

## **Ashmore Precinct Trunk Stormwater Project - Amendment to Project Agreement with Sydney Water**

**File No: X008356.006**

### **Summary**

This report requests Council approve a contract variation to the executed Project Agreement with Sydney Water for the delivery of the Ashmore Precinct Trunk Stormwater Project (the "Project").

The Ashmore Precinct urban renewal area is transitioning from an old industrial precinct to a new high density residential and commercial centre. However, the area is located on a floodplain and, during periods of heavy rainfall, significant flooding problems have been identified which affect the ability for both public infrastructure and private development to take place.

The Alexandra Canal Floodplain Risk Management Plan (May 2014) proposed a flood mitigation solution for the Ashmore Precinct urban renewal area. This solution involved the original project scope of constructing approximately 650 metres of stormwater pipes from Coulson Street, Erskineville to the Alexandra Canal (Trunk Drain). It was identified that the construction of this Trunk Drain would reduce high hazard flooding and mitigate flood risks for the additional 6,000 people who will ultimately live in this precinct.

The City and Sydney Water entered a Project Agreement to deliver the original project scope and equally share the project costs (that is, each party bears 50 per cent of the costs). The Project Agreement detailed each parties' share of the project cost, asset ownership share, the project scope and an estimated project cost. This was approved by Council on 27 June 2016 (Attachment A).

Further flood studies, value engineering and concept design development resulted in significant scope reduction and change in order to resolve construction issues and reduce project costs. The updated modelling confirms the significant stormwater works already undertaken and to be undertaken as part of the redevelopment of the Ashmore precinct will significantly reduce flooding in the precinct. The current scope involves construction of a large inlet structure on Coulson Street, a Transition Structure within 165-175 Mitchell Road, culvert improvements on Euston Road and short-term flap gate(s) installation along Burrows Road, Erskineville. This reduced scope will still meet the original objectives of the Project.

Sydney Water have agreed in principle to cover the City's costs on the Project to date and deliver the inlet structure on Coulson Street and short-term flap gate(s) installation along Burrows Road in Erskineville. The cost of delivery of these two assets will offset the City's costs of the descoped upstream portion of the Green Square Trunk Drain project which previously was to be constructed by Sydney Water and the City under the Green Square Trunk Drain project agreement but is now to be through the mechanism of Voluntary Planning Agreements. Sydney Water intend to enter into a third-party agreement with Transport for NSW to deliver the culvert improvements on Euston Road.

The Transition Structure scope will be delivered on behalf of the City by the developer at 165-175 Mitchell Road via an existing Voluntary Planning Agreement and then dedicated back to Sydney Water. A long-term solution at Burrows Road, Erskineville is also outside of this agreement and involves local stormwater drainage improvements; pending development in the area.

A revision to the Project Agreement is required to update the project scope, asset delivery responsibility, ownership, and reimbursement of the City's costs.

A draft contract variation to the original Ashmore Project Agreement has been prepared and is at Confidential Attachment B for the approval of Council. The contract variation provides that Sydney Water reimburse the City's costs on the Project to date and deliver the inlet structure on Coulson Street, short-term flap gate(s) installation along Burrows Road in Erskineville and endeavour to deliver the culvert improvements on Euston Road with third party (TfNSW) as part of Sydney Water's program of works for the Ashmore precinct.

This report recommends that Council approve a contract variation to the executed Project Agreement with Sydney Water for the delivery of the revised Ashmore Precinct Trunk Stormwater Project scope.

## Recommendation

It is resolved that:

