Post-Exhibition Report – Addendum

PP-2021-6630

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The planning proposal seeks to amend the Georges River Local Environmental Plan (LEP) 2021 to rezone a former public administration building to R4 High Density Residential with additional permitted uses at 143 Stoney Creek Road, Beverly Hills (provision of approx. *38 homes, 0 jobs)*

1 Introduction

The purpose of this report is to provide a summary of the key matters NSW State Emergency Service (SES) and Department of Planning and Environment – Environment and Heritage Group (EHG) have provided in their supplementary submissions on the planning proposal (**Attachment A**) for 143 Stoney Creek Road, Beverly Hills (the site). The report makes a recommendation to the Panel that it submit the proposal to the Department of Planning and Environment for finalisation.

Table 1 – Overview of planning proposal

Element	Description	
LGA	Georges River	
LEP to be amended	Georges River LEP 2021	
Address	143 Stoney Creek Road, Beverly Hills	
Reason for review	☐Council notified the proponent it will not support the proposed amendment.	☒ Council failed to indicate support for the proposal within 90 days.
Brief overview of the timeframe/ progress of the planning proposal	**17 November 2021** – Planning proposal lodged with Council **February to July 2022** – Council provided advice and requests for additional information. Proponent submitted a revised planning proposal. **6 October 2022** – Proponent lodged Rezoning Review request after Council failed to indicate support for the proposal within 90 days. **13 December 2022** – The Panel considered the Rezoning Review. **15 December 2022** – The Panel determined the planning proposal be submitted for Gateway and appointed itself as the PPA. **3 February 2023** – Proposal is submitted for Gateway assessment. **2 March 2023** – Gateway Determination issued. **27 April 2023 to 26 May 2023** – Public exhibition of planning proposal and supporting documents.	

Element	Description
	27 April 2023 - Updated Flood Risk Impact Assessment provided by proponent. **19 June 2023** – Proponent provided a response to submissions. **31 July 2023** – The Panel held post exhibition finalisation meeting **4 August 2023** - The Panel deferred its decision pending further advice from state agencies regarding flooding. **25 August 2023** – Comments from EHG received. **8 September 2023** – Comments from SES received. **14 September 2023** – Proponents response to submission received. **27 September 2023** – Proponents revised response to submission received
Department contact:	Douglas Cunningham, Specialist Planning Officer

2 Process to date

On 13 December 2022, the Panel considered a rezoning review for this planning proposal because Council failed to indicate support for the proposal within 90 days.

On 15 December 2022, the Panel determined to support the planning proposal because the proposal has demonstrated strategic and site-specific merit and is consistent with State and local strategies. The Panel also recommended that the LEP amendment and site specific DCP be revised to include a minimum lot size consistent with the R4 zone.

The planning proposal was public exhibited from 17 April 2023 to 26 May 2023. A total of 11 submissions were received including 6 public submissions, comprising of 5 unique submissions and one submission submitted without any content,4 Agency submissions and a Council submission.

On 31 July 2023, the Panel was convened to consider the matters raised in submissions received by the Department during the exhibition period and to determine if the proposal should continue and proceed to finalisation. On 4 August 2023 the Panel deferred its decision to seek additional comments from the SES and EHG on the Flood Risk Impact Assessment (FRA) (Northrop, April 2023) and provide an updated response to the Panel on flooding.

On 25 August 2023, the Agile Planning team received comments from EHG (**Attachment B**). On 8 September 2023, the Agile Planning team received comments from SES (**Attachment C**).

On 14 September 2023, the Agile Planning team received a response to submissions from the proponent. On 27 September 2023, the Agile Planning team received a revised response to submissions from the proponent (**Attachment D**).

3 Agency Responses

In response to the Panel's decision, the Agile Planning team consulted with SES and EHG who both provided detailed responses regarding flooding, emergency management and consistency with the Ministerial Directions. A summary of the key issues raised by both agencies is below.

