

## Planning Services

IRF18/6117

### Plan finalisation report

**Local government area:** The Hills

#### 1. NAME OF DRAFT LEP

The Hills Local Environmental Plan 2012 (Amendment No 56).

#### 2. SITE DESCRIPTION

The planning proposal applies to land at 582 and 582A Old Northern Road, Dural (Figure 1). The site is irregular in shape with an area of 1.89ha and has frontages to Old Northern Road and Derriwong Road, Dural.



Figure 1: The site (source: Council report, 24 April 2018).

The site contains an operational timber supply business with associated structures (such as sheds) and a dwelling. Vegetation on the site is identified as Shale Sandstone Transition Forest, which is a critically endangered ecological community under the state *Biodiversity Conservation Act 2016* and the federal *Environmental Protection and Biodiversity Conservation Act 1999*.

The site is approximately 1km to the east of Round Corner (Dural), a local town centre, and is on the opposite side of Old Northern Road to the Dural Service Centre to the east (Figure 2, next page), which are both zoned B2 Local Centre. The land immediately to the west is zoned R2 Low Density Residential.



Figure 2: Extended locality with site outlined in yellow (source: Council report, 24 April 2018).

### 3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone the site from RU6 Transition to R3 Medium Density Residential; and
- reduce the minimum lot size from 2ha to 700m<sup>2</sup>.

The draft LEP maps are provided at **Attachment Maps**.

The site is zoned RU6 Transition under The Hills Local Environmental Plan (LEP) 2012, with a minimum lot size of 2ha (20,000m<sup>2</sup>).

The draft LEP, which is supported by a reference design (**Attachment F**), indicates the site can accommodate up to 57 dwellings via a combination of multi-dwelling housing, attached dwellings and dwelling houses (Figures 3 – 5, next page).

The final layout, dwelling design and total number of lots will be the subject of a future development application.

The Hills Shire Council advised the Department that on 10 October 2018, a voluntary planning agreement (VPA) was signed and executed. The VPA secures contributions with a value of \$1.086 million. The monetary contributions respond to the additional demand generated by the proposed development and will secure funding towards a pedestrian refuge in the locality and upgrades to other infrastructure, including parks, sporting fields and community facilities.

Council has advised that a draft amendment to The Hills Development Control Plan (DCP) 2012 has been adopted and will come into effect when the draft LEP is made. The draft DCP seeks to ensure appropriate development controls are established to support the intent of the draft LEP, which includes measures to protect vegetation on-site.

While the DCP contains development controls, this does not negate the need to obtain any required approvals under the state *Biodiversity Conservation Act 2016* and the federal *Environment Protection and Biodiversity Conservation Act 1999*. Approvals under this legislation will be required as part of a future development application if necessary.





Figure 3: Artist's impression of the development outcome (source: concept master plan – Architecture Design Studios).



Figure 4: Artist's impression of the development outcome (source: Rockeman town planning report, May 2015).

