



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

26 April 2024

Mr Adrian Villella
Director
Urbis Pty Ltd
Level 7, 6 Hassall Street
PARRAMATTA NSW 2150

Via Email: avillella@urbis.com.au

Our Ref: 1/2024/PLP

Dear Mr Villella

LOCAL PLANNING PANEL ADVICE – PLANNING PROPOSAL
WEST GABLES PRECINCT (1/2024/PLP)

On Wednesday 17 April 2024, The Hills Local Planning Panel considered the abovementioned planning proposal and provided advice for Council's consideration. The Council officer's recommendation to the Panel was that the planning proposal is capable of demonstrating adequate strategic and site-specific merit to warrant progression to Gateway Determination, subject to the resolution of a number of outstanding matters prior to the matter being considered by Council for determination.

The Panel provided the following advice to Council:

1. *The Panel advises that the site has a lot of potential to deliver additional housing, however this should not be in the absence of appropriate mechanisms to ensure the infrastructure to support future residents will be efficiently provided.*
2. *The planning proposal is capable of demonstrating adequate strategic and site-specific merit to warrant progression to Gateway Determination, subject to the following matters being resolved to Council's satisfaction:*
 - a) *Achievement of minimum lot sizes of less than 300m² should continue to be managed under the existing provisions within Clause 4.1B of The Hills Local Environmental Plan, which allow for a minimum lot size of 240m² (rather than 225m² as requested by the Proponent), consistent with other areas of The Shire and adjoining Gables development.*
 - b) *Land intended to be dedicated to Council for open space must not contain any proposed 'avoided areas' (for the purpose of Biodiversity Certification).*

- c) *The Proponent's application for Biodiversity Certification should be updated to account for 1 b) above and then lodged and progressed to DCCEEW. The Proponent will need to obtain Biodiversity Certification of the land, prior to the finalisation of any rezoning.*
 - d) *If 'avoided areas' are retained on the site, the Bushfire Strategic Study needs to address the bushfire hazard presented by more dense vegetation formations.*
 - e) *The proposed site-specific clause should be revised to give greater certainty with respect to how the total yield of 1,260 dwellings will be achieved across the various lot size ranges proposed. This should be resolved prior to the planning proposal being reported to Council for determination.*
 - f) *The draft site-specific Development Control Plan prepared by the Proponent, which amends the existing Part D Section 17 of the Hills DCP – Box Hill North Precinct to incorporate the subject land be amended by Council officers to Council's satisfaction and as outlined in Council Officer's report and reported to Council concurrent with the planning proposal.*
 - g) *Establishment of a mechanism that secures adequate and proportionate contributions from future development of the subject land to address the demand for new local infrastructure arising from the proposal. This should be resolved prior to the planning proposal being reported to Council for determination.*
 - h) *The additional information submitted on 5 April 2024 includes an approach that has not been utilised in other locations for local infrastructure and relies on an amendment to the Environmental Planning and Assessment Regulation 2021, which is outside of Council's control. More work is required to establish an appropriate mechanism for infrastructure delivery as what has been proposed does not give Council sufficient certainty or reasonable belief that the infrastructure mechanism will be in place at the time a rezoning occurs.*
 - i) *An updated SIDRA analysis should be prepared as part of any public agency consultation with TfNSW, should a Gateway Determination be issued for the proposal.*
3. *The Panel advises that the lack of school infrastructure in the locality is a critical issue. The Panel's support for the progression of the planning proposal is contingent upon certainty that this infrastructure will be delivered. This is a key issue for this locality, that currently has a high public profile and needs to be addressed in order for additional housing to be supported.*

The Minutes of the Local Planning Panel meeting can be viewed on Council's website at <https://www.thehills.nsw.gov.au/Council/Meeting-Agendas-Minutes/Local-Planning-Panel-LPP>. A copy is also attached for your information.

To give effect to the Panel's advice, it is requested that the following issues be resolved to enable Council to continue with the assessment of the proposal and commence preparation of a report to Council for determination.

LEP Mechanisms

- *Minimum Lot Size*

The 'Housing Lot Typology Package' has been reviewed by Council Officers.

