



**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**  
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26 May 2023

Ms Tharani Yoganathan  
Manager Place & Infrastructure  
Planning & Land Use Strategy  
Department of Planning and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Our Ref: 2/2023/PLP  
Your Ref: RR-2023-7

Dear Ms Yoganathan

**REQUEST FOR REZONING REVIEW – DERRIWONG ROAD AND OLD NORTHERN ROAD,  
DURAL (2/2023/PLP)**

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Reference is made to a letter received from the Department of Planning and Environment (DPE) dated 1 May 2023 advising that DPE has received a Rezoning Review request in relation to the planning proposal lodged with Council for land at Derriwong Road and Old Northern Road, Dural. Thank you for the opportunity to provide a response and outline the reasons for Council's decision not to progress the matter to Gateway Determination.

*Confirmation of Material Received*

On 12 April 2023 and 18 April 2023, DPE provided Council with a copy of the Rezoning Review material submitted by the Proponent. At this time, it was confirmed that the information provided to Council is the same as the material that was considered by Council in the assessment of the planning proposal, with the exception of one additional document provided by the Proponent.

“Attachment G – Dural Public School Safe System Assessment” had been provided as an attachment to the Proponent’s Rezoning Review justification report. This is an additional technical study, as it seeks to demonstrate that the kiss and drop facilities have been designed in accordance with safety requirements adjacent to Dural Public School, which have subsequently informed the design and consideration of the proposed bypass road.

This assessment was completed in March 2023, after the Council determination of the proposal in February 2023. It therefore did not form part of the planning proposal material submitted to Council or considered by the Local Planning Panel or Council in the assessment and determination of the planning proposal. Any reference to it throughout the Proponent’s rezoning review justification report should therefore be disregarded by both DPE and the Sydney Central City Planning Panel. It appears that the Department has already acknowledged this inconsistency as the report does not form part of the material uploaded to the NSW Planning Portal with respect to this Rezoning Review Request.

### Local Planning Panel Advice

On 21 December 2022, The Hills Local Planning Panel considered the proposal and provided the following advice to Council:

1. *The planning proposal has not yet satisfied the strategic merit test. It may be able to demonstrate strategic merit if the following factors were resolved:*
  - a. *The proposed corridor can be delivered in the proposed location, to serve a bypass function, with an intersection at Old Northern Road;*
  - b. *The road to be dedicated is a regional corridor width;*
  - c. *The issues raised by SINSW can be addressed without compromising the function of the future bypass road.*
2. *The planning proposal should however proceed to Gateway Determination to allow for the above factors to be progressed.*
3. *The Panel acknowledges the engagement with agencies that has been undertaken to date on this and previous iterations of planning proposals for this site and notes that they have been unable to resolve issues raised by agencies and that progressing to Gateway Determination appears to be the only way to continue to resolve the issues.*
4. *The Panel notes the advice of the Independent Planning Commission as it relates to the previous iteration of the proposal and the Panel's view remains consistent with the Independent Planning Commission advice as it relates to site specific merit.*

Following receipt of the Local Planning Panel Advice, Council officers wrote to the Proponent providing a copy of the advice and advising that the next step is for the matter to be reported to Council for a decision on whether or not to forward the proposal to Gateway Determination. The planning proposal was subsequently reported to Council at its Ordinary Meeting on 21 February 2023.

### Council Determination

At its Meeting on 21 February 2023, Council considered the planning proposal and resolved as follows:

*'The planning proposal not proceed to Gateway Determination in accordance with Option 2 of this Report'.*

Option 2 of the Council Report provided the following commentary:

*'It would also be justifiable to determine that the planning proposal should not proceed to Gateway Determination. A decision to this effect would place greater emphasis on the technical inconsistency of the proposal with the Region Plan, District Plan and LSPS having regard to the treatment of land within the Metropolitan Rural Area. It would also reflect that despite the strong site-specific merit demonstrated by the proposal and the advice of the IPC with respect to the previous proposal, the Region Plan has not yet been updated to identify any urban development on this land and the consideration of the site-specific merit is only a relevant factor once a proposal has first satisfied the strategic merit test.*

*While Option 1 presents a pathway for Council to continue to secure its strategic vision for a regional bypass corridor, Option 2 places greater weight on the current views of TfNSW and acknowledges that despite the contribution of this proposal, the ultimate provision of a regional bypass corridor is contingent on a number of factors that are becoming increasingly uncertain or unlikely, therefore presenting a speculative risk or financial burden to Council.'*

A copy of the Council Report and Minute, including the Council Officer Assessment Report to the Local Planning Panel and the Panel's advice are provided as Attachment 1 for your information.

A detailed response to the Rezoning Review assessment criteria, contained in DPE's *Local Environmental Plan Making Guideline*, is provided as Attachment 2 to this letter.

It is noted that the Council Officer Assessment Report to Council recommended that the planning proposal should proceed to Gateway Determination. However, the assessment within the report was balanced across the different elements of the strategic planning framework which, in the view of Council officers, can at times be in conflict. Specifically, the Council officer's report set out the tension between the opportunity offered by the Proposal to further Council's local strategic objective of securing a regional bypass corridor generally in this location and the other policy positions and objectives of the strategic planning framework, particularly as they relate to protecting and managing rural lands and discouraging any densification of development in the Metropolitan Rural Area.

