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Dear Mr Frayne

SEARs – 7 Concord Avenue, 202 George Street and 69-73 Victoria Avenue, Concord West

I write in relation to 7 Concord Avenue, 202 George Street and 69-73 (excluding 69A) Victoria Avenue, Concord West (the Site) and the recent request for Secretary's Environmental Assessment Requirements (SEARs).

The subject proposal involves a State Significant Development Application (SSDA) with a concurrent rezoning. Demonstrating 'strategic merit' is a requirement under the Department's *Local Environmental Plan Making Guide* for proposals involving rezoning. To assess how strategic merit applies to the Site and any SEARs, the following contextual background is provided.

Background

The site is within the Homebush North precinct under the *Parramatta Road Corridor Urban Transformation Strategy* (PRCUTS) and new planning controls for the precinct were gazetted in December 2022. At the time of publishing PRCUTS (2016), the NSW Government had not completed a number of supporting studies, including a flood study and a traffic study. Council subsequently prepared the Powells Creek Flood Study and PRCUTS Traffic and Transport Study to support Canada Bay Council's Stage 1 PRCUTS planning proposal.

The Powells Creek Flood Study (December 2022) identified certain land in the Homebush North precinct as being significantly flood affected, especially 7 Concord Avenue, 202 George Street and 69-73 (excluding 69A) Victoria Avenue, Concord West (the Site). The Study found that:

- in a PMF event, 7 Concord Avenue, 202 George Street, and 73 Victoria Avenue would become a Floodway;
- in a 1% AEP event the single emergency evacuation route for the locality (George Street opposite 176-184 George Street) would become a floodway;
- in a 1% AEP storm event, part of the site would become Hydraulic Hazard H3 – *Unsafe for vehicles, children and the elderly*, with this increasing to a H5 hazard in a PMF event - *Unsafe for vehicles and people. All buildings vulnerable to structural damage. Some less robust building types vulnerable to failure*; and
- 7 Concord Avenue is classified as *Flooded Isolated Submerged* in the Preliminary Flood Emergency Response Classification of Communities, and the *NSW Floodplain Development Manual 2005* includes a principle that “*Evacuation must not require people to drive or walk through flood water.*”

As the site is located in a Flood Planning Area and is seeking to **significantly increase the development and/or dwelling density of that land**, the proposal is **inconsistent with the following requirements of the 9.1 Direction 4.1 Flooding**, that a planning proposal must not:

- *permit development in floodway areas* (the site becomes a floodway in a PMF event);
- *permit development for the purposes of residential accommodation in high hazard areas* (the site has only a single evacuation route that becomes a Floodway in 1% AEP);
- *result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities* (it is expected that the proposal will result in increased Government spending on ecological remediation in the Sydney Olympic Parklands and emergency evacuation via George Street).
- The proposal is seeking to significantly increase residential development (10-40 storey towers) in a Flood Planning Area and a high hazard area, which may result in significant flood impacts to other properties (Sydney Olympic Parkland ecologically sensitive land) and increased requirement for Government spending (SOPA, SES).

The site is at the low point in the overall catchment, which has majority flat grades and shallow water table and discharges into the Sydney Olympic Parklands, which is tidal and only slightly lower in elevation. The parklands are also environmentally sensitive land that includes the Badu Mangroves precinct. The mangrove forest is protected marine vegetation and the largest remnant mangrove forest in the Sydney Harbour-Parramatta River estuary. It is maintained by the SOPA and the responsibility of the State Government to ameliorate for flooding impacts. It is already under threat by sea level rise ¹.

