



14 OCTOBER 2022,
MARIBYRNONG FLOODS

PARLIAMENTARY SUBMISSION

Legislative Council Environment and
Planning Committee

Inquiry into the 2022 Flood Event in Victoria

Prepared by:

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Chair, Maribyrnong Community Recovery
Committee

1. INTRODUCTION

1.1. Submission

Thank you for the opportunity to submit this submission to the Inquiry into the 2022 Flood Event in Victoria (**Enquiry**) being conducted by Legislative Council Environment and Planning Committee (**Committee**). My submission will address, or note my concurrence with and endorsement of another submission for the following Items in the Committee's Terms of Reference:

(2) adequacy and effectiveness of early warning systems;

(3) resourcing of the State Emergency Service, the adequacy of its response to the Flood Event and the adequacy of its resourcing to deal with increasing floods and natural disasters in the future;

(5) location, funding, maintenance and effectiveness of engineered structures, such as floodwalls, rural levees and culverts, as a flood mitigation strategy; and

(9) any other related matters.

1.2. My background

I am a semi-retired corporate lawyer now concentrating on non-executive directorships with a community/ social justice emphasis. My partner, Dr Kieran Keane and I bought our home in The Esplanade, Maribyrnong in 2015. We are part of the community in the Township of Maribyrnong and cherish the beautiful riparian environment of the Maribyrnong River, its parklands, estuarine character, biodiversity of flora and fauna and its remarkable historical contribution to Australia's economic and social wellbeing.

1.3. 14 October 2022 – Day of the Flood

- a. Like many others, we went to sleep on Thursday 13 October 2022 as normal. We had **no** warning or advices/door knocking etc. from any emergency services' personnel that there was a risk of flooding in the days preceding the Flood: nothing. The only thing I recall regarding weather in the days leading up to the Flood – was observing the Premier, Daniel Andrews at a press conference early in the week explaining that Victoria was about to experience an extreme rain event.

- b. Fast forward a few days, we awoke as normal on Friday 14 October and began to prepare for work and commitments. We then discovered that our phones had recorded two text messages: one at 4.26am and the other at 6.01am. Both advised us to "EVACUATE NOW for flooding at Maribyrnong..." etc. Our phones were on sleep settings, and we didn't hear these messages. We were in shock and rushed to look outside. It was immediately apparent that the water was rising fast. It was at the bottom of our street where it met Chifley Drive and starting to come up the Esplanade towards our home. Everywhere about, you could hear and see people in distress – my elderly neighbours were being dragged out of their homes and children were screaming. It was a complete state of chaos. We rushed inside and began trying to move to

preserve our possessions. We did as much as we could – but by 8.20 – flood water was rushing into our home from the front and the rear.

- c. Overall, we had around a metre of water go through the house. Now, I know the flood water is rated as Category 3 Black Water. The water level rose peaking around 11 am then slowly falling until around 6 pm. We then began to start getting the water out and clearing the mud and debris from our home. I will never forget the viscous, oily, rank mud. It was everywhere. Frankly we are still cleaning up.
- d. October 14, 2022 has changed my life. Eight months later, my double storey home remains a chaotic flood damaged mess with the lower level remaining wet and unrestored. The management of my insurance claim by my insurer, RACV has been appalling and well below any reasonable standard of commercial practice. I am now aware that RACV's appointed subcontractors have performed shoddy and substandard work. In many respects I am back to square one i.e. the first week following the flood. I am now aware that it is very probably that restoration and rebuilding will take another 12 months. It is a horrible, depressing process as we remain 'camping' amidst the mess of our flood damaged home.
- e. There is no doubt that the flood has been profound and adverse: emotionally, financially and socially. I completely understand why the Insurance Council of Australia declared it to be a catastrophe. What I don't understand is the extraordinary absence of attention to the community recovery.

