

## Item 11.

### **Green Square Trunk Drain - Updated Project Agreement with Sydney Water**

**File No: S121015**

#### **Summary**

This report requests Council approve a contract variation to the executed Project Agreement with Sydney Water for the delivery of the Green Square Trunk Drain Project.

The Green Square urban renewal area is currently transitioning from an old industrial precinct to a new commercial, retail and residential centre. The catchment area is however located on a floodplain and during periods of heavy rainfall, significant flooding problems were identified which affected the ability for both public infrastructure and private development to take place.

In the Green Square – West Kensington Catchment Floodplain Risk Management Study (May 2013) and the Green Square Floodplain Risk Management Plan (May 2013), a flood mitigation solution was proposed for the Green Square urban renewal area. This solution involves the construction of a 2.4 kilometre trunk stormwater drain from Link Road, Zetland to the Alexandra Canal (Green Square Trunk Stormwater Project). It was identified that the construction of this trunk drain would reduce high hazard flooding, mitigate flood risks and increase development potential in the area. The Alexandra Canal Catchment Floodplain Risk Management Strategy and Plan (March 2014) also identifies the trunk stormwater drain as critical to improving flooding in the Shea's Creek sub-catchment.

On 7 April 2014, Council approved the substantive terms of a Project Agreement between the City and Sydney Water Corporation. The Project Agreement detailed each parties' share of the project cost, asset ownership share, the project scope, a preliminary tender reference design, the proposed procurement model to deliver the project and the governance model. This was executed on the 30 June 2014.

On 8 December 2014, Council approved the formation of an Alliance between the City and Sydney Water Corporation as Owner Participants and UGL Engineering Pty Ltd, Seymour Whyte Constructions Pty Ltd, Parsons Brinckerhoff Australia Pty Ltd and RPS Manidis Roberts Pty Ltd as the Non-Owner Participants to deliver the Green Square Trunk Stormwater Drain. The Alliance was known as the Drying Green Alliance.

Works commenced in February 2015. On 29 February 2016, Council approved additional scope for the project to include a shared pedestrian and cycle path along part of the Alexandria Canal. On 12 December 2016, Council approved scope changes and additional funding for the project. The scope changes involved staging of the delivery of the eastern section (approximately 400 metres) of the project from Rose Valley Way to Link Road due to buildings at the time being located over the stormwater drain, with delivery of this section to be timed with the redevelopment of three properties that the drain passes through. Two of the three properties now have Voluntary Planning Agreements (VPA) in place and construction of the works are substantially complete. The third property has a draft Voluntary Planning Agreement under negotiation and the works are expected to commence in the next two years.

The project has reached practical completion for all separable portions and the Alliance agreement has reached a Deed of Settlement. The Deed was executed on 27 October 2021 (Attachment C).

A Deed of Asset Ownership and amendment to the original Project Agreement for the Green Square Trunk Stormwater Project is required to close out remaining affairs with Sydney Water including asset ownership, easement arrangements, descoping of part of the eastern section (approximately 400 metres) of the project from Rose Valley Way to Link Road and acknowledge the Deed of Settlement on the Project Alliance Agreement.

A draft Deed of Asset Ownership and amendment to the original Project Agreement for the Green Square Trunk Stormwater Project has now been prepared and is attached as confidential Attachment B to this report, for the approval of Council.

## Recommendation

It is resolved that:

- (A) Council note that the delivery of the eastern section (approximately 400 metres) of the project from Rose Valley Way to Link Road has been staged due to buildings at the time being located over the stormwater drain. Delivery of this section is being timed with the redevelopment of three properties via Voluntary Planning Agreements, of which two are substantially complete;
- (B) Council approve the substantive terms of the Deed of Asset Ownership and amendment to the original Project Agreement for the Green Square Trunk Stormwater Project between the City and Sydney Water Corporation, as detailed in Confidential Attachment B to the subject report; and
- (C) authority be delegated to the Chief Executive Officer to finalise negotiations, execute and administer the Deed of Asset Ownership and amendment to the original Project Agreement, substantially on the same terms shown at Confidential Attachment B to the subject report.