¹ 20 years of healing: Delivering the ecological legacy of the Green Games. SOPA. June 2020.
<https://www.sydneyolympicpark.nsw.gov.au/sites/default/files/2023-11/2021%20Biodiversity%20Ebook.pdf>

Any additional flooding would result in additional and ongoing maintenance of the Sydney Olympic Parklands by SOPA to minimise impacts, especially silting of the Badu mangroves culvert that was constructed in 2019 by the SOPA to improve drainage and reverse mangrove dieback that was due to water-logging and poor drainage. Free flow of the culvert is essential for the life and health of the mangroves. Additional silting from additional flooding would increase the need to manually clear the culvert. SOPA's *20 years of healing: Delivering the ecological legacy of the Green Games* (June 2020) states that "*Whilst the need for more development activities in the precinct and in closer proximity to estuarine wetlands is well understood it is also given utmost priority to not encourage such development at the expense of ecological integrity of the wetlands*" (ibid. pg 91).

The 9.1 Direction requires that planning proposals must not "*result in a significantly increased requirement for government spending on ... flood mitigation ... which can include but are not limited to the provision of ... flood mitigation infrastructure and utilities.*" Given the low elevation of the site, the discharge of flood waters from the site into the Sydney Olympic Parklands (and only possible at low tide), and the vulnerability of the mangroves to the effects of inundation and siltation, the proposal could result in significantly increased government spending to minimise (as much as possible) the effects of increased flooding on the parklands.

Planning Proposals

The site has been subject to several proponent-initiated planning proposals and a scoping proposal, all of which have been refused by Council, the Local Planning Panel, and the Sydney Eastern City Regional Panel – due to the land being significantly flood prone and inconsistent with Local Planning Directions. The SSDA proposal exceeds the development capacity of all previous proposals, which have all been comprehensively refused at State and local government levels, due to the risks associated with locating development on significantly flood prone land.

On 29 April 2021, a Rezoning Review for 7 Concord Avenue (PP-2020-536; PP_2017_CANAD_005_00) was ultimately refused by the Department of Planning, Industry and Environment (DPHI) following a recommendation that it be refused by the Sydney Eastern City Regional Panel. On 11 March 2021, the Sydney Eastern Planning Panel advised that rezoning of 7 Concord Ave is inconsistent with good planning principles and with Ministerial Direction 4.3 pertaining to flooding; and recommended that rezoning of the site should not proceed. The Rezoning Review followed a refusal by Council, supported by advice from the Local Planning Panel. The reason for refusal by all decision makers was inconsistency with section 9.1 direction 4.3 pertaining to flood prone land. DPHI's finalisation report noted that "*the inconsistency is **not** of a minor nature.*"

On 28 September 2021, Council also refused a planning proposal for 202 George Street. The refusal was based on inconsistency with 9.1 Direction 4.3 pertaining to flood prone land, as it would have intensified residential development within a floodway and was not adequately justified by a flood and risk impact assessment; was inconsistent with 9.1 Direction 7.3 Parramatta Road Corridor Urban Transformation Strategy, in effect, abandoning the Strategy. Addressing the Flooding Direction would require substantial flood mitigation works to be designed, constructed and approved

by Council/other agencies, and would result in substantially increased government spending on flood mitigation measures, infrastructure and services. The proposal also lacked site specific merit with regard to the proposed density and building height, flood mitigation measures, traffic mitigation measures, active transport delivery, overshadowing and heritage impacts, and insufficient provision of open space and social infrastructure.

On 17 October 2024, the Sydney Eastern City Regional Panel again refused a Planning Proposal for 7 Concord Avenue (PP-2024-499), and the Department updated the Planning Portal to state that the proposal was Not Supported. The Pre-Gateway Review followed a refusal by Council and the Local Planning Panel. The reasons for refusal by the Regional Planning Panel (and Council and the Local Planning Panel) were:

- *Inconsistency with Section 9.1 Direction 4.1 Flooding and its consistency requirements. The flooding hazard affecting the site raises substantial issues that have not been adequately resolved to demonstrate a compatible development outcome can be achieved*
- *There was insufficient justification for the increase in height and floor space ratio beyond that recommended in the PRCUTS and the flooding hazards affecting the site. The Panel considered this would result in a redevelopment which would not achieve good planning outcomes*
- *In the absence of a precinct masterplan with the supporting infrastructure there is the potential for unplanned costs to the community to resolve flooding issues. The planning proposal did not provide evidence that the risk of this was low or non-existent.*

Consistency with Ministerial Directions is a requirement that must be satisfied under the LEP Making Guideline to demonstrate strategic merit when an Environmental Planning Instrument is proposed to be amended.

