

## **Amendment C109 Manningham Planning Scheme - Land Subject to Inundation Overlay and Special Building Overlay - Consideration of Submissions and Request for a Panel Hearing**

File Number:	IN17/488
Responsible Director:	Director Assets and Engineering
Attachments:	<ol style="list-style-type: none"><li>1 Flood Mapping Catchments, 2015</li><li>2 Development of the Special Building Overlay Technical Report, Cardno September 2015</li><li>3 Planning Scheme Amendment C109 Amendment Documentation</li><li>4 Consultation Report and Summary of Issues in Submissions</li><li>5 Officer Response to Issues Raised in Submissions</li><li>6 Template and Criteria</li><li>7 Peer Review, Water Technology July 2016</li><li>8 Summary of Submissions, Officer response and Recommendation</li><li>9 Table of Recommended Changes to Submitter Properties</li><li>10 Value Impact Assessment, Charter Keck Cramer, November 2016</li><li>11 Table of Recommended Changes to Non-submitter Properties</li></ol>

### **EXECUTIVE SUMMARY**

*The purpose of this report is to consider all submissions received to Amendment C109 to the Manningham Planning Scheme.*

*Amendment C109 to the Manningham Planning Scheme as exhibited, proposes to introduce and/or revise the application of the Land Subject to Inundation Overlay (LSIO) and the Special Building Overlays (SBO) in relation to 10,300 properties in Manningham. These overlays are proposed to apply to land that has been identified by Melbourne Water and Council as being liable to inundation from an open watercourse or subject to overland flows exceeding the capacity of the underground drainage system, during a severe storm event (1 in 100 year Average Recurrence Interval (ARI)). The overlay relating to the open watercourses is the LSIO. The overlays relating to the drainage system (Melbourne Water main drains and Council local drains) are the SBOs. The proposed overlays are well aligned with the Australian Rainfall and Runoff flood hazard categories, with LSIO presenting the highest and SBO3 presenting the lowest flood risk.*

*The key strategic drivers for Council to undertake the flood mapping of its local drainage catchments and to introduce or revise Planning Scheme overlays include State Government and Melbourne Water strategies, recommendations of the State Auditor General in relation to flood risk, Council's own Drainage and Residential Strategies and the most recent Planning Scheme review.*

*The Amendment was exhibited for six weeks from 12 November 2015 to 24 December 2015. Submissions have continued to be received up until the time of preparation of this report and a total of 558 have been received (including 6 now withdrawn).*

*In relation to its consideration of submissions to Amendment C109, at its meeting of 21 February 2017, Council resolved, "that this matter be deferred for three months to enable further consultation with councillors." In response to that resolution, Council officers wrote to all 523 submitters (the number of submitters at the time) offering the*

*opportunity to meet with officers to further discuss the officers' response to their individual submissions. The meetings resulted in a number of follow up actions which have resulted in additional changes.*

*Fourteen key issues have been identified in relation to the submissions received and a response has been prepared for each submission. 1,013 changes affecting 1,150 properties are recommended to the exhibited amendment in relation to such matters as changes to the flood shape, changes to the overlay designation; and removal of the exhibited overlay. 664 of these changes are associated with minor incursions in respect of properties proactively identified but where no submissions have been received. A minor text change to the controls is also recommended, as well as a further change to remove the UFZ from properties in Carbine Street, Donvale.*

*As changes to the Amendment as requested in submissions are not proposed in relation to all submissions, Council can either abandon the Amendment or refer the submissions to an Independent Planning Panel for review. This report recommends that Council requests the Minister for Planning to appoint an Independent Planning Panel to review all submissions received.*

*It is also noted that pursuant to section 30(1)(a) of the Planning and Environment Act 1987 (the Act), an amendment lapses or part of an amendment lapses at the end of two years after the date of publication of the notice in the Government gazette under section 19(3). As the notice of exhibition was published in the Government gazette on 12 November 2015, it will be necessary to request the Minister for Planning for an extension of time in which to adopt the amendment.*

## **1. RECOMMENDATION**

### **That Council:**

- A. Receives and considers all written submissions made to Amendment C109 to the Manningham Planning Scheme.**
- B. Requests that the Minister for Planning appoint an Independent Planning Panel to review the submissions received to Amendment C109, in accordance with Part 8 of the Planning and Environment Act, 1987.**
- C. Refers all submissions, including any late submissions received, to the Independent Planning Panel to be appointed by the Minister for Planning.**
- D. Endorses the recommended response to issues raised in submissions outlined in Attachments 5, 8, 9 and 11, as the basis for Council's submission to the Independent Planning Panel.**
- E. Notes other actions outside of this Amendment that relate to drainage management such as Council's ongoing maintenance and education programs and the current review of Council's Drainage Strategy.**
- F. Requests the Minister for Planning for an extension of time for a further two years in which to consider and adopt the amendment.**
- G. Writes to all submitters, informing them of Council's decision.**

## 1. BACKGROUND

- 1.1 Over the past few years Council has undertaken flood modelling in several of its drainage catchments which has culminated in the preparation of Amendment C109 to the Manningham Planning Scheme to introduce or make changes to those overlays which relate to managing risk of flooding in the municipality.
- 1.2 The key strategic drivers for the modelling and Planning Scheme amendment are described more fully in Section 3 of this report and include State Government and Melbourne Water strategies, recommendations of the State Auditor General in relation to flood risk, Council's own Drainage and Residential Strategies and the most recent Planning Scheme review.

### *Flood modelling*

- 1.3 In 2011, Council engaged consultants to undertake flood modelling for local catchments for the municipality. The purposes of that work included to:
  - review the extent of the SBO (and by implication, in part the LSIO); and
  - assess the flooding impacts of climate change.
- 1.4 Flood mapping was completed for the following catchments (Refer map at **Attachment 1**):
  - Bulleen North
  - Ruffey Creek
  - Koonung Creek
  - Mullum Mullum Creek
  - Andersons Creek
- 1.5 Three smaller urban catchments abutting the Bulleen North catchment and the Jumping Creek and Brushy Creek catchments are yet to be mapped.
- 1.6 The flood mapping was undertaken in accordance with Melbourne Water's specifications and Melbourne Water was either engaged in the flood model calibration or, in the case of Bulleen North and Ruffey Creek, managed the consultancy contracts, to ensure robust and consistent results.
- 1.7 The mapped flood extents were filtered in accordance with best industry practice to generally delete flooding which is less than 50mm in depth and where the flood velocities are low. The data filtering process removed areas of the flood extent considered as low risk as set out in the '*Development of the Special Building Overlay Technical Report for Manningham City Council (Cardno) September 2015*' report, included at **Attachment 2**. This filtering process included modification of the extent of areas displaying flooding which are isolated from the flood extent and remote from underground drainage assets, which were less than 500 square metres in area.
- 1.8 A total of 10,300 properties (approximately) are affected by the modelling of the flood extent for the 1 in 100 year ARI flood event, and in turn by the proposed amendment to the Manningham Planning Scheme.
- 1.9 The flood mapping data generated in the study was used by Council and Melbourne Water to develop and agree on a revised flood extent to be covered by the LSIO and SBO. The mapping also has implications for the Melbourne Water main drains, hence the need for Melbourne Water to also amend its existing LSIO and SBO.

