

Item No: R2 Recommendation to Council

Subject: **PLANNING PROPOSAL - PADDINGTON FLOODPLAIN RISK MANAGEMENT STUDY AND PLAN 2019**

Authors: Anne White, Acting Manager - Strategic Planning
Aurelio Lindaya, Manager Engineering Services

Approvers: Allan Coker, Director - Planning & Development
Tom O'Hanlon, Director - Technical Services

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Reason for Report: To obtain a Council decision to prepare a planning proposal to amend the Flood Planning Map of the Woollahra LEP 2014 based on the adopted Paddington Floodplain Risk Management Study and Plan 2019.

To obtain a Council decision to refer the planning proposal to the Woollahra Local Planning Panel for advice.

Recommendation:

- A. THAT a planning proposal be prepared to amend the Flood Planning Map of *Woollahra Local Environmental Plan 2014* based on the adopted *Paddington Floodplain Risk Management Study and Plan 2019*.
- B. THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.
- C. THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.

1. Background

On 9 September 2019 Council adopted the Paddington Floodplain Risk Management Study and Plan (FRMSP).

One of the recommendations identified in the Paddington FRMSP is that Council's Flood Planning Maps are updated to take advantage of the updated flood information generated as part of the study (pg. 113, Paddington FRMSP).

2. Woollahra Local Environmental Plan 2014 - Clause 6.3 Flood Planning

Flood planning is addressed in clause 6.3 *Flood Planning of Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014), which states:

6.3 Flood planning

- (1) *The objectives of this clause are as follows—*
 - (a) *to minimise the flood risk to life and property associated with the use of land,*
 - (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
 - (c) *to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) *This clause applies to—*
 - (a) *land identified as "Flood planning area" on the [Flood Planning Map](#), and*
 - (b) *other land at or below the flood planning level.*

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—*
- (a) *is compatible with the flood hazard of the land, and*
 - (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *incorporates appropriate measures to manage risk to life from flood, and*
 - (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*
 - (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.*
- (5) *In this clause—*

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event, plus 0.5 metre freeboard.

Clause 6.3 *Flood Planning* is informed by the Flood Planning Maps. The Flood Planning Maps identify all the land within the Local Government Area (LGA) which is identified as *Flood planning area*. The current parcels identified as *Flood planning area* in the Paddington area are shown in **Figure 1**.

The flood planning map shows extensive areas of the lower region of the Rushcutters Bay catchment that fall within Council's flood planning area. However, no parcels of land south of Lawson Street, Harris Street, Sutherland Street and Glenmore Road are identified on the map.

The consultants who prepared the Paddington Floodplain Risk Management Study and Plan (in consultation with Council's Engineers) recommended a specific methodology to determine the parcels of land that are identified as flood control lots^[1]. The recommended methodology is based on identifying a property as a flood control lot if the flood planning area (which is equal to the 1% annual exceedance probability (AEP)^[2] flood) extends across more than 5% of the property.

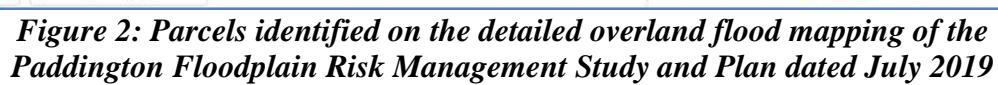
This methodology is consistent with the NSW Floodplain Development Manual and is consistent with approaches adopted by other Sydney Metropolitan Councils to identify flood control lots.

This methodology was applied to the detailed overland flooding in the Study. As shown in **Figure 2**, an additional 837 properties in Paddington, Edgecliff and Woollahra are identified to be included in the flood planning area. The additional land parcels identified reflect the fact that overland flooding was not considered as part of previous flood studies across these areas. An A3 map of these properties is available at **Annexure 1**, and a list of all the properties is attached at **Annexure 2**.

Council staff recommend that the *Flood planning area* for the Woollahra LEP 2014 is updated for the Paddington area, consistent with the adopted *Paddington Floodplain Rise Management Study and Plan 2019*.