- (A) Council note that the updated extensive flood modelling for the Ashmore Precinct Trunk Stormwater Project confirms the significant stormwater works, already undertaken and to be undertaken as part of the redevelopment of the Ashmore precinct, will significantly reduce flooding in the precinct;
- (B) Council note that the Concept Design Report in Confidential Attachment C to the subject report has recommended the scope include construction of a large inlet structure on Coulson Street, Transition Structure within 165-175 Mitchell Road, culvert improvements on Euston Road and short-term flap gate(s) installation along Burrows Road, Erskineville. This reduced scope will still meet the original objectives of the Project;
- (C) Council approve the substantive terms of the draft contract variation, set out in Annexure 1 to the Original Ashmore Project Agreement between the City and Sydney Water Corporation for the Ashmore Precinct Trunk Stormwater Project, as detailed in Confidential Attachment B to the subject report;
- (D) Council note that, as detailed in Confidential Attachment B to the subject report, on execution of the contract variation, the new scope will be split between the parties for delivery. Sydney Water will engage third party service providers for their works and the City will complete their works under an existing Voluntary Planning Agreement (VPA);
- (E) Council note that, as detailed in Confidential Attachment B to the subject report, Sydney Water will reimburse the City's costs on the project to date to offset Green Square Trunk Drain descoped works, Sydney Water will deliver all scope not covered by an existing VPA and both parties will cover their own costs after execution;
- (F) Council not invite tenders for the City's works in accordance with the tendering requirements set out in section 55 of the Local Government Act 1993 as the work will be completed under an existing Voluntary Planning Agreement; and
- (G) authority be delegated to the Chief Executive Officer to finalise negotiations, execute and administer the contract variation to the Original Ashmore Project Agreement, based on terms substantially the same as the terms shown at Confidential Attachment B to the subject report.

## Attachments

- Attachment A.** 27 June 2016 Resolution of Council - Ashmore Precinct Trunk Stormwater Project - Project Agreement with Sydney Water
- Attachment B.** Draft Annexure 1 to Variation Letter Ashmore Estate (Confidential)
- Attachment C.** Erskineville Flood Safe Concept Design Report (Confidential)

## Background

1. On 17 March 2014, Council adopted the Alexandra Canal Flood Study, Alexandra Canal Floodplain Risk Management Study and the Alexandra Canal Floodplain Risk Management Plan (updated May 2014). The Munni Street – Erskineville catchment area is a sub-catchment of the Alexandra Canal catchment and is approximately 2.2 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 Ashmore Precinct urban renewal area, which falls within this catchment, is currently undergoing a major urban renewal phase, transitioning from an old industrial precinct to a high density residential, retail and commercial precinct with community facilities, including open recreational spaces (refer to image below). Within the urban renewal area, trapped low points were identified at Macdonald Street, Mitchell Road and Coulson Street and, during high rainfall events, these low points have previously been known to reach flood levels of over one metre.



Image: Aerial view showing Ashmore Precinct and the Alexandra Canal.

4. The development of the Ashmore Precinct is dependent on a flooding solution being implemented to mitigate the flood risks through the precinct. If a flood mitigation solution is not implemented, then development outcomes will be poor, and the City will fail to meet one of the commitments of the Alexandra Canal Floodplain Risk Management Plan as required under the NSW Government Flood Prone Land Policy.

5. The Alexandra Canal Floodplain Risk Management Study (2014) reviewed the current status of flooding and identified a number of flood mitigation solutions for the catchment area. One recommendation involved the construction of a large trunk stormwater drain from Coulson Street, Erskineville to the Alexandra Canal. It was identified that the construction of this Trunk Drain would reduce high hazard flooding and mitigate flood risks for the additional 6,000 people who will ultimately live in this precinct.
6. Together with Sydney Water, the City completed an options review in May 2016 to identify and assess possible size, alignment and methodology options for the Trunk Drain. The Trunk Drainage options review led to the selection of the preferred option (Option 6) which involved a new pipeline connection from the intersection of Coulson Street and Mitchell Road down to Sydney Park carpark (micro-tunnelling) and continuing east under the Sydney Park using open cut methodology to an amplified Munni Street Channel. This options review and preferred option was referred to in the original draft project agreement. It made a number of significant assumptions and recommended hydraulic modelling, flood modelling, site investigations and consultation with authorities for major utilities be undertaken in further design development stages.
7. The City and Sydney Water entered into a Project Agreement to deliver the original project scope based on the preferred option and equally share the project costs (that is, each party bears 50 per cent of the costs). The Project Agreement detailed each parties' share of the project cost, asset ownership share, the project scope and an estimated project cost. The Project Agreement was approved by Council on 27 June 2016.
8. Since project commencement, the title of this Project was changed to Erskineville Flood Safe by Sydney Water.
9. A further detailed Options Assessment report was completed by the City and Sydney Water in August 2019. It included a preliminary environmental assessment, hydraulic assessment, geotechnical and contamination assessment, condition assessment for the Munni Street Channel to Alexandra Canal, cost estimates review, constructability reviews with contractor input and subsequent value engineering modelling.
10. This assessment resulted in significant scope reduction and change to resolve major construction issues, minimise community impacts and reduce project costs. The preferred option involves the construction of a large stormwater inlet structure on Coulson Street, large Transition Structure within 165-175 Mitchell Road, culvert improvements on Munni Channel beneath Euston Road and short-term flap gate(s) installation along Burrows Road in Erskineville. This preferred option results in minor increased flooding downstream in Burrows Road area which is mostly light industrial warehouses with adjoining administration offices.

