



October 8, 2021

RE: City Commitments needed to ensure Net Zero CSO Rezoning

Since the 2018 release of DCP's Gowanus Framework for a Sustainable, Inclusive, Mixed-use Neighborhood, introducing the proposal for a district-wide rezoning of the Gowanus neighborhood, GCC and our partners in the Gowanus Neighborhood Coalition for Justice (GNCJ) have demanded a **Net Zero CSO Rezoning** to ensure future development in the neighborhood does not contribute additional Combined Sewer Overflow (CSO) to the historically burdened and polluted Gowanus Canal. As part of this demand, we have repeatedly requested that the City provide accurate and up-to-date modeling of the sewer system that utilizes best available data to realistically account for the reasonable worst case development scenario and increased precipitation as a result of climate change in order to realistically assess environmental impacts.

In April 2021, DCP released the Draft Environmental Impact Statement (DEIS), where DEP has shown a robust response to this demand, going above and beyond CEQR requirements with a better than Net Zero outcome. The DEIS shows CSO reductions to the Gowanus Canal by 5 million gallons per year *with* the forthcoming Unified Stormwater Rule in place as new development installs stormwater management practices required under the new rule. Absent the new rule, the City concedes that CSO would actually increase by 3 million gallons per year. While we commend DEP for their work on adopting new citywide stormwater policy that will undoubtedly improve stormwater management in the neighborhood and across the City, it is critical to note that the assessment of CSO outcomes are based on complex sewer and stormwater modeling or projections that are only as reliable as the data that informs them. Evaluating these models requires tools and expertise beyond what the average citizen has access to and for this reason, GCC, local elected officials and the Gowanus community have looked to EPA for guidance. In August 2021, EPA's comments on the City's DEIS concluded that they "*cannot assess what the net CSO discharge impacts will be from the proposed rezoning*" due to a number of inconsistencies in the data presented in the DEIS, including the use of outdated rainfall projections that are not representative of expected future climate predictions.

Given EPA's inconclusive assessment of the Gowanus CSO and sewer modeling and the detrimental local impacts of extreme weather caused by recent storms Henri and Ida, the City must provide additional information and take additional responsibility for tracking the net CSO discharge impacts over time in order to fully meet the community's demand. The City acknowledged the need for future study in flood prone neighborhoods just this past Monday,

when the Mayor's Office office released a landmark report¹: *The New Normal: Combatting Storm-Related Extreme Weather in New York City*," committing more than \$2.7 billion to counteract impacts of extreme weather as a result of climate change and calling for accelerated planning to upgrade our City's sewer system and improve modeling efforts. If the City intends to deliver on it's promise to ensure the Gowanus Neighborhood Plan provides a just and green neighborhood for all, **we urge the City to commit to the following as Points of Agreement (POA) prior to the approval of the Gowanus Rezoning:**

1. To ensure our demand is met, **the Unified Stormwater Rule must be in effect prior to the first site sewer connection in the Rezoning Area** and the City must provide transparent reporting on implementation as described in #3 below.

2. **The Gowanus neighborhood must be included as one of the 10 neighborhoods that the City advances for its upcoming Cloudburst Study.**

As outlined in the Mayor's report, DEP will select 10 at-risk neighborhoods for the implementation of a **cloudburst design study** by the end of 2021. We need a firm commitment from the City to identify the Gowanus neighborhood and adjacent drainage areas in the Red Hook Sewershed as one of these areas in order to make good on the *flood resiliency or hydrology study* that the Gowanus community has been asking for for years.

- *Background: A Cloudburst Study* assesses stormwater flow paths based on topography and sub-surface conditions in at-risk areas to identify grey and green infrastructure priorities and capital projects for flood mitigation and stormwater management. It is essentially the *flood resiliency or hydrology study* that the Gowanus community has been asking for for years. It can and should:

- Integrate recent data and high-resolution flood maps developed by the Mayor's Office of Resiliency as part of the *Stormwater Resiliency Plan* (May 2021)², 311 flood and sewer reports recorded across the neighborhood following extreme weather, and Coastal Flood maps - all of which demonstrate a high-level of extreme flood risk in Gowanus, particularly along 9th Street and along the Bond-Lorraine Sewer Line, which connects the Gowanus Neighborhood to Red Hook and has been identified by DEP as a "Highest Priority" stormwater improvement project.

- Address EPA's recommendation that the City develop a separate "probability analysis" to study the various impacts of development and the range of potential climate change outcomes.

- Ensure flood resilience measures in the public right-of-way as new development occurs in the Gowanus neighborhood. While the Unified Stormwater Rule aims to improve private on-site stormwater

¹ [The New Normal: Combating Storm-Related Extreme Weather in NYC \(September 2021\)](#)

² [NYC Stormwater Resiliency Plan \(May 2021\)](#)

management, there is no plan to address the high-risk flooding that occurs in streets and sidewalks.

- Incorporate impacts of new development as a result of the Gowanus Rezoning
- Be a transparent and inclusive process that incorporates diverse stakeholder input.