^[1] A flood control lot is a land parcel that would be subject to flood-related development controls

^[2] AEP (measured as a percentage) is a term used to describe flood size. It is a means of describing how likely a flood is to occur in a given year. For example, a 1% AEP flood is a flood that has a 1% chance of occurring, or being exceeded in any one year.



3. Impacts of Planning Proposal

There are three (3) significant impacts associated with the inclusion of an additional 837 properties being identified as “Flood planning area” from the FRMSP, and subsequently on the Flood Planning Map of the Woollahra LEP 2014.

Firstly, all development applications (DAs) which are submitted for consent to carry out development on land identified as “Flood planning area” must be assessed against the provisions of clause 6.3 of the LEP. This will be undertaken on a case by case basis having regard to the nature and scope of proposed development. Where feasible, new habitable floor levels should be constructed at or above the 1% AEP flood level plus 0.5m freeboard (which is a factor of safety typically used in relation to the setting of floor levels). Alternatively, other flood control measures may be required.

Secondly, planning certificates issued under the provisions of s.10.7 of the *Environmental Planning and Assessment Act 1979* must identify whether or not development on the land, the subject of the certificate, is subject to flood related development controls³.

Thirdly, minor development, such as fences cannot be carried out as exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

4. Woollahra Local Planning Panel advice

Section 2.19 of the *Environmental Planning and Assessment Act 1979* sets out the functions of local planning panels. One of those functions is “to advise the council on any planning proposal that has been prepared or is to be prepared by the council under section 3.33 and that is referred to the panel by the council”.

Additionally, the *Local Planning Panel Direction – Planning Proposals* which was issued by the Minister for Planning on 27 September 2018 identifies the types of planning proposals that are to be referred to a local planning panel for advice prior to a planning proposal being sent to the Department of Planning, Industry and Environment (DPIE) for a gateway determination.

Under the terms of the Direction, the planning proposal to update the Flood Planning Map must be referred to the Woollahra Local Planning Panel (Woollahra LPP) for advice. This step will be undertaken at the next available meeting of the Woollahra LPP should the Council decide to prepare a planning proposal.

5. Next steps

If Council decides to support amending the Flood Planning Map of the Woollahra LEP 2014, the next step is to prepare a planning proposal in accordance with NSW Government Guidelines.

The planning proposal will be referred to the Woollahra LPP for its advice. The advice will then be provided to a meeting of the Environmental Planning Committee (EPC).

³ Clause 7A of Schedule 4 of the *Environmental Planning Assessment Act Regulation 2000*

If Council resolves to proceed with the planning proposal it will be referred to the DPIE for a gateway determination. This will allow the planning proposal to be placed on public exhibition. It is recommended that when requesting the gateway determination that Council seek the delegation of the plan-making steps under section 3.36 of the *Environmental Planning and Assessment Act 1979*.


The outcome of the public exhibition will be reported to a future meeting of the EPC for consideration. If Council resolves to proceed with the Local Environmental Plan amendment it will be forwarded to the NSW Parliamentary Counsel Office and the DPIE for legal drafting and finalisation. The new planning controls in Woollahra LEP 2014 will come into effect after the LEP is notified on the NSW Legislation website.

6. Conclusion

The *Paddington Floodplain Risk Management Study and Plan*, dated July 2019, was adopted by Council on 9 September 2019. The *Paddington Floodplain Risk Management Study and Plan 2019* was prepared in accordance with the NSW Floodplain Development Manual. The *Paddington Floodplain Risk Management Study and Plan 2019* aims to provide solutions to existing flooding problems to ensure that new development is compatible with flood hazards and does not create additional flooding problems.

The Study and Plan has identified that 837 additional properties in the Paddington area should be identified on the Woollahra LEP 2014 Flood Planning Map. To facilitate the updating of the Flood Planning Map, a planning proposal should be prepared with the aim of updating the Flood Planning Map of Woollahra LEP 2014. The planning proposal should be referred to the Woollahra LPP for advice.

Annexures

1. Paddington Flood Study - Parcels identified on detailed overland flood mapping of the Paddington Floodplain Risk - A3 Print [↓](#) 
2. Parcel addresses of the properties identified on detailed overland flood mapping of the Paddington Floodplain Risk Management Study and Plan 2019 [↓](#) 