3.1 Flooding

EHG noted that the site is in the upper reaches of the Bardwell Creek Catchment on an overland flow path and is subject to flooding during 1% annual exceedance probability (AEP) and probable maximum flood (PMF) events. Under the Flood Risk Management Manual 2023, the site is considered to have a flood planning constraint category (FPCC) of 1, which is a high-risk precinct.

EHG noted that the site would be classified as a high flood island during the rarer flooding events due to the level of inundation and is expected to be isolated for at least two hours. EHG advised that due to the site being a high flood island, development intensification through rezoning to high-density residential development on the site should not be supported.

EHG notes that the submitted FRA from the proponent does not include the relevant details on the flood modelling including the works undertaken by the proponent regarding the model inputs, parameters, and assumptions.

SES noted that from the provided FRA that the site is subject to inundation and isolation in floods more frequently than the 5% AEP event. This is extremely frequent and SES recommends further exploration of the frequency of the site becoming flooded and/or isolated.

Proponent response

The proponent notes that in the current Defined Flood Event (a 1% AEP event) flood behaviour across the site is classified as low flood hazard and at least two flood emergency response strategies are available for the subject site in the event of a flood. The primary response is proposed to be evacuation, in accordance with SES recommendations, with a secondary response being shelter in place. Evacuation from the site is possible during the peak of the 1% AEP event by continuing west from the site up Stoney Creek Road to a location above the PMF flood event.

Development of the subject site provides an opportunity for people to retreat to higher ground which does not currently exist, therefore directly reducing the existing flood risk and risk to life on the subject site.

Agile Planning Comments

The planning proposal is supported by a FRA, which includes a flood impact assessment that models the flood hazards on site. Although this modelling is based on a three-storey medical development, the concept plan supporting the planning proposal shows that the footprint of the proposed residential development will be like that of the medical building used in the flood modelling. The FRA concludes that there is no significant change to flood hazard both on and off site compared to existing conditions.

Mapping for the existing conditions shows that during a 1% AEP event, the site is generally classified as a hazard rating of H2 except for a portion of H3 observed along the northern boundary. During a PMF event, modelling shows a flood hazard varies between H2 to H5 across the subject site.

Although there is an increase in flood depth during both 1% AEP and PMF design storm events, these increases result from development covering more of the site. Modelling for the developed case shows a H2-H4 hazard across the site in a 1% AEP event, like the existing case. Similarly flood hazard within the developed case for a PMF event varies between H2 to H5 across the subject site. Flood hazard within the proposed on-site flood chamber is generally H4 with some patches of H5 during the 1% AEP and H5 with patches of H6 during the PMF design storm event.

Georges River Council exhibited a revised draft Overland Flow Floodplain Risk Management Study and Plan for Hurstville, Mortdale, and Peakhurst Wards which identifies the site as being a flood effect lot in the 1% AEP event. It should be noted that this study is yet to be finalised and endorsed by Council.

3.2 Emergency Management

EHG notes that the supporting Flood Emergency Response Plan (FERP) summary, included in the FRA (Northrop, April 2023), indicates that the development site would be used as a refuge for residents of the adjoining properties during major flooding events. EHG does not support this as it would result in exposing more residents to isolation during rarer flood events. EHG's view is that there would be considerable uncertainties for the development and implementation of the proposed FERP and its efficient operations in addressing and managing flooding risks.

SES have stated that further evidence is needed to show how development will "enhance evacuation" and "will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood" and "ensure the safe evacuation of people in the event of a flood". The proponent states the development will not increase the demand for SES in flooding events, however further evidence is needed to support this claim. SES advises that historically they have been required to attended flood rescues at existing development immediately adjacent to the proposed development in the same flow path.

'Shelter in place' strategies are not endorsed for flood management by the SES for future development and are only considered suitable for existing dwellings that are currently at risk to reduce their risk. SES recommend detailed assessment of the potential maximum duration of isolation and inundation to fully understand the risks associated with sheltering in place.

