

Item 7.**Post Exhibition - Planning Proposal - 242-258 Young Street, Waterloo - Sydney Local Environmental Plan 2012 Amendment and Draft Design Guide**

File No: X093892

Summary

This report follows the public exhibition of Planning Proposal – 242-258 Young Street, Waterloo (planning proposal) and associated draft Design Guide. The planning proposal is to facilitate a 6-storey development comprising a K-12 independent school and an integrated film school.

On 20 and 24 June 2024, the Central Sydney Planning Committee and Council respectively endorsed the planning proposal for submission to the Department of Planning, Housing and Infrastructure, seeking a Gateway Determination. A Gateway Determination was issued on 23 October 2024.

The planning proposal was publicly exhibited from 7 February 2025 to 7 March 2025, and 53 submissions were received.

The NSW State Emergency Service (NSW SES) and the NSW Department of Climate Change, Energy, Environment and Water (DCCEEW) raised significant concerns about the flood risk associated with a sensitive land use, such as a school, on the site. Subsequent advice confirmed they do not support the planning proposal, irrespective of any further mitigation measures being introduced in the planning controls or through detailed design at later stages.

It is recommended that Council request the Minister determine that the planning proposal not proceed under section 3.35 of the Environmental Planning and Assessment Act 1979, given it is not supported by referral public agencies because the identified flood risks cannot be adequately mitigated and managed.

Recommendation

It is resolved that Council:

- (A) note the matters raised in response to the public exhibition of Planning Proposal - 242-258 Young Street, Waterloo and draft Design Guide 242-258 Young Street, Waterloo, as shown in the summary at Attachment A to the subject report;
- (B) note submissions from the NSW State Emergency Service and the NSW Department of Climate Change, Energy, Environment and Water, as shown in full at Attachment B to the subject report, stating they do not support the Planning Proposal - 242-258 Young Street, Waterloo;
- (C) request the Minister determine that the planning proposal, as shown at Attachment C to the subject report, not proceed under section 3.35 of the Environmental Planning and Assessment Act 1979;
- (D) does not approve the draft Design Guide 242-258 Young Street, Waterloo, as shown at Attachment D to the subject report; and
- (E) note the Chief Executive Officer will not execute a draft planning agreement that was publicly exhibited concurrently with Planning Proposal - 242-258 Young Street, Waterloo, shown at Attachment E to the subject report.

Attachments

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| Attachment A. | Summary of Submissions |
| Attachment B. | Submissions from NSW State Emergency Service and the NSW Department of Climate Change, Energy, Environment and Water |
| Attachment C. | Planning Proposal - 242-258 Young Street, Waterloo and relevant appendices |
| Attachment D. | Draft Design Guide - 242-258 Young Street, Waterloo |
| Attachment E. | Draft Planning Agreement |
| Attachment F. | Resolutions of Council and the Central Sydney Planning Committee |
| Attachment G. | Gateway Determination - dated 23 October 2024 |

Background

1. This report follows the public exhibition of Planning Proposal – 242-258 Young Street, Waterloo (planning proposal) and draft Design Guide 242-258 Young Street, Waterloo, (draft DCP), shown at Attachments C and D respectively. An associated draft planning agreement was also publicly exhibited and is shown at Attachment E. The site is shown at Figure 1.