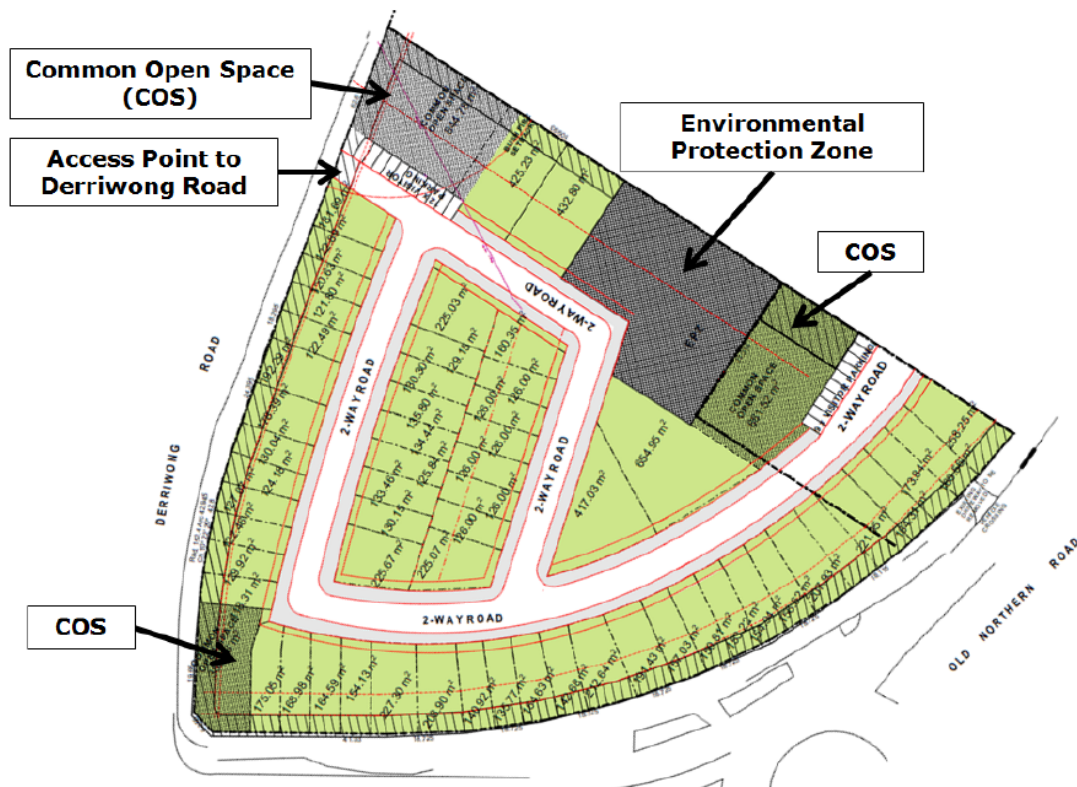


Figure 5: Possible development layout (source: Council report, 24 April 2018).

#### 4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Castle Hill State Electorate. The Hon Ray Williams MP is the State Member for Castle Hill.

The site falls within the Berowra Federal Electorate. Mr Julian Leaser MP is the Federal Member for Berowra.

To the regional planning team's knowledge, Mr Leaser has not made any written representations regarding the proposal.

Mr Williams contacted the Hon Anthony Roberts MP, Minister for Planning, on behalf of The Hills Shire Council (**Attachment G**). He raised the following concerns:

- the property falls outside the growth centre's boundaries;
- the property is zoned rural and if the amendment is successful it will be zoned R3 Medium Density Residential;
- Council is on track to meet housing demand targets and this planning proposal is not required to meet those targets;
- cumulative traffic impacts; and
- the precedent this will set rezoning rural land for urban development.

Minister Roberts considered Mr Williams' comments and responded (**Attachment H**) noting the following:

- the Sydney West Central Planning Panel (now the Sydney Central City Planning Panel), an independent assessment body, supported the submission of the planning proposal via a rezoning review;
- consultation with government agencies will help address potential environmental, traffic and infrastructure impacts in the locality; and
- the proposed development is compatible with the adjoining residential and commercial land uses and will not adversely affect nearby agricultural activities.

<b>NSW Government Lobbyist Code of Conduct:</b> There have been no meetings or communications with registered lobbyists with respect to this proposal.
--

<b>NSW Government reportable political donation:</b> There are no donations or gifts to disclose and a political donation disclosure is not required.
---

#### 5. GATEWAY DETERMINATION

The proposal was subject to a rezoning review by the then Sydney West Central Planning Panel (now the Sydney Central City Planning Panel), as The Hills Shire Council had not indicated its support for the proposal within 90 days of the planning proposal being lodged. The Panel considered that the proposal had strategic merit.

On 11 April 2017 Council considered the decision of the panel and resolved to accept the role as Planning Proposal Authority and to submit the planning proposal to the Department for Gateway determination (**Attachment T**).

The Gateway determination issued on 25 May 2017 (**Attachment C**) determined that the proposal should proceed subject to conditions.

The Gateway determination was due for finalisation by 1 June 2018. The request for finalisation was made by Council on 14 May 2018.

## 6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 17 August to 15 September 2017.

A total of 16 public submissions were received, some in support of the proposal and most raising concerns, which included impacts on traffic, parking, pedestrian safety, access and vegetation. Questions were also raised with the strategic justification of the proposal.

Council officers satisfactorily addressed the public submissions in their report to Council dated 24 April 2018 (**Attachment I**). Furthermore, the preparation of the draft DCP seeks to address the issues raised in submissions, guide future development and provide certainty of the development outcome.

## 7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult the NSW Rural Fire Service (RFS) and the Office of Environment and Heritage (OEH) prior to community consultation. The comments provided by each agency are considered below:

### NSW Rural Fire Service

RFS raised no objections to the proposal (**Attachment J**). It commented that the future design of any development will need to consider RFS's *Planning for Bush Fire Protection 2006* and the need for appropriate asset protection zones from the areas of vegetation which are to be protected on-site.

