

## Eastern Harbour City

### Addendum Submissions Report

<b>Sydney Eastern City Planning Panel No:</b>	2017SCL040 PPA
<b>LGA</b>	Canada Bay LGA
<b>Proposal</b>	<p>The planning proposal seeks to:</p> <ul style="list-style-type: none"> <li>• Rezone land from IN1 General Industrial to R3 Medium Density Residential;</li> <li>• Increase the maximum permissible floor space ratio from 1:1 to 1.6:1; and</li> <li>• Increase the maximum height of building from 12 metres to 25 metres</li> </ul> <p>The proposal will identify the land as a 'Flood Planning Area' per Clause 6.8 of Canada Bay LEP 2013, and as an 'Intensive Urban Area' per clauses 6.9 and 6.10 of Canada Bay LEP 2013.</p>
<b>Address</b>	7 Concord Avenue Concord West Lot 1 DP 219742
<b>Applicant/Owner</b>	Elton Consulting
<b>Date application considered by Panel</b>	2 July 2020
<b>Reason for deferral</b>	Deferral requested by applicant to respond to issues regarding flooding, traffic, affordable housing and biodiversity.
<b>Report by</b>	Robert Drew, Senior Planner - Department of Planning, Industry and Environment
<b>Report date</b>	2 December 2020

## 1. INTRODUCTION AND BACKGROUND

### 1.1 Background and previous consideration of the planning proposal

On 2 July 2020, the Sydney Eastern City Planning Panel considered a submissions report advising of the feedback of the public exhibition for planning proposal PP\_2017\_CANAD\_005\_01 for 7 Concord Avenue Concord West (**Attachment A**). A decision on the planning proposal was deferred due to unresolved issues regarding flooding, traffic, affordable housing and biodiversity.

The submissions report advised that the Department considered flooding the key issue associated with the proposal. The Department raised concern that the proposal was inconsistent with Section 9.1 Ministerial Direction 4.3 'Flood Prone Land' and that the inconsistency with the direction was not considered to be of minor significance. A determination of the planning proposal by the Panel was deferred at the applicant's request to provide the opportunity to respond to the issues raised in the submissions report.

To assist in making a recommendation on the proposal, the Panel requested the Department engage an independent flood expert, to be agreed with the proponent, at the proponent's expense, and according to terms of reference approved by the Panel (**Attachment B**).

Consulting engineers Lyall and Associates were engaged to undertake the peer review which was agreed to by both the proponent and the Department. On 25 November 2020, the independent peer review report was received by the Department (**Attachment C**).

At the request of the Panel, the peer review report was forwarded to the proponent and Council for a response. The findings of the peer review and the responses received from the proponent and Council are outlined in Section 2.1 of this addendum report.

## **2. RESPONSES TO ISSUES**

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### **2.1 Flooding**

#### **Proponent's addendum flooding report**

The planning proposal was supported by a Revised Flood Impact and Flood Risk Assessment dated June 2018 prepared by Catchment Simulation Solutions (**Attachment D**). On 15 October, the proponent submitted an addendum flooding report prepared by Catchment Simulation Solutions dated October 2020 (**Attachment E**).

The addendum report addressed concerns raised by Council and the Department regarding:

1. Floodway classification, and whether the site is located in a floodway;
2. Impacts of flooding on neighbouring properties; and
3. Impacts on government spending.

The report states that the proposal is appropriate for the site because:

- The site is not located in a floodway based on industry accepted, and standard floodplain management practice in defining a floodway;
- There would be no impacts on neighbouring properties because the proposed design and flood mitigation measures include:
  - a 50% blockage allowance;
  - a “flap gate” to reduce ingress of saltwater flows; and
  - the development would convey stormwater around and out of the site in a controlled manner; and
- There will be no substantial increase in government spending if the proposed design and flood mitigation measures are adopted.