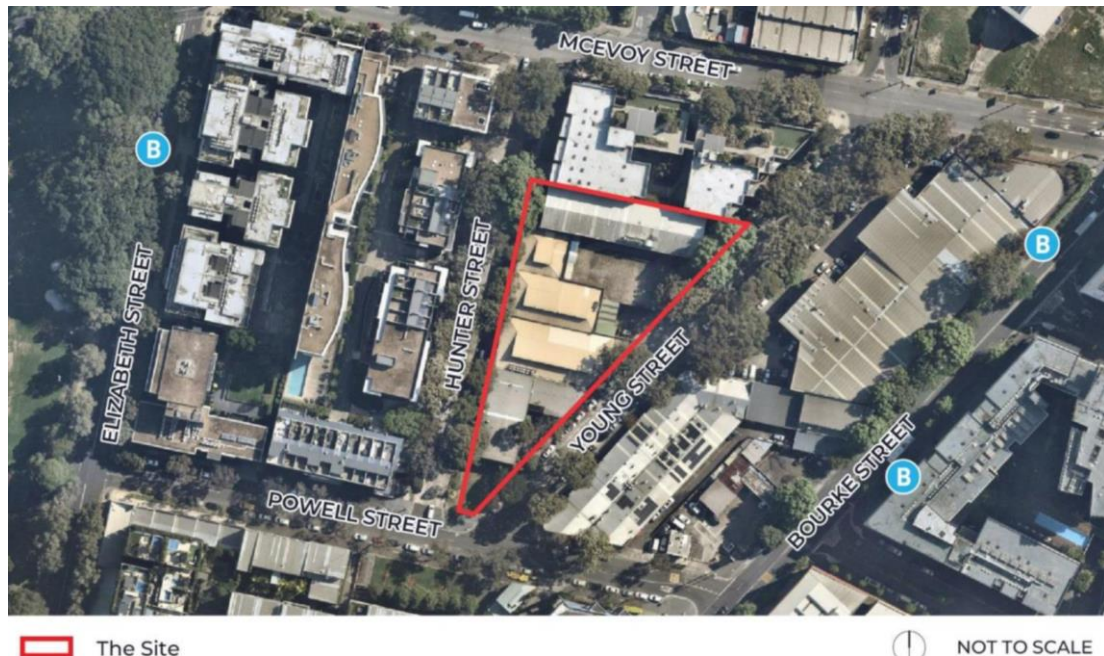


Figure 1: Land affected by the planning proposal

2. The planning proposal was prepared at the request of Sustainable Development Group Ltd (the proponent). The proposal sought to amend the Sydney Local Environmental Plan 2012 (Sydney LEP) to allow for a six-storey development comprising a K-12 independent school and an integrated film school, which is already operating on the site. The proposed changes to building height and floor space ratio were intended to facilitate the redevelopment while ensuring a good contextual fit with adjacent development.
3. Site details, current planning controls, proposed planning controls and a public benefit offer from the landowner are described in detail in the pre-exhibition report to the Transport, Heritage, Environment and Planning Committee and the Central Sydney Planning Committee (CSPC), available at: <https://city.sydney/242-258-young-street>.
4. On 20 and 24 June 2024, the Central Sydney Planning Committee (CSPC) and Council endorsed the planning proposal for submission to the Minister for Planning and Public Spaces, seeking a Gateway Determination. The Council and CSPC resolutions are provided at Attachment F.
5. The Department of Planning, Housing and Infrastructure (Department) issued a Gateway Determination on 23 October 2024, shown at Attachment G. The City of Sydney (the City) was required by the Gateway to consult with relevant stakeholders and the delegation for plan-making was granted to the City.

The site is flood affected

6. The site is flood-affected, with flood depths reaching up to 1.7m in a 1-in-100-year flood event and predicted to exceed 4m in a probable maximum flood. In a probable maximum flood, floodwaters can reach velocities of 3 to 4 metres per second, resulting in deep, fast-moving water that would entirely inundate the site, including the ground floor of the proposed school.
7. Several key factors influence flood behaviour around the site. During a flood event, floodwaters flow south along Young Street and Hunter Street. The intersection of Hunter Street, Young Street, and Powell Street acts as a low point where floodwaters pool and rise. Additionally, floodwaters rise along Young and Hunter Streets before reaching the site, creating a 'flood island' effect, where surrounding streets become inundated before the site itself.
8. A flood study was prepared and submitted as part of the planning proposal that found flooding risks could be mitigated where appropriate design mitigations were made. It proposed a "shelter in place" strategy where there was a flooding event, that is, the occupants of the building are to remain on unaffected levels in the building in the event of a flood.
9. The planning proposal detailed a concept building design that responded to the requirements of the flood study and a preliminary operational management plan, including a flood emergency response plan that utilised a shelter in place strategy. This information is typically included at the planning proposal stage to demonstrate alignment with relevant ministerial directions and to demonstrate that flood risk can be mitigated for the site. The detailed building design and the final operational management plan are not approved at the planning proposal stage and can be further developed and may be approved with a development application.
10. The planning proposal addresses Ministerial Direction 4.1 which requires the development of flood prone land to be consistent with the Government's Flood Planning Framework and ensure LEP provisions are commensurate with flood behaviour and consider potential impacts on and off the land.
11. The Department's Gateway Determination Report found the planning proposal was inconsistent with the Ministerial Direction, but that the inconsistency was justified given the site is currently developed to a similar footprint for commercial purposes including education purposes and that the extent of new development permitted under the planning proposal is not significant. It also noted the existing zoning of the site allows for the proposed land uses, and the proposal seeks only a modest increase to development capacity. Additionally, it noted development permitted under the planning proposal will not result in significant flood impact to other properties.
12. Notwithstanding the above, the Gateway Determination required the planning proposal be referred to the NSW State Emergency Service (SES) and the NSW Department of Climate Change, Energy, Environment and Water (DCCEEW), given that the proposal would facilitate the development of a school with a significant daily attendance of children and young people.

The NSW Government has released Shelter in Place Guidelines

13. On 7 January 2025, the NSW Government released new Shelter in Place Guidelines, providing a step-by-step checklist for determining whether sheltering in place is an appropriate emergency response on a site. A key factor in this assessment is flood behaviour on surrounding roads during a probable maximum flood. If nearby roads have a high flood hazard rating of H5 or H6 in a probable maximum flood, the Guidelines indicate that the site would not be suitable for a shelter in place strategy for a sensitive use like a school.
14. The Guidelines also emphasise that sensitive land uses, such as schools, hospitals, and nursing homes, may not be appropriate for sheltering in place due to the specific risks involved.
15. Given the proposed land use and the flood hazard rating of Young and Hunter Streets, the Guidelines indicate sheltering in place is not a suitable flood risk management strategy for this site. A school presents additional challenges in safely implementing such a strategy.

