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Department of Planning & Environment
Attn: Michael Hingley
Manager Infrastructure Contributions & Agreements
GPO Box 39
SYDNEY NSW 2001

Via email: Michael.Hingley@planning.nsw.gov.au

Dear Mr Hingley,

2017/8367 Oakdale West Estate, Erskine Park – Submission to Proposed Planning Agreement and State Significant Development Application at Lot 11 DP 1178389 & Lot 1 DP 663937, Mamre Road, Kemps Creek

I refer to your email dated 8 May 2019 advising of the draft Planning Agreement public notification and the invitation to comment on the proposal.

Thank you for the opportunity to review and make comment on this proposal.

Council has reviewed the draft Planning Agreement which is understood to be proposed by the applicant to satisfy obligations under State Environmental Planning Policy (Western Sydney Employment Area) 2009 with respect to regional transport infrastructure contributions to facilitate determination of a separate State Significant Development Application.

The following are key concerns with the proposals necessitating amendment to the terms of the planning agreement and the classification of roads within the proposed state significant development proposal:-

1. Parties to the Proposed Agreement

It is noted that the parties proposed to the agreement are the developer, being Goodman Property Services (Aust) Pty Ltd, the land owner and the Minister for Planning. Neither the NSW Roads and Maritime Service or Penrith City Council are included as being party to this proposed agreement, despite asset and infrastructure delivery being proposed / enabled by way of the agreement that will be the responsibility of either Roads Authority. This is of significant concern as terms of the Agreement and any suggested works in kind or contribution offsets must be predicated on agreements reached with the applicable roads authority as this relates to the scope and agreed design of infrastructure works necessary to be delivered, and the reasonableness of the offer with respect to that delivery, as outlined within the proposed agreement.

It is also noted that as neither roads authority is a listed party to the proposed agreement, the provisions relating to dispute resolution do not apply thereby not affording the roads authority any powers to raise issues or be party of mediation proceedings. is of particular concern given Clause 3 specifically provides for works in kind associated with the Northern WNSL Road Section.

Further, Council is not the consent authority and the design and construction of the roads can be undertaken through private certification without inspection and asset endorsement prior to dedication. This has occurred with the developer within the Oakdale Precinct as road assets were not considered or required by the SSD determination to be endorsed by Council at CC and SC stages. This is of critical importance to ensure that the road authority has considered and agreed to the civil design for the asset to be constructed and dedicated. The suggestion for a road works agreement may seek to provide this mechanism however this is questionable as the roads authority is not party to the agreement, and it therefore must be explained how this proposed agreement makes binding commitments to a third party that is not a signatory to the agreement.

2. Classification of Northern WNSL Road Infrastructure

On 18 August 2011 and more recently on the 21 September 2018, Council made submissions to the NSW Department of Planning with respect to the Western Sydney Employment Area and the delivery of strategic transport routes within the precinct.

A copy of the 2011 and 2018 submission is attached to this submission and reinforces Council's key concerns and strong objection to any suggestion that the planned arterial link roads be dedicated as local public roads.

It is reiterated that all proposed roads which provide arterial to arterial connections must be state roads under the care, control and responsibility of the RMS which up until recently, has been the shared and agreed understanding throughout the strategic planning of this precinct.

To clarify, there has been significant modelling and design works associated with the entire southern link road network, including the subject WNSLR. This analysis supports unequivocally the role that this road will play in the State Arterial Road Network. Up until recently this has been supported by the Department and RMS. The most recent decision to assign this road as a local road is not based on fact, and appears to be a cost shifting exercise by the RMS.

The need and planning for this road as an arterial road and not a local road is supported from the following strategic planning policies and studies which provide for, and set up the intention for, state road ownership with no suggestion or provisions for local road dedication: -

- The SEPP (WSEA) itself identifies this western north south link road (WNSLR) as an arterial road as clearly mapped within the 'Transport and Arterial Road Infrastructure Plan Map' within Map Sheet TAI001. Any suggestion that this arterial connection should be a local road is contrary to the SEPP and the strategic planning framework that underpins the delivery of this precinct as a whole;
- Clause 26 of the SEPP (WSEA) also mandates that 'all development on, or in the vicinity of proposed transport infrastructure as shown on the above infrastructure plan' requires referral to the Department of Planning and that any comments made must be considered. This reinforces the state significance of the identified traffic infrastructure works (including WNSLR) as a local road classification, as suggested by the RMS, would not require this level of state government review and scrutiny.
- The Broader WSEA Southern Link Road Options Refinement study prepared by AECOM in 2014 for this project, identified the western north

south link road (WNSLR) as 'arterial routes', clearly identified within Figure 4-7 of this study.

It is clear from the studies dating back to 2011 and the drafting and gazettal of the SEPP (WSEA), that these strategically planned road infrastructure connections are planned for, and required as a major arterial state road connection and as such must be classified State Roads under the care and control of the RMS. If this is not amendable to RMS or the Department, then the road hierarchy structure plan supporting this precinct, and indeed the development of this precinct as a whole, needs to be re-evaluated and re-planned in its entirety as the road hierarchy and structure plan as established through the SEPP is predicated on a level of infrastructure delivery, maintenance and ongoing management that is fundamentally different from a low order, local road servicing only a local catchment.

The recent decision by the RMS to designate this road (WNSLR) as a local road is neither practical or factually based.

Council would also strongly argue that any connection across the pipeline which is not planned, delivered and managed as a state road not be endorsed, and that instead, any development proposal and any planning agreement that seeks to deliver this proposal, ensures that no arterial connection across the water pipeline is provided. Alternative internal road access to the development can be readily achieved to the east.

