP flood event. Council explained that although a planning permit would be required for specified works and subdivisions, the proposed three Schedules to the LSIO will introduce exemptions for low risk buildings and works to minimise permit triggers based on the flood risk according to the projected flooding depth. The NCCMA will be a recommending referral authority

for the three Schedules. Council submitted the following summary table explaining the differences between the three Schedules:

Table 1 Proposed LSIO Schedules and Permit Requirements

Overlay	Definition	Planning Permit Requirements
LSIO1 Flooding from waterways (depths up to and including 350mm)	Land affected by creek flooding up to 350mm depth for 1% AEP flood in the localities of Clunes and Creswick.	Permit required for buildings, works and subdivision. Exemption for minor works including upper storey extensions if there is no increase to the ground floor footprint, extensions less than 40 square metres, replacement dwellings and fences, agricultural buildings with permanent openings, sheds and rainwater tanks.
LSIO2 Flooding from waterways (depths greater than 350mm)	Land affected by creek flooding over 350mm depth for 1% AEP flood in the localities of Clunes and Creswick.	Permit required for buildings, works and subdivision. Exemption for minor works including extensions less than 20 square metres, replacement dwellings, agricultural buildings with permanent openings, open fences.
LSIO3	Remaining rural areas currently covered by the existing LSIO controls that are liable to inundation. These localities include Coomoora, Drummond, Kooroocheang, Smeaton, Mount Beckworth, Yandoit, Mount Cameron and Evansford.	Provides permit exemptions for buildings and works including a replacement single dwelling if it is constructed to at least 300 millimetres above the 1% AEP flood level and the original building footprint is not increased by 20 square metres in area.

Source: Council's Part A Submission (Document 5)

Council and the NCCMA concluded that:

The Amendment is necessary to assist in the protection of life, property and community infrastructure from flood hazard and to maintain the natural flood carrying capacity of the Creswick Creek and its tributaries. The Amendment gives appropriate effect to the State planning policy for floodplain management at Clause 13.03-1S of the HPS and has incorporated the guidance from Planning Practice Note 12 as relevant.

Mount Rommel Mining and Timmermans Furniture opposed the Amendment for a number of reasons but in particular they disagreed that the properties they own, or have a lease over, are not subject to flooding and that the LSIO Schedule would impose onerous planning controls on their properties and activities.

Mount Rommel Mining submitted that the introduction of the Amendment may affect the company's future use of the entire land area and has '*entirely disregarded other State law responsible for this land, its special character, and the sub-surface*'. In response, Council noted in its submission that the issues raised by Mount Rommel Mining in regard to its right to mine gold in the area are not matters related to land use and development that is regulated by the HPS.

Council submitted:

mining is a land use term nested within 'earth and energy resources industry' that is exempt from the need for planning permission due to the requirements of Clause 62.01 of the Hepburn Planning Scheme.

Ms de Deugd, for Timmermans, submitted that they are strongly opposed to flood controls or permit requirements across their property and submitted that there had only been flooding on Timmermans property at 67 Fraser Street, Clunes once since 1955 and that was in the January 2011 floods. The submission suggests that works have since been undertaken around the Creswick Creek to clear the waterways of debris and the likelihood of flooding is reduced because of this. Ms de Deugd submitted that the proposed controls and permit triggers are too onerous, impacting on the viability of businesses and on property values. Timmermans request that their property not be included in the LSIO mapping at all. Alternatively, Ms de Deugd requested that the property be changed from the exhibited LSIO2 to LSIO1 as the previous flooding on the property did not exceed 330 millimetres and this change would reduce the permit controls on the property.

In reply, Council and NCCMA submitted that although works have been undertaken in the floodplain which they acknowledged does reduce the severity of flooding, the risk still remains for the properties in Clunes of a 1% AEP flood event, including the Timmermans property and therefore mapping via the LSIO is still required.

Ms White, NCCMA, explained that although works had been undertaken in the floodplain at both Clunes and Creswick and had reduced the risk of flooding, the level of protection afforded is now a 1 in 50 year event so the risk of a 1 in 100 year flooding event (that is, the 1%AEP) still remains and since the planning controls are based on the 1-in-100 flood event they should remain in place as exhibited.

Council and NCCMA submitted:

... the Flood Overlay does not cause or change the likelihood of flooding but recognises the existing condition of land. If a property has been identified as having a flood risk, the real flood risks on a property have not changed. The flood information in the HPS will ensure a higher level of transparency to land owners and occupiers and planning applicants.

As noted over many years in numerous Panel reports on Amendments state-wide, property values resulting from the application of planning controls to land are not a relevant matter to be considered in a planning scheme amendment. Property values are not applicable in this Amendment

...

The proposed planning controls in the LSIO and the three schedules are not designed to be onerous and in many cases land owners already require permits for buildings and works due to the presence of the Heritage Overlay, Environmental Significance Overlay and other controls.

Notwithstanding, Council and the NCCMA considered Timmermans submission and have agreed to remove the LSIO2 from the land at 67 Fraser Street, Clunes and apply the LSIO1 to the entire property instead.