3. **DEP must commit to annual monitoring of net changes in sanitary and stormwater loading within the Gowanus Sewershed as mandated by EPA's Executive Administrative Order.**

The City must agree to comply with the monitoring and reporting requirements for *Stormwater Controls* outlined in Paragraph 73c of EPA's Executive Administrative Order (EAO) from March 29, 2021. As per this mandate, the City must commit to **annual monitoring of net changes in sanitary and stormwater loading, to be reported as modeled volumes**, within the Gowanus Sewershed in order to assess incremental impact of sewer hookups and ensure these do not result in a net increase.

- *Background:* The EPA's EAO includes four distinct and separate mandates for monitoring and subsequent reporting of the following: 1) Stormwater Controls; 2) Separated Outfall Treatment Units; 3) CSO Solids; and 4) CSO Tank Operation and Maintenance.
- The City's response to EPA's EAO provides reasoning towards a "*sufficient cause for non-compliance*" regarding all four monitoring areas. We believe that in most cases the City provides reasonable grounds for this defense. In particular, regarding *CSO Solids*, the City commits to submitting a post-dredging Monitoring Plan to EPA by October 31, 2021 that will outline protocol for assessing CSO recontamination of the Canal consistent with requirements of the EPA Record of Decision (ROD).
- However, the **monitoring area of greatest relevance** to our demand for a *Net Zero CSO Rezoning* pertains to *Stormwater Controls*, outlined in *Paragraph 73c* of the EAO³.

³*Paragraph 73c. Stormwater Controls: Beginning upon the Effective Date of this Order, Respondent shall ensure implementation of applicable City regulations for sewer connections (Chapter 31 of Title 15 of the Rules of the City of New York) and stormwater control regulations and standards, as set forth in the ROD, at minimum, and as may be updated in City regulations and guidelines, for project plan approvals within the Gowanus Canal sewershed, to ensure that hazardous substances and solids from additional stormwater and sewage loads do not compromise the effectiveness of the permanent CSO control measures by exceeding their design capacity. See ROD at page 85. When implementing or approving municipal sewer infrastructure upgrades and/or private stormwater controls within the Gowanus Canal sewershed, stormwater shall be separated for discharge to the Gowanus Canal to the maximum extent practicable. Commencing on January 31, 2022, Respondent shall submit to EPA an annual report summarizing the net changes in sanitary and stormwater loadings within the Gowanus Canal sewershed, which shall include but not be limited to, the major project plan approvals for the preceding calendar year. Respondents shall submit the proposed form and contents of the report for EPA approval.*

- It is our firm belief that this particular mandate will be essential for validating on-the-ground, incremental impacts of the Unified Stormwater Rule and meeting compliance with the EPA ROD mandate that *“redevelopment projects will need to take mitigation measures to prevent or offset additional sewer loadings.”* Without this tracking, the City cannot confirm that the rezoning will achieve Net Zero CSO.
 - The City’s response to the EAO⁴ suggests that compliance with this mandate is not feasible, claiming that applications for site sewer connections are *not always implemented* and that *pollutant loadings from sanitary and stormwater flows are best calculated through modeling to be measured on a long-term basis*. This reasoning is not good enough.
- *Modeling as Monitoring:* We acknowledge that on-the-ground tracking of sanitary and stormwater flows for every redevelopment site may not be feasible and therefore accept annual modeling of projected sanitary and stormwater flows and/or site-based CSO reduction as a sufficient form of *monitoring* to satisfy this demand.
- Under requirements for the Unified Stormwater Rule (USWR), applicants applying for their site sewer connection must provide DEP with the project proposed sanitary discharge, proposed development site storm flow, allowable flow from the site and/or the stormwater release rate from the site in accordance with DEP rules.
 - Additionally, applicant sites greater than 20,000 square feet will trigger the USWR Chapter 19.1 requirements. These sites will also be required to submit a Stormwater Management Plan (SMP) containing documentation for all infiltration/retention practices to be implemented on site.
 - Under DEP’s 2021 Green Infrastructure Contingency Plan,⁵ the Department provides a methodology for converting green infrastructure practices or “greened acres” to a CSO reduction volume.
- The required metrics for a site sewer connection combined with DEP’s updated metric for assessing CSO reduction volume provide sufficient information for satisfying the EPA mandate for an annual report summarizing projected or *modeled* annual net changes and overall CSO reduction. While all site-sewer applicants may not implement projects, a summary of net changes based on the applicant projections would be sufficient for this tracking.

⁴ As part of the application for connection to the City sewer system, an applicant must provide the proposed sanitary discharge, proposed development site storm flow, allowable flow from the site and/or the stormwater release rate from the site in accordance with DEP rules. DEP thus receives information on the projected storm and sanitary flows, as applicable. However, DEP’s approval of a project does not mean that the project will be implemented. Further, pollutant loadings from sanitary and stormwater flows are calculated through modeling, are not expected to change significantly on an annual basis and are better measured on a long-term basis. Thus, DEP believes that beginning in 2023 reporting the number of stormwater management pollution prevention plans for approved and/or completed projects, including the number of post construction management practices triggered by the City’s stormwater regulations, should be sufficient. This clarification was included in the proposed edits conveyed to Mr. Carr on May 4th, but was rejected by EPA.

⁵ [DEP Green Infrastructure Contingency Plan \(June 2021\)](#)