The decision of the elected Council was unanimous, that the planning proposal should not proceed to Gateway Determination. This decision of the elected Council reflects the view that the proposal does not satisfy the strategic merit test and the determinative weight given to the inconsistency of the proposal with the Region Plan, District Plan and Council's Local Strategic Planning Statement, as it relates to the protection and management of land within the Metropolitan Rural Area. While the Council Officer's report presented a pathway for Council to continue to secure its local strategic vision for a regional bypass corridor, the elected Council's decision not to proceed ultimately places greater weight on the current views of TfNSW and acknowledges that despite the contribution of this proposal, the ultimate provision of a regional bypass corridor is contingent on a number of factors that are becoming increasingly uncertain or unlikely, therefore presenting a speculative risk or financial burden to Council.

It was acknowledged that the proposal would likely be capable of satisfying the site-specific merit test (and this has been indicated by way of advice from the IPC with respect to a previous proposal for the site), however site-specific merit is only a relevant factor once a proposal has first satisfied the strategic merit test.

Thank you for the opportunity to comment on the planning proposal. If you require further information, please contact Kayla Atkins, Strategic Planning Coordinator, on 9843 0404.

Yours faithfully



**Nicholas Carlton**  
**MANAGER – FORWARD PLANNING**

Attachments:

1. Council Report and Minute, 21 February 2023
2. Detailed Response to Rezoning Review Assessment Criteria
3. Council Officer Pre-lodgement Feedback Letter, 5 August 2022

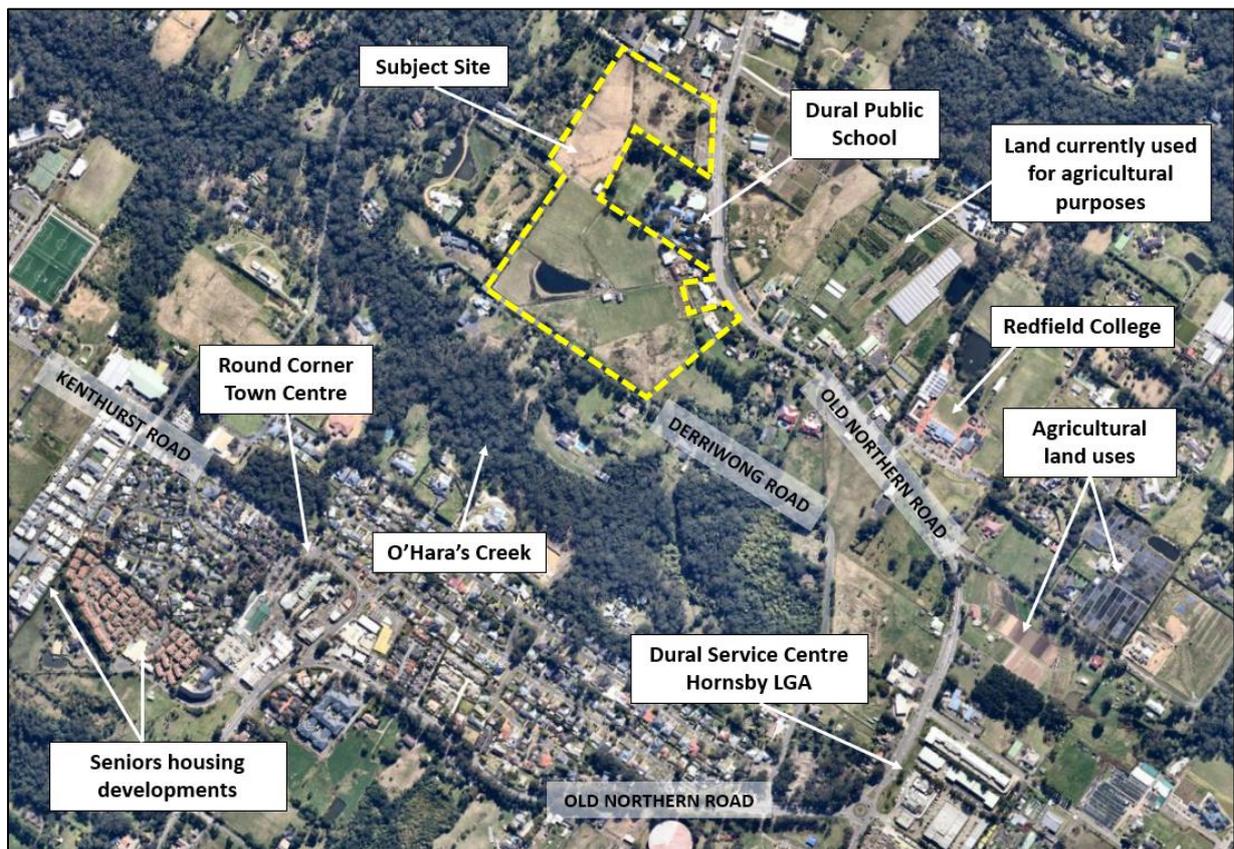
## DETAILED RESPONSE TO REZONING REVIEW ASSESSMENT CRITERIA *Derriwong Road and Old Northern Road, Dural (2/2023/PLP)*

### 1. THE SITE

The site has a total area of approximately 12.88 hectares and comprises five (5) individual land parcels known as 614, 618 and 626 Old Northern Road and 21 and 27 Derriwong Road, Dural.