**Planning Scheme Amendment C109**

1.10 At the Council meeting on 29 September 2015 it was resolved:

*“That Council:*

- A. *Resolves to prepare Amendment C109 to the Manningham Planning Scheme to implement the review of the Special Building Overlay and Land Subject to Inundation Overlay, thereby better informing the community of flood risk and protecting proposed development from inundation, by:*
  1. *Updating the planning scheme maps to reflect the revised flood-shape generally in accordance with the Maps at Attachment 4.*
  2. *Introducing new schedules to the Special Building Overlay (Clause 44.05) generally in accordance with Attachment 3.*
  3. *Amending the MSS at Clause 21.12 and 21.16 to include reference to the ‘Flood Management Plan for Manningham Council and Melbourne Water June 2011’ and the ‘Development of the Special Building Overlay Technical Report for Manningham City Council (Cardno) September 2015’.*
- B. *Requests the Minister for Planning’s authorisation under section 8A of the Planning and Environment Act 1987 to prepare and exhibit Amendment C109 to the Manningham Planning Scheme which proposes to revise the existing Special Building Overlay (SBO) and Land Subject to Inundation Overlay (LSIO), include additional properties in the SBO and LSIO and amend the MSS, generally in accordance with Attachment 3.*
- C. *Advises the Minister for Planning that:*
  - *Pursuant to Section 19 (1A) of the Planning and Environment Act, 1987, Council considers it impractical to notify all owners and occupiers individually of Amendment C109 and will limit direct notification to property owners.*
  - *Council will give notice of the amendment in accordance with Section 19(1B) of the Act (including giving notice in a paper circulating within the affected areas inviting submissions to be made) and will also undertake a range of non-statutory consultation measures to ensure awareness of the proposed amendment amongst occupiers of affected properties.*
- D. *Subject to authorisation being granted by the Minister for Planning, resolves to place Amendment C109 on public exhibition for a period of six weeks.”*

1.11 The request for authorisation to prepare the amendment was submitted to the Department of Environment, Land, Water and Planning (DELWP) on 1 October 2015. The Amendment was deemed to be authorised on 15 October 2015.

1.12 The exhibited amendment documentation is included as **Attachment 3**. The exhibited Planning Scheme maps are available for viewing in the Council Chamber.

1.13 In general, the following changes to the Manningham Planning Scheme are proposed by Amendment C109 to implement the outcomes of the flood modelling work:

- Modification of the existing LSIO and SBO boundaries and introduction of new LSIO and SBO areas on planning scheme maps to reflect the revised and new flood shapes agreed by Melbourne Water and Council.
- Changes to the Municipal Strategic Statement (MSS) at Clause 21.12 Infrastructure and 21.16 Key References to include reference to:

- The '*Flood Management Plan for Manningham Council and Melbourne Water June 2011*' which provides the strategic framework for establishing the appropriate Planning Scheme overlays in respect of the results of the flood mapping project and;
- The '*Development of the Special Building Overlay – Technical Report for Manningham City Council (Cardno) September 2015*', which provides an overview of the methodology used in the flood mapping of the five local catchments.

### ***Land Subject to Inundation Overlay and Special Building Overlays***

- 1.14 Inclusion of Planning Scheme overlays relating to flooding, ensure that drainage issues are addressed at the start of the development process and that buildings and works are properly designed.
- 1.15 One of the key aims of the overlays is to minimise the effects of overland flows and mainstream flooding on new buildings. It is also to ensure that new development does not adversely redirect the flow paths into neighbouring properties.
- 1.16 These overlays are based upon the extent of flooding that would result from a 1 in 100 year ARI flood event. The 1 in 100 year flood relates to a storm event of such intensity that, based upon historical rainfall data, it has a probability of occurring once in every one hundred years or a 1% chance of occurring in any given year.
- 1.17 The Land Subject to Inundation Overlay (LSIO) applies to land affected by mainstream flooding associated with waterways and open drainage systems. Such areas are commonly known as floodplains. Mainstream flooding is caused by heavy rainfall which produces surface run-off which flows into streams and rivers. When there is a large amount of run-off, water overflows the river banks on to adjacent low-lying land causing flooding. Under this overlay, a planning permit is generally required for buildings and works.
- 1.18 The Special Building Overlay (SBO) identifies areas prone to overland flooding and overland flow from the urban drainage system. The purpose of this overlay is to set appropriate conditions and floor levels to address any flood risk to developments; to ensure that new development is designed to maintain the free passage and temporary storage of floodwaters; to minimise flood damage and not cause any significant rise in flood level or flow velocity that may adversely affect existing properties. Under this overlay a planning permit may be required for buildings and works if permit exemption criteria are not met.
- 1.19 The effect of the LSIO and SBO is not to prevent new development. Implementation of the LSIO and SBO can however, influence the siting of buildings and set appropriate conditions, such as raised floor levels, in order to address any flood risk to new development.
- 1.20 The LSIO was first introduced into the Manningham Planning Scheme by Melbourne Water in June 2000 when the 'new format planning schemes' were first introduced.
- 1.21 The SBO was first introduced into the Manningham Planning Scheme in 2003 (Amendment C13) to cater for main drains (Melbourne Water). Melbourne Water is the responsible drainage authority for relevant development applications within the existing SBO.
- 1.22 The LSIO in the Victoria Planning Provisions (VPP) includes fewer exemptions than the SBO, and they relate to works such as flood mitigation works and the laying of underground sewerage, water and gas mains.

- 1.23 The SBO in the VPPs includes standard exemptions for planning permits for common urban developments, such as minor extensions to dwellings, replacement fencing, carports, pergolas and in-ground swimming pools, unless a 'schedule' applies which proposes to refine these exemptions.
- 1.24 Apart from the standard exemptions for buildings and works in the overlays, the schedules to the overlays can be used to exempt certain buildings and works from the need for a permit. Exemptions in schedules are used to respond to local conditions, taking into account specific types of development and local needs, and can be used to streamline the planning permit application process.
- 1.25 The existing Melbourne Water LSIO and SBO provisions in the Manningham Planning Scheme do not include a local schedule specifying additional permit exemptions.
- 1.26 Amendment C109 proposes to introduce three local schedules to the SBO which distinguish between areas subject to inundation in relation to the 'main' drainage system (Melbourne Water drains) and the 'local' drainage system (Council drains).
- 1.27 The Schedules will be referred to as SBO1, SBO2 and SBO3 respectively. The SBO maps define the area/properties to which each schedule applies. The Schedules define permit exemptions and nominate the authority responsible for drainage. **Table 1** explains the delineation between the three SBO schedules and the LSIO.
- 1.28 SBO1, SBO2 and SBO3 are proposed to replace and expand the existing Special Building Overlay (SBO) in the Manningham Planning Scheme which currently relates to overland flooding from Melbourne Water's main drains only.
- 1.29 More specifically, Amendment C109 as exhibited proposes to:
- Remove the existing LSIO and SBO from approximately 230 properties (2% of total properties affected) which are no longer expected to be at risk of flooding;
  - Make minor changes to the extent of the LSIO and SBO (and change to SBO1, 2 or 3) in relation to approximately 900 properties (9%) which remain subject to inundation.
  - Apply the LSIO and SBO1 to an additional 380 additional properties (4%) which have a potential risk of being flooded as a result of Melbourne Water assets (natural watercourses and main drains);
  - Apply the SBO2 to approximately 3,860 properties (37%) which are potentially at risk of being flooded as a result of flows in excess of the capacity of City of Manningham assets (local drains) in a major storm event; and
  - Apply the SBO3 to approximately 4,930 properties (48%) which are at risk of being affected by small and shallow areas of flooding (up to 100mm in depth) as a result of flows in excess of the capacity of City of Manningham assets (local drains) in a major storm event.