The need to consider *Planning for Bush Fire Protection 2006* is ensured via a combination of the *Environmental Planning and Assessment Act 1979* and the *Rural Fires Act 1997*. Any future development application must consider the requirements of *Planning for Bush Fire Protection 2006* and it is considered that there is potential for the provisions of this document to be satisfactorily addressed.

RFS's comments have been satisfactorily addressed.

### Office of Environment and Heritage

OEH considered the proposal and decided not to provide comment on environmental, natural hazards and Aboriginal cultural heritage. OEH's letter (**Attachment K1**) noted that while it would not comment, this did not represent support and the aforementioned matters may still need to be considered.

OEH was invited to make further comments and again declined, noting that its previous comments remained valid (**Attachment K2**).

The OEH – Heritage Division provided comments (**Attachment L**), noting that the site is next to the local heritage item of Old Northern Road. The Heritage Division raised no objections. An Aboriginal Heritage Information Management System search was undertaken, which indicated there are no known Aboriginal relics in the locality.

The Gateway conditions required consultation with Roads and Maritime Services, the Environment Protection Authority, Endeavour Energy, Sydney Water and Hornsby Shire Council. Their comments are addressed below:

- Roads and Maritime Services (**Attachment M**) raised no objections to the proposal on the basis that the draft LEP would not likely impact on the state road network. General comments relating to access were provided, which can be considered with any future development application should the draft LEP be made.
- Transport for NSW (**Attachments N1–N2**) considered the draft LEP and the offer of a pedestrian refuge on Old Northern Road next to the site within the voluntary planning agreement and raised no objections.

- The Environment Protection Authority (**Attachment O**) considered the proposal and provided comments addressing land-use conflict, contaminated land management, water quality and waste management. These matters can be considered further during the development application process should the draft LEP be made.
- Endeavour Energy (**Attachment P**) provided comments relating to the protection of its infrastructure and the works required to ensure any new development is provided with a connection. This matter can be considered further during the development application process should the draft LEP be made.
- Sydney Water (**Attachment Q**) advised that water is available. The site is not connected to the Sydney Water reticulated sewerage system and if development is carried out connection will be required. This matter can be considered further during the development application process should the draft LEP be made.
- Hornsby Shire Council was given the opportunity to comment on the draft LEP and did not respond.

## 8. POST-EXHIBITION CHANGES

No post-exhibition changes are proposed.

## 9. ASSESSMENT

### Section 9.1 Directions

#### *2.1 Environment Protection Zones*

The objective of this Direction is to protect and conserve environmentally sensitive areas. The Direction requires a draft LEP to include provisions that facilitate the protection and conservation of environmentally sensitive areas.

The Gateway determination noted that the Hills LEP 2012 contained provisions for the preservation of trees and vegetation and terrestrial biodiversity. The provision relating to the preservation of trees and vegetation has been repealed (clause 5.9) and the provision relating to terrestrial biodiversity (clause 7.4) does not apply to the site as the site is not mapped by the terrestrial biodiversity map.

The planning proposal included a flora and fauna assessment report prepared by Ecological Australia dated March 2014 (**Attachment R**). The report was submitted to provide an assessment of the strategic ecological value of the site and determine whether there would be a significant impact on key ecological features.

The report found the site contains Shale Sandstone Transition Forest (SSTF), which is a critically endangered ecological community under the *Biodiversity Conservation Act 2016*. Figure 6 (next page) identifies the vegetation on the site and identifies the SSTF with low to moderate condition, low condition, very low condition, cleared areas and exotics. The yellow hatched section of Figure 6, which contains most of the SSTF with low to moderate condition, is intended to be preserved in a restricted development area, which Council indicated can be identified on title through the development application process and management in perpetuity via a vegetation management plan as required by the draft DCP.

The report found the SSTF is generally of a low condition, is relatively isolated from other areas of native vegetation (in better condition) and is not the limit of this community's distribution in the locality. In conclusion, the report noted that the proposal would be unlikely to have a significant impact on ecological features.

The report suggests that in the preparation of any development application, a new flora and fauna report would be required. The report refers to the *Threatened Species*



*Conservation Act 1995*, which has been replaced by the *Biodiversity Conservation Act 2016*. In the preparation of the new report, the planning framework would need to be addressed and considered by the relevant authority during the assessment of any future development application.