11. A concept design report was prepared in September 2020 to develop the preferred option and prepare concept design drawings. This included additional flood modelling and concept design development for the Burrows Road short-term and long-term portion of works. A damages assessment of existing flood affected industrial properties fronting Burrows Road determined a marginal increase in property flood damage costs as a result of the short-term preferred option. A long-term solution at Burrows Road involves local stormwater drainage improvements. The long-term solution is proposed to be managed as a separate program of works and under a new collaborative project Sydney Water between Sydney Water and the City for delivery within 10 years. Planning work is estimated to start from 2025. The project may not be needed if the area is redeveloped in the medium term as flood risk can be managed by the City requiring new buildings to be at a higher level.

### **Proposed Delivery, Asset Ownership and Funding**

12. The preferred option amendments enable a change to the delivery, ownership and funding for the Project.
13. It is proposed that Sydney Water deliver and own the large stormwater inlet structure on Coulson Street, culvert improvements on Munni channel beneath Euston Road as a third-party agreement with TfSNW and short-term flap gate(s) installation along Burrows Road in Erskineville.
14. It is proposed that the large Transition Structure within 165-175 Mitchell Road is delivered by the City under an existing Voluntary Planning Agreement (VPA) with the developer and dedicated back to Sydney Water.
15. The City also entered another contract with Sydney Water for the joint delivery of the Green Square Trunk Drain project by an alliance of Sydney Water and the City and four construction delivery partners (the "Alliance"). Site work for this project finished in late 2019. A settlement to conclude the project was agreed and executed on 27 October 2021 and the close out of commercial matters between the City and Sydney Water is almost complete. The project scope was to deliver a 2.4 km trunk drain, however, the parties agreed that only about 2 km should be built as part of the joint project between Sydney Water and the City. Three properties at the upstream end of the trunk drain couldn't be accessed at the time due to buildings being constructed over the stormwater drain, so this 400m section was 'descoped' from the contract. The City now has voluntary planning agreements in place for developers to deliver the drain through two of the three properties. Two sections have now been substantially completed. The final VPA is expected to be in place within the next two years, in line with redevelopment of the site. The value of this work is about \$6.94 million and under the Project Agreement Sydney Water are to contribute 46.21% of the cost, or \$3.2 million.
16. Sydney Water's remaining Green Square Trunk Drain commitment of \$3.2 million with the City is proposed to be met by Sydney Water reimbursing the City's costs to date on the Ashmore Precinct Trunk Stormwater Project and fully funding the design and construction of the large stormwater inlet structure on Coulson Street and short-term flap gate(s) installation along Burrows Road in Erskineville and endeavouring to deliver the culvert improvements on Munni Channel beneath Euston Road.
17. Sydney Water and the City acknowledge the importance of the Project to the Ashmore precinct and adjoining areas, and both parties have a strong commitment to the Project.