**Table 1: Amendment C109 - LSIO and SBO Schedules 1, 2 and 3**

Drainage Network	Planning Permit Exemptions	Responsible / Referral Authority
<b>LSIO Approx. 500 properties (5% of all properties affected)</b>		
Land adjacent to a creek or river that is known to be subject to inundation i.e. a natural watercourse.	The State-wide LSIO control includes a number of exemptions to allow for minor buildings and works by Council and other authorities (e.g. the laying of underground sewerage, water	Melbourne Water would be the Determining Referral Authority. All applications for development would be referred to Melbourne Water for assessment and for

Drainage Network	Planning Permit Exemptions	Responsible / Referral Authority
	and gas mains) that can occur without the need for a planning permit. No schedule to the LSIO is proposed as part of this amendment.	appropriate conditions and floor levels.
<b>SBO1 (7% of properties affected by the SBO)</b>		
Melbourne Water main drains.	<p>The SBO triggers the need for a planning permit for buildings and works in most instances.</p> <p>The State-wide SBO provisions include a number of exemptions to allow for minor buildings and works that can occur without the need for a planning permit.</p> <p>No additional exemptions over those specified in the State-wide provisions are proposed to be included in the schedule.</p>	Melbourne Water would be the Determining Referral Authority. All applications for development would be referred to Melbourne Water to determine if a planning permit should be issued and provide the appropriate conditions and floor levels.
<b>SBO2 (41% of properties affected by the SBO)</b>		
<p>Manningham City Council local drains (maintained by Council).</p> <p>The schedule would apply from the upstream most point where flow depths exceed 100mm in depth, to the junction between the Council and Melbourne Water drainage system.</p>	<p>The SBO triggers the need for a planning permit for buildings and works in most instances.</p> <p>The State-wide SBO provisions include a number of exemptions to allow for minor buildings and works that can occur without the need for a planning permit.</p> <p>No additional exemptions over those specified in the State-wide provisions are proposed to be included in the schedule.</p>	Council would be the Responsible Authority. Council would assess all applications for development and provide appropriate permit conditions and floor levels.
<b>SBO3 (52% of properties affected by the SBO)</b>		
<p>Manningham City Council local drains (maintained by Council).</p> <p>The schedule would apply in areas upstream of the SBO2 where the flow depth is less than 100mm.</p>	Council is the Responsible Authority. Council assesses all applications for development and provides appropriate permit conditions and floor levels.	A more extensive range of exemptions would be included in SBO3 because of the reduce depth of flooding, for example, a permit will not be required where proposed new dwelling floor levels are at least 400mm above the natural surface level.

- 1.30 As outlined in **Table 1**, it is anticipated that permit exemptions would apply to 59% of the properties where the SBO 1, 2 or 3 is proposed to apply if certain conditions are met, such as a minimum building floor level height above the ground.

#### ***Exhibition of the Amendment***

- 1.31 Amendment C109 was placed on public exhibition for six weeks between 12 November and 24 December 2015 using the following combination of statutory and non-statutory notification:

- Direct notification (letters) to affected property owners (approximately 10,000), prescribed authorities and key stakeholder groups/agencies;
- Public notices in the Manningham Leader on 9 November 2015 and the Government Gazette on 12 November 2015 and again on the 26 November 2015;
- The Amendment documents made available for viewing and download (website/offices and libraries and DELWP website);
- An 'Interactive Map' which was searchable via property address was available on Council's web site showing the application of the proposed amendment;
- Article in Manningham Matters November 2015 edition;
- Fact Sheet and FAQs pamphlet made available on Council's website, information was further provided in response to the need for additional clarification;
- Six drop in Information sessions – (appointment based) for each of the affected catchments, where specific individual property information was made available;
- Melbourne Water webpage (in addition to MCC web page) included information; and
- Telephone enquiry numbers (at both Melbourne Water and MCC) were advertised

1.32 The exhibition of the Amendment resulted in the following responses:

<i>Webpage hits</i>	<i>4,220</i>
<i>Interactive map hits</i>	<i>2,788</i>
<i>Phone calls</i>	<i>1,000</i>
<i>Counter enquiries</i>	<i>120</i>
<i>Attendees at Info sessions</i>	<i>150</i>
<i>Written submissions</i>	<i>558 (incl. 6 since withdrawn)</i>

- 1.33 At the request of Council, a follow up letter was sent to all submitters on 12 May 2016, explaining the process for the review of submissions and the type of information that would be considered in the review. That correspondence also offered the opportunity for addendums to original submissions to be submitted.
- 1.34 In addition, at the request of Council, letters were also sent on 23 May 2016, to those properties affected by an identified communication ambiguity (58 private properties and 50 government properties), clarifying that the existing LSIO along the Yarra River would continue to apply in addition to the proposed controls. Those property owners were given an opportunity to lodge a submission or to submit addenda to existing submissions over a further period of six weeks.
- 1.35 The web based communication tool was also amended to include the existing LSIO in the 'Proposed Overlay' view.
- 1.36 For the wider community, a separate dedicated advertisement was included in the Manningham Leader in the week beginning 16 May 2016 advising that Council officers were still considering submissions in relation to Amendment C109 and that further updates were being provided on the Your Say Manningham webpage.



***Further Consultation***

- 1.37 In relation to its consideration of submissions to Amendment C109, at its meeting of 21 February 2017, Council resolved “*that this matter be deferred for three months to enable further consultation with councillors*”.
- 1.38 In response to that resolution:
- Council officers wrote to all 523 submitters on 1 March February 2017, (the number of submitters at that time) advising them of the Council resolution and inviting them to make an appointment for a one on one information session to discuss the officers’ response to their submissions;
  - This letter also anticipated that a submitters meeting and Council meeting would be held towards the end of May 2017; and
  - Your Say Manningham consultation portal and the FAQs (frequently asked questions) were updated.
- 1.39 Officers met with approximately 220 submitters at the one on one meetings, which resulted in a number of follow up actions including additional requests for site inspections; investigating new issues and information raised through the meetings in addition to the original submissions; further review of the flood shape based on topographical information submitted by several submitters; and responding to requests for further information.
- 1.40 Approximately 70 follow-up site inspections were requested at the one-on-one meetings. A desktop review was undertaken for each of these properties and where considered necessary, a site inspection was then undertaken by Cardno (or Council officers), who was engaged to review most of these properties. Whilst a site inspection was generally undertaken where requested, in some instances a site inspection was not considered necessary where sufficient information was available as part of the desktop review to assess the submitter’s concerns and the outcome of the desktop review was the removal of the overlay from the property.
- 1.41 Additional information requested by submitters has generally been provided where this information has been readily available e.g. hard copies of the Value Impact Assessment by Charter Keck Cramer, although in some instances this has not been possible. Information which would only be available if the submitter had access to the relevant software or cases where the information would be costly to provide was not provided.
- 1.42 The one on one sessions also resulted in a significant amount of follow up actions requiring further review by the Engineering and Technical Services Unit and/or Cardno e.g. review of the flood shape on properties, location of existing drainage assets and whether these have been included in the model. This information has generally been addressed in the technical review report which has been provided to submitters.
- 1.43 Due to the significant amount of additional work required to be undertaken resulting from the individual sessions, Council at its meeting on 30 May 2017, resolved to further defer consideration of submissions until September 2017. Submitters were advised in writing that the earliest possible date for a Council meeting to consider submissions and request an independent panel was likely to be September 2017.
- 1.44 A further thirty five (35) submissions have been received since the 21 February Council meeting, requiring further technical review. Reviews have been completed for 34 of the new submissions. Due to timing constraints, technical reviews have been unable to be completed for two of the late submissions, which were only received in early September.