Public authorities have objected to the planning proposal

16. Submissions were received from both the NSW SES and DCCEEW raising concerns about flooding risks on and around the site. The submissions, while noting that a school was not an ideal use of the site, suggested additional flood modelling, potential design mitigations and amendments to the preliminary operational management plan could address their concerns.
17. The City referred these submissions to the proponent and advised that further flood modelling may be required following further advice from SES and DCCEEW.
18. The City is required to resolve matters raised by public authorities before it can exercise its delegation to make the changes to the Sydney LEP proposed by the planning proposal.
19. Given the unresolved matters raised, the City met with NSW SES and DCCEEW on 27 March 2025 to better understand their concerns and to explore whether additional flood modelling and/or design changes might be required to mitigate their concerns. However, both agencies advised that they could not support the planning proposal under any circumstances. Their position is based on the school being a sensitive use where the risk is greater than other potential uses of the site due to the possible behaviour of children, parents and carers in a flood event. The agencies expressed concern that, during a flood, children may attempt to leave the building, while parents or carers might similarly take unsafe actions in attempting to reach their children.
20. In the probable maximum flood, the school would become inundated (by over 1m) and isolated with high hazard flood waters in the surrounding roads. The proposal relies on a shelter in place strategy to manage the risk, however NSW Government guidelines don't support such a strategy for sensitive land uses such as a school, affected by high hazard flood waters in the probable maximum flood event.
21. Following the meeting, the City requested DCCEEW and NSW SES provide further submissions to clarify their objections and opposition to the planning proposal. The updated letters were received on 4 April and 10 April 2025 respectively. These submissions are provided at Attachment B.

22. The proponent was advised of the advice provided by DCCEEW and NSW SES on 15 April 2025 and they requested a meeting with those organisations to understand their objections.
23. The City, DCCEEW, SES, the proponent and their planning and flooding consultants met on 21 May 2025 and the proponent provided further analysis of how various flood events might affect the site and described more developed management measures. However, at the close of the meeting, DCCEEW and SES stated their advice to the City had not changed and that, irrespective of any further modelling that might be provided, the risks of locating a school on this site could not, in the opinion of those referral agencies, be sufficiently mitigated by design or management strategies to ensure safety. In these circumstances the City is unable to put forward a recommendation to progress the planning proposal.

The planning proposal is not recommended for support

24. This report recommends Council determine not to make the planning proposal or approve the associated draft design guide for the following reasons:
 - (a) it is not supported by NSW SES and DCCEEW, being public agencies tasked with evaluating the public safety implications of developing flood-prone areas, particularly when changes in land use could exacerbate existing flood risks or introduce new risks for local communities;
 - (b) NSW SES and NSW Department of Climate Change, Energy, Environment and Water (DCCEEW) have identified a school as an inappropriate use of the land, given the flooding risks;
 - (c) the recently introduced Shelter in Place Guidelines indicate sheltering in place is not a suitable flood risk management strategy for this site; and
 - (d) support for the planning proposal is not aligned with the City's risk appetite (see below for further discussion).

Public exhibition

25. The planning proposal was publicly exhibited from 7 February 2025 to 7 March 2025. The exhibition process included:
 - (a) a dedicated webpage on Sydney Your Say, which received 311 unique page views and 170 document downloads;
 - (b) inclusion in the Sydney Your Say e-newsletter on 7 February 2025, reaching 5,112 subscribers.
26. A total of 54 submissions were received during the exhibition period, including from residents, planning consultants representing a strata scheme, and 2 state agencies. The majority (87%) opposed the planning proposal, raising concerns about traffic and transport, privacy, overshadowing, height and floor space ratio, parking, noise, flooding and hours of operation.
27. A summary of submissions is provided at Attachment A. While the City would typically prepare a response to all submissions, as the planning proposal is not recommended to proceed, responses have not been included in this instance.

Key Implications

Risks

28. The City's Risk Appetite Statement provides guidance about the amount of risk it is willing to take to achieve our strategic goals, while ensuring the protection of our assets, reputation and the wellbeing of our employees and community. The City's risk tolerance varies depending on the nature of the risk, its potential impact and the capacity to manage it effectively.
29. On balanced consideration of matters raised in the public exhibition of the planning proposal, it is considered the planning proposal presents an unacceptable risk to the health and safety of future occupants of the proposed school due to the flood risks associated with the site.
30. The Risk Appetite Statement says the City:
 - (a) has minimal appetite to take risks that jeopardise the safety of the community. Where these risks can be effectively mitigated and there are reasonable benefits to the community, a minimal risk appetite can be considered and
 - (b) will not tolerate activities that result in reasonably foreseeable and preventable injuries to our workers or community
31. The risks associated with this planning proposal cannot be effectively mitigated and in this instance the risk cannot be supported. Therefore, proceeding with the planning proposal is not aligned with the City's risk appetite.

Relevant Legislation

32. Environmental Planning and Assessment Act 1979 (Act)
33. Environmental Planning and Assessment Regulation 2021

Next steps

34. If the recommendations of this report are endorsed the City will write to the Department to advise Council will not make the planning proposal.

GRAHAM JAHN AM

Chief Planner / Executive Director City Planning, Development and Transport

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