#### **Independent flood study peer review**

In response to the Panel's deferral recommendation, a flood study peer review was procured by the Department. Quotes to undertake the peer review were sought from three expert consultants. The Department engaged Lyall & Associates to undertake the review in accordance with Terms of Reference approved by the Panel. The proponent agreed to the appointment of Lyall and Associates.

The Terms of Reference required:

- An assessment of consistency of the proposal with Ministerial Direction 4.3 for Flood Prone Land;
- An assessment of consistency of the proposal with Canada Bay LEP 2013 Clause 6.8 Flood Planning;
- An assessment of impact on other properties and the adjoining Powells Creek; and
- An assessment of whether the proposed flood mitigation measures are appropriate for the site and the requirements of the planning proposal.

As part of the peer review process, Lyall & Associates requested additional information from the proponent to inform their assessment. A request for information was submitted to the proponent on 6 November 2020. This included a request for additional modelling, clarifications relating to the proposed flood mitigation measures, and confirmation as to whether alternative solutions, including raising the podium level above the Probable Maximum Flood (PMF) could be accommodated.

It should be noted that the findings of the peer review are based on an assessment of the proposed flood mitigation measures provided in the planning proposal submitted to the Panel, not on changes that were included in the response to additional information.

Lyall and Associated finalised the flood study peer review on 25 November 2020. The Department considers that the report is consistent with the Terms of Reference. The peer review supports the proponent's assessment of the suitability of the proposal for the site.

The peer review concludes that while the proposed flood mitigation measures are dissimilar to other flood affected sites:

- the proposed mitigation measures are appropriate for the site and inconsistencies with Section 9.1 Direction 4.3 are of minor significance;
- The proposal complies with, or is capable of complying with, the requirements of Clause 6.8 Flood Planning of Canada Bay LEP 2013;
- No adverse impacts on the existing transverse drainage of Homebush Bay Drive would be felt if an appropriately sized on-site detention and retention system were incorporated into the design to limit the rate and volume of runoff to no more than present day conditions;
- The quality of the flow discharging to the receiving drainage lines would be generally improved;
- the proposed vertical space beneath the podium level would hinder maintenance given its large size and providing greater clearance to RL 3.8m AHD would allow easier access and result in the podium level of the concept being flood free.

The peer review assessment is summarised at **Appendix 1**.

Proponent's response to the peer review:

The proponent provided a response to the peer review report (**Attachment F**). The response notes that the peer review supports the proponent's assertions that the proposed development incorporates appropriate flood mitigation measures which result in development that is compliant with State and local government flood policies.

Canada Bay Council response to the peer review:

Canada Bay Council provided a response to the peer review report (**Attachment G**). The response disagrees with findings in the independent peer review and states that a number of relevant issues were not addressed including the effect of sea level rise during the life of the development, and the effect of rising backwater due to sedimentation in downstream drainage structures, accretion within the mangrove forest downstream and sea level rise.

Council's response states the planning proposal is deficient when assessed against the following requirements of Section 9.1 Direction 4.3 Flood Prone Land:

- Sub-clause 4.3(6)(a) regarding permitting development in a floodway. Council's response states the proposal is located in a floodway based on the definition in the Flood Risk Management Guideline published by the Department of Environment & Climate Change (DECC) (2007). The Guideline states:
  - Floodways are generally areas where development is undesirable due to*
    - *The potential to redirect flows*
    - *The level of potential danger to personal safety*
    - *Significant financial losses due to the damage potential*
- Subclause 4.3(6)(c) regarding permitting a significant increase in development potential at the site. Council's response states the planning proposal significantly increases the development potential of the land.
- Sub-clause 4.3(6)(d) regarding a proposal not resulting in substantially increased government spending on flood mitigation measures, infrastructure or services. Council's response states that the proposal is likely to result in substantially increased government spending on infrastructure on the basis of needing to remove sediment downstream from the development;
- Sub-clause 4.3(7) regarding the imposition of flood related development controls above the residential flood planning level. Council's response states the planning proposal is inconsistent with the Sub-clause as the planning proposal seeks to impose flood related development controls.