The site is located to the north of Round Corner Town Centre and is bound by Old Northern Road to the east and Derriwong Road to the south and west. The subject land surrounds Dural Public School. Old Northern Road forms the boundary between The Hills Shire Council and Hornsby Shire Council Local Government Areas.

The site falls to the west and south-west towards O'Hara Creek and currently comprises rural residential development, including a dam. The site is predominantly cleared of substantial vegetation though some patches of vegetation remain. Desktop analysis suggests parts of the site were used for agricultural purposes as recently as 2014, whilst other parts of the site have been used for small businesses and home businesses. There are a number of surrounding land uses including large rural properties, agricultural land uses, Dural Public School, Redfield College and various commercial uses. The site and its surrounding locality are identified in the figure below.



**Figure 1**  
Subject site and aerial view of surrounding locality

### 2. HISTORY

**May 2016** A previous planning proposal was lodged with Council incorporating the subject site and additional land further south opposite the Dural Service Centre.

**December 2016** Council resolved to hold the planning proposal in abeyance until the wider Dural Investigation Area planning was completed to enable a more cohesive

development and infrastructure outcome and provide a clear boundary to urban development.

**February 2017** A Rezoning Review was lodged with the Department of Planning and Environment. The Sydney West Central Planning Panel determined that the planning proposal should not proceed to Gateway Determination.

**March 2019** The Phase 1 Urban Capacity and Capability Assessment for the Dural locality was completed. The Assessment concluded that while some land is environmentally capable of accommodating development, there is insufficient infrastructure capacity to facilitate development uplift in the Dural locality at this time.

Council resolved to receive the outcomes of this Assessment, discontinue further investigations with respect to rural rezoning in the locality and further lobby the State Government with respect to regional road upgrades and reclassification along Annangrove Road, Old Northern Road and New Line Road to address existing road capacity problems. Council also resolved to consider the merits of any future planning proposal, where it can be demonstrated that required local and regional infrastructure upgrades can be delivered at no cost to Council.

**June 2019** The Local Planning Panel considered the planning proposal and advised that the application should not proceed to Gateway Determination.

**July 2019** Council considered the planning proposal and resolved to forward the application to the Department for Gateway Assessment to determine State Government agency views on the merits of the planning proposal. Council's resolution was as follows:

1. *That the planning proposal applicable to land at Derriwong Road and Old Northern Road, Dural be submitted to the Department of Planning and Environment for Gateway Assessment to determine State Government agency views on the merits of the planning proposal.*
2. *Should the Department of Planning and Environment determine that the proposal has strategic and site-specific merit and issue a Gateway Determination, the following matters should be resolved prior to any exhibition of the planning proposal:*
  - a) *The inclusion of 1,000m<sup>2</sup> and 2,000m<sup>2</sup> minimum lot sizes at the periphery of the zoned area to serve as a transition to the adjoining rural area;*
  - b) *Access arrangements and relationship between proposed residential lots and the planned arterial bypass road;*
  - c) *Establishment of a mechanism to ensure that the proposed amendments would not facilitate a proliferation of seniors housing development proposals on adjoining rural land; and*
  - d) *The ability to service the proposed residential yield with new local and regional infrastructure, at no cost to Council. This would include further resolution of ongoing discussions with State and Federal Government surrounding the funding of required regional road upgrades.*

**April 2020** DPE issued a Gateway Determination that the planning proposal should not proceed.

**September 2020** The Proponent initiated a Gateway Determination Review and DPE referred the matter to the Independent Planning Commission (IPC) for advice on whether the Gateway Determination should be altered. The IPC advised that the planning proposal should not proceed to Gateway Determination.

The findings of the IPC concluded that the proposal does not have strategic merit as it is inconsistent with the locational housing objectives and rural management objectives of the strategic planning framework as the site is located within the Metropolitan Rural Area, which is not delineated for any additional urban development. The IPC noted that this was a matter that could be reconsidered by Government and Council as part of the next review of the Greater Sydney Region Plan and Local Strategic Planning Statement.

However, the IPC concluded that the proposal before the commission at that time (and specifically the 'Northern Site' element, which is now the relevant land that is the subject of this new planning proposal), demonstrated considerable site-specific merit for a number of reasons. These included the social and economic benefits of the local infrastructure improvements proposed (including the key contribution of the Round Corner regional bypass), the presence of surrounding land uses along Old Northern Road compromising the site's agricultural potential, the site's proximity to jobs and services in the nearby Dural Neighbourhood Village, the ability of the site to overcome view and vista impacts through site specific design and the low likelihood of generating a significant impact on the local and regional road network.

A copy of the Independent Planning Commission's Advice is provided as Attachment 3 to this report.

**November 2020** DPE advised Council that it had not yet determined whether to alter the Gateway Determination in light of the IPC's advice. DPE invited Council to submit a revised planning proposal if Council was satisfied that it could address the concerns raised by the IPC and DPE's Gateway Determination.