## Attachments

- Attachment A.** 7 April 2014 Resolution of Council - Green Square Trunk Drain - Project Agreement with Sydney Water
- Attachment B.** Draft Deed of Asset Ownership and amendment to the Original Project Agreement (Confidential)
- Attachment C.** Draft Deed Attachments - Works Valuation and Ownership Allocation Report and Deed of Settlement (Confidential)

**Background**

1. On 24 June 2013, Council adopted the Green Square - West Kensington Catchment Floodplain Risk Management Study (May 2013) and the Green Square Floodplain Risk Management Plan (May 2013). The Green Square – West Kensington catchment area is a sub-catchment of the Alexandra Canal catchment and is approximately 2.5 square kilometres. The area has, in the past, experienced significant flooding problems during periods of heavy rainfall.
2. Stormwater flows are currently conveyed through a series of underground pipe networks. Flows that exceed the capacity of the existing pipe network are conveyed on ground, along streets, through open spaces and in some instances, private property.
3. The Green Square urban renewal area, which falls within this catchment, is undergoing a major urban renewal phase, transitioning from an industrial area to a high density residential, retail and commercial precinct with community facilities, including open recreational spaces. Within the urban renewal area, trapped low points were identified at Botany Road and Joynton Avenue and during high rainfall events, these sag points were known to reach flooding levels of over 1.1 metres and 2.3 metres, respectively.
4. The development of the Green Square Town Centre, which lies within the boundaries of Joynton Avenue and Botany Road, was dependent on a flooding solution being implemented to mitigate the flood risks through the town centre. If a flood mitigation solution was not implemented, development of the town centre, which includes public infrastructure works and private development, comprising of retail, commercial and residential developments, would have been hindered.
5. In the Green Square – West Kensington Catchment Floodplain Risk Management Study (May 2013) and the Green Square Floodplain Risk Management Plan (May 2013), a flood mitigation solution was proposed for the Green Square urban renewal area. This solution involves the construction of a 2.4 kilometre trunk stormwater drain from Link Road, Zetland to the Alexandra Canal (Green Square Trunk Stormwater Project). It was identified that the construction of this trunk drain would reduce high hazard flooding, mitigate flood risks and increase development potential in the area. The Alexandra Canal Catchment Floodplain Risk Management Strategy and Plan (March 2014) also identifies the trunk stormwater drain as critical to improving flooding in the Shea's Creek sub-catchment.
6. Together with Sydney Water, the City conducted a number of stormwater modelling investigations and planning related works to identify the feasibility of constructing a trunk drain of this size and to also determine a suitable alignment for the proposed trunk drain.
7. The City and Sydney Water recognised the significance of this Project and both parties secured funds to support its collaborative delivery and engaged KPMG to draft a procurement strategy and governance framework to deliver the project.
8. On 7 April 2014, Council approved the substantive terms of a Project Agreement between the City and Sydney Water Corporation. The Project Agreement detailed each parties' share of the project cost, asset ownership share, the project scope, a preliminary tender reference design, the proposed procurement model to deliver the project and the governance model. This was executed on 30 June 2014.