Ms Potter and Mr Phillips submitted that the updated LSIO mapping should be broader to include the rural parts of Creswick, not just the town centre and should have also included the Creswick waste transfer site. Ms Potter raised concerns with potential contamination of the waterways downstream from the existing Council waste transfer station, especially in a flood event. In reply, Council acknowledged Ms Potter's concerns as valid about flooding in the area of the waste transfer station, however they submitted that the area is outside the boundaries of the mapping undertaken as part of the *Creswick Flood Mitigation and Urban Drainage Plan 2012* and would need to be considered as part of further strategic work.

Other issues raised by Ms Potter in submissions included the need for better environmental weed management within creek corridors and protection of habitat for species such as the Growling Grass Frog.

Council and the NCCMA noted that the extent of the investigation areas were based on identifying the core parts of the Shire's townships that would be subject to major risk to property, the environment and human life. Council also noted in closing submissions that they propose further strategic work on a number of matters that are noted in Ms Potter's submission but many of these issues are outside of the scope of the Amendment, for example opportunities to address further flooding concerns within the Creswick settlement boundary as part of the Creswick Structure Plan that will inform a future planning scheme amendment.

3.4 Discussion

It is appropriate to apply the LSIO and Schedules on properties in Clunes, Creswick and rural parts of the municipality that would be subject to a 1% AEP flood event. They are an important planning tool for identifying and responding to potential major risk to property, the environment and human life in the future. The Panel agrees with the Council and NCCMA that where there is a purpose to implement planning controls to achieve an outcome then it is appropriate to do so.

The extent of flood modelling and data collection undertaken to inform the Amendment is robust and follows an approach that has been used in a number of flood mapping planning controls in Victoria. The Panel notes that community engagement was a key component in the preparation of the two flood studies, as well as a community based Steering Committee.

The Panel notes that submissions from the Environment Protection Authority, Central Highlands Water and Goulburn Murray Water do not object to the Amendment nor did these authorities propose any changes to the Amendment.

The Panel agrees with the Council that the introduction of the LSIO over the Mount Rommel Mining land will not preclude the use and development of the land for mining purposes and that the approvals sought and processes outlined in the submission are not a matter for this Amendment.

In regard to the submissions of Ms de Deugd for Timmermans, the Panel agrees that the flooding risk may have decreased since 2011 with the works associated with floodplain maintenance and removal of debris in the waterways being completed, however it agrees with the NCCMA that the risk of a 1 in 100 year flood event still remains as the modelling has indicated. For this reason, the Panel accepts the position that the LSIO1 and not LSIO2 should be proposed over the property at 67 Fraser Street, Clunes but disagrees with the submitter that it should be removed entirely.

In regards to the issues raised by Ms Potter and Mr Phillips, the Panel notes that in principle, the submitter supports the implementation of flood controls, however raised concerns about matters such as contamination, weed control, ongoing management and the need for further strategic work within the Shire which are beyond the scope of the Amendment. Notwithstanding, the Panel is encouraged to hear from the Council that further strategic planning work is proposed for some of the matters raised by Ms Potter. The Panel encourages the Council to engage with the community in developing this further strategic work.

The Panel agrees with the Council in that the permit triggers are not onerous. The Panel notes that many properties within the townships of Clunes and Creswick are already subject to permit

triggers and requirements for buildings, works and subdivision through Heritage Overlays and the like.

3.5 Conclusions and recommendation

The Panel concludes:

- That the proposed LSIO schedules are appropriate as a measure to protect life, property, community infrastructure and the environment from flooding in a 1% AEP flood extent.
- Mapping and data used to determine the 1% AEP flood extent is robust and follows a tested methodology within Victoria.
- There is merit in changing the property at 67 Fraser Street, Clunes (Timmermans) from the exhibited LSIO2 to the LSIO1.
- There is a net community benefit of implementing flooding controls through the use of the LSIO to prevent flooding risk and harm to property, the environment and life.

The Panel recommends that:

Hepburn Planning Scheme Amendment C77hepb be adopted as exhibited subject to the following:

- **Apply Land Subject to Inundation Overlay Schedule 1 instead of Schedule 2 to 67 Fraser Street, Clunes.**

Appendix A Document list

No.	Date	Description	Presented by
1	10 Feb 21	Directions Hearing letter	the Panel
2	19 Apr 21	Letter regarding distribution list	Mr Buxton
3	26 Apr 21	Covering Letter and Directions Hearing document	Mr Buxton
4	4 May 21	Directions letter	the Panel
5	21 May 21	Covering Letter and Part A submission including Appendices	Mr Buxton
6	28 May 21	Email regarding COVID restrictions	the Panel
7	28 May 21	Council Covering Letter and Part B submission	Mr Buxton
8	3 Jun 21	Email confirming revised Hearing date and timetable	the Panel
9	21 Jun 21	Exhibit A Map – Overlays as exhibited for 67 Fraser Street, Clunes	Ms de Deugd
10	“	Exhibit B Map – Proposed Overlay changes to 67 Fraser Street, Clunes	“
11	“	Exhibit C Map - Proposed Overlay changes to 67 Fraser Street, Clunes with dotted line	“
12	24 Jun 21	Speaking Notes	“
13	“	Council Closing submissions incl. Appendix A	Mr Buxton
14	14 Jul 21	Speaking Notes	Ms Potter