

26 June 2023

Our Ref: 11239 Gilead Draft Amendment Review DRAFT

Ms Catherine Van Laeren  
Executive Director – Metro West  
Department of Planning and Environment  
Locked Bag 5022  
Parramatta NSW 2124

Attention: Adrian Hohenzollern and Gary Hinder

Dear Adrian and Gary,

**RE: Review of draft amendment to State Environmental Planning Policy (Precincts – Western Parkland City) 2021 – Gilead Part Precinct**

We appreciate the opportunity to review the proposed drafting to *State Environmental Planning Policy (Precincts – Western Parkland City) 2021 (WPC SEPP)* that once gazette will give effect to the rezoning of the Gilead (Part) Precinct in the Greater Macarthur Growth Area. This submission has been prepared on behalf of Lendlease Communities to supplement separate commentary provided regarding the inclusion of ‘*Flood mitigation works*’ within the C2 Environment Conservation zone and proposed ‘Terrestrial Biodiversity’ provision to afford additional protection to vegetation identified as ‘retained land’ in the Biodiversity Certification Strategy and application currently being assessed for Gilead. Lendlease would seek to keep working with the Department on refining these provisions as necessary.

The commentary made in this submission has been made to either seek clarification on the intended effect of various provisions or otherwise assist in the interpretation and ongoing implementation in future Development Application included in the following draft instruments:

- *Environmental Planning and Assessment Amendment (Greater Macarthur Growth Area) Regulation 2023*, version s2023-126.d04 dated 23/5/23, 02:04pm (**Regulation**)
- *Campbelltown Local Environmental Plan 2015 (Amendment No.33)*, version e2023-068.d06 dated 29/5/23, 02:53pm (**LEP Amendment**)

## Regulation

It is noted that similar provisions have been adopted with the North West and South West Growth Areas with the ‘relevant plans’ (being Structure Plans with principles document) being available. In those circumstances, a number of the Structure Plan elements and principles apply to the rezoning of the land with minimal specific consideration for development applications with the implications readily able to be understood.

In this regard, relevant to the Gilead (Part) Precinct, confirmation is sought as to what form the Structure Plan will have for the Gilead (Part) Precinct and the opportunity for involvement Lendlease

will have to inform and refine the plan, noting that the current broader Greater Macarthur Structure Plan does not strictly align with the current Gilead Structure Plan that formed part of the Planning Proposal to rezone the land. Is it intended to be the Structure Plan to be approved by the Planning Secretary in Section 6.1 of the LEP Amendment rather than the Structure Plan for the Greater Macarthur Growth Area referred to in Parts 1 and 2 of the LEP Amendment? Future development applications would benefit from clarity on this matter given the litigious nature of previous applications in South Campbelltown and Wilton.

In addition to the above, it is noted that both the Regulations and LEP Amendment are proposed to be adopted on the date they are published on the Legislation website but not take effect until 15 December 2023. It is understood that this has been done to provide additional time to allow the resolution of the State Planning Agreement. Lendlease seeks clarification that the State Planning Agreement is not expressly linked to the commencement date such that commencement date will not change if the Planning Agreement is expedited or otherwise delayed.

## LEP Amendment

It is understood that the LEP Amendment is being used to amend *Campbelltown Local Environmental Plan 2015* to remove relevant land use controls over the Gilead (Part) Precinct and establish Appendix 10, specific to the Gilead (Part) Precinct the WPC SEPP. Compared to the provisions that were exhibited for this appendix, a number of the LEP Amendment provisions are different and this section of the letter seeks clarifications for the deviations in lieu of being able to engage directly with the Department in the time available. This will serve to inform our ongoing planning and approval strategy.

In addition, as outlined to the Department, Lendlease require the ability to undertake an initial residue lot subdivision (**Master Lot Subdivision**) to create a series of land parcels (to be subject to future applications for conservation and development) to facilitate the staged acquisition of land in line with the terms of our contract with the landowner. In principle, the Department has not raised concern with the need to facilitate this minor subdivision in advance of specific matters like a final Structure Plan or Development Control Plan being finalized. Upon the review of latest drafting, it is evident that additional clauses require a minor amendment (inline with the approach afforded in other draft clauses) to facilitate this outcome and this section also highlights these requests.