**February 2021** Council resolved to submit a revised planning proposal to DPE for Gateway Assessment, commence negotiations with the Proponent to prepare a draft VPA to secure local infrastructure contributions and consider a further report on the draft VPA and a draft DCP prior to any public exhibition of the planning proposal.

Council's resolution was, in part, as follows:

*"Council proceed with Option 1 as set out in this Report".*

For reference, "Option 1" (as contained within the Council Report and referred to in Council's resolution) was that *"Council submit the revised proposal to the Department of Planning, Industry and Environment (DPIE) including the requirements set out in Council's previous resolution of 9 July 2019)".*

**July 2021** A Gateway Determination was issued by DPE authorising the planning proposal to proceed, subject to a number of conditions including public agency consultation prior to public exhibition. The planning proposal could not proceed to public exhibition unless a letter of support was provided by TfNSW.

Agency consultation was undertaken with RFS, TfNSW and SINSW. TfNSW objected to the proposal and advised that it would not accept the land or reserve other land for a regional bypass corridor at this time. As such, Council was unable to meet the condition of the Gateway Determination to obtain a letter of support from TfNSW.

**August 2021 – March 2022** Consultation continued to occur between Council Officers, DPE (including the Planning Delivery Unit), TfNSW, SINSW and the Proponent. Council Officers sought advice from DPE on the next steps of the proposal in the absence of being able to satisfy the Gateway conditions that would enable the proposal's progression to public exhibition.

**April 2022**

A Gateway Alteration was issued by DPE that deleted all conditions of the Gateway Determination and stated that the planning proposal should *not* proceed.

Reasons for this decision included the proposal's inability to comply with Gateway conditions in light of TfNSW's consistent submissions, the substantial amount of work that was still required to comply with other Gateway Conditions and the inability to meet the 9 month finalisation timeframe.

The Gateway Alteration letter from DPE advised that Council and the Proponent may wish to consider a new planning proposal but flagged a number of implications with a future proposal. These included the provision of a local road corridor, the removal of a regional road bypass, no future references to 'land-banking' a local road corridor, and consideration of design, alignment, land dedication and revised traffic and transport analysis in consultation with TfNSW with respect to a local road corridor.

The letter also noted that the regional bypass corridor was the core element of the proposal's strategic merit, and that as a result, any future planning proposal would need to meet the strategic merit test in the absence of the regional bypass road, noting TfNSW's objection to this element of the proposal previously.

**September 2022**

Subject planning proposal application lodged with Council.

**December 2022**

The planning proposal was reported to The Hills Local Planning Panel for advice. The following advice was issued to Council:

1. *The planning proposal has not yet satisfied the strategic merit test. It may be able to demonstrate strategic merit if the following factors were resolved:*
  - a. *The proposed corridor can be delivered in the proposed location, to serve a bypass function, with an intersection at Old Northern Road;*
  - b. *The road to be dedicated is a regional corridor width;*
  - c. *The issues raised by SINSW can be addressed without compromising the function of the future bypass road.*
2. *The planning proposal should however proceed to Gateway Determination to allow for the above factors to be progressed.*
3. *The Panel acknowledges the engagement with agencies that has been undertaken to date on this and previous iterations of planning proposals for this site and notes that they have been unable to resolve issues raised by agencies and that progressing to Gateway Determination appears to be the only way to continue to resolve the issues.*
4. *The Panel notes the advice of the Independent Planning Commission as it relates to the previous iteration of the proposal and the Panel's view remains consistent with the Independent Planning Commission advice as it relates to site specific merit.*

**February 2023**

Council considered the planning proposal at its Ordinary Meeting of 21 February 2023 and resolved that:

*'The planning proposal not proceed to Gateway Determination in accordance with Option 2 of this Report'.*

For reference, Option 2 of the Council Report provided the following commentary:

*'It would also be justifiable to determine that the planning proposal should not proceed to Gateway Determination. A decision to this effect would place greater emphasis on the technical inconsistency of the proposal with the Region Plan, District Plan and LSPS having regard to the treatment of land within the Metropolitan Rural Area. It would also reflect that despite the strong site-specific merit demonstrated by the proposal and the advice of the IPC with respect to the previous proposal, the Region Plan has not yet been updated to identify any urban development on this land and the consideration of the site-specific merit is only a relevant factor once a proposal has first satisfied the strategic merit test.'*

*'While Option 1 presents a pathway for Council to continue to secure its strategic vision for a regional bypass corridor, Option 2 places greater weight on the current views of TfNSW and acknowledges that despite the contribution of this proposal, the ultimate provision of a regional bypass corridor is contingent on a number of factors that are becoming increasingly uncertain or unlikely, therefore presenting a speculative risk or financial burden to Council.'*