The proposal has not demonstrated that development of the floodplain does not impact on the ability of the existing community to respond to a flood safely and effectively.

Proponents' response

In the event where time is not available, development at the subject site presents an opportunity for vertical evacuation and on-site refuge which does not currently exist under existing conditions. Any future development has the potential to reduce the amount of time it takes for people exposed to the hazard to seek refuge away from the hazard. Similarly, refuge on-site eliminates the requirement to evacuate through a potentially compromised road network in the event.

An analysis of flood hazard conditions and evacuation paths from the site has been performed using the developed case for both 1% AEP and PMF events. An evacuation path is available from the site during both events. In the 1% AEP event, evacuation is available from the north-western corner of the site, with flood hazard conditions along this path of a maximum of H1. In the PMF event, flood hazard conditions are up to H3 in the North-western corner of the site. An analysis of the duration where flow conditions exceed H1 and H2 has been performed with a period of 48 minutes and 26 minutes observed respectively. An investigation to further reduce flood risk by improving flood hazard conditions at this corner, with an aim to enable evacuation during the full duration of the PMF, can also be performed as part of any future development application for the site.

It is understood that a Shelter in Place strategy is not endorsed by the SES and the primary response to flooding for the SES is evacuation, however, in some circumstances, evacuation is not appropriate. The Draft Shelter-In-Place guideline prepared by the Department notes that in some instances, SIP maybe be suitable for sites, such as flash flood events which is consistent with the type of event expected at the subject site.

The FRA currently contains mapping showing flood depths for the 50%, 20%, 10%, 5% AEP and the 1% AEP plus climate change flooding events. If required, further exploration of the frequency of the site becoming flooded and/or isolated can be reviewed as part of any future development application for the site, particularly when a detailed design for the site is established.

The Flood Emergency Response Summary included in the FRA (Northrop, 2023) highlights a strategy for early closure and evacuation of the facility, up to a day in advance, if warning time permits. Where sufficient time for evacuation is not available, on-site refuge is recommended. Early evacuation or on-site refuge are recognised emergency response measures identified in the Draft Shelter-In-Place guideline.

Agile Planning Comments

In the supporting FRA (Northrop, 2023) and the additional supporting information provided to address the agency submissions, the proponent has provided an outline of two risk management approaches, namely evacuation or shelter in place. Based on the modelling provided, it is noted that evacuation can be achieved in a 1% AEP event, however, may not be achievable based on hazard conditions during a PMF event. It is also noted that modelling shows the only safe evacuation point from the site during a PMF event is from a small portion of the north-western corner of the site. In these circumstances where evacuation cannot be achieved, the proponent is proposing a shelter in place strategy, which at this stage is not supported by SES.

The Department's draft shelter in place guideline sets several criteria to consider when determining if shelter in place is appropriate for any development. Of note to the subject site, the guidelines state shelter in place may be considered appropriate for used if the development is not located in an area of high-risk (eg, floodway's and H5 or H6 flood hazard areas). As mentioned in this briefing report the subject site is in a defined floodway. However, the guideline does state that Councils can develop shelter in place related controls for their development control plans (DCP) and apply those controls when assessing development applications.

The Agile Planning team notes that a draft Flood Emergency Response Plan (FERP) has been prepared in response to EHG and SES's additional submissions. The FERP aims to outline the potential future Flood Emergency Response measures for future development, however, would not be finalised until the future development application or construction certificate phase of any development on site.

The Agile Planning team notes that the proponent has addressed the proposals consistency with the Flood Risk Management Manual (2023) principles as part of their revised response to submissions (**Attachment D**).