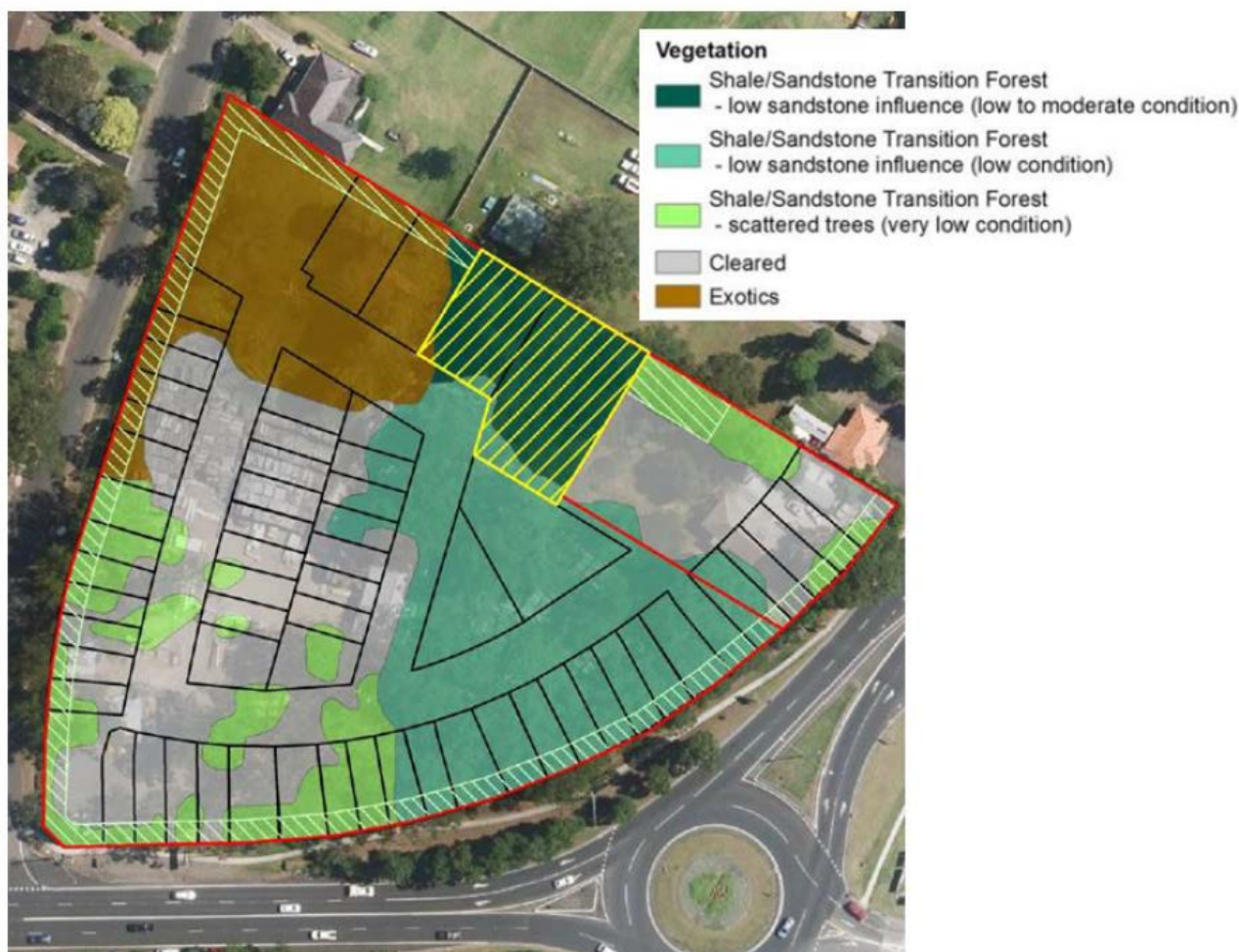


Figure 6: Vegetation on-site (source: Council report, 24 April 2018).

Council have identified several mechanisms that will allow for the protection of the environment including existing legislation, the existing LEP and draft DCP. Any development application lodged over the site must demonstrate compliance with the requirements of existing legislation and the DCP which will offer sufficient environmental protection.

It is considered there are sufficient controls in place to ensure that the objective of this Direction, to protect and conserve environmentally sensitive areas, is met. This may result in a reduction in dwelling density on the site, depending on the findings of the additional reporting that is required to be prepared to support a development application and the outcomes of the development assessment process.

#### 4.4 Planning for Bushfire Protection

Direction 4.4 'Planning for Bushfire Protection' is relevant to the planning proposal as part of the land to which the proposal applies is mapped as being bush fire prone. The Direction provides that the PPA must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS has occurred and the RFS has raised no objection. Any inconsistency with direction is considered minor.