1.4. The Maribyrnong Community Recovery Committee

- a. The Maribyrnong community was devastated by the floods of 14 October and has raised a unified powerful voice for a recovery that includes establishment of better warning systems, effective mitigation infrastructure and better flood plain/catchment management by the responsible authority, Melbourne Water.
- b. The Committee's Terms of Reference offer an effective pathway for the Maribyrnong Community to have its concerns (about what happened, and all the attendant failures shown by the Maribyrnong Floods) raised in a public forum with rigorous consideration. The further scope to develop better public policy, planning, decision making and effective systems for flood risk by Recommendation is well received by the Maribyrnong Community. For this reason, many members of Maribyrnong flood affected Community have made individual submissions to the Enquiry.
- c. In May 2023, I was confirmed as the founding Chair of the Maribyrnong Community Recovery Committee, established by Maribyrnong City Council (MCRC). The MCRC aims to adopt the successful model of community-led recovery and resilience that originated in communities after major bushfires. The MCRC comprises four Maribyrnong City Council staff and an elected councillor Members plus 8 Resident Committee Members.
- d. The MCRC has Terms of Reference drawn from the Australian Institute of Disaster Resilience principles under the auspices of the Australian National Emergency Agency.

The MCRC's clear mandate is to work towards Recovery and Resilience which includes efforts towards mitigation of flood risk.

- e. From a personal perspective, I regard the Maribyrnong Floods as an unmitigated disaster. What happened on 14Oct should not be allowed to happen again. Over and over again, I note that if this event were to have occurred on the Eastern/South Eastern side of Melbourne the swift response by civil decision makers would be amazing. For no good reason, harm in the Western suburbs of Melbourne matters less. This is completely unacceptable.



Front Garden, The Esplanade 11.10 am, 14 October, 2022



Rear Garden, The Esplanade 9.19 am

2. TERMS OF REFERENCE WITH RECOMMENDATIONS

My submission addresses the following Terms of Reference

2.1. Terms of Reference #2 Adequacy and effectiveness of early warning systems

Please note I concur with and endorse *the Submission to the Parliamentary Enquiry from the Victoria SES Volunteers Association (VicSESVA)* prepared by Dr Faye Bendrups OAM regarding Terms of Reference #2 pp 17-33 and its recommendations.

2.2. Terms of Reference #3 Resourcing of the State Emergency Service, the adequacy of its response to the flood event and the adequacy of its resourcing to deal with increasing floods and natural disasters in the future.

I concur with and endorse *the Submission to the Parliamentary Enquiry from the Victoria SES Volunteers Association (VicSESVA)* prepared by Dr Faye Bendrups OAM regarding Terms of Reference #2 pp 34-36 and its recommendations.

2.3. Terms of Reference #5 location, funding, maintenance, and effectiveness of engineered structures, such as floodwalls, rural levees and culverts, as a flood mitigation strategy.