9. On 8 December 2014, Council approved the formation of an Alliance between the City and Sydney Water Corporation as Owner Participants and UGL Engineering Pty Ltd, Seymour Whyte Constructions Pty Ltd, Parsons Brinckerhoff Australia Pty Ltd and RPS Manidis Roberts Pty Ltd as the Non-Owner Participants to deliver the Green Square Trunk Stormwater Drain. The Alliance was known as the Drying Green Alliance.
10. Works commenced in February 2015.
11. On 29 February 2016, Council approved additional scope for the project to include a shared pedestrian and cycle path along part of the Alexandria Canal.
12. On 12 December 2016, Council approved scope changes and additional funding for the project. The scope changes involved staging of the delivery of the eastern section (approximately 400 metres) of the project from Rose Valley Way to Link Road, with delivery of this section to be timed with the redevelopment of three properties that the drain passes through. This change was required due to access issues beneath functioning commercial properties. Two of the three properties now have Voluntary Planning Agreements (VPA) in place to manage the works, with the third expected in the next two years.
13. Sydney Water's Green Square Trunk Drain owed commitment with the City is proposed to be met by Sydney Water reimbursing the City's costs to date and fully funding the design and construction of portions of the Erskineville Flood Safe revised scope of work. Sydney Water and Council have agreed to this in principle pending Council approval. The scope of the Erskineville Flood Safe project to be delivered by Sydney Water is part of another concurrent Committee report.
14. The Green Square Trunk Drain project has reached practical completion for all separable portions (excluding the eastern section of the project from Rose Valley Way to Link Road ) and the Alliance Non-Owner Participants and Owner Participants have reached a Deed of Settlement. The Deed of Settlement was executed on 27 October 2021.
15. A works valuation and Ownership Allocation report was prepared by Quantity Surveyors in July 2020 to allocate the assets to the Owner Participants in line with expenditure. This has been referred to within the Deed of Asset Ownership and amendment to the original Project Agreement (Attachments B and C).

#### **Deed of Asset Ownership and amendment to the original Project Agreement**

16. A Deed of Asset Ownership and amendment to the original Project Agreement for the Green Square Trunk Stormwater Project is required to close out remaining affairs with Sydney Water including asset ownership, easement arrangements, descoping of the eastern section (approximately 400 metres) of the project from Rose Valley Way to Link Road and acknowledge the Deed of Settlement on the Project Alliance Agreement.
17. A draft Deed of Asset Ownership and amendment to the original Project Agreement for the Green Square Trunk Stormwater Project has now been prepared and is attached as Confidential Attachment B to this report, for the approval of Council.
18. The parties agree to release each other from any obligation under the Project Agreement to complete that part of the separable portion 1 works that have not reached practical completion.

19. The parties have agreed that sections of the works will be solely owned by each party in accordance with the terms of the deed and Project Agreement (Attachment B).
20. The parties have acknowledged the status of the separable portion 1 works and agreed to certain amendments to the Project Agreement in accordance with the terms of the deed (Attachment B).
21. Under the revised agreement, Sydney Water will:
  - (a) be responsible for the care and maintenance of the agreement allocated Sydney Water Assets from one minute after the effective signed date; and
  - (b) review the existing easements on 130 Joynton Avenue, Zetland and assist the City where possible to update easement requirements on that section of land.
22. Under the revised agreement, the City will be responsible for the care and maintenance of the agreement allocated City assets from one minute after the effective signed date.
23. The parties agree they are required to pursue for the benefit of the relevant asset owner, any rights that the parties have in their capacity as Project Owner against the Non-Owner Participants regarding the rectification of any Defects.

### **Financial Implications**

24. Sydney Water's outstanding commitment for the descoped eastern section (approximately 400 metres) of the project from Rose Valley Way to Link Road will be used to deliver the Erskineville Flood Safe scope of work and reimburse the City for its cost to date on that Project.
25. The Long Term Financial Plan recently adopted by Council takes into account the proposed variation.

### **Relevant Legislation**

26. Local Government Act 1993, the Local Government (General) Regulation 2021.
27. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

28. Attachments B and C contain confidential commercial information which, if disclosed, would:
  - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
  - (b) prejudice the commercial position of the person who supplied it.
29. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

### **Critical Dates / Time Frames**

30. Signage of the Deed of Asset Ownership and amendment to the original Project Agreement for the Green Square Trunk Stormwater Project by the end of 2022.
31. Two of the three properties within the eastern section (approximately 400 metres) of the project from Rose Valley Way to Link Road now have Voluntary Planning Agreements (VPA) in place and construction of the works are substantially complete. The third property has a draft Voluntary Planning Agreement under negotiation and the works are expected to commence in the next two years.

### **KIM WOODBURY**

Chief Operating Officer

Ailie Silkman, Specialist Project Manager