Council's response to the peer review is consistent with its submission received to the exhibition of the planning proposal dated 27 November 2018 (**Attachment H**). This submission asserted the proposal does not exhibit site-specific merit as it is inconsistent with Section 9.1 Direction 4.3 Flood Prone Land because:

- the land is not considered to be site suitable for residential development because it is located in a "floodway area" as defined in the Floodplain Development Manual 2005.
- the rezoning would permit a significant increase in the development of the land in a Flood Planning Area which will present a significant increase in risk and safety of future residents because the proposal seeks to rezone the land from IN1 General Industrial with an existing industrial building employing two people (based on Hill PDA socio-economic report), to an estimated population of 696 people living at the site (based on estimated occupancy rate of 2.4 and approximately 290 dwellings).
- The rezoning is likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services because the proposal would likely require substantial maintenance of the drainage area by way of removing sediment due to frequent inundation of the site.

Department's response to the peer review:

The Department has considered the findings of the peer review and the proponent and Council's response and remains concerned that the proposal is inconsistent with Section 9.1 Direction 4.3 Flood Prone Land. In the submissions report to the Panel in July 2020, the Department raised concern that flooding issues had not been resolved and was not satisfied that the proposal was consistent with Ministerial Direction 4.3 'Flood Prone Land', and that inconsistencies were not of minor significance.

With regard to Sub-clause 6(c) regarding permitting a significant increase in development on flood prone land. It is the view of the Department that the proposal does not comply with Sub-clause 6(c) and that the inconsistency with the sub-clause is not of minor significance.

The interpretation of Sub-clause 6(c) as presented in the peer review is that while the proposal does indeed constitute a significant increase in the development of the land, the inconsistency is considered to be of minor significance because the proposal would remove a large industrial building and replace it with medium density development, where the majority of the apartments and publicly accessible areas are above the residential flood planning panel.

The Department does not share this interpretation. It is the view of the Department that were it not for the flood impacts at the site the proposal could be supported; however, the Department considers the planning proposal is inconsistent with Sub-clause 6(c) and not of minor significance for the following reasons:

- The proposal represents a significant increase in the floor space ratio (FSR) development potential of the land from an existing FSR of 1:1 to 1.6:1 to facilitate approximately 260 dwellings at the site;
- The proposal would result in the site being converted from an existing industrial use to residential use which, despite flood mitigation measures, significantly increases the risk to life at the site during flood events which currently does not exist; and
- The proposed flood mitigation measures would likely produce undesirable built form outcomes for the site and the surrounding area as a result of requirements to flood-proof the development.

Regarding whether the site is in a floodway, it is noted the peer review identified the presence of floodway areas on the site and that the planning proposal seeks to maintain these flow paths albeit in a modified form where they run through the site. This acknowledges the site is within a floodway. However, the peer review found that as the proposal would locate development outside of the affected areas by way of elevating the development well above floodway areas, the inconsistency with Sub-clause 6(a) is considered to be of minor significance.

As stated above, Council states that site is in a floodway per the definition in the Flood Risk Management Guideline published by the Department of Environment & Climate Change (DECC) (2007) but does not agree that the inconsistency with the direction is of minor significance.

The Department is of the opinion that, in the context of permitting a significant increase in the development of the land, that the proposal's inconsistency with Sub-clause 6(a) is not of minor significance.

## 2.2 Other issues

### Affordable housing

As part of the planning proposal the proponent indicated an intention to supply 5% of the permissible development uplift as affordable housing; however, no evidence was provided of how affordable housing would be delivered. On 15 September 2020, the proponent provided a letter of commitment to provide affordable housing by inclusion in Council's Affordable Housing Contribution Scheme (**Attachment I**).

