

6 November 2024

Council Ref: LEP2024/7

Mr David Hynes
Winston Langley Pty Ltd
Level 1, 154 Pacific Highway
ST LEONARDS NSW 2065

Sent via email to d.hynes@winstonlangley.com.au and uploaded to the NSW Planning Portal

Dear David,

Request for Additional Information – PP–2024–1465: 146-150 Vimieria Road, MARSFIELD

I refer to the abovementioned planning proposal, which seeks to amend the *Ryde Local Environmental Plan 2014* (RLEP 2014) to rezone the site at 146-150 Vimieria Road, Marsfield from RE2 – Private Recreation to part R2 – Low Density Residential and RE1 – Public Recreation. A preliminary assessment has been undertaken against the relevant strategies to determine the strategic merit of the proposal.

The preliminary assessment conducted by Council staff found that further justification is required before it can be determined if the proposal has strategic and site-specific merit. These issues are summarised below and justified in more detail in **Appendix A**:

- Alignment with Council's Strategic Open Space documents by undertaking investigations and feasibility studies required for a possible second playing field design.
- Further justification and detail on how the proposal aligns with guidance on well-located development for the terrace typologies.
- The proposal lot size and FSR provisions as DCP controls is not supported and must be addressed as a development standard under the RLEP 2014.
- An updated Flood and Stormwater assessment that provides an assessment against the Ministerial Directions 4.1 Flooding and pre-and post- development scenarios.
- An updated Traffic Impact Assessment to include more up to date information in relation to traffic surveys, public and active transport accessibility, and considerations of a possible second playing field option.
- Swept paths that demonstrates capacity for a Heavy Rigid Vehicle (HRV) for all proposed lots.

It is noted a response has been provided to Council's Preliminary Feedback following a meeting with Council officers on Thursday, 26 September 2024. This letter incorporates Council's feedback in relation to the points highlighted in that response.

Please note that the issues raised in this letter are fundamental to taking the next step of reporting this matter to the Ryde Local Planning Panel and subsequently an Ordinary Council meeting for approval to progress to a Gateway determination. There may be additional amendments required because of ongoing discussions and site-specific DCP amendments.

It is requested that the additional information is provided to Council via the NSW Planning Portal by close of business, 24 November 2024. If you require additional time, please let us know as soon as possible.

If you have any questions or concerns, please do not hesitate to contact Terry Agar – Senior Strategic Planner on (02) 9952 8259.

Kind regards,



Wayne Rylands
Chief Executive Officer

SUMMARY OF AMENDED DOCUMENTATION REQUIRED

Supporting document	Amendments required	Provided? (Y/N)
Planning Proposal report	Further justification and detail on how the proposal aligns with the provisions on well-located development for the proposed terrace typologies.	
Open Space Provision	The proposal is not currently consistent with the Council's Open Space Future Provision Strategy and Sports Field Action Plan. These strategies identify the opportunity for the site to contribute to the future demand for sporting fields by having 2 full sized playing fields situated on the site.	
LEP maps	Additional FSR and Lot Size LEP maps demonstrating consistent standards with the surrounding R2 zoning.	
Flooding and Stormwater Report	Provide an updated Flood Study that addresses the requirements of Ministerial Direction 4.1 Flooding and details of pre-development and post-development flood levels.	
Transport and Traffic Impact Assessment	A review of the provided SIDRA modelling	
	An amended and updated analysis in relation to public and active transport accessibility to demonstrate the site is well-located.	
	Consideration of the second field option including an assessment of the impacts associated with this use	
Waste Management Plan	Provide swept paths demonstrating compliance with AS2890.02. The paths must be for a heavy rigid vehicle measuring 12.5m long with a 4.5 headroom clearance.	

APPENDIX A – DETAILED REQUEST FOR ADDITIONAL INFORMATION

1. Open Space

Council has considered the additional submission made on 17 September 2024 by the Proponent regarding open space within the Ryde LGA and Macquarie Park Corridor. Council does not consider that all the options for provision of active open space on the site have been fully explored to indicate there is no strategic merit in doing so.

The open space proposed as part of the planning proposal is noted. However, Council's Open Space Future Provision Strategy (OSFPS) and Sports Field Action Plan (SFAP) does not identify the need for the open space as proposed. The area is well serviced for passive open space, however the opportunity is instead, identified that the site could contribute to the future demand for active recreation space throughout the Ryde LGA, which is expected to be an additional 453 hours per week in 2036. This is the equivalent to 15 sporting fields (based on a Natural Turf Field being able to accommodate 30 hours p/week). The TG Millner site is identified as a priority project within the SFAP, as a rezoning opportunity, and providing 60 hours per week (2 natural turf sporting fields) additional capacity.