**April 2023** Rezoning Review application lodged by Proponent.

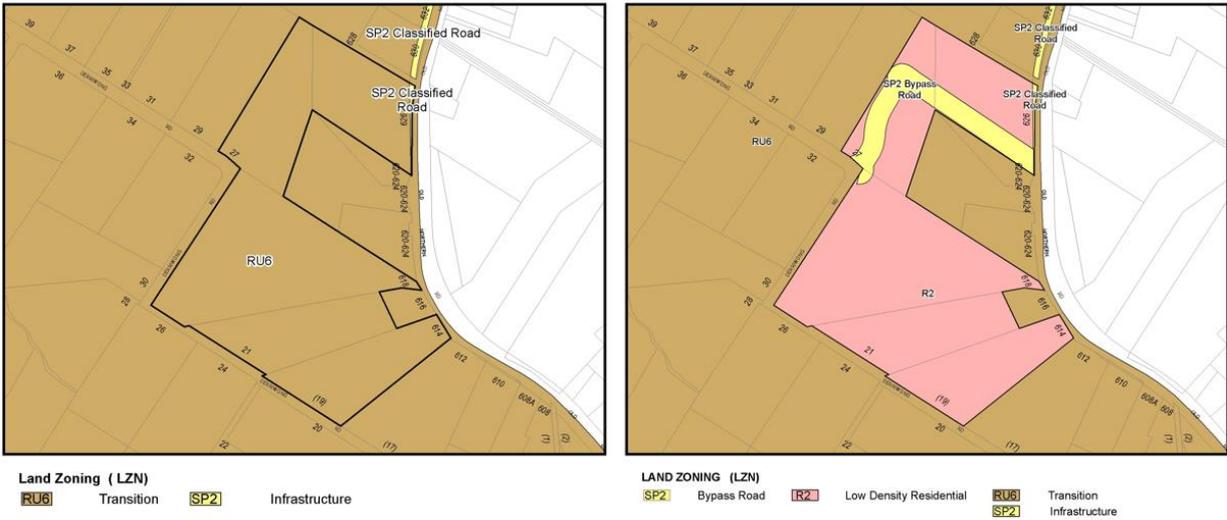
### 3. DESCRIPTION OF PLANNING PROPOSAL

The subject planning proposal was lodged on 30 September 2022. It seeks to rezone the land from RU6 Transition to R2 Low Density Residential and SP2 Infrastructure (Local Road). It would also make associated amendments to maximum building height and minimum lot size controls to facilitate a low density subdivision comprising approximately 110 lots.

A comparison between the existing and proposed controls under LEP 2019 is provided in Table 1 and Figures 2-4 below.

<b>Planning Control</b>	<b>Existing</b>	<b>Proposed</b>
Land Zone	RU6 Transition SP2 Infrastructure (Classified Road)	R2 Low Density Residential SP2 Infrastructure (Local Road) SP2 Infrastructure (Classified Road) (retained)
Height of Building	10m	9m
Floor Space Ratio	N/A	No change
Minimum Lot Size	2 hectares	600m <sup>2</sup> , 1,000m <sup>2</sup> and 2,000m <sup>2</sup>

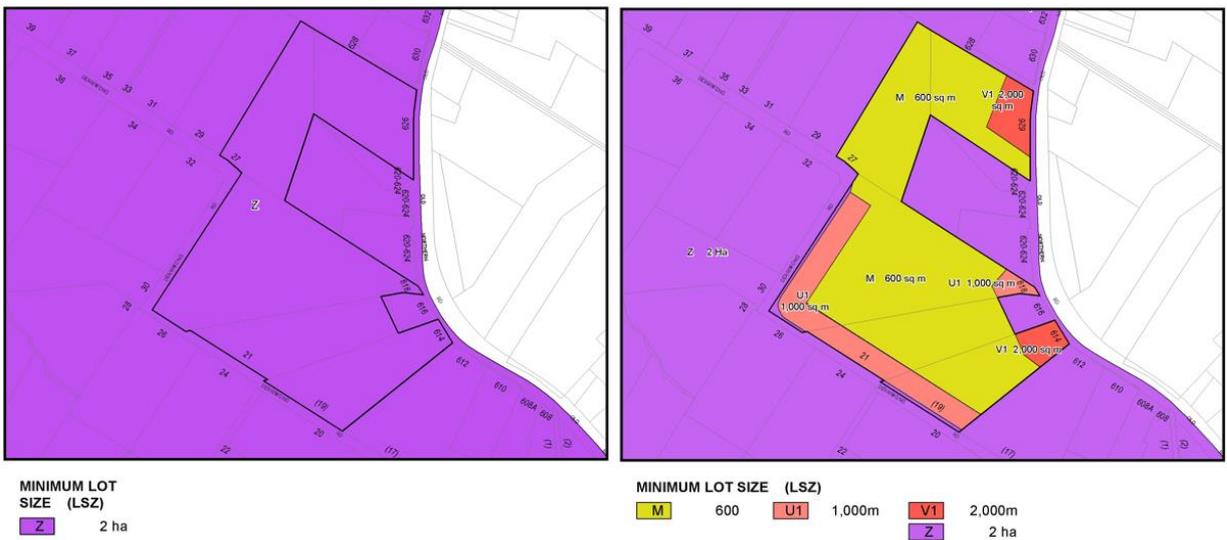
**Table 1**  
Existing and proposed development controls under LEP 2019