Council's draft Affordable Housing Contribution Scheme was exhibited from 1 June to 27 July 2020 as part of Council's Local Strategic Planning Statement and Housekeeping Amendment planning proposal. The draft scheme did not include the subject site. The draft scheme would need to be updated to allow developer contributions for affordable housing to be levied pursuant to Council's scheme.

The planning proposal is at finalisation stage and the LEP is yet to be made. Therefore, a provision to levy contributions for affordable housing on the site is not available in the Canada Bay Local Environmental Plan (LEP) 2013.

It is recommended that, should the Panel support the proposal proceeding to finalisation, an alternative mechanism for contributing toward affordable housing be considered, such as through the offer of a voluntary planning agreement.

### Biodiversity

The proposal was referred to the Environment Energy and Science (EES) group for further comment in relation to whether the proponent adequately addressed the matters raised in its submission and in relation to the ecological report.

On 1 July 2020, EES advised it considered that the Biodiversity Constraints Report (BCR) prepared by Travers (2019) which was submitted in support of the planning proposal provided an adequate level of assessment and supported the conclusions of the BCR (**Attachment J**).

It is considered that biodiversity issues are resolved for the proposal.

### Traffic

On 15 October the proponent submitted an addendum traffic report prepared by SCT Consulting dated 15 September 2020 (**Attachment K**). The addendum traffic report presented a review of the previous traffic studies and addressed items raised by Transport for NSW to ensure the traffic report was current.

The addendum traffic report concluded that the proposed rezoning and development of the site is consistent with the Concord West Masterplan, supporting traffic report and Homebush Precinct plans, and that the proposal is unlikely to have significant impacts on the surrounding road, pedestrian and public transport network.

It is considered that issues regarding traffic have been satisfactorily addressed for the planning proposal. Council may request additional information to support any future development application.

## 3. CONCLUSION AND RECOMMENDATION

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In accordance with the request of the Panel, outstanding issues for the site have been responded to. The Panel can now proceed to make a recommendation on the finalisation of the planning proposal. The Department considers that matters relating to affordable housing, biodiversity, traffic have been resolved.

Regarding flooding, the Department considers the proposal remains inconsistent with Ministerial Direction 4.3 Flood Prone Land as the proposal constitutes a significant increase in the development of the land and which, from a planning perspective, cannot be considered of minor significance.

It is recommended that the Sydney Eastern City Planning Panel, as relevant planning authority,

- **Release** the addendum submissions report publicly;

- **Conduct** a public meeting;
- **Provide advice** to the Minister on whether the proposal should proceed to finalisation and if so, in what form.

**Endorsed by:**



**Katrina Burley**  
**Manager, Place and Infrastructure**  
**30 November 2020**



**Brendan Metcalfe**  
**A/Director, Eastern and South Districts**  
**1 December 2020**



**Malcolm McDonald**  
**Executive Director**  
**Eastern Harbour City**  
**3 December 2020**

**ATTACHMENTS:**

- Attachment A: Submissions Report (June 2020)
- Attachment B: Terms of Reference
- Attachment C: Independent Flood Study Peer Review
- Attachment D: Revised Flood Impact and Flood Risk Assessment (June 2018)
- Attachment E: Addendum Flooding Report (October 2020)
- Attachment F: Proponent's Response to Flood Study Peer Review
- Attachment G: Council Response to Flood Study Peer Review
- Attachment H: Council's Submission to Exhibition of Planning Proposal (2018)
- Attachment I: Affordable Housing Commitment Letter
- Attachment J: Comment from Environment Energy Science Group
- Attachment K: Addendum Traffic Report (September 2020)