The Department should note the advice provided by the Local Planning Panel on previous proposals to rezone the site, and the decisions of Council and the Eastern City Planning Panel to refuse the proposals due to inconsistency with the requirements of Local Planning Direction 4.1 - Flooding. It should also be acknowledged that circumstances in relation to flooding have not changed and the proposed rezoning will remain inconsistent with the Local Planning Direction.

There are no engineering solutions or mitigation measures that are possible to enable the development to meet the requirements of the Direction, which seeks to rezone land to residential where additional people will be placed at risk on flood prone land.

Recommendation

Noting the reasons that the three previous planning proposals were refused by the Regional Planning Panel, Council and the Local Planning Panel, the Department accept that the rezoning of the subject land lacks strategic merit and should not proceed.

Should the SSDA proceed, it is requested that SEARs be required to be consistent with 9.1 Direction 4.1 Flooding, to confirm that the residential density

of the land will not be increased and that (as a minimum) be supported by a flood and risk impact assessment, prepared in accordance with the principles of *the Floodplain Development Manual 2005* and consistent with the relevant planning authorities' requirements;

In addition to the above, it is requested that any EIS address the matters outlined below.

Statutory and strategic context

The EIS be prepared in accordance with the:

- *Local Environmental Plan Making Guidelines*, including an assessment of the strategic and site-specific merit of the proposal and consistency with relevant planning directions.

The EIS address consistency with:

- *Ministerial Direction 4.1 Flooding*.
- *Ministerial Direction 1.5 PRCUTS*
- The Canada Bay Local Strategic Planning Statement, particularly Action 5.1.

The applicant engage with Council prior to lodgement of an SSDA (as required by the SEARs) to seek feedback on both strategic and site-specific merit of the Proposal, and more detailed feedback on the SSDA scheme.

Density and Heights

The proposed building heights (136m across the site) and Floor Space ratio (5.0:1) are well in excess of the heights and density recommended by PRCUTS for the site, which are 25m and 1.6:1 at 7 Concord Avenue, 16m and 22m and 1.6:1 at 202 George Street, and 8.5m and 0.5:1 along Victoria Avenue.

The proposed heights (10-40 storeys) will result in significant overshadowing of the local area, the public domain (including any future new open space), and Victoria Avenue Public School.

- Building heights and FSRs are to be no greater than those recommended by PRCUTS and subject to the results of the flood and risk impact assessment endorsed by DPHI, precinct-wide traffic study and detailed overshadowing analysis.
- Building heights are to result in no additional overshadowing of Victoria Avenue Public School.

Visual Impact Assessment

- Provide a visual analysis of the development from key viewpoints, including photomontages or perspectives showing the proposed and likely future development.
- Provide a visual impact assessment, which considers the impact of the proposed buildings (compared to the existing situation and the envelope

contained within the Parramatta Road Corridor Urban Transformation Strategy Planning and Design Guidelines) when viewed from key vantage points surrounding the site.

Traffic and Transport

The *PRCUTS Implementation Plan 2016-2023* required that “prior to any rezoning commencing, a Precinct-wide traffic study and supporting modelling is required to be completed which considers the recommended land uses and densities, as well as future Westconnex conditions, and identifies the necessary road improvements and upgrades required to be delivered as part of any proposed renewal in the Precinct.”

The City of Canada Bay, Burwood, and Strathfield Councils, in collaboration with Transport for NSW and the Department of Planning and Environment (DPHI), undertook to prepare the PRCUTS Traffic and Transport Study (October 2022). It applied a methodology that was agreed with TfNSW, using a baseline model of 2019 and uplift models for 2026 and 2036. The study found that by 2036, the study area will see a 35% to 39% increase in traffic from 2019 levels and that impacts need to be mitigated with network traffic improvements that centre around relieving pinch points and on more efficient queue storage.