**Figure 2**  
Existing (left) and Proposed (right) Land Zone Map

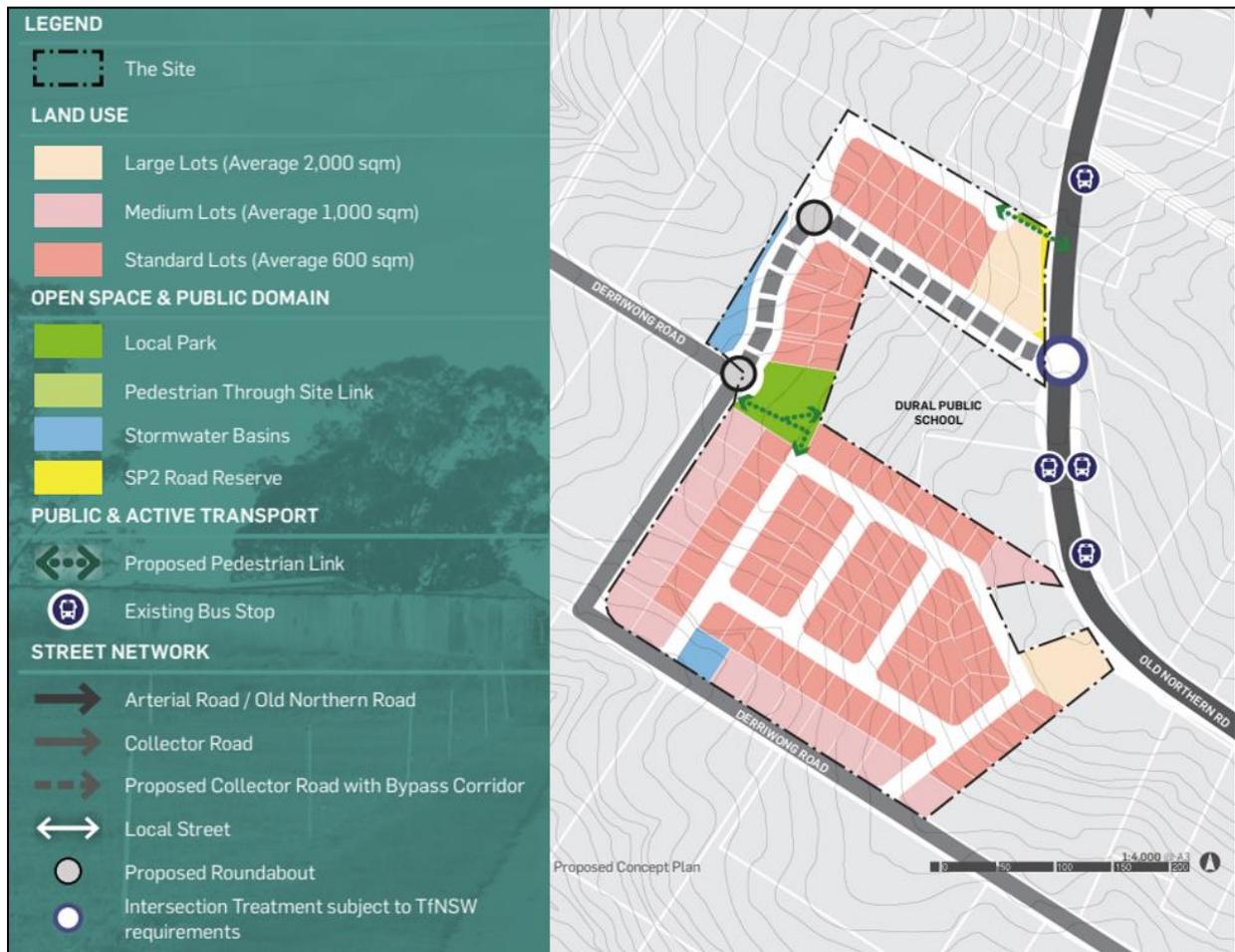


**Figure 3**  
Existing (left) and Proposed (right) Height of Building Map



**Figure 4**  
Existing (left) and Proposed (right) Minimum Lot Size Map

A proposed concept plan prepared by the Proponent is provided in the following figure, illustrating the indicative subdivision layout, proposed lot sizes and internal road network including a potential new bypass corridor through the site.



**Figure 5**  
Proposed Concept Plan

The planning proposal is accompanied by a draft site-specific Development Control Plan (DCP) and draft Voluntary Planning Agreement (VPA) letter of offer.

The draft DCP comprises development controls relating to subdivision requirements, site planning, residential density, visual character, road network, vehicular access, public open space and landscaping, bushfire management, stormwater management, utilities requirements and dwelling design.

The draft VPA letter of offer proposes infrastructure contributions comprising the following:

- Embellishment and dedication of 4,000m<sup>2</sup> of land for the purpose of a new local park;
- Embellishment and dedication of 141m<sup>2</sup> of land for the purpose of a pedestrian link;
- Land dedication associated with a portion of a future Round Corner bypass road (approx. 13,223m<sup>2</sup> forming a 32m wide road reservation);
- Works to construct a 21.5m wide local collector road within the future Round Corner bypass road corridor);
- Embellishment and dedication of two stormwater detention basins;
- Active open space monetary contribution of \$363,305.80; and
- Community facilities monetary contribution of \$101,242.90.