- 1.45 It is further noted that thirty (30) of the late submitters were originally advised that upon the technical reviews being completed, that they would be afforded the same opportunity as the previous submitters, to attend an individual information session with officers to discuss the officer's proposed recommendation. As the technical reviews for these submissions have only recently been completed, it was not possible to meet with these submitters prior to the Council meeting. It is proposed that technical reports be completed for the remaining two late submissions and that an invitation be extended to all of these 35 submitters to attend an individual meeting with officers prior to any Panel Hearing.
- 1.46 On 23 August 2017, Council officers wrote to all submitters (excluding one late submitter) extending an invitation for them to attend a submitters' meeting, where they would be given the opportunity to raise concerns with the officer recommendations to Councillors on these matters. Given the large number of submissions received, it was decided to conduct the meeting over three nights to facilitate the large number of submitters that may attend these meetings. The meetings are by invitation only as follows (based on the exhibited overlay controls):
- Thursday 14 September – Meeting 1 – being properties affected by the Land Subject to Inundation Overlay (LSIO) and Special Building Overlay Schedule 1 (SBO1) (land affected by Melbourne Water's controls). (13% of submissions).
  - Monday 18 September – Meeting 2 – being properties affected by the Special Building Overlay Schedule 2 (SBO2). (38% of submissions).
  - Thursday 21 September – Meeting 3 – being properties affected by the Special Building Overlay Schedule 3 (SBO3). (44% of submissions).
- It should be noted that 5% of submissions have dual controls.
- 1.47 A second letter was subsequently sent out to submitters, which included an updated (where necessary) technical review report and Council officer recommendation in relation to their individual submission(s). Where possible the second letter was sent via email. Due to timing constraints the letters sent to those proposed to be affected by LSIO and SBO1 were not emailed but were instead sent by Express Post.

## 2. DISCUSSION / ISSUE

### *Submissions Received*

- 2.1 A total of 558 submissions have been received, including 198 submissions which were received after the initially advertised exhibition period. A total of 6 submissions have since been withdrawn.
- 2.2 The specific overlays and catchment areas to which those submissions relate are identified in **Table 2** below, together with the position of the submission in relation to the Amendment.

**Table 2: Amendment C109 – Summary of Submissions**

Summary of Submissions	%
<b>Catchments</b>	
Andersons Creek	7%
Bulleen	5%
Koonung Creek	18%
Mullum Mullum Creek	29%
Ruffey Creek	41%
<b>Overlays</b>	
Melbourne Water's drainage areas - LSIO & SBO1	13%
Council's drainage areas – SBO2	38%
Council's drainage areas – SBO3	44%
Dual controls	5%
<b>Nature of Submissions</b>	
Objections seeking removal of property from the Amendment	92%
Objections seeking modification to the Amendment	1%
Objections but no reasons given	1%
Requesting other changes not directly related to the Amendment	3%
No position(despite a follow up letter) to the Amendment	3%
Submissions in support of the Amendment	<1%
No objection (Parks Victoria & Eastlink 1)	<1%
Property not affected	<1%

- 2.3 The 'Consultation Report and Summary of Issues in Submissions' at **Attachment 4** outlines the consultation process undertaken in detail, provides statistics on the location and number of submissions received and summarises the main issues raised in the submissions. The issues raised will also be discussed later in this report.

### **Review of Submissions**

- 2.4 A rigorous review of the submissions received for Amendment C109 has been undertaken by officers from both Melbourne Water and Council.
- 2.5 Officers undertook a Further Technical Review (FTR) where submitters have questioned the inclusion of their property in the LSIO and SBO due to:
- the accuracy of the modelling;
  - where flooding has not been experienced in the past; and
  - where the extent of coverage over the subject land is minimal.
- 2.6 The objective of that review was to determine if the exhibited flood shape is accurate, and if any changes to flood shapes should be considered.
- 2.7 The FTR included:
- a review of the site (either via desktop analysis, or if considered necessary, a site visit); and

- a review of existing drainage infrastructure, terrain and contours and existing flow paths, against Council's information.
- 2.8 **Attachment 6** includes a more detailed explanation of the criteria applied to review the submissions and a copy of the template used for the FTR which has been completed for every submission where the accuracy of the modelling has been questioned.
- 2.9 As noted in Section 1 of this report, further assessment and investigation has been undertaken for a significant number of properties in response to the one on one meetings conducted in March and April 2017. An updated Further Technical Review has been prepared for all of those where further review was undertaken (even if no change to the recommendation is proposed).
- 2.10 The FTR has resulted in a large number of recommended changes, including refinements to the flood shapes that have been modelled, changes to the overlay applying to the property (e.g. changing from SBO1 to SBO3) and in some instances, the removal of proposed overlays from properties and therefore removal from the Amendment. The final FTR have been forwarded to all affected submitters.
- 2.11 A number of submissions relate to proposed overlays under the control of Melbourne Water (LSIO and SBO1). Melbourne Water has reviewed these submissions and 86 changes are also recommended to the exhibited Amendment.
- 2.12 All the recommended changes to submitters' properties are included in **Attachment 9**. This Attachment also incorporates maps showing those properties where the flood shape is proposed to be amended. It should be noted that the maps do not show all those properties proposed to be deleted or where the designation of the overlay is proposed to change. As noted previously, all submitters have been provided with a copy of the FTR relating to their submission incorporating updated information as appropriate.
- 2.13 In addition, a peer review has been undertaken by an independent consultant (Water Technology) who considered the methodology used for the catchment mapping and translation to the planning overlays. The peer review report is attached at **Attachment 7**.
- 2.14 This type of peer review is common in processes such as these as part of due diligence and transparency.
- 2.15 The Water Technology review concluded that:
- *"The methods and outputs for the 5 catchment areas comprising the Amendment are appropriate for urban flood mapping.*
  - *Appropriate checks and validation have been made in each study such that the design flow estimates are considered robust.*
  - *A consistent and appropriate method has been applied to the processing of model results to produce mapping outputs that are relatively consistent across the Municipality.*
  - *It is considered that a number of small, isolated areas of inundation that are not expected to represent any significant threat to life or property could be removed from the SBO3 layer without compromising the appropriate management of flood risk within the area".*

**Key issues Raised in Submissions**

- 2.16 Fourteen key issues have been identified in relation to the 558 submissions received, the categorisation of which has assisted the review and analysis of the submissions. A summary of these issues and a general officer response is provided in **Table 3** below. Note that many submissions raised more than one issue.
- 2.17 A more detailed officer response to each of these issues is provided in **Attachment 5: 'Officer Response to Issues Raised in Submissions'**. The attachment also includes relevant commentary from previous Independent Planning Panel reports where the issue has been previously considered.

**Table 3: Summary of submissions by issue with general response**

GENERAL RESPONSE	% OF SUBMISSIONS
<b>1. Individual properties have not experienced flooding in the past</b>	
<p>The lack of historical evidence about flooding on a particular site does not mean the property may not be inundated by overland or riverine flooding in the future.</p> <p>The SBO and LSIO maps are based on the forecasted overland stormwater flows associated with a 1 in 100 year ARI storm event, meaning that there is a 1 per cent chance that such an event could occur in any given year.</p> <p>In many cases, the 1 in 100 year ARI storm event may only result in inundation for a short period of time, but it is capable of causing damage.</p>	<b>34%</b>
<b>2. The modelling is inaccurate</b>	
<p>The proposed changes to the SBO and LSIO are based on the best available information, best practice modelling and techniques, developed over many years by experts in this field.</p> <p>The use of computer modelling is acknowledged as the only practical method to reliably map the extent of changes to the flood shape across the municipality.</p> <p>Where the accuracy of the modelling has been questioned, a further technical review (peer review) has been undertaken to check the accuracy of the modelling against agreed criteria.</p>	<b>68%</b>
<b>3. Council and/or Melbourne Water drainage works have already addressed any potential flooding impacts</b>	
<p>Drainage pipe upgrades that occurred prior to the undertaking of the modelling were generally considered as part of the flood mapping exercise.</p> <p>The further technical review process involved a review of the drainage pipe GIS data in the surrounding area to the submitters' properties, to ascertain if an upgrade had taken place recently which may not have been reflected in the data underpinning the flood model.</p> <p>The capital works records from the last few years were also reviewed to identify possible upgrades that may not have been reflected in the GIS data and model.</p> <p>Possible scenarios are:</p> <ul style="list-style-type: none"> <li>• The drainage upgrade has been included in the modelling but the upgraded drains will not have the capacity to remove surface runoff entirely during a 1 in 100 year ARI event; or</li> </ul>	<b>15%</b>