### Schedule 1, Appendix 10, Clause 1.2 Aims of precinct plan

It is noted that subclause (f), relating to the enhancement and protection of Aboriginal cultural heritage and environmental heritage is not typical of other Growth Area Precincts. No objection is raised to its insertion, however there are no specific provisions relating to this matter, other than the standard Section 5.10, we are seeking clarification as to why this is inserted. It may be that Appendix 11, as it relates to a significant and sensitive site may have more specific provisions than are required for the Gilead (Part) Precinct.

### Schedule 1, Appendix 10, Clause 1.8A Savings provision relating to pending development applications

From a contract administration, it is critical that the commencement date does not fall later as Lendlease is dependent on the LEP Amendment to be able to lodge, and obtain consent, for the Master Lot subdivision. To assist Lendlease in providing certainty, could a provision be included to allow Council discretion for *'development on land that is of a minor nature only, if the consent*

*authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated'.*

#### **Schedule 1, Appendix 10, Land Use Table, Zone C2 Environmental Conservation**

Further to our Planning Proposal and earlier submissions, we would request that 'Flood mitigation works' are included in the land use table for development 'Permitted with consent' to provide greater certainty that the proposed stormwater management regime can be delivered in line with the regime proposed in the Planning Proposal and Biodiversity Certification Strategy. The proposed water management regime aligns with best practice water cycle management providing opportunities for significant regeneration of native vegetation suitable for a range of local fauna. It also provides opportunities for more efficient management and maintenance of stormwater infrastructure reducing the burden of Council resources and funding.

It is our view that previous advice that the NSW Chief Scientist did not support this type of activity in koala corridors is mis-informed and incorrect and should not be relied upon as justification to remove Flood Mitigation Works within the land use table.

We understand that Council has also provide their supportive for the inclusion of 'Flood mitigation works' within C2 Environmental Conservation Lands.

#### **Schedule 1, Appendix 10, Clause 4.3 Height of buildings**

Per the draft Structure Plan and provisions in the Planning Proposal, a provision was included to allow the maximum height of buildings, for certain types of development, to be varied without the need for a clause 4.6 variation where Council were satisfied that solar access and privacy were not compromised. This allowed for greater housing diversity to be delivered in the opportunity medium density areas identified in the draft Structure Plan. This is similar to how other appendices in the WPC SEPP allow the permissibility of attached dwellings and multi dwelling housing in the R2 Low Density zone where criteria area satisfied. Clarification as to why this approach was not included within the Gilead (Part) Precinct would be appreciated as it could overly constrain opportunities for housing diversity to the southern side of the proposed town centre.

#### **Schedule 1, Appendix 10, Clause 4.3A Residential density**

The provisions in the Planning Proposal were modelled on the previously legal drafting adopted in Appendix 7 and 8 of the WPC in the way density bands are used to inform what housing typologies are to be implemented to achieve a built form outcome. Clarification is sought as to why the density bands were changed?

Housing Typology	Appendix 7 South East Wilton	Appendix 8 North Wilton	Proposed Appendix 10 Gilead (Part) Precinct
Dwelling houses and dual occupancies	Not being fewer than 15 dwellings per hectare or exceeding 25 dwellings per hectare	Not being fewer than 15 dwellings per hectare or exceeding 25 dwellings per hectare	Between 16 and 25 dwellings per hectare

Housing Typology	Appendix 7 South East Wilton	Appendix 8 North Wilton	Proposed Appendix 10 Gilead (Part) Precinct
Residential flat buildings, multi dwelling housing, mixed use development, seniors housing and shop top housing	Not being fewer than 25 dwellings per hectare or exceeding 45 dwellings per hectare	Not being fewer than 25 dwellings per hectare or exceeding 45 dwellings per hectare	Between 26 and 45 dwellings per hectare
Attached dwellings	Not being fewer than 15 dwellings per hectare or exceeding 45 dwellings per hectare	Not being fewer than 15 dwellings per hectare or exceeding 45 dwellings per hectare	Between 16 and 45 dwellings per hectare

#### **Schedule 1, Appendix 10, Clause 4.6 Exceptions to development standards**

It is noted that the requirement for the Planning Secretary to provide concurrence on certain exceptions has been removed and not per the Standard Instrument. Clarification as to why this is proposed would be appreciated.