The demand for active recreation space is projected to grow beyond 2036, given the impact of the draft Macquarie Park Rezoning Strategy and the lack of guaranteed Open Space provision identified in the draft Infrastructure Delivery Plan. The OSFPS and SFAP suggests options for addressing this, including 2 full sporting fields at the TG Milner site.

Through the State Government's amendments to the Housing SEPP and in Council's future Master Plan for the Eastwood Town Centre and Meadowbank / West Ryde, a change to the City of Ryde's population projection (above that to which has been utilised in the development of Council current open space strategies) by an additional 1,049 residents by 2036. Population projections for the City have also been identified out to 2046 with a forecast for a total population across the LGA of 193,863 (22,581 above the projections previously utilised). For the Macquarie Park district this equates to a projected increase in previous numbers by 12,936 residents to a total population of 44,218 in 2046.

These updated population projections will increase the demand for sporting fields required within the LGA for organised sport further, with additional capacity required out to 2046 of the equivalent of 6.5 natural turf sports fields above previous projected requirements (based on maintaining existing provision of 1 field per 3,400 residents).

2. Well-Located Development

The proposal notes the commitment by the NSW Government to the National Housing Accord which identified new housing targets for NSW and emphasised the need to increase housing in well-located areas. The proposal seeks to facilitate additional housing such as single dwellings, dual occupancies, and terraces on a wide range of lot sizes. The surrounding

locality is characterised by low density residential developments predominately in the form of single detached dwellings and dual occupancies within an R2 zone.

Council notes in the response to Council's Preliminary Feedback provided by Ethos dated 4 October 2024, that 'multi-dwelling housing' is not proposed under this Planning Proposal and it seeks to include 'attached dwellings' and 'semi-detached dwellings' as Additional Permitted Uses (APU). It is noted that the Housing SEPP permits 'semi-detached dwellings' in the R2 Zone therefore there will be no need to include this use as an APU given it is already permissible.

Council has undertaken an assessment of the appropriateness of higher density typologies, such as attached dwellings (based on various planning policies, this can also be referred to as terraces), within the site. The site is located within an area predominantly surrounded by R2 – Low Density zoning and single detached dwellings. Further, the site is not located within an 800-metre walking distance to high frequency, high-capacity public transport services or a wide variety of shops and services.

In order to ensure the terrace typology is suitable in a proposed R2 zone, which is currently not a permitted use, Council has referred to proposed planning policy reforms to assess suitability. To undertake this assessment, one of the reference documents used to assess the appropriateness of terraces in the proposed location is the State Government's proposed *EIE – Low- and Mid-Rise Housing Reform*. The criteria that are deemed appropriate for terraces in this policy includes sites being:

- 800m walking distance of a heavy rail, metro, or light rail station; or
- 800m walking distance of land zoned E2 Commercial Centre or SP5 Metropolitan Centre; or
- 800m walking distance of land zoned E1 Local Centre or MU1 Mixed use on the condition it provides a wide range of frequently needed goods and services.

While it is noted Council has previously resolved to reject the reforms as mentioned in Preliminary Feedback document, Council's concerns with the reforms were not related specifically to building typologies but regarding the provision of appropriate infrastructure and public services to service population growth. Council made it very clear that it was not opposing to additional housing in its submission, on the condition development strikes the right balance for our communities' lifestyle.

Terraces are classified as 'multi-dwelling housing' in the proposed low and mid-rise housing policy. While noting that there is a distinct definition in the LEP between 'attached dwellings' and 'multi-dwelling housing' ownership in relation to lot titles, there is no design difference in relation to building typologies for the purposes of this analysis. It is recognised that in its

submission for the 2022 Planning Proposal to the Sydney North Planning Panel, Council provided general support for the intended outcome of low-density housing however, there were uncertainties in relation to the lack of statutory mechanisms to demonstrate the design intent outlined in the master plan. Upon reviewing the submitted site-specific DCP which supports this Planning Proposal, it delivers a clearer picture for Council to provide more specific considerations in relation to the proposed dwelling typologies.

Council is not satisfied the development is well located for the proposed terrace typologies in the proposed R2 zone. The site is not located within 800m walking distance of the abovementioned land uses. Further justification is required to demonstrate strategic merit in relation to the proposed permissibility of terraces (attached dwellings) on the site.

3. Floor Space Ratio and Lot Size

The Planning Proposal seeks to change the land zoning and height of building maps of the RLEP 2014. It does not propose to change the FSR and lot size maps but instead requests for these standards to be dealt with via a site-specific DCP control, with an alternative solution to propose an overall dwelling cap via a site-specific clause within Schedule 1 of the RLEP 2014. Council notes the rationale contained in the Planning Proposal report which in summary argues including these standards as DCP controls, or alternatively through a dwelling cap, will allow for genuine housing diversity. Council further notes additional rationale was provided in the Preliminary Feedback response for Council's consideration.