GENERAL RESPONSE	% OF SUBMISSIONS
<ul style="list-style-type: none"> <li>• The upgrade was modelled but the submission property is upstream and does not benefit; or</li> <li>• The upgrade was not modelled because it was undertaken after the modelling was done;</li> </ul> <p>Where the upgrade was not modelled as it was completed after the modelling was undertaken, it is expected that there will need to be some adjustments to the flood mapping in the future.</p> <p>A few isolated cases have been identified where drainage upgrades had been completed prior to the flood modelling work but not incorporated into the GIS data. In these cases, Council will arrange for remodelling of the flood extents prior to any future Panel hearing.</p>	
<p><b>4. Council/Melbourne Water drains have not been properly maintained and/or are inadequate</b></p>	
<p>The modelling was based on the assumption that the drainage network is clear and working at 100%. In reality, however, this is not always the case.</p> <p>Submissions that have raised specific issues about drains not being properly maintained and blocked with leaves and other litter, or specific problems with the design of the local drainage network, have been logged in Council's customer request system. Actions taken will include cleaning out the relevant drain and/or marking it for future special attention.</p> <p>Maintenance issues do not have any direct bearing on the proposed Amendment C109 noting, however, the organisation's broader obligation to respond to these matters.</p>	<p><b>8%</b></p>
<p><b>5. Council and Melbourne Water should review and upgrade the drainage system to cope with overland flow and flooding from the one in 100 year ARI flood event</b></p>	
<p>The majority of the public drainage system in Manningham was constructed well before consideration of overland flows from 1 in 100 year ARI flood events (which became the minimum requirement in 1975).</p> <p>The drainage system in Manningham has been generally constructed and maintained to a 1 in 5 year ARI standard.</p> <p>Upgrading the entirety of the drainage system in Manningham to a 1 in 100 year standard is not economically feasible and in some areas the prevention of flooding from 1 in 100 year flood events may not even be practically achieved without substantial changes to the layout of streets and blocks.</p> <p>Council has over the last fifteen years committed up to \$2 million annually to the upgrade of its underground drainage system where dwellings are subject to inundation in a 1 in 100 year ARI storm event.</p> <p>It is also important to note, that even with an extensive upgrade to all infrastructure, this does not mean that all flooding will be eradicated, as some areas will still be subject to overland flows.</p> <p>Council has a Strategic Resource Plan Item for 2017/2018 to complete the review of the current Drainage Strategy. This will use detailed flood mapping as a key input to understand the magnitude of and risk posed by flooding. This will enable a systematic approach to develop and prioritise management responses and interventions.</p>	<p><b>23%</b></p>
<p><b>6. New development and the increase in density across Manningham has increased the level of overland flow and flooding.</b></p>	

GENERAL RESPONSE	% OF SUBMISSIONS
<p>With increased urban consolidation, drainage services are being placed under increased pressure, affecting the quality, quantity and rate of flow of water emanating from new or intensified development and potentially causing flooding.</p> <p>Planning controls can address drainage issues resulting from increased densities by requiring a multi-unit development, for example, to provide a drainage system that promotes the on-site retention and re-use of stormwater run-off and regulates overland flow to better manage flooding. These measures aim to avoid intensifying the impacts of flooding through inappropriately located uses and developments.</p>	<b>10%</b>
<p><b>7. Property values and property resale will be impacted, accordingly, Council rates should decrease or may increase as a result of the overlays and compensation should be payable.</b></p>	
<p>The flood prone nature of some land is an existing fact. Application of the SBO and LSIO ensures that existing owners and prospective purchasers are aware of affected properties and can make informed decisions about the property and about planning for future flood events.</p> <p>Property values are also influenced by many factors.</p> <p>Past planning panels have not found evidence that the LSIO and SBO impacts on property values and have also determined this would not be reason to avoid application of the control.</p> <p>In November 2016, Council appointed Charter Keck Cramer ('Charter') to provide advice on what, if any impact the SBO will have on the values of those properties affected in the short and long term. The report is found at <b>Attachment 11</b>.</p> <p>The report concluded the following:</p> <p><i>"In undertaking this assessment Charter has not been able to establish that the application of the SBO will negatively impact the values of those properties to be affected. This is consistent with the findings of the study undertaken by Charter for the City of Stonnington in 2004.</i></p> <p><i>Though concern over value impacts is regularly expressed in submissions to amendments to introduce the SBO, there has been no evidence provided through the Independent Panel process to establish this. This outcome is reinforced through numerous studies that have found that while actual flood events can impact property values, flood related policies and controls have no noticeable effect. This is further reaffirmed in the analysis of sales in the City of Manningham, undertaken by Charter, which shows there is no evidence that the Special Building Overlay has had an adverse impact on property values.</i></p> <p><i>For the reasons outlined, it is Charter's opinion that the SBO will not negatively impact property values in the City of Manningham."</i></p> <p>Council rates are relative to property value, which as noted above, is influenced by many factors.</p> <p>With respect to whether compensation will be payable, Melbourne Water has advised that the <i>Planning and Environment Act 1987</i> clearly sets out the circumstances where compensation is payable and is essentially limited to where land is reserved or required for a public purpose or where access is to be denied by the closure of a public road. It does not cover situations where controls such as the LSIO/SBO are imposed.</p>	<b>35%</b>
<p><b>8. Insurance costs/premiums will be impacted</b></p>	

GENERAL RESPONSE	% OF SUBMISSIONS
<p>Previous planning panels have consistently determined that the potential impact on insurance premiums is not a matter that should have a bearing on the application of the LSIO or SBO.</p> <p>The application of the LSIO and SBO does not cause or change the likelihood of flooding but recognises the existing condition of land.</p> <p>The Insurance Council of Australia has advised Melbourne Water that most insurance policies provide coverage for storm damage, including cover for damages resulting from overland flows (noting that this needs to be confirmed by the property owner's individual insurer).</p> <p>The Insurance Council of Australia's Property Risk and Exposure Program (PREP) allows risks to be further considered at an individual address level. Developed as an affordability initiative the PREP was developed to allow the calculation of premiums to take into account depth of flooding and where it was able to be demonstrated that on-site controls were in place to reduce flood risk.</p>	33%
<p><b>9. Buildings or structures on a property are unaffected by the proposed overlays, and therefore the overlay will impact the site unnecessarily</b></p>	
<p>It is important to note that future buildings or development may not necessarily be in the same location as existing buildings or structures.</p> <p>The function of the LSIO and SBO is therefore to ensure that any future development within an affected portion of the site is designed appropriately in response to the identified flood potential.</p> <p>The removal of the LSIO or SBO could result in inappropriate development that increases flood risk to adjoining properties, or has an insufficient floor level or basement entrance that would be at risk of flooding.</p>	2%
<p><b>10. There will be a financial or administrative burden for future development – including additional costs associated with seeking planning permission and raising floor levels</b></p>	
<p>A planning permit is only triggered if the proposed buildings and/or works fall within the area of land covered by the LSIO or SBO. In a significant amount of cases (45% of affected properties), a planning permit would already be required under other provisions of the Planning Scheme.</p> <p>Costs associated with redevelopment in LSIO and SBO areas will vary depending on the site context, how the overlay affects the site and the proposed design of the development.</p> <p>Any additional costs of increasing floor levels should be considered as a safeguard against the cost incurred as a result of potential flood damage to new buildings.</p> <p>Having access to relevant data early in the building planning phase of a development allows designers to consider the most cost effective manner in which to respond to site constraints.</p>	10%
<p><b>11. The proposed overlay will only have a minor impact on the property due to a minimal incursion or the overlay falling over an existing easement or driveway, and should therefore be removed.</b></p>	
<p>The extent of the proposed flood shapes affects properties differently. Some properties may only have 0.01% of their area affected by the flood shape, whereas other properties may be 100% affected. People will also have different opinions about what is considered to be a minor impact.</p>	13%