#### **Schedule 1, Appendix 10, Clause 5.1A Consideration of development applications**

Mining has never been raised as constraint within the Gilead (Part) Precinct and it is unclear as to why this clause has been included as it was not included in the Planning Proposal, nor has it been included in other recent appendices. It may be that Appendix 11, as it relates to a significant and sensitive site may have more specific provisions than are required for the Gilead (Part) Precinct. In any event, should this clause be justified to remain, it is critical that a provision is included to facilitate the Master Lot Subdivision with consistent wording to give Council discretion to approve the application (i.e. *'development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated'*).

#### **Schedule 1, Appendix 10, Clause 5.11 Bushfire hazard reduction**

Further to earlier discussions, it is understood that the Department is investigating the impact of adopting non-Standard Instrument terms that restrict bushfire hazard reduction works from being able to be undertaken without development consent and the Rural Fire Services operations. We understand that Council has also questioned the provision of this clause.

#### **Schedule 1, Appendix 10, Clause 6.1 Structure plan**

Clarification is sought on the following parts of this clause and requirements for a Structure Plan:

- (1) Clarification is sought as to whether it is intended to development to proceed if the Planning Secretary does not approve a Structure Plan (i.e. Council deem an application is consistent with the Greater Macarthur Structure Plan)?

- 2(b) Given recent discussions on the need for additional protection for 'retained land' in the Biodiversity Certification Strategy and application that occurs over the Urban Development zone, is the need for an additional clause for protection still required?
- 2(c) in the instance Schools Infrastructure NSW do not deem Gilead as being appropriate for a school (i.e. if Figtree Hill was able to provide appropriate/larger facility earlier), would the Structure Plan still be bound to show a school site?
- 2(d) the required split between active and passive open space does not align with the Social Infrastructure Assessment provided in support of the Planning Proposal, nor has it been informed by a technical analysis. Further, the clause in its current form does not reflect the significant oversupply of open space that Council recently adopted through amendment to *Campbelltown Local Environmental Plan 2015* within the Figtree Hill development that provides some 19ha additional open space land for the community despite retaining the same maximum yield of 1,700 lots.

Lendlease do not have an objection to the overall quantum of open space to be shown in the Structure Plan (29.1ha) and this would be secured by virtue of the adoption of a site specific Development Control Plan and Development Control Plan as previously demonstrated with Lendlease's Figtree Hill development. In this regard, we request that greater flexibility be engrained in the clause to allow them to work directly with Council to devise an appropriate split between active and passive open space, particularly as there is no technical backing to Council's proposed split. The clause in its current arrangement will continue to force subsequent Structure Plan amendments, or amendments to the clause, for even minor deviation from this split. We believe that appropriate flexibility in the delivery of the 29.1ha of open space can better be achieved through the deletion of (d)(i) and (ii).

- (5) The Department's latest Structure Plan for Greater Macarthur shows the Transport Corridor in a different location than the draft Structure Plan provided in the Planning Proposal and ongoing discussions regarding the crossing of Menangle Creek. Clarification is sought as to whether the Planning Secretary has discretion to deviate from the requirement for consistency?

#### Schedule 1, Appendix 10, Clause 6.2 Development control plan

The Planning Proposal provisions provided updates to the typical requirements for development controls plans to reflect the greenfield context and experience in previous court matters in Greater Macarthur. Clarification is sought as to why these amendments were not carried through (relate to Staging plan requirements, urban design controls for 'significant development sites', parking facilities).

#### Schedule 1, Appendix 10, Clause 6.3 Concurrence of Planning Secretary

It is noted that the typical 'Satisfactory Arrangements' provision adopted for recent Precincts in the WPC has been abandoned. Further it removes the typical clauses exclusion of applying to residue lots that has previously been discussed for the purposes of the Master Lot Subdivision. Clarification for the departure from business as usual is requested, particularly given the latest announcements regarding the Housing and Productivity Contribution.

In any event, should this clause be justified to remain, it is critical that a provision is included to facilitate the Master Lot Subdivision with consistent wording to give Council discretion to approve the application (i.e. *'development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated'*).

#### **Schedule 1, Appendix 10, Clause 6.4 Concurrence of Planning Secretary – koala corridor**

Appreciating that drafting of the koala corridor provision may have evolved since its first adoption in *Campbelltown Local Environmental Plan 2015*, critical to the Master Lot Subdivision, clarification is sought as to whether the Planning Secretary will be able to provide concurrence under this clause for the facilitatory subdivision? It may provide greater security for Lendlease for Council to have discretion for applications that they deem are for minor development (i.e. *'development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated'*).