- a. Flood mitigation strategies for Maribyrnong need historical, social and environmental context.
- b. Maribyrnong is a well-established, thriving and evolving western suburb, located around 8 km from the centre of Melbourne. It has an extraordinary largely unappreciated history of the First People of the Kulin Nation through to industrial development and a great part in the creation of modern multicultural Australia; It is an amazing place beside the beautiful and precious Maribyrnong River.
- c. Almost all munitions made for war for Australia's military campaigns were made in Defence factories in Maribyrnong. The consequences of their production persist in huge tracts of Commonwealth contaminated land on the old Defence Land site.
- d. Every horse that went to war for Australia - pulled the equipment; or charged as the Light Horse.... came together stabled in Maribyrnong - before they were shipped off to become part of Anzac lore. Only one horse came home. And he's Sandy. Sandy was the horse of Major General Bridges, the founder of Duntroon who was killed at Gallipoli. Sandy lived out his life in Maribyrnong where he is buried. Maribyrnong literally holds the greatest treasures and toxic horrors of Anzac right beside our river Mirrangbamurn.
- e. The Maribyrnong River is like most of Australia's waterways environmentally fragile. It has been neglected and mismanaged for decades by all government entities entrusted with its care – most notably Melbourne Water in recent times. The work of the Maribyrnong Riverways and Water Association's film: Maribyrnong, Mirrangbamurn is a superb visual explanation of the real environmental challenges.
- f. Then add over 1500 people, over 600 homes – some 80 condemned by inundation on 14 October, 2022 as the Maribyrnong River flooded in its lower reaches. The scale of the disaster and the devastation caused by Maribyrnong Floods produced the largest single disaster (outside Covid19) in Metropolitan Melbourne in over 50 years. All the while, Flemington Racecourse – primed for the Spring Carnival of 2022 remained pristine; dry and sparkling green behind the Flood Wall erected in 2007.
- g. The scale of the disaster and the very real prospect of repeated and potentially worse disasters is exactly why flood mitigation strategies are required. The flood event of 14 October 2022 must not be allowed to repeat.
- h. However, I am equally certain that achieving flood mitigation for the Maribyrnong River - to meet the diverse and legitimate objectives of all the various stakeholders concerned - in particular the voice of the indigenous custodians of Mirrangbamurn, all within the growing impact of Climate Change - is a challenge well beyond any expertise and capacity existing in Australia. And further, the dense web of governmental agencies, consultants and contractors removes any realistic probability of independent, sound advice and decision making. The present enquiry in the Australian Senate by the FPA References Committee evidencing egregious breaches of conflicts of interest is proof positive.

- i. Flood mitigation strategies for the Maribyrnong need to draw inspiration and solutions beyond extant historical proposals like the Arundel Basin. The recent catastrophic floods in Europe and the varying success of the European nations to successfully manage flood plains in extreme weather events must become a source for knowledge for Maribyrnong. There will be many other world locations that could provide additional wisdom and insight for flood mitigation strategies for the Maribyrnong River.

RECOMMENDATION:

THAT, the Victorian Government commission a study of international best practice in flood risk management systems with particular regard to environmental, indigenous cultural heritage and spatial planning to develop a project plan for flood mitigation of the Maribyrnong River.

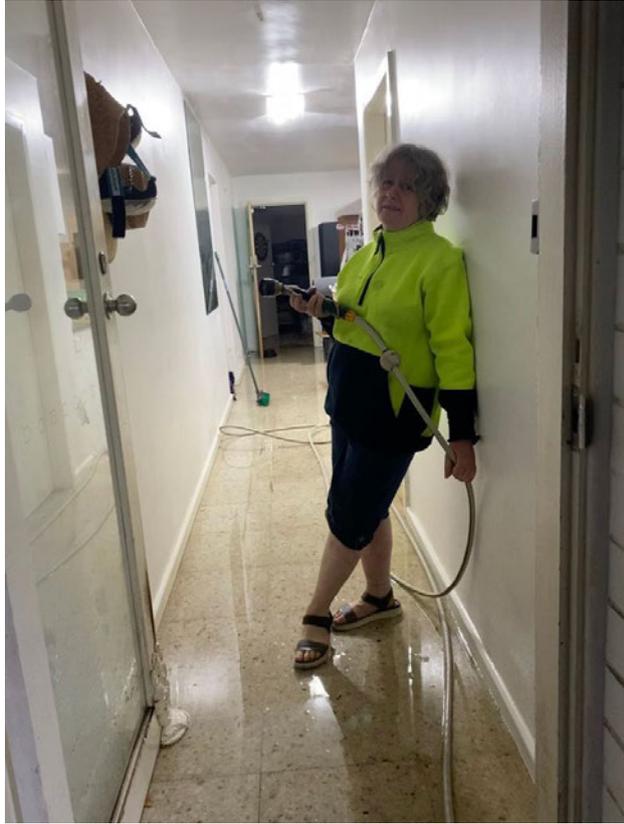
2.4. Any other related matters: Flood Insurance in Maribyrnong