GENERAL RESPONSE	% OF SUBMISSIONS
<p>Due to the flood mapping methodology, the flood extents generated from the flood model results may encroach slightly onto properties. As part of the development of the overlays, in cases where the modelled inundated area of a property was entirely within 5 metres of a roadway and the percentage of the property affected was less than 10%, those areas were removed from the proposed overlay flood shape, prior to exhibition. Those adjustments were considered appropriate given the low level of benefit associated with retention of those encumbrances in controlling future development.</p> <p>Several submitters have objected to the Amendment on the basis that their properties are only impacted by minor incursions. The City of Port Phillip Planning Scheme amendment proposed that in cases where incursions of 6% and 15m<sup>2</sup> or less of the property area applied, the proposed planning extents be removed from affected properties. Similar criteria has been developed as part of the Further Technical Review of submissions made to Amendment C109. In the case of Manningham, as the properties are generally significantly larger than the properties in Port Phillip (700sqm versus 300sqm), where the incursion is less than 30m<sup>2</sup> and represents less than 6% of the property area and is not considered to be significant, a recommendation may have been made to delete the overlay in the subject location.</p> <p>The further technical review of submissions undertook further assessment of whether an incursion was minor and whether it could be removed without creating a disconnect or a significant impact on the connectivity of the flood shape.</p> <p>Consideration was also given to whether the minor flood shape incursion was associated with flow into or out of the property, based on the topography of the land. If the flood shape is associated with flow into the property, the flood shape is recommended to be retained.</p> <p>Finally, consideration was given to the length of the incursion into the property. Incursions greater than 5 metres into properties are recommended to be retained.</p> <p>These requirements are in keeping with the adopted criteria for removal of minor incursions along the frontages of properties as part of the original filtering process, precedent associated with prior Independent Planning Panel processes and flood risk management principles.</p> <p>Even small incursions onto property may become significant after a site is re-developed. For example, significant flood impact could occur if a basement was proposed and the driveway entrance connected with a substantial flooded area.</p>	
<p><b>12. Built features (such as existing floor levels, on site drainage, retaining walls, landscaping etc.) on the subject property and adjoining properties may currently divert water away or prevent water from entering a property. Therefore the relevance of the overlay is questioned.</b></p>	
<p>It is correct that built features on adjoining properties, or on the property itself, may currently divert water away or prevent water from entering a property. These built features, however, are private assets and can be removed at any time.</p>	<p><b>19%</b></p>

GENERAL RESPONSE	% OF SUBMISSIONS
<p>The overland flow path projected in the model is based on a terrain that contains no structural barriers such as fences, houses and brick walls and is based on 'Lidar*' data which is an accepted approach for understanding the contours of the land. Using the general contours as the basis for the modelling means that, at any point in the future, Council can make sure new buildings, wherever they are built, will be appropriate for the flood shapes and overland flow depths.</p> <p>It has been found that there is generally very good agreement between the LiDAR data and the fall of land within the municipality. Where submitters have raised concerns regarding the proposed overlay shape, the site has been inspected and the model has been interrogated. Cases have arisen where there have been isolated issues with the LiDAR data and in these cases the proposed overlay shape has been reviewed and recommendations made to amend the overlay shape as necessary.</p> <p>The modelling relies on 'roughness factors' to account for such obstructions as houses, walls and soft and hard landscaping features. More substantial landscaping works, such as retaining walls, are picked up in the topographical information as a change of level. However, lesser landscape changes are not permanent and can be changed over time, therefore, they are not a legitimate consideration when undertaking flood modelling. Having said this, the modelling does make more indirect allowance for landscaping, both from the perspective of the ability of vegetated areas to absorb more water than paved areas and the increase in overland flow depths which result from water flow being impeded on rougher surfaces. The ability of stormwater in a major storm event to percolate into clay soils is, however, very limited. The treatment of landscaped areas has been applied consistently to all areas through the modelling. It should also be noted that the flood modelling methodology adopted for this project follows Melbourne Waters specifications.</p> <p>*LiDAR (Light Detection and Ranging) is a remote sensing technique similar to radar where the time taken for reflected laser to return from a surface is used to measure terrain elevation.</p>	
<b>13. Consultation process and information provided was inadequate</b>	
<p>Exhibition of the Amendment exceeded the statutory requirements specified under section 19 of the <i>Planning and Environment Act, 1987</i>.</p> <p>Exhibition of the Amendment also included non-statutory communication measures including:</p> <ul style="list-style-type: none"> <li>• Interactive web tool</li> <li>• Information sessions</li> <li>• FAQs</li> <li>• Information on Council's web site</li> </ul> <p>The Amendment was exhibited for six weeks compared to the statutory requirement of four weeks under the <i>Planning and Environment Act, 1987</i>.</p> <p>Council received over 1000 phone calls during exhibition; attended to over 120 counter enquiries and every person who wished to speak to a Council officer directly had the chance to do so.</p> <p>Submissions were still being submitted after the closing date and can be received up until the Independent Planning Panel hearing to consider submissions.</p>	<b>3%</b>
<b>14. Other issues</b>	

GENERAL RESPONSE	% OF SUBMISSIONS
A range of other site specific issues were raised in addition to the issues and responses provided above. Responses to the site specific issues raised can be found in <b>Attachment 8</b> .	14%

### **Response to Submissions**

- 2.18 A summary of each individual submission received based on the 14 identified issues, an officer response to each submission (based predominantly on the FTR) and an officer recommendation to retain, modify or delete the exhibited overlay as appropriate, is provided at **Attachment 8**: 'Summary of Individual Submissions and Officer Response'.
- 2.19 1,013 changes affecting 1,150 properties are recommended on the basis of the review of submissions including the further technical reviews undertaken by Council, Cardno and Melbourne Water. These changes are listed in the table at the **Attachment 9**.
- 2.20 If Council resolves to endorse these recommended changes, they will form the basis of the Council submission to the Independent Planning Panel.
- 2.21 The recommended changes to the exhibited amendment at this stage include:
- A total of 157 changes to the exhibited flood shape and/or the overlay designation;
  - Removal of a total of 856 LSIO and SBO shapes (proposed overlay) (noting that shapes may relate to multiple properties) relating to properties;
  - 1 change to remove the UFZ from properties in Carbine Street, Donvale; and
  - 1 minor text change to controls.
- 2.22 A breakdown of the proposed changes by overlay designation is provided in **Table 4** below.

**Table 4: Summary of Proposed Changes by Overlay**

OVERLAY	REMOVAL OF OVERLAY		CHANGE TO OVERLAY (Change designation and/or overlay shape)	
	No. of changes	Submitters' properties affected	No. of changes	Submitters' properties affected
LSIO (Melbourne Water)	4	13	35	36
SBO1 (Melbourne Water)	11		36	
SBO2	60	50	61	45

SBO2 (Minor incursions)	228		8	
SBO3	125	83	17	15
SBO3 (Minor incursions)	428		0	
<b>TOTALS</b>	<b>856</b>	<b>146</b>	<b>157</b>	<b>96</b>

2.23 In total, the 1,013 changes/deletions will affect 1,150 properties.

2.24 The majority of recommended changes are in response to situations where the flood extent incursion into the property is considered to be minor in nature and will not result in a break or discontinuity of the flood shape.

2.25 A minor text change to the Schedule to SBO3 is also recommended, in response to several submissions, to address some potential ambiguity with the controls.

2.26 Specifically, in Schedule 3 to the Special Building Overlay, it is recommended to change the last dot point under Clause 1.0 Permit requirement as follows:

- “New fencing with at least 25% openings or with a plinth at least 400mm above the natural surface level”.