There is insufficient evidence provided within this material to demonstrate that the proposed planning mechanism that would enable lot sizes down to 225m² provides a superior outcome to that already being delivered by the existing Clause 4.1B, that allows for lots with a minimum size of 240m². The reduction in minimum lot size from 240m² to 225m² will make it more difficult to comply with minimum

private open space, solar access, privacy and amenity requirements in the DCP and is not considered necessary in the context of a greenfield release area, where there is ample flexibility to design for a range of varied lot sizes as part of a master planned development. This element of the proposal is not supported, and it is requested that the achievement of minimum lot sizes of less than 300m² continue to be managed under the existing provisions within Clause 4.1B of The Hills Local Environmental Plan, which allow for a minimum lot size of 240m² (rather than 225m²), consistent with other areas of The Shire and the adjoining Gables development.

- *Dwelling Cap*

Council officers remain concerned about the certainty of how many lots will be provided within each of the different lot size ranges across the entire West Gables Precinct.

The original proposal included a total dwelling cap of 1,260 dwellings in the site-specific clause for the entirety of the subject site. Concerns were previously raised with the administration of the dwelling cap over the course of the development, given the variety of lot sizes that are proposed. In response, additional information was submitted which proposed to remove the dwelling cap from the suggested clause and indicated that the dwelling cap could form part of the Voluntary Planning Agreement, to ensure that appropriate infrastructure is provided should additional dwellings be achieved.

While there are concerns with the longer-term enforcement of a dwelling cap given the extent of flexibility that could theoretically be achieved through the diversity of lot sizes, a dwelling cap control in the LEP is still considered appropriate, to provide certainty with respect to the final development yield and ensure that development rolls out throughout the Precinct commensurate with servicing and infrastructure planning limitations and expected built form outcomes. It is recommended to reinstate the dwelling cap control as a LEP mechanism *in addition to* the suggestion of including additional contribution requirements in the Voluntary Planning Agreement should the dwelling cap be exceeded.

Rear Laneways

It is requested that controls within The Hills Development Control Plan 2012 be prepared to remove the ability for the provision of dwellings with rear lane access, instead requiring all dwelling products be front loaded, with a minimum lot width of 7m.

Council has experience with poor maintenance outcomes with respect to the verges fronting these rear loaded terrace type dwellings. In addition, the laneways with only garages fronting them are often an attractor for anti-social behaviour resulting in graffiti and social unrest, as there is poor passive surveillance without dwellings fronting the laneways. Council has also experienced difficulties in collecting waste from rear laneways that are undersized for the current fleet of waste collection vehicles. It is noted that as part of previous discussions Council, you were advised of the required laneways depth and space for waste collection. Your response indicated that you wish to continue with the existing controls for Gables. These controls were established in 2013 and are no longer suitable for the current fleet of waste vehicles, or the need to present 3 bins for collection from 2027 onwards in association with Council's adopted FOGO waste collection program and are therefore not supported.

Biodiversity Certification

It is not an appropriate outcome for Council to accept the transfer of 'avoided areas' and the associated maintenance burden to Council in order to facilitate the Proponent's urban development outcomes. This approach would place an unreasonable cost and maintenance burden on Council and the broader community in perpetuity. An alternative approach to obtaining biodiversity certification should be considered, which may include the need to purchase additional credits to

offset all vegetation within the subject area, such that there are no “avoided areas” on land proposed to be dedicated to Council.

At this time, the application material submitted has not demonstrated that biodiversity can be conserved in accordance with the Biodiversity Conservation Act 2016 and relevant planning policies and legislation. It is requested that following matters be resolved:

- Land intended to be dedicated to Council for open space must not contain any proposed ‘avoided areas’;
- Following rectification of the above, it would be necessary to revise the necessary ecosystem and species credits; and
- Amendments are to be made to the planning proposal material, including the preparation and submission of an application for Biodiversity Certification to DCCEEW. Biodiversity Certification of the land will need to be obtained prior to the finalisation of any rezoning.

Open Space

As outlined above, the identification of “avoided areas” (for the purpose of biodiversity certification) within the land proposed to be open space is not supported. Based on the information provided to date, there is not sufficient certainty that Council will be able to utilise or embellish these passive open space areas to a standard that is adequate to service development from a recreational perspective.