## Revised Project Agreement

18. A variation of the Ashmore Precinct Trunk Stormwater Project Agreement is required to update the project scope, resolve asset delivery responsibility, asset ownership, funding and reimbursement of the City's costs to date.
19. A draft variation of the Original Ashmore Project Agreement has been prepared and is at Confidential Attachment B for the approval of Council.
20. Under the revised Project Agreement, Sydney Water will:
  - (a) deliver the Coulson Street Inlet and the Burrows Road flap gate(s) works:
    - (i) acting as the sole project manager for all delivery aspects of these elements including design development and construction;
    - (ii) using its preferred contracting model to engage its delivery contractor for these works; and
    - (iii) obtain funding and cover all project costs and risks;
  - (b) endeavour to enter a third-party agreement with TfNSW for the culvert improvements on Munni channel beneath Euston Road. Accordingly, there is no longer an obligation on the City to assist Sydney Water with the delivery of the Euston Road works, other than to provide access to land that may be needed by Sydney Water to facilitate the delivery of the Euston Road works. Sydney Water agrees to notify the City prior to any access requirements, and the City agrees to co-operate and to provide assistance as required;
  - (c) reimburse the City for its costs to date on the Project as outlined in Confidential Attachment B;
  - (d) not make payment for any costs incurred by the City on and from the date of variation of the Project Agreement; and
  - (e) upon completion of construction own and maintain the Coulson Street Inlet, Burrows Road flap gate(s) and Euston Road works in perpetuity.
21. Under the revised Project Agreement, the City will:
  - (a) be responsible for the delivery of the Transition Structure;
  - (b) be responsible for managing the voluntary planning agreement for the delivery of the Transition Structure;
  - (c) provide Sydney Water with a regular opportunity to review any changes made to that part of the Preferred Concept Design relating to the delivery of the Transition Structure;
  - (d) consider and respond to comments that result from Sydney Water's review of those documents;
  - (e) upon completion of construction of the Transition Structure assign all its rights, title, and interests in and to the Transition Structure to Sydney Water; and

- (f) provide reasonable assistance to Sydney Water, to enable Sydney Water to procure the grant of any easement(s) reasonably required by Sydney Water in relation to the ongoing access to, and repair and maintenance of, the Coulson St Inlet, Burrows Road flap gate and Euston Road works.
22. Either party may amend the design of the assets at any time during the term of the Project Agreement with consultation with the other party, if the party determines that the amendments would better achieve or impacts the Project Objectives.
23. Each party will obtain all relevant planning approvals for their respective portions of work. Each party will be the determining authority for all relevant assessments of planning approvals and will make recommendations to the other party accordingly.
24. Both parties will engage in consultation with the relevant authorities or entities to obtain the external approvals for their respective portions of work. Both parties will support the other party to obtain the approvals and will provide that support in a timely manner.
25. Intellectual property generated after the date of variation of the Project Agreement will be managed in accordance with Attachment B.
26. It is recommended that Council approve the substantive terms of the draft variation of the Project Agreement set out in confidential Attachment B between the City and Sydney Water Corporation, and delegate authority to the Chief Executive Officer to finalise negotiations, execute and administer the Project Agreement (as varied) substantially on the same terms shown in confidential Attachment B.

### **Financial Implications**

27. Funding previously allocated for the Ashmore Precinct Trunk Stormwater Project is no longer required. This substantial reduction has mostly been reflected in the recently adopted Long Term Financial Plan.
28. Sydney Water will reimburse the City's costs to date on the Project as outlined in Confidential Attachment B.
29. The long-term solution at Burrows Road industrial area may require funding in future if redevelopment in the area does not occur in the medium term. This will be treated as a separate project with Sydney Water, with planning estimated to start from 2025.

### **Relevant Legislation**

30. Local Government Act 1993 and the Local Government (General) Regulation 2021.
31. 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.



32. Attachments B and C contain confidential commercial information and details of the Project which, if disclosed, would:
  - (a) confer a commercial advantage on a person with whom the City is conducting (or proposes to conduct) business; and
  - (b) prejudice the commercial position of the person who supplied it.
33. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise the City's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.
34. Council not invite tenders in accordance with the tendering requirements set out in section 55 of the Local Government Act 1993 for procuring third party service providers or to deliver the works because a satisfactory result would not be achieved by inviting such tenders, given the following extenuating circumstances:
  - (a) the procurement process for part of these works will be undertaken by Sydney Water. Sydney Water may procure services as required for the works in accordance with the NSW Procurement Policy Framework for NSW Government Agencies 2015; and
  - (b) the City's works will be completed under an existing Voluntary Planning Agreement.

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

35. Finalisation and execution of the contract variation of the Original Ashmore Project Agreement by late 2022.
36. The City understands that Sydney Water will commence delivery of the Coulson Street inlet and flap gates in late 2022 and reach completion by mid-2023.

### **KIM WOODBURY**

Chief Operating Officer

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