The Proponent has valued the above land, works and monetary items at \$17,826,409, which would equate to \$162,000 per lot. These items are proposed to be in addition to the already applicable Section 7.12 Contributions Plan, which levies development at a rate of 1% of the cost of development.

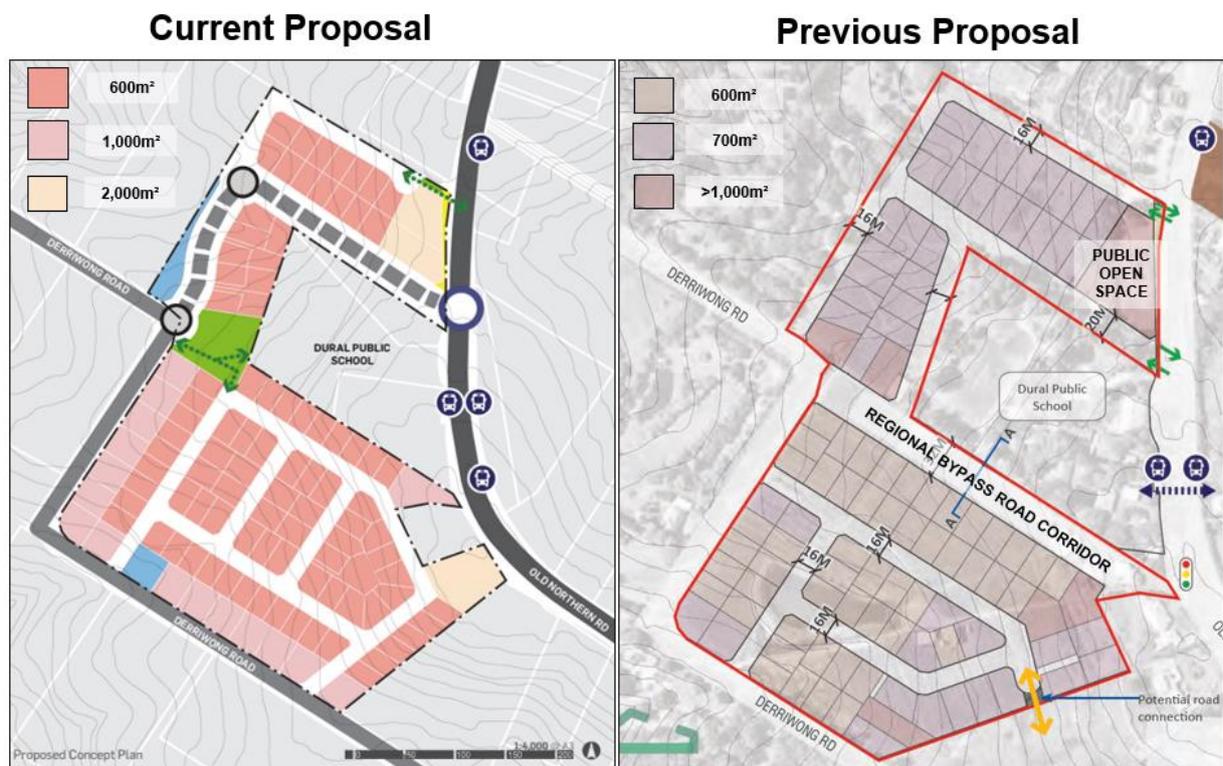
It is noted that as part of these local infrastructure works and the broader master plan concept, the Proponent has identified the following benefits to State Government infrastructure:

- The provision of the local collector road which includes a drop off and pick up facility adjacent to Dural Public School and widened verges to accommodate future expansion;
- Provision of sewer infrastructure up to the boundary of Dural Public School and undergrounding of overhead powerlines across the School site;
- Potential for the School to utilise the public park and benefit from improved connectivity and access to the School via the park;
- The ability to install and upgrade pedestrian pathways to the School site's frontage and northern edge to mitigate potential impacts on existing pedestrian entrances; and
- Provision of a new intersection at Old Northern Road to support improved traffic distribution within the locality in north south movements and more broadly around the school.

It is noted that if the proposal was to ultimately progress, Council officers would need to undertake further work and negotiations with the Proponent with respect to the DCP and VPA.

Comparison between Previous Proposal and Current Proposal

As detailed in the History section earlier within this response, the land was subject to a previous planning proposal (23/2016/PLP), which was supported by Council and ultimately received a Gateway Determination (PP-2021-4415), however did not subsequently proceed beyond this point. A comparison between the previous and current proposal is provided below.



