

## Infrastructure and Contributions response to Local Planning Panel advice for the West Gables Planning Proposal

20 May 2024

### 1 Purpose

The purpose of this memo is to respond to comments included in The Hills Shire Council's correspondence dated 26 April 2024 following the consideration of the West Gables Planning Proposal by The Hills Local Planning Panel (**LPP**).

This advice is provided to support the Council and LPP in its review of the planning proposal. Further, it demonstrates that appropriate infrastructure planning has occurred as part of the master planning of the entire site, and local contributions mechanisms are available which will support the release of 769 lots as soon as possible to help housing supply amidst the current housing affordability crisis.

### 2 Relationship to previous correspondence

GLN Planning (**GLN**) previously prepared an Infrastructure Delivery Plan (**IDP**) to support the planning proposal, including a preliminary schedule of infrastructure required to support the proposal.

GLN submitted a response to the Council's Request for Information (**RFI**) via a memo dated 4 April 2024 which included separate planning agreement offers from Stockland and Allam, copies of the infrastructure schedules for the whole site, and responses to other matters raised by Council pertaining to open space and infrastructure provision and the proposed mechanisms for infrastructure delivery.

This memo provides specific responses to the matters raised in Council's letter dated 26 April 2024 following the LPP meeting. This memo should be read in conjunction with the IDP and RFI response, however this memo prevails over GLN's previous correspondence and reports.

### 3 Key issues raised by Council and GLN response

#### 3.1 Prepare a VPA offer or contributions plan or the entire site

##### Council comment

Council has requested that a single planning agreement offer should include all land in West Gables, or alternatively, a contributions plan should be prepared for the whole development.



## Response

The detailed master planning and infrastructure planning for West Gables has been undertaken on a “whole of site” basis, assessing and incorporating the infrastructure requirements of all landholdings in the IDP which underpins the development.

Stockland and Allam are unable to provide a consolidated planning agreement offer for the entire site at this time as they do not control all of the land and this cannot practically be achieved at this stage of the planning proposal process.

Instead, Stockland and Allam propose a “layered” infrastructure contributions approach to provide Council with sufficient certainty regarding infrastructure delivery. The approach includes:

- A draft costed infrastructure schedule for the development, and corresponding draft planning agreement offers for the Stockland and Allam landholdings.
- An offer for Stockland and Allam to fund and support the preparation of a local contributions plan for West Gables.
- The inclusion of a local satisfactory arrangements clause as discussed in Section 3.2 of this memo.

This approach provides Council with confidence that the infrastructure requirements for the proposal have been identified, and viable local contributions mechanisms are available. The VPA offers from Stockland and Allam include monetary contributions towards the embellishment of the offsite Horseworld active open space site and the augmentation of community infrastructure floorspace, which cannot be included in a local contributions plan due to the “essential works list” which applies to contributions plans where IPART approval is required to levy above the \$30,000 per lot cap for development in a designated greenfield urban release area. Further, the inclusion of a local satisfactory arrangements clause in the LEP means that development cannot be approved prior to a contributions mechanism being in place for the land. Thus, the financial and infrastructure delivery risk is essentially transferred from the Council to the developers.

Stockland and Allam will continue to liaise with other landowners in West Gables and will advise Council if an updated VPA offer which includes other landowners is proposed.

## 3.2 Satisfactory arrangements provisions not supported

### Council comment

Satisfactory arrangements provisions have not been used elsewhere and are not supported. Further, Local Environmental Plans (LEPs) have been amended following the introduction of the Housing and Productivity Contribution (HPC) to remove satisfactory arrangement provisions.



## Response

The NSW Government amended LEPs to remove satisfactory arrangements provisions relating to state contributions following the introduction of the HPC across six regions/catchments in NSW, however there are several examples of local satisfactory arrangements provisions currently in operation via LEPs.

Example 1 - A local satisfactory arrangements clause was recently included in Amendment 30 to the Penrith LEP 2010 which was made on 30 June 2023. New clause 6.3A accompanied the making of a planning proposal for Glenmore Park Stage 3 which is an urban release area. An extract of Clause 6.3A is included below:

### [6] Clause 6.3A

Insert after clause 6.3—

#### 6.3A Concurrence of Planning Secretary

- (1) Development consent must not be granted to development on land in an urban release area unless the consent authority has obtained the concurrence of the Planning Secretary.
- (2) In deciding whether to grant concurrence, the Planning Secretary must consider the following—
  - (a) the impact of the development on the relevant planning matters,
  - (b) the steps taken to address the impacts, including whether a planning agreement has been, or will be, entered into to improve or contribute to the relevant planning matters.
- (3) In this clause—

***relevant planning matters*** means the following—

  - (a) transport and traffic management,
  - (b) water cycle management,
  - (c) land used for public open space or recreational purposes.