2.27 Two additional changes are recommended to the exhibited Amendment which are not directly related to submissions.

*Minor incursions*

2.28 Consideration has been given to the impacts of the minor incursion criteria as set out under Item 11 in Table 3 above, if applied to all properties. A total of 2,224 properties, including submitter properties, were identified as potentially being subject to minor incursions. Each was assessed against the criteria and a determination made as to whether the flood extent should be modified. Properties which were not submitters but where changes to the proposed controls are recommended are listed in **Attachment 11**.

2.29 The recommended changes to the flood shape include 664 minor incursions, including 3 boundary issues.

2.30 Further potential changes to non-submitting properties affected by minor incursions of the LSIO or the SBO1 have been referred to Melbourne Water for consideration with a final decision resting with Melbourne Water as to whether to change the Amendment as suggested.

2.31 It is recognised that the proposed changes based on this assessment impact a significant number of properties. However, as determined through the peer review of the flood mapping for the five catchments (Items 2.13 to 2.15 of this report), the modelling undertaken is still considered robust and appropriate for urban flood mapping. The proposed amendments to the flood shape based on the minor incursion criteria do not undermine the integrity of the flood maps for the subject catchments but respond to community concerns that the filtered results appropriately manage the risk associated with major flood events for the control of future development.

*Rezoning of Urban Floodway Zone in Donvale*

2.32 Removal of the Urban Floodway Zone from five properties (Nos 13, 15, 19, 20 and 25) in Carbine Street, Donvale, with a rezoning to General Residential Zone 3. Following discussions with Melbourne Water, it has been ascertained that, with the introduction of the SBO1, these properties no longer need to be included within the Urban Floodway Zone. Melbourne Water therefore, has no objection to the removal of the Urban Floodway Zone and its replacement with the General Residential 3 Zone, which is the prevailing zone in this area.

*Flood Risk and Overlay Designation*

- 2.33 Flood risk encompasses public safety and building / property damage risk. Risks associated with development in areas conveying overland flows include the risk of ponding or displacement of overland flows through the inappropriate siting of buildings and building flooding as a result of setting building floor levels below anticipated overland flow depths. These risks increase with overland flow depths and velocities.
- 2.34 The proposed Amendment C109 overlay designations are aligned with Australian Rainfall and Runoff flood hazard categories with the overlay presenting the highest level of risk being the LSIO and the lowest level of risk presented by SBO3. Overlay SBO3 aligns with the lowest flood hazard class with flow depths less than 100mm. Flows in these areas are generally safe for people, vehicles and buildings from a structural stability perspective, although there remains a risk of nuisance habitable floor inundation
- 2.35 Submitters have raised concerns regarding the designation of SBO3 areas, particularly in steeper terrain. On steeper terrain, due to the filtering criteria, higher velocity shallow flows (less than 50mm in depth) can be mapped and included in the SBO3 overlay. Melbourne Water is considering potential new flood mapping data filtering criteria which, if adopted, could result in reduction of the order of 10 to 15% in the numbers of properties affected, with the greatest impact being in respect of SBO3 areas. Cardno ran a trial of these amended filtering criteria but found that the application resulted in excessive creation of isolated SBO shapes.
- 2.36 The independent review of the flood mapping undertaken by Water Technology supported the mapping undertaken but commented that '*.. a number of small, isolated areas of inundation that are not expected to represent any significant threat to life or property could be removed from the SBO3 layer without compromising the appropriate management of flood risk within the area*'

***Council's obligations under the Planning and Environment Act, 1987***

- 2.37 Once Council has considered all written submissions received in respect to Amendment C109, it must determine whether to:
- make changes to the Amendment as requested in the submissions;
  - refer the submissions to an Independent Planning Panel (to be established by the Minister for Planning) for further review; or
  - abandon the Amendment or part of the Amendment.
- 2.38 Making every change to the Amendment as requested in the submissions is not supported for the reasons set out in **Attachment 8** to this report. A number of changes, however, are recommended to be made to the Amendment, where it can be clearly shown that the criteria for removing or changing an overlay have been met.
- 2.39 Resolving to abandon the amendment is not recommended and would likely expose Council and the community to unnecessary risk in relation to flooding.

- 2.40 In addition, a failure to implement appropriate flood mapping (based on Planning Practice Note 12), could give rise to a finding that Council has failed to adequately perform its statutory functions and duties as a planning authority.
- 2.41 Inclusion of flood information in the Planning Scheme will enable landowners, developers and purchasers to have immediate access to this critical information in the early stages of the development approval process, thereby ensuring that new development is designed with flood mitigation in mind.
- 2.42 It is therefore recommended that the Amendment (together with the suggested changes as set out in **Attachment 9**) be progressed to the next step in the planning scheme amendment process and that the submissions be referred to an Independent Planning Panel for further review.

### ***Lapsing of Amendment C109***

- 2.43 Section 30 of the *Planning & Environment Act 1987* states that an amendment lapses at the end of two years after the date of publication of the notice in the Government Gazette under section 19(3), unless the planning authority adopts it within that period; or the Minister allows a longer period for the adoption of the amendment. The notice of exhibition for Amendment C109 was published in the Government Gazette on 12 November 2015. To comply with the requirements of the *Planning & Environment Act 1987*, Council would be required to adopt the amendment by 12 November 2017.
- 2.44 It is therefore necessary to request the Minister for Planning for an extension of time within which to adopt the amendment. Requests for an extension of time should be made at least one month prior to the lapse date. As part of seeking the extension of time, Council: must demonstrate what has delayed the progression of the amendment; and outline the key timelines for progressing the amendment to adopt the amendment.
- 2.45 It is anticipated that if Council supports referring submissions to an independent panel for consideration, a panel hearing would be likely to commence in early 2018. This would be due to the number of submissions and complexity of the issue and in order to give Council and other submitters time to prepare submissions to the Panel. Council is then required to consider the panel's recommendations and decide whether or not to adopt the amendment.
- 2.46 It is proposed that Council seek an extension of 18 months within which to adopt Amendment C109.

## **3. COUNCIL PLAN / STRATEGY**

### ***Council Plan and Strategies***

- 3.1 Under the Council Plan 2013-2017 Strategic Objective 4 Planning for Where We Live, the Annual Initiatives for 2014-2015 included, "*Identify further land subject to flooding in the Manningham Planning Scheme to improve management of future catchment flood levels.*"
- 3.2 In addition, there have been a number of other strategies which have necessitated that Council undertake flood mapping of its local catchments and support the implementation of flood mapping through the introduction of planning scheme overlays.

### ***State Government Strategy***

- 3.3 Most recently, the Victorian Government has developed the *Victorian Floodplain Management Strategy* (2016) to help communities be better prepared for future floods.

The strategy clarifies the roles and responsibilities of government agencies and authorities involved in flood management. It aims to improve the evaluation and communication of flood risks so communities and relevant agencies can take better-informed action to manage floods.

- 3.4 That Strategy also states that in order to avoid or minimise future risks, the use of planning controls to manage the potential growth in flood risk should be endorsed. It also sets accountabilities in land use planning to avoid increased stormwater runoff from new developments.

### **Auditor General's Report**

- 3.5 The Auditor General released the '*Managing Storm Water Flooding Risks in Melbourne*' report (2005), following widespread flooding of the Melbourne metropolitan area between December 2004 and January 2005. The Auditor General formed the view that Victorian Councils were not effectively managing flooding risks associated with significant storm events and recommended that Councils provide a higher level of flood protection, carry out reliable flood mapping and include the results in their planning schemes.
- 3.6 In 2007, Melbourne Water released its '*Port Phillip and Westernport Region Flood Management and Drainage Strategy*', in response to the Auditor General's report. One of the key themes of that strategy was improved collaboration and communication between Councils and Melbourne Water. A key action involved the joint development of Flood Management Plans to improve the flood knowledge base and for the organisations to work collaboratively to better address flood risk. Accurate flood mapping is considered to be a critical foundation for the development of sound drainage and flood management activities.
- 3.7 In June 2011, Council and Melbourne Water adopted a joint Flood Management Plan for the municipality which aims to facilitate a coordinated approach to flood management within Manningham. Section 11 of the Flood Management Plan sets out a list of actions for Council and Melbourne Water to reduce flood risk and flood impact severity for Manningham. One of the actions identified in the improvement plan includes completion of flood mapping for Manningham Council's local catchments.