2.4.1. Flood Insurance and resilience

- a. Flood insurance plays an important role in developing a community's flood resilience.
- b. Where a community is situated in an area prone to flooding – eg LSIO – such as Maribyrnong, the number of residents who hold flood insurance significantly affects the ability of that community to recover from the economic shock of flooding.
- c. To date, there is no accurate dataset for exactly what occurred on 14October in the Township of Maribyrnong. The MCRC is presently considering how to create an accurate dataset – which would include the number of residents with appropriate flood insurance.
- d. Anecdotally, the amount of residents insured in the Township of Maribyrnong for flood is believed to be around 50%. Given the scale of property damage, and again the anecdotal numbers of condemned homes (around 80) create a dire prospect of abandoned homes. The loss of amenity of streetscapes would be an awful outcome for the community. It would also compound erosion in property value and associated psychosocial wellbeing. the harm to the community attributable to the flood.
- e. In previous flood events, Melbourne Water has bought flood damaged homes and reinstated them as empty blocks to further enhance *flood water flow*. However, so far, Melbourne Water has not been identified as a buyer for any of the properties sold since 14Oct.
- f. This raises the dire prospect that in a major flood – such as 14Oct - many home owners may:
 - not have the means to restore their homes; and

- be forced to sell homes that are uninhabitable for land value only – creating further loss.
- g. And for the community generally trying to recover from a major flood, the prospect of denuded streets would cause further social unease and disadvantage. For example, in Maribyrnong presently there may be as many as 80 houses condemned but the proportion of those homes that are uninsured is unknown.





2.4.2 Improving affordability of flood insurance

- a. The Insurance Council of Australia consistently raise the relationship between:
 - improved flood mapping/modelling systems; and
 - mitigationby responsible authorities – such as Melbourne Water - as key determinants of price.

- b. In Queensland, the largescale incidence of flooding and other natural disasters led to the establishment of the Queensland Reconstruction Authority <https://www.qra.qld.gov.au/> which sets the Queensland Strategy for Disaster Resilience. Key outcomes include the development of Flood Resilient Building Guidance with flood resilient building materials. <https://www.qra.qld.gov.au/resilient-homes/flood-resilient-building-guidance-queensland-homes>

- c. The Queensland flood resilience framework supports stronger, safer and more resilient Queensland communities and delivers economic benefits which include incentives to put downward pressure on insurance costs.

RECOMMENDATION:

THAT, the Victorian Minister for Emergency Services (or the Minister holding an equivalent responsibility in the event of an amendment to government departments and ministries) establishes a public review into community Flood Resilient Strategies and strategies with reference to the work and current operation of the Queensland Reconstruction Authority for the purposes of establishing an equivalent scheme in Victoria.





2.4.3 Melbourne Water – Planning Permit Conditions – Section 173 Agreement - Indemnities

- a. Development or renovation of a property in an area with a flood overlay (LSIO) – such as the Township of Maribyrnong generally requires a Planning Permit from the council. Before issuing a permit, councils must in most cases refer the application to Melbourne Water for consent to ensure the proposal conforms with Melbourne Water’s criteria for flood, asset and waterway protection.
<https://www.melbournewater.com.au/building-and-works/flooding-information-and-advice/get-our-consent-council-planning-permit>
- b. Typically, Melbourne Water imposes special conditions in addition to the general Planning Permit Conditions required by the Council. Once settled, the Section 173 Agreement is a legal contract made between council, the owner of land and a referral authority, such as Melbourne Water. A Section 173 Agreement is registered on the title to the land so that future owners of the land are bound by the obligations of that agreement. <https://www.melbournewater.com.au/building-and-works/apply-to-build-or-develop/section-173-agreement>

- c. In what is believed to be the *first* Planning Permit issued in the Township of Maribyrnong after 14Oct, Melbourne Water in conjunction with the Maribyrnong City Council included an extraordinary special condition: An indemnity.