It is noted that Clause 6.3A requires the concurrence of the Planning Secretary, however the clause could be drafted to require the Council to be satisfied, similar to Example 2 below.

Example 2 - A local satisfactory arrangements clause which applies to urban release areas in the Camden LGA under the Camden LEP 2010 is included below:

#### 6.2 Public utility infrastructure

- (1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.



(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

### 3.3 Infrastructure planning and mechanisms concurrent with rezoning

#### Council comment

Infrastructure planning should take place concurrently with a rezoning, with mechanisms in place at the time that a rezoning occurs.

#### Response

DPHI's planning agreement practice note and LEP making guidelines state that infrastructure planning should occur concurrently with the rezoning process, and where possible, the contributions mechanism should be in place (or be ready for adoption/execution) when the rezoning occurs. These requirements were introduced to require proponents and the relevant planning authority to consider the infrastructure requirements of a proposal early in the rezoning process, rather than addressing matters retrospectively after a rezoning has occurred.

GLN contends that the infrastructure requirements for West Gables and appropriate contributions mechanisms for the development have been provided as follows:

- An IDP has been prepared for West Gables which outlines infrastructure requirements to support growth.
- Draft VPA offers have been made to Council for the Stockland and Allam landholdings, informed by a costed infrastructure schedule.
- As outlined earlier in this memo, the proponents offer to prepare a site-specific contributions plan which will provide Council with a baseline contributions mechanism for levying contributions.
- The inclusion of a local satisfactory arrangements clause in The Hills LEP 2019 which means that following the rezoning, the developer of any parcel will need to either negotiate a planning agreement with the Council, or await the adoption of a contributions plan.

DPHI has allowed rezonings to proceed where an adequate assessment of infrastructure requirements has been undertaken during the rezoning process, but where the infrastructure mechanisms have not been finalised at gazettal.

This outcome has been facilitated via local satisfactory arrangements provisions outlined in Section 3.2 of this memo, along with state satisfactory arrangements contained in Clause 66 of the Environmental Planning and Assessment Regulation 2021 shown below:

#### 66 Contributions plans for certain areas in Sydney—the Act, s 4.16(1)

(1) A development application for development on the following land must not be determined by the consent authority unless a contributions plan has been approved for the land to which the application relates—

(a) land in Zone IN1 General Industrial under *State Environmental Planning Policy (Industry and Employment) 2021*, Chapter 2,

(b) land in a residential, business or industrial zone, Zone C4 Environmental Living or Zone 1 Urban Development under a Precinct Plan in *State Environmental Planning Policy (Precincts—Central River City) 2021*, Chapter 3 or *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 3,

(c) land shown on the *Land Application Map* under *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 4.

(2) The consent authority may dispense with the requirement for a contributions plan if—

(a) the consent authority considers the development application is of a minor nature, or

(b) the developer has entered into a planning agreement for the matters that may be the subject of a contributions plan.

(3) This section applies to a development application for development on land referred to in subsection (1)(b) that was made but not finally determined before 25 January 2019.

This approach recognises that the planning, design and the commencement of the development approval processes for release areas should not be unnecessarily delayed whilst waiting for the finalisation of a contributions mechanism, as to do so would substantially delay land release and housing supply.

It is noted that DPHI and Parliamentary Counsel have deliberately worded the satisfactory arrangements clauses in both the LEPs and the Regulation so that they apply to urban release areas, and not only a specific release area named in the instrument. This is a deliberate and ensures that where future rezonings have included an appropriate assessment of infrastructure requirements up-front in the planning proposal process, the Council and DPHI are able to progress the planning proposal in a timely manner and instead require the contributions mechanism to be finalised before development approvals are granted.

## 4 Provision of funding for ongoing management of C2 land

The proponents have commissioned advice from Eco Logical Australia to respond to the LPP's comments regarding biodiversity. The advice will be provided to Council under separate cover.

Subject to Council's feedback on this matter, the proponents intend to update their respective draft planning agreement letters of offer by including a monetary contribution to fund the ongoing management of the C2 land.



5 Conclusion

The holistic approach to infrastructure planning for West Gables reflected in the IDP and broader planning proposal package provides Council and DPHI with certainty around the demand for local infrastructure generated by the development, and how that infrastructure can be provided.

The making of draft planning agreement offers by Stockland and Allam, coupled with the offer to prepare an underlying local contributions plan and the inclusion of a local satisfactory arrangements clause, provides Council with certainty that contributions mechanisms must be in place before development approvals are granted.

Importantly, this approach provides Council with appropriate local contributions mechanisms to support the delivery of 769 lots to market as soon as practicable, supporting ongoing land release and housing supply.

A handwritten signature in black ink, appearing to read 'P. McKenna'.

PETER MCKENNA  
ASSOCIATE DIRECTOR INFRASTRUCTURE AND DEVELOPMENT