3. Council Engagement and Roads Act Considerations

As outlined above, the understanding of Council which is supported by the gazetted environmental planning instrument and supporting strategies underpinning and following that gazettal, was that the link roads identified within the SEPP Maps were arterial roads to be controlled and managed by the RMS. This understanding and expectation is further reinforced by virtue of the RMS's confirmed role in the design of the precinct's road infrastructure, which Council has not been party too.

If the proposed Planning and Agreement or the SSD Application under assessment is suggesting and enforcing local road dedication contrary to the strategic works outlined above, then the strategic planning analysis that underpins the structure plan is wrong or unwarranted and to date, no evidence of this has been made available to Council to support a suggestion of local road classification.

If the RMS is disputing the arterial classifications identified in the gazetted SEPP plan, then the RMS should be required to satisfy the provisions within Division 2 Clause 59 of the Roads Act 1993 being:-

"RMS must take the following matters into consideration before deciding on what to recommend to the Minister:

- (a) the submissions made by any roads authority concerned with respect to the proposed action,*
- (b) whether the main road or proposed main road is or may become a major route for long-distance traffic,*
- (c) the amount of money available or likely to become available for the construction and maintenance of the main road or proposed main road,*
- (d) such other factors as are relevant to the decision."*

The modelling and traffic projections underpinning the SEPP (WSEA) and the 2014 SWEA options reporting from 2014 provide for this road as a 'major arterial route' reinforce that a link road across the water pipeline (with a bridge) has regional and state connectivity and infrastructure in excess of what is expected for a low order local road.

Funding for this road is also available through the Special Infrastructure Contributions which is understood to be established for state significant infrastructure projects and not intended for local infrastructure which is typically managed through Clause 7.11 Contribution Plans.

As such the key matters that the RMS must consider, address and report to the Minister under the above Roads Act requirements (were the direction to be pursued) have not been addressed, and do not warrant or substantiate a declassification of the planned state arterial road to a local road dedication.

For the above to be satisfied, detailed and current traffic modelling is required to be provided to the Department and Council that adequately demonstrates that the planned assumptions and expectations established through earlier studies and the gazetted SEPP change the planned road hierarchy of this precinct. This would then necessitate a holistic amendment to the SEPP provisions to address the issues identified in Item 2 of this submission.

If however the intended road design is revised, in agreement by Council, to remove crossing of the water pipeline thereby ensuring that the local road is in fact servicing a local catchment, and not a state arterial route then acceptance of the road as a local road may be agreed. This however would need to be considered in the context of the cumulative implications on the broader planned road network.

Upon any agreement as to the correct roads authority, then that authority should also be made party to this agreement given the terms of the agreement relate specifically to the delivery of assets and infrastructure that must designed to, and compliant with, that authorities specifications.

4. Works in Kind and Contribution Offsets

The draft Planning Agreement has been prepared to meet obligations required by way of Clause 29 of the SEPP. This clause specifically provides for the following:-

29(2) The object of this clause is to require assistance to authorities of the State towards the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) to satisfy needs that arise from development on land to which this clause applies.

The planning and funding of this road also needs to consider in the context of satisfactory arrangements for the provision of regional transport infrastructure and services and state infrastructure contributions under Clause 29 of State Environmental Planning Policy (Western Sydney Employment Area) 2009.

A review of the Department of Planning website supports Council's concerns that the intentions of the Special Infrastructure Contributions are to deliver state and regional infrastructure and not local infrastructure. The website explains the intention of the SIC process as follows:-

“Special Infrastructure Contributions help fund the delivery of some of the key pieces of State and regional infrastructure required to support a growing population, such as:

- *state and regional roads;*

.....

The Department of Planning and Environment has conducted extensive work to identify the State and regional infrastructure needs for each of these areas and SIC funding will help support new and growing communities.”

The above rationale further reinforces the emphasis on strategic analysis to identify necessary state and regional infrastructure to ensure the orderly and viable delivery of new developments and new communities. This analysis was undertaken, with the roads in question identified as state and regionally significant arterial roads which justifies the application of SIC contributions towards their development.

If the Department supports the RMS's objection to the classification of WNSL Road as a State Arterial Road, and it is agreed that the road is of local significance, then this classification does not fall within the Departments intention and rationale for the application of SIC funds and the Planning Agreement should be revised to remove the suggested works in kind offset as the significance of the works are diminished to a level that does not provide for state or regional benefit. The resulting required local road infrastructure (as declassified) would then require construction as a nexus to the delivery of the proposed development without contribution reductions or works in kind offsets under the SIC funding scheme.

5. Recommended Resolution of the Planning Agreement

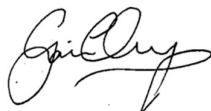
For the draft Planning Agreement to be progressed, it is recommended that all and any references to Council as the road authority be removed and replaced with reference to the RMS in accordance with the preceding planning and traffic analysis that underpins the delivery of this precinct as outlined at length within this submission.

6. Opportunity for Further Engagement

If it would be appreciated if you are able to advise Council of the basis on which the WNSL Road network is intended to be proposed and assessed under the terms of the Draft Planning Agreement and the lodged State Significant Development Application. Council would also appreciate a further opportunity to comment on the planning agreement and state significant application prior to the assessment being finalised and the application being determined if that does not provide for the WNSLR to be a State Road under control and management of the RMS.

Should you require any further information or would like to discuss this matter further please do not hesitate to contact me on 4732 8125.

Yours faithfully



Gavin Cherry
Development Assessment Coordinator