## Appendix 1

### Summary of independent flood study peer review findings - Ministerial Direction 4.3 Flood Prone Land

Component	Consistent	Peer review assessment
<p><b>Clause 4</b> A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).</p>	Yes	<p>The report states the proposal is consistent with <b>Sub-clause 4</b> because:</p> <ul style="list-style-type: none"> <li>- the proposed podium level will be raised and only impacted during extremely rare storm events</li> <li>- the flood risk to occupiers is reduced by constructing the development above the flood planning level; adopting a shelter in place strategy and preventing the ingress of floodwater to the basement up to the PMF</li> <li>- The planning proposal would maintain the flood function of the site; and</li> <li>- There would be no increase in significant adverse flood behaviour resulting in detrimental impacts on neighbouring properties</li> </ul>
<p><b>Clause 5</b> A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p>	Yes	<p>The report states the proposal is consistent with <b>Sub-clause 5</b> because the planning proposal does not seek to rezone the land from Special Use, Special Purpose, Recreation or Environmental Protection to residential.</p>
<p><b>Clause 6</b> A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <p>(a) permit development in floodway areas,</p>	Yes	<p>The report states the proposal is consistent with <b>Sub-clause 6(a)</b> because the planning proposal seeks to maintain flow paths, albeit in a modified form where they run through the site; and, development would be located outside affected areas.</p>
<p>(b) permit development that will result in significant flood impacts to other properties,</p>		<p>The report states the proposal is consistent with <b>Sub-clause 6(b)</b> because, subject to further modelling, it is considered the proposed development would not significantly affect flood behaviour and result in significant flood impacts to other properties.</p>

Component	Consistent	Peer review assessment
<p>(c) permit a significant increase in the development of that land,</p> <p>(d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or</p> <p>(e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.</p>		<p>The report states the proposal is consistent with <b>Sub-clause 6(c)</b> because although the planning proposal represents a significant increase in the development of the site the inconsistency is of minor significance as the elevation of privately owned areas and the majority of publicly accessible land is set well above the residential flood planning level which would only be inundated during an extremely rare storm event and only then to a relatively shallow depth.</p> <p>The report states the proposal is consistent with <b>Sub-clause 6(d)</b> because, provided runoff is piped to the existing transverse drainage of Homebush Bay Drive and appropriate measures are incorporated on the site for the control and disposal of sediment during the washdown of the flood void area then the proposal would not result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services.</p> <p>Clause 6(e) does not apply to the site and so no assessment was included.</p>
<p><b>Clause 7</b> A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General)</p>	Yes	<p>The report states the proposal includes controls above the residential flood planning level including flood-proofing the basement carpark and the adoption of a shelter-in-place strategy which would need to be enforced by Council as part of a future development application.</p>
<p><b>Clause 8</b> For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for</p>	N/A	N/A



Component	Consistent	Peer review assessment
the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).		
<b>Canada Bay LEP 2013 Clause 6.8 Flood Planning</b>		
<p><b>Clause 3</b> Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development –</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p>	Yes	<p>The report states the proposal is consistent with <b>Sub-clause 3(a)</b> because the proposed dwellings and the majority of public space area would be positioned well above the residential flood planning level and would not be subject to flooding in any but an extremely rare storm event.</p> <p>The report states the proposal is consistent with <b>Sub-clause 3(b)</b> because, provided run-off is controlled by an appropriately sized on-site detention and retention system the proposal would not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other properties.</p> <p>The report states the proposal is consistent with <b>Sub-clause 3(c)</b> because the proposal manages risk to life from flood by:</p> <ul style="list-style-type: none"> <li>- raising the habitable portion of the site above the residential flood planning level;</li> <li>- Providing shelter-in-place areas above the PMF</li> <li>- Flood-proofing of the basement carpark to prevent ingress for floodwater up to the PMF.</li> <li>- Including a <i>Flood Emergency Response Plan</i></li> </ul> <p>The report states the proposal is consistent with <b>Sub-clause 3(d)</b> because the proposal will incorporate an appropriately sized on-site detention and retention system to limit the rate and volume of runoff to no greater than present day conditions; and, include measures to control and dispose of sediment during the wash down of the flood void area.</p> <p>The report states the proposal is consistent with <b>Sub-clause 3(e)</b> because it would not adversely affect other development or properties; siting proposed new development above the residential flood planning level; and, the basement car park would be flood proofed.</p>