3.3 Ministerial Directions – 4.1 Flooding

Agency comments

Both EGH and SES have noted that the proposal has the potential to be inconsistent with the Ministerial Direction 4.1 Flooding and that the consent authority will need to ensure that the planning proposal is considered against the relevant Ministerial Section 9.1 Directions, including and is consistent with the NSW Flood Prone Land Policy as set out in the Flood Risk Management Manual 2023 (the Manual) and supporting guidelines, including the Support for Emergency Management Planning.

EHG noted that the planning proposal is inconsistent with the Ministerial Direction 4.1 (2) and 4.1 (3) (c) as it rezones land within the flood planning area to a residential use. The site is included within the flood planning area (FPA) as it is under the defined flood event (DFE), which is 1% AEP flood event. The modelling works undertaken by the proponent as well as the modelling results from Georges River Council indicate that the site is located within a floodway, and therefore a flood planning area. As specified by Direction 4.1 (3) (c) 'a planning proposal must not contain provisions that apply to the flood planning area which permit development for the purposes of residential accommodation in high hazard areas.

Proponents' response

The proponent has provided an assessment of the proposal against Ministerial Direction 4.1 Flooding. In response to the submissions, the proponent notes that the proposal is generally consistent with the direction, however any inconsistencies with the Direction are justified as outlined below.

The FRA states that the site is classified as low flood hazard during the Defined Flood Event (i.e. the 1% AEP design storm event). The flood impacts created by the development of the subject site can be managed using appropriate on-site flood mitigation measures.

The FRA was prepared using Council's Adopted Hurstville, Mortdale and Peakhurst Wards (HMPW) Overland Flow Flood Study (SMEC 2016). The HMPW Overland Flow Flood Study (SMEC 2016) and discusses FPL of the 1% AEP + 500mm for residential and 1% AEP + 300mm for commercial / industrial. The concept design for the site suggests a FPL of the PMF is achievable, and therefore exceeds the Councils recommended FPL levels.

Flood Emergency Response measures can also be introduced to manage the residual site risk during an extreme event. This includes the incorporation of on-site refuge, evacuation / refuge procedures, site preparation and education and awareness programs to be confirmed at the Development Assessment stage. A draft FERP has been prepared as part of the response to submissions.

Agile Planning Comments

Ministerial Direction 4.1 relates to flooding and the objectives of this direction are to ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land. It is noted that the direction is currently being updated to reference the recently made Floodplain Development Manual 2023, however it currently references the 2005 Manual.

A planning proposal may be inconsistent with this ministerial direction if the proposal is in accordance with a floodplain risk management study or plan adopted by the relevant council in accordance with the Floodplain Development Manual 2005 and/or the proposal is supported by a flood and risk impact assessment accepted by the relevant planning authority (Georges River Council).

The FRA demonstrates a FPL above the PMF is achievable on site and the concept plan proposes to locate a flood storage chamber below the FPL to further reduce the flood risk on site. This outcome would exceed the recommendations presented in Council's adopted flood study and be consistent with the recommendations present with in the Floodplain Development Manual 2005. A site specific DCP for the proposal also seeks to ensure that basement carpark entry threshold is set to a similar level, with all other openings to the basement positioned at or above the PMF level.

4 Recommendation

The Panel notes the Agile Planning teams comments regarding flooding, emergency management and the ministerial direction and agree to progress the planning proposal to finalisation stage.

4.1.1.1 Attachments

Attachment A - Planning Proposal (March 2023)

Attachment A1 – Planning Proposal Appendix A - Concept of a Residential Flat Development (May 2022)

Attachment A2 - Planning Proposal Appendix B - Flood and risk impact assessment (June 2022)

Attachment A3 - Planning Proposal Appendix C - Traffic assessment (April 2022)

Attachment A4 - Planning Proposal Appendix D - Detailed Site Investigation (July 2022)
Attachment A5 - Updated Flood Risk Impact Assessment (April 2023)

Attachment B – EHG response

Attachment C – SES response

Attachment D – Proponent Revised response to submission

McMahon.

16/10/23

Louise McMahon

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