14. Prior to the commencement of works, the landowner must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987 with the Responsible Authority and Melbourne Water Corporation. All costs associated with the creation of this agreement must be borne by the permit holder. The agreement must be registered on title and run with the land, and must provide, to the satisfaction of the Responsible Authority and Melbourne Water, for the following:

- a) Prospective and future owners of the Land to be informed that the Land is subject to inundation;
- b) The outdoor undercroft areas (including the outdoor pavilions) are to be unenclosed and remain permanently open. These areas are not to be used for storage and/or habitable purposes;
- c) The lift must be restricted/stop at the first floor level, to prevent access to the ground floor level during a flood event;
- d) Notify prospective and future owners of the risk for flood damage associated with the outdoor undercroft areas at the ground floor level;
- e) **Indemnify Melbourne Water of the risk associated with flood damage of the property and its contents.**

- d. The inclusion of this indemnity in favour of Melbourne Water is remarkable in several ways:
- I. It will almost certainly mean that the homeowner cannot obtain flood insurance – because an insurer may well view the homeowner as having lost the right to recover flood damages – having indemnified Melbourne Water. In any event the ordinary difficulty of obtaining flood insurance will be significantly increased leading to a strong possibility that insurance will be ‘too hard’ to arrange and therefore be refused by the insurer.
 - II. The homeowner will *not* be able to bring or participate in any legal action against Melbourne Water for flood damage. That would not of itself seem a great loss. However, under present circumstances, i.e., the readily arguable legal actions related to comprehensive failures by Melbourne Water as a flood plain manager and for failure to properly warn for the flood event on 14Oct the loss may be material.
 - III. The nature of a s 173 Agreements - being registered on title – is that it runs with the property. As such, any subsequent owner is bound by the special condition too. This means subsequent owners will find themselves also struggling to get insurance. And if the performance of Melbourne Water does not improve – then the issue under 2. may be relevant too.

- e. If indeed this is the first example of the use of an indemnity in the Township of Maribyrnong – then the potential for Melbourne Water to seek to make the indemnity a standard precedent will create a chilling effect on the number of residents able to obtain insurance as paragraphs 1, 2 and 3 capture more residents.
- f. When considered against the approach of Queensland in strategic disaster planning discussed earlier; collectively, 1 – 4 above are completely at odds with the extant economic benefits of increasing insurance as a means to increase community resilience. In fact, it presents a barrier to community resilience which surely is counter to good public policy.



Public and Statutory Duties

- a. Furthermore, Melbourne Water is not an ordinary commercial counterparty fully entitled to advance a hard bargain. Instead, Melbourne Water is an arm of government with an enabling Act: the Water Act 1989 setting out public purposes in section 1.
- b. While the Water Act does not impose any express duties, Melbourne Water clearly elects via its vision and strategic direction in the current Annual Report 21-22 a public accountability:

“Melbourne Water’s vision is to enhance life and liveability across greater Melbourne and the surrounding region. We know that water is central to life. It sustains the natural environment we live in, the communities we value, and the economy we depend on.”

“The way we deliver our projects and services is guided by our vision and values.

“As caretakers for Melbourne’s water cycle, we care for water, life and land throughout Melbourne: both its people and its biodiversity. Our three core values are integral to the way we do that work.

We believe in care, integrity and courage:

care - we put safety and wellbeing first at all times

integrity - we are open and transparent in everything we do

courage - we encourage each other to be confident and innovative.

The way we deliver our projects and services is guided by our vision and values.”

- c. So, given the public purpose and in all the circumstances of the ongoing trauma and distress from 14Oct I query what reasonable purpose was served by Melbourne Water and the City of Maribyrnong deciding to include the indemnity provision in the Planning Permit? Particularly given the ‘person’ most able to control the risk (of flooding) is Melbourne Water and not the Resident which means the allocation of risk is the reverse basic contractual allocation risk principles.

RECOMMENDATION:

THAT, the Victorian Minister for Water (or the Minister holding an equivalent responsibility in the event of an amendment to government departments and ministries) considers the scope and application of special conditions in planning permits and removes Melbourne Water’s right to include indemnities in its own favour as against the permit applicant or holder.