Council’s Recreation Strategy identifies that local suburban parks should contain (at a minimum) internal pathways, a playground, a playground shade structure, playground synthetic/soft fall rubber, shelter and seating, rubbish bins and collection areas, drinking water, tap, park signage, an open space kick around area and landscaping.

If the land identified for passive open space was biodiversity certified and Council was not restricted in its ability to embellish these sites for passive recreation, the proposed provision of local parks would be considered satisfactory (noting that Council would still have the flexibility to retain some vegetation in these parks as part of their design, similar to Equinox Park and Withers Road Reserve).

Infrastructure Mechanism

Council Officers have reviewed the additional information package submitted on 5 April 2024 containing draft letters of offer from Stockland and Allam Homes.

The letters of offer do not apply to the whole of the land to which the proposed rezoning and proposed infrastructure items relate. It is understood that there is an expectation that Council also prepare a new Contributions Plan to cover the planning proposal site to secure the infrastructure included in the planning proposal and introduce a ‘satisfactory arrangements’ clause within Part 7 of The Hills Local Environmental Plan (LEP).

Council officers do not support the proposed approach. The proposed infrastructure solution does not give Council a reasonable level of certainty that an infrastructure mechanism would be in place for the subject land in its entirety and at the time that rezoning would occur.

The Department’s Planning Circular PS 21-001 Improving Planning Agreements emphasises the importance of ensuring that infrastructure planning takes place concurrently to the rezoning process, particularly in areas experiencing major growth. The Planning Circular highlights the benefits of this approach, which enables the cost of growth infrastructure to be fairly apportioned, encourages confidence in the planning system, and reduces the need for ad hoc or reactive infrastructure solutions for individual developments. Further, a Practice Note on Planning Agreements released by the Department in February 2021 also emphasises the importance of integrating land use planning with strategic infrastructure planning concurrently, to ensure that contributions mechanisms are in place at the time that rezoning occurs.

Additionally, Council's LSPS reiterates that a holistic master planned approach to deal with the subject land is critical to the merit of any rezoning application for this remaining pocket of rural land. This position has been clearly communicated to you early on in planning proposal process, including in pre-lodgement meetings, where holistic infrastructure solutions were discussed.

In order for Voluntary Planning Agreements to be a suitable mechanism for the delivery of infrastructure, they need to cover all of the land to which the rezoning pertains. This ensures that the developer of the land is delivering the infrastructure required to support the development and not relying on Council to undertake these works. This would also ensure that land zoned for public purpose would be dedicated to Council at no cost and not expose Council to acquisition liability and escalating land costs associated with purchase in the future.

Satisfactory arrangements clauses have not previously been utilised for local infrastructure. Further, all satisfactory arrangements clauses have since been deleted from Council's LEP following State Government changes to the contributions framework and are unlikely to be an option for infrastructure delivery in the future.

As such, both the proposed satisfactory arrangements clause and the VPA offers pertaining to only part of the site are not supported, and there is concern with respect to the strategic merit of the rezoning where it does not align infrastructure with growth and the Proponent does not have control of all land proposed to be rezoned. Council would not be able to prepare and adopt a contributions plan concurrently with the consideration of the planning proposal in the required timeframes, therefore a contributions plan not a reasonable option for infrastructure delivery at this point in the process.

The mechanism for infrastructure delivery is a fundamental issue that needs to be resolved not only in terms of providing certainty of infrastructure delivery, but also for Council's concluding assessment for the merits of the rezoning in its entirety. It is requested that you amend your proposed infrastructure solution to address the above concerns. This would include an offer to either enter into a voluntary planning agreement or prepare a contributions plan for the subject land in its entirety for Council to consider. However, as discussed previously, a planning agreement is the preferred method to ensure that infrastructure is resolved at the time of the rezoning, noting that the lengthy process involved in establishing a contributions plan will delay the consideration of the planning proposal.

Any future correspondence in relation to this matter should quote the reference number 1/2024/PLP. If you require further information please contact Dragana Strbac, Senior Town Planner, on 9843 0269.

Yours faithfully



Megan Munari
A/MANAGER – FORWARD PLANNING