Council does not agree with the rationale regarding its ability to apply the provisions of a site-specific DCP. The legislative hierarchy of a DCP is less than a Local Environmental Plan and therefore does not provide sufficient certainty for future applicants or Council for matters relating to fundamental development standards. DCP controls open more opportunities for interpretation, creates ambiguity at development assessment stage and limits Council's ability to control density in the precinct. This is important given the limited provision of services and high frequency public transport within the area. It is more appropriate to include these as amendments to the corresponding clauses within RLEP 2014.

The matter of 20 Waterview Street, Putney (Waterview PP), which was referenced in the Preliminary Feedback response, is not relevant to this Planning Proposal. Firstly, a dwelling cap was included within the APU clause at the request of the Sydney East Joint Regional Planning Panel (JRPP) not Council. Secondly, the Waterview PP pertains to a site zoned W1 – Working Waterfront (previously IN4 – Working Waterfront) and its characteristics are inherently different to the TG Millner site. There is no reason why a proposed R2 zoned site,

that does not contain any unusual site characteristics, cannot be subject to FSR and lot size development standards within the RLEP 2014.

In relation to the principles established in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 (Stockland), the principles note that where a DCP has been consistently applied by a Council, it will be given significantly greater weight. It also highlights the fundamental objective of consistency which is further iterated in Stockland at 92 when determining the weight to be given to a planning policy. Specifically:

- The extent to which the policy has been departed from in prior decisions.
- The compatibility of the policy with the objectives and provisions of relevant environmental planning instruments and development control plans
- The compatibility of the policy with other policies adopted by a council or by any other relevant government agency.

While noting the above references planning policy and not development control plans, the same principle applies. Council has not applied FSR and lot size standards within the DCP for any other site in the LGA.

The application has not provided sufficient justification for why FSR and minimum lot size cannot be dealt with as a development standard. It is requested FSR and lot size LEP maps are provided that contain consistent standards to the surrounding existing R2 zoning. This is further clarified below.

a) FSR

As the subject site is seeking to adopt an R2 characteristic, proposing planning controls that reflect the adopted R2 zoning outcomes under the existing RLEP 2014 is required. Council's current FSR control for all R2 zoned lots within the RLEP 2014 is 0.5:1, therefore should be adopted under the applicant's planning proposal.

b) Lot size

The RLEP 2014 contains relevant standards for lot size in the R2 zone for dwelling houses and Attached Dual Occupancies, being the primary allotment having a size of 580 sqm. Council's existing controls for those developments would continue to apply to the proposal.

The application proposes 'semi-detached dwellings' which has now been nominated permissible under the Housing SEPP. Council has planning controls (including subdivision) for attached dual occupancies, which once an attached dual occupancy is subdivided, it becomes a semi-detached dwelling. Given that Council's existing planning controls provide a suitable statutory framework and have been consistently applied through DA Assessment, the application should include an amendment to Clause 4.1(A) to amend it applying to 'semi-detached dwellings'.

4. Secondary Dwellings

The application proposes numerous secondary dwellings within the precinct, including sites where attached dwellings would be located. It is also noted that the proposal includes secondary dwellings on sites less than 450 sqm. It is noted that in the excerpt from the Council letter to Applicant of 31 March 2022 provided in the Preliminary Feedback, Council did not advise secondary dwellings were to be incorporated to activate the laneways, rather active uses such as “studios, home offices, guest bedrooms or other similar uses”. These uses are an extension to a primary dwelling on a site and not a separate domicile and would not trigger the need for additional provisions (such as private open space for the secondary dwelling). Council still holds the view that the uses such as studios, home offices, guest bedrooms etc., are suitable for laneway activation and will be addressed through further refinements to the site-specific DCP.

Council notes in the Proponent’s further response, it identifies clause 52 of the Housing SEPP as being the relevant clause which is incorrect. The non-discretionary development standards for Secondary Dwellings are contained within Clause 53(2). As the sites subject the proposed secondary dwellings are not compliant with the 450 sqm non-discretionary development standard, all detailed DA’s would require to be supported by a Clause 4.6 variation pursuant to the requirements of the Environmental Planning and Assessment Act 1979 (EPA&A Act).

With respect to the identified non-compliances, Section 4.15(3) of the EP&A Act specifically addresses non-compliances to non-discretionary development standards and states:

“If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

a) subsection (2) does not apply [subsection 2 refers to development which does comply with a non-discretionary development standard] and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard”.

Point (b) above refers to a provision of an environmental planning instrument which allows flexibility in the application of a development standard and is taken to mean a request to vary the standard via Clause 4.6 of the Standard Instrument (being the RLEP 2014).