#### **Schedule 1, Appendix 10, Clause 6.5 Concurrence of Transport for NSW**

Similar to the above, to ensure the Master Lot Subdivision is not unduly delayed or constrained, It may provide greater security for Lendlease for Council to have discretion for applications that they deem are for minor development (i.e. *'development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated'*).

In addition to the above, given that no agency has been nominated as the relevant acquisition authority for the crossing of Menangle Creek or the Transport corridor itself. Without this commitment to the corridor, the underlying need and burden of this clause on future development is questionable and should be deleted.

#### **Schedule 1, Appendix 10, Clause 6.7 Development in Zone C2**

This clause appears to be structured for the more generic application of the Cumberland Plain Conservation Plan where development does not have specific site mitigation measures secured (i.e. subject to development applications to confirm, such as the securing of Biodiversity Stewardship Agreements etc). It is unclear whether this clause responds to the situation for the Gilead (Part) Precinct that will have a site specific Biodiversity Certification Agreement to specifically guide future development of the land. For the purpose of this clause, the executed Biodiversity Certification Agreement, that is registered on title before any Biodiversity Stewardship Agreements, should be considered a suitable substitute for clauses (2) and (3), and be specifically mentioned in clause (4).

In addition to the above, to facilitate the Master Lot Subdivision in advance of the Biodiversity Certification Agreement being executed, it is requested the clause is amended to include a provision that gives Council discretion for applications that they deem are for minor development (i.e. *'development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated'*).



#### Schedule 1, Appendix 10, Clause 6.8 Development on land adjoining Zone C2

Similar to the commentary provided for Clause 6.7, for the purpose of this clause the Biodiversity Certification Agreement should be considered a suitable substitute for clause (3) and appropriately recognised in the clause.

A further modification to the clause should include a provision that gives Council discretion for applications that they deem are for minor development (i.e. *'development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the development would be consistent with the objectives of the zone in which the land is situated'*)

#### Schedule 1, Appendix 10, Clause 6.9 Earthworks

This clause was not provided in the Planning Proposal. Request clarification as to why requirement has been included.

#### Schedule 1, Appendix 10, Clause 6.12 Affordable housing

Following the Department's earlier request following the Technical Assurance Panel, the Planning Proposal was amended to include a specific commitment and clause relating to the delivery of affordable housing. The suggested provision was tailored to respond to the greenfield nature and single ownership of the Gilead (Part) Precinct compared the infill and consolidation of fragmented land nature of clause 8.4 in *Campbelltown Local Environmental Plan 2015*. The proposed approach in the LEP Amendment could result in a situation that if the select housing typologies are not pursued over the land. Further clarification of the Department's consideration of the Planning Proposal's wording is requested.

#### Schedule 1, Appendix 10, Schedule 1 Additional permitted uses, 3 Use of transport corridor land

Clarification is sought that the intent of this provision is to allow the construction of the road crossing of Menangle Creek that is shown as C2 Environment Conservation in the latest mapping provided by the Department?

#### Maps

The following comments on the latest version of supporting maps are provided:

- Land Zoning Map – The impact of the Menangle Creek Crossing not being clearly identified and on the Biodiversity Certification Strategy is still being investigated.
- Precinct Boundary Map – Sheet 002, inclusion of Gilead Precinct label will provide clarity.
- Minimum Lot Size for Subdivision Map – Legend does not specify the minimum lot size, should indicate 5ha.

As the maps are further revised, Lendlease would continue to appreciate the opportunity to review the detail prior to their gazettal.

Thank you for the opportunity to provide feedback on the specific clause drafting. Following your earliest opportunity to review this commentary, it may be of assistance or more expedient for both Lendlease and the Department to meet to discuss and resolve the approach the various matters

raised to ensure the instruments facilitate the orderly and efficient delivery of development in the Gilead (Part) Precinct. Should you require any additional details in the interim, please do not hesitate to contact me on 9249 4100 or alternatively Taylor Paynter at Lendlease on 0409 039 760.

Yours faithfully

**GLN PLANNING PTY LTD**



**MATT COOPER  
DIRECTOR**