## State environmental planning policies (SEPPs)

### *SEPP No 55 – Remediation of Land*

The objective of this SEPP is to provide a singular planning approach to the identification and remediation of contaminated land. The SEPP requires the following to be considered in the rezoning of land:

- whether the land is contaminated;
- if the land is contaminated, if it can be remediated for the purpose intended for that land; and
- if the land requires remediation, if it can be made suitable prior to the land being used for its intended purpose.

The draft LEP is supported by two reports by Argus – a preliminary site investigation dated 4 April 2014 (**Attachment S1**) and a detailed site investigation dated 19 September 2014 (**Attachment S2**). The reports identify that:

- the site has been used for commercial timber sales and storage;
- the previous use of the site is likely to have caused contamination;
- the contamination is considered to be of low to moderate risk to human health;
- the site needs to be remediated via an appropriate remedial/management strategy, culminating in the preparation of a remedial action plan in accordance with Environment Protection Authority guidelines; and
- subject to remediation occurring, the site can be made suitable for the intended use (residential development).

The draft LEP is consistent with the SEPP. The steps outlined above must be undertaken, with Council's consent, via a development application.

## Regional and district plans

### *Greater Sydney Region Plan*

The Greater Sydney Region Plan:

- sets a 40-year vision (to 2056) and establishes a 20-year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters;
- informs district and local plans and the assessment of planning proposals;
- helps infrastructure agencies to plan and deliver for growth and change and align their infrastructure plans to place-based outcomes; and
- informs the private sector and the community of the growth management and infrastructure investment intentions of government.

The draft LEP is broadly consistent with the plan.

### *Central City District Plan*

The Central City District Plan intends to inform local councils' plans, guide the assessment of local planning proposals and inform infrastructure agencies, the development sector and the community of expectations for growth, change and infrastructure provision within the district.

The proposal, as identified by the draft LEP and reference design, is consistent with the following planning priorities of the plan:



- C5 – Providing housing supply, choice and affordability with access to jobs, services and public transport by providing opportunities for additional housing near service centres;
- C9 – Delivering integrated land use and transport planning and a 30-minute city by providing additional housing opportunities near public transport;
- C15 – Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes by identifying the site's biodiversity values and opportunities for future housing outside those locations; and
- C20 – Adapting to the impacts of urban and natural hazards and climate change by identifying the bushfire requirements to undertake development in accordance with RFS's *Planning for Bush Fire Protection 2006*.

The planning proposal is inconsistent with Planning Priority 18, which requires that environmental, social and economic values in rural areas be protected and enhanced. The priority notes that urban development is not consistent with the values of the metropolitan rural area and it should only be considered within urban investigation areas. Action 74 of the district plan states that development should be limited to the urban area.

The planning proposal was initiated prior to the introduction of the district plan. The Gateway determination raised no objections to the progression of the planning proposal on the grounds of its incompatibility with the locality and the rezoning of rural zones for residential uses. The Gateway determination noted that the site's current use is not agricultural, and any agricultural uses permitted in the RU6 zone may not be compatible with the surrounding locality.

The draft LEP is consistent with the Gateway determination. The property is on the periphery of the metropolitan rural area between rural-residential, urban residential and commercial uses. The site has had an industrial use (a timber mill) for 50 years. There is no indication that the site is suited to agricultural uses given its size and shape, soil conditions, proximity to urban residential zones and the presence of an endangered ecological community (SSTF).

While the draft LEP is inconsistent with Planning Priority 18, it is considered to be acceptable for the reasons outlined above.

## 10. MAPPING

There are two maps (**Attachment Maps**) and an accompanying map cover sheet (**Attachment MCS**) associated with this amendment:

- a land zoning map – sheet LZN\_023; and
- a lot size map – sheet LSZ\_023.

The maps and map cover sheet have been approved by the Department's e-Planning team and provided to Parliamentary Counsel.

## 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment D**). Council confirmed on 30 October 2018 that it was satisfied with the draft LEP and the plan should be made (**Attachment E**).

## 12. PARLIAMENTARY COUNSEL OPINION

On 5 November 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

### **13. RECOMMENDATION**

It is recommended that the Minister for Planning's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979*.



17/12/2018

**Ann-Maree Carruthers**  
**Director, Sydney Region West**

Contact Officer: Simon Turner  
Senior Planner, Accelerated Rezoning  
Phone: 8837 6376