Therefore, subject to Clause 4.15(3) of the EP&A Act, an Applicant would require submitting a Clause 4.6 variation request to clause 53(2)(a). This point is clarified in The Department of Planning Guidelines to Varying Development Standards, refer page 24.

The purpose of the above is to identify the significant shortfall and non-compliance the proposed planning proposal in respect of the secondary dwellings being included with the scheme. The non-compliance with the State Policy in regard to secondary dwellings is not complied with, therefore the scheme does not demonstrate that there is site specific merit for the proposed secondary dwellings. A planning proposal that necessitates the need for a clause 4.6 submission on multiple lots is inappropriate and hasn't properly considered the statutory planning context that it seeks to adopt.

Should the applicant seek to implement secondary dwellings within the planning proposal, each principal allotment (on which a secondary dwelling is proposed) must be 450 sqm or greater in accordance with the State Policy (Housing) for secondary dwellings.

5. Flooding and Stormwater Assessment

The portion of the site fronting Vimiera Road is affected by PMF and 20% AEP flood events. The proposal has been supported by a Stormwater Servicing Report produced by Northrop, dated 10/05/2022, which in summary notes that the proposal takes advantage of the site layout to implement flooding and Water Sensitive Design Solutions. It is noted this is the same report that was submitted with the 2022 Planning Proposal.

Since the 2022 Planning Proposal, there have been changes to flooding considerations under the Ministerial Directions. Specifically, the Ministerial Direction 4.1 Flooding notes the following:

*A planning proposal must not rezone land within the flood planning area from **Recreation**, Rural, Special Purpose or Conservation Zones to a **Residential**, Employment, Mixed use, W4 Working Waterway or Special Purposes Zones.*

Council notes the previous comments provided by officers in its submission to the Sydney North Planning Panel. As above, the flooding considerations have changed since this submission.

As the report does not provide pre- or post-development scenarios, it is unclear if the proposed R2 rezoning to the northwest and northeast will be located in flood prone land. Additionally, an assessment has not been provided on how the proposal is consistent with

most recent flood planning considerations. The flooding across the north-eastern portion of the site also presents as a risk to resident egress and emergency access. Alternative access and egress arrangement may be required to demonstrate R2 viability. Council does not agree that this is a matter to be dealt with at DA stage. An updated report is required to demonstrate consistency with the Ministerial Direction 4.1 Flooding. It is understood Northrop are preparing a response to the matters raised above.

6. Transport and Traffic Impact Assessment

It is noted that the provided Traffic Impact Assessment report is the same as that submitted with the 2022 Planning Proposal. Considering the time past and changes to traffic behaviour, a review should be conducted to ensure the SIDRA modelling is still relevant.

Council notes the comments from Ethos in response to Council's preliminary feedback regarding the detailed matters provided by Council's Traffic Engineers. Upon further consideration, it is agreed the majority of these issues can be dealt with at DA stage. The matters that Council believes require attention at this stage of the planning process are provided below:

- A review of the provided SIDRA modelling to ensure the results are still relevant to current traffic conditions. This includes updated information based on current vehicular, pedestrian and cyclist traffic volumes during weekday and weekend peak periods.
- An amended and updated analysis in relation to public and active transport accessibility to demonstrate the site is well-located. This includes most up to date bus routes and walking routes and distances to public transport options. It is requested for this to be presented visually to help the Council and the community understand the sites transport characteristics.
- It is also requested that in considering the second field option as outlined above in this letter, that the Traffic Impact Assessment includes an assessment of the impacts associated with this use, including the requirement for any additional on-site car parking. This will also help demonstrate to the Council and the community that the application has considered any possible alternate outcomes sufficiently.

7. Street Network and Waste Management

Residential entries off the proposed public park is not supported as this blurs the public-private interface. Additionally, as outlined above in point 5, access and egress arrangements may be required to comply with the recent flood planning requirements. Therefore, the street network needs to be reviewed and a road should be constructed between the park and proposed dwellings in the area proposed to be zoned R2. Council notes and upon further

consideration agrees with the response from Ethos that this matter can be dealt with as part of a site-specific DCP.

Furthermore, the application has not provided details in relation to the street networks capacity to demonstrate compliant swept paths of a heavy rigid waste collection vehicle (AS2890.02). The properties proposed to be located on in the eastern corner are of particular concern (please see below as outlined in pink). Please demonstrate the developments' ability to comply with heavy rigid waste collection vehicle swept paths. Council does not agree that this can be dealt with as part of a site-specific DCP as waste collection is an essential service and the ability to provide waste services to dwellings may impact dwelling yields/densities and supporting LEP controls.