The Traffic Study identified a significant pinch point at the George Street and Pomeroy Street intersection, which is the only road in and out of the area north of the intersection. It represents a fundamental constraint on the quantum of new housing that is able to be supported north of the intersection, until such a time as the intersection is upgraded. Council has investigated options to upgrade the intersection, however due to the cost of construction, the upgrade has not proceeded.

Given the current level of congestion at the George Street and Pomeroy Street intersection, which currently serves the existing low density residential area and which currently impacts the local road network and Parramatta Road, any increased traffic in the Homebush North precinct has implications for the wider area. No additional development should occur north of the intersection until suitable arrangements are in place to ensure the Level of Service at this intersection will be able to accommodate the increased density on the site and other land north of Pomeroy Street, including within the Homebush TOD and HDA SSDs, such as at 1 King Street, Concord West.

- The SEARs should include a requirement that a precinct-wide traffic study be undertaken that includes SIDRA modelling, to determine impacts on the local road network, especially the George Street and Pomeroy Street intersection.
- The traffic study should assess vehicle movements associated with the proposed development and consider the cumulative increase in vehicle movements arising from the Homebush Transport Oriented Development precinct and the SSDA for 1 King Street, Concord West.
- The EIS should address any interventions recommended by the traffic study.
- Delivery mechanisms that enable early delivery of critical road network improvements should be investigated and implemented alongside this SSDA.

Affordable Housing

The proposal intends to include a minimum of 10% affordable housing for 15 years, rather than in perpetuity, as required by the Eastern City Direct Plan (minimum of 5-10%), PRCUTS (minimum of 5%) and the Canada Bay Local Strategic Planning Statement (minimum of 5-10%). The proposal is therefore inconsistent with 9.1 Direction 5.1 PRCUTS.

- The DPHI should test capacity and feasibility of the Site to deliver additional affordable housing in accordance with 6.12 of the *Canada Bay Local Environmental Plan 2013* and the *Canada Bay Affordable Housing Contribution Scheme*, with this provided in perpetuity .
- The EIS should confirm the quantum of affordable housing to be provided, and an amendment progressed to the *Canada Bay Local Environmental Plan 2013*.

Housing diversity

The proposal fails to provide a tangible diversity of housing, other than affordable housing for a period of 15 years. The proposal is therefore inconsistent with 9.1 Direction 5.1 PRCUTS.

The proposal should include a range of dwelling types to suit various household types, including terraces and townhouse/courtyard style dwellings and larger apartments suitable for families.

Design Quality

- The development or concept approval is to be subject to a competitive design process in accordance with Clause 6.14 of the *Canada Bay Local Environmental Plan 2013* and in accordance with an endorsed brief and Design Excellence Strategy.
- Recommendations of the jury and Design Integrity Panel are to be addressed prior to lodging the EIS.

Other

- Schools Infrastructure NSW should be consulted regarding the potential overshadowing of Victoria Avenue Public School, as well as demand for new school places in the immediate school catchments that will be required to support the proposed increase in population on the subject site.
- The Sydney Olympic Park Authority should be consulted regarding the likely adverse impacts on the parklands and the environmentally sensitive Badu mangroves as a result of likely increased flooding.
- Applicable Departmental SEARs requirements in relation to public space, trees and landscaping, contamination and remediation, waste management, social impact, ecological sustainable development, and flooding and hazards and risks not mentioned above, need to be addressed.

Council would welcome the opportunity to provide further input on any proposal that is progressed for the Site.

Should you have any enquiries in relation to this matter, please contact Helen Wilkins on 9911 6292.

Yours faithfully

A handwritten signature in black ink, appearing to read 'm. cologna', is positioned above a thin horizontal line.

Monica Cologna

Director, Environmental Planning