### **Council Strategies**

- 3.8 Council's Drainage Strategy 2004-2014 recognised the need for buildings and other vulnerable assets to be above flood levels and not to be surrounded or isolated by deep or fast flowing waters and recommended 'a municipal wide study be carried out and an overlay be introduced for overland flow path areas which prevents any development which may occur in the flow path'.
- 3.9 The *Manningham Residential Strategy (2012)* includes an action (Action 4.4 – short term) to "complete floodway mapping and progress appropriate planning controls on the affected properties"
- 3.10 Recommendation 6 of the *Manningham Planning Scheme Review (2014)* is to amend the Planning Scheme to apply the Special Building Overlay or Land Subject to Inundation Overlay where mapping of local drainage catchments has confirmed that land is subject to flooding.

### **State and Local Planning Policy Frameworks**

- 3.11 The proposal to apply the LSIO and SBO is consistent with the following Clauses of the State Planning Policy Framework:

- Clause 11 Settlement seeks to anticipate and respond to the needs of existing and future communities through the provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.
- Clause 13 Environmental Risks Planning should adopt a best practice environmental management and risk management approach which aims to avoid or minimise environmental degradation and hazards. Planning should identify and manage the potential for the environment, and environmental changes, to impact upon the economic, environmental or social well-being of society.

3.12 In particular Amendment C109 will implement the following objectives of Clause 13.02-1 Floodplain management:

*To assist the protection of:*

- *Life, property and community infrastructure from flood hazard.*
- *The natural flood carrying capacity of rivers, streams and floodways.*
- *The flood storage function of floodplains and waterways.*

3.13 The relevant strategies in Clause 13.02-1 are to:

*'Identify land affected by flooding, including floodway areas, as verified by the relevant floodplain management authority, in planning scheme maps. Land affected by flooding is land inundated by the 1 in 100 year flood event or as determined by the floodplain management authority'*

and

*'Avoid intensifying the impacts of flooding through inappropriately located uses and developments.'*

3.14 The Amendment is also consistent with the following clauses of the Local Planning Policy Framework incorporating the Municipal Strategic Statement and Local Planning Policies:

- Clause 21.05 Residential, Clause 21.06 Low Density and Clause 21.07 Green Wedge and Yarra River Corridor all recognise that areas within the municipality are susceptible to flooding and that any proposals to subdivide or develop land need to have regard and respond to identified land constraints including flooding.
- Clause 21.12 Infrastructure recognises that Council is responsible for providing drainage for the local street network and local catchment areas. Council also encourages developments to design and upgrade drainage infrastructure to reduce the occurrence of inundation and flooding, and improve safety and enhance the amenity of the municipality. Further, it recognises that Council will continue to identify land which has drainage and flood constraints.

### ***Planning Practice Note 12***

3.15 Practice Note 12 (PN12): Applying the flood provisions in planning schemes (revised June 2015) provides guidance about applying the flood provisions in planning schemes and identifying which flood overlay should apply.

3.16 PN12 states, relevantly:

*"In general, it is not practical or economical to provide land use planning or flood protection up to the 'probable maximum flood (PMF). A lesser flood standard, known as the 'design flood event' (DFE), is adopted for land use planning purposes and is the area applicable for planning schemes. The area defined by the DFE will be referred to*



*as 'land subject to inundation' and can be divided into its relevant UFZ, FO, LSIO and SBO components as the case requires. In Victoria, the DFE for land use planning and building purposes is the 100-year ARI (average recurrence interval) flood, which occurs on average once every 100 years. This is the basis for declaring flood levels and flood areas under the Water Act 1989 and for setting minimum building floor levels under the Building Act 1993."*

#### 4. IMPACTS & IMPLICATIONS

##### *Community*

- 4.1 Approximately 10,300 properties across five urban catchments of Manningham are liable to inundation by overland flows from the urban drainage system and mainstream flooding, which are proposed to be included in the SBO and LSIO.
- 4.2 Approximately 45% of the affected properties already have other planning scheme controls that trigger the requirement for a planning permit.
- 4.3 As noted earlier in this report, the majority (59%) of properties will have minimal impacts from the proposed amendment, as they will either have their existing flooding overlay removed completely, they will have minor changes made to the boundary of their existing flooding overlay, or permit exemptions will ensure that planning permit approval is not required if certain conditions are met (such as minimum height of proposed building floor level above the ground).
- 4.4 Existing houses or buildings will not retrospectively be required to obtain planning permit approval (only new development will require a planning permit where planning permit exemptions are not met).
- 4.5 The proposed flooding overlays only affect small parts or sections of properties in most instances, and therefore new development will only need a planning permit if it is located within the overlay itself (where planning permit exemptions are not met).
- 4.6 Flood mapping within Manningham's local catchments supports an integrated approach to managing the impacts of stormwater runoff. The key function of the application of the SBO and LSIO to identified land is to ensure that drainage issues are considered at an early stage of the development approvals process. Consideration of flooding also seeks to ensure that detrimental impacts to life and new buildings are minimised.
- 4.7 The identification of properties within overland flow paths can also enable community education and communications to be better directed, to enable residents to best prepare for flood events. The flood mapping will also inform the prioritisation of future drainage improvement works, to protect habitable floor areas and address community safety risks.

##### *Sustainability*

- 4.8 The proposed amendment is likely to have positive social and economic effects. Benefits include better management of land liable to flooding and reduced incidence of flood damage to habitable floor areas over time.
- 4.9 By more accurately identifying land within the SBO and LSIO, the amendment will assist council to provide timely and more accurate advice when new development is proposed on land that is potentially subject to inundation.
- 4.10 Increasing the awareness of flood potential and thereby minimising the potential impacts of flooding will also have public safety benefits.
- 4.11 The economic impact of flooding on individuals and communities will be minimised through reduced flood risk. Design requirements arising from the application of the SBO and LSIO may result in some increase in development costs. However, having access to information early in the planning phase will allow appropriate, cost effective strategies to be implemented by developers.

- 4.12 After re-development of a site, costs associated with future flood damage should be reduced. This benefit would be specific to individual properties.

## 5. IMPLEMENTATION

### *Finances and Resources*

- 5.1 Melbourne Water has shared the costs associated with exhibition of the amendment and would also share the costs associated with a panel hearing.
- 5.2 In order to reduce the number of planning permit applications to Council, and the related costs of considering those applications, Amendment C109 has been structured to include additional planning permit exemptions in SBO3, which cover 57% of properties within the SBO. If the application complies with a number of conditions (e.g. the proposed floor level is set a minimum of 400mm above the existing ground surface level at the building and the proposed building does not exacerbate overland flows), then a planning permit will not be triggered.

### *Timelines*

- 5.3 Ministerial Direction No. 15 sets the timeframe for completing the various steps in the Planning Scheme amendment process.
- 5.4 Pursuant to Clause 4(3) of the Ministerial Direction, Council must request the appointment of an Independent Planning Panel within 40 business days of the closing date for submissions unless a Panel is not required.
- 5.5 As submissions closed on 24 December 2015, it was necessary to seek a Ministerial exemption with respect to requesting the appointment of a Panel.
- 5.6 This exemption was granted by the Minister on 3 March 2016.
- 5.7 Should Council decide to refer the submissions to an Independent Planning Panel, a formal request to appoint a Panel will be made.

## 6. DECLARATIONS OF CONFLICT OF INTEREST

No Officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.