**Figure 6**  
Comparison between current (left) and previous (right) proposal

As shown above, the current proposal is generally similar in terms of the key outcomes previously sought, noting the following differences:

- The subject site has been expanded to include one additional property at 614 Old Northern Road (at the south eastern edge of the site);
- The average lot sizes proposed have been adjusted. The new proposal has a greater number of 600m<sup>2</sup> lots and previously proposed 700m<sup>2</sup> lots have been removed. The new proposal includes more larger lots (generally 1,000m<sup>2</sup>) at the site's peripheries;
- The new proposal seeks to achieve 110 lots, in comparison to the 101 lots previously proposed;
- The location of the proposed public park has changed from its original proposed location fronting Old Northern Road, to a more central location the rear of the site adjoining Derriwong Road and Dural Public School;
- The previous proposal identified land that could form part of a broader regional bypass corridor running directly through the site, along the southern boundary of Dural Public School. In resolving to support the previous proposal, Council was of the view that the achievement of the full regional bypass corridor (between Annangrove Road and Old Northern Road) would be contingent on the remaining land acquisition and road construction being funded by the NSW Government / TfNSW, at no cost to Council. It is noted however that TfNSW was not supportive of this outcome. Under the current proposal, the alignment of the corridor has been adjusted to run north (along the western boundary of the site) and then east (along the northern boundary of Dural Public School). The corridor through the site would be identified as part of a local bypass corridor. In light of the current position of TfNSW, the achievement of the full local bypass corridor (between Annangrove Road and Old Northern Road) would be contingent on the remaining land acquisition and road construction being funded by Council, unless the NSW Government was to change its current position with respect to this regional transport corridor and an associated funding commitment.

#### 4. STRATEGIC MERIT ASSESSMENT

- a) *Does the proposal give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans released for public comment or a place strategic for a strategic precinct including any draft place strategy;*

##### **Greater Sydney Region Plan and Central City District Plan**

The following objectives of the Greater Sydney Region Plan and Planning Priorities of the Central City District Plan are relevant to the subject proposal:

- Objective 2 – Infrastructure aligns with forecast growth
- Objective 10 – Greater housing supply
- Objective 11 – Housing is more diverse and affordable
- Objective 28 – Scenic and cultural landscapes are protected
- Objective 29 – Environmental, social and economic values in rural areas are protected and enhanced
- Planning Priority C1 – Planning for a city supported by infrastructure
- Planning Priority C5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport
- Planning Priority C15 – Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes
- Planning Priority C18 – Better managing rural areas

*Objective 2 – Infrastructure Aligns with forecast growth and Planning Priority C1 – Planning for a city supported by infrastructure*

The planning proposal does not demonstrate strategic merit as there is no commitment to a bypass corridor in this location and the proposed densification would therefore not align infrastructure with future growth. Council previously resolved that if increased densities were to be permitted in this location, the infrastructure necessary to support the growth would need to be provided at no cost to government. Given that the regional bypass is not proposed to be funded by State Government and this proposal, in isolation, is unable to deliver the entire length of the corridor, there will be a cost to Council to upgrade

the proposed local road to a bypass road in the future. Council has not indicated any intent to allocate funds to further studies, designs, land acquisition of capital works for a bypass corridor road and TfNSW has expressed the view that it does not have any plans for such a regional bypass corridor.

Further to the above, even if the significant funding issues were overcome, the ability for a bypass road to be constructed to a standard that allows for sufficient speeds consistent with a bypass corridor status remains uncertain, given the “dog-leg” layout of the proposed alignment and the comments from Schools Infrastructure NSW that have requested lower vehicle speeds and traffic calming treatments to ensure safety adjacent to Dural Public School. Further, the signalised intersection treatment works required to connect the bypass road to Old Northern Road do not form part of the Proponent’s public benefit offer and would be an additional cost that is unaccounted for as part of the provision of either the local or regional bypass road.

*Objective 10 – Greater housing supply, Objective 11 – Housing is more diverse and affordable, Planning Priority C5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport*

These objectives and planning priorities seek to increase housing supply in the right locations. While the planning proposal would seek to increase housing supply, it is in a location that is not identified within the State Government’s or Council’s strategic policies. Council’s Local Strategic Planning Statement identifies potential for an additional 38,000 dwellings by 2036, primarily within areas already planned for future growth and densification, being the North West Metro Corridor or Growth Centres Precincts of Box Hill and North Kellyville.

The nomination of these areas with sufficient housing supply to 2036 and beyond has allowed Council to accommodate all future growth within its existing urban areas without need for expansion onto rural land. While Council’s approach to rural land management is discussed in the next section, it is noted that The Hills Shire Council is the only Metropolitan Council that has not only met its 5-year housing target from 2016 to 2021, but is also on track to meet its next 5-year housing target from 2021-2026. This proven track record of supply indicates that Council is providing housing in the right locations that are already strategically identified and zoned for growth.

With respect to diversity of housing supply, the Proponent submits that with the increased density of housing in the Shire as a result of the Metro, the planning proposal offers a point of difference with large lot lower density development. It should be noted however, that while a greater proportion of dwellings within The Hills will be apartments (30%), detached homes will continue to be the predominant built form (57%) within The Hills in 2036. It is therefore considered that there are broader opportunities, in areas already identified and zoned for urban development, for the provision of housing diversity in this respect.

It is acknowledged, however, that the subject land is considered to have a development capacity as demonstrated in the Phase 1 Urban Capacity and Capability Assessment for the Dural locality.

*Objective 28 – Scenic and cultural landscapes are protected, Objective 29 – Environmental, social and economic values in rural areas are protected and enhanced, Planning Priority C15 – Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes, Planning Priority C18 – Better managing rural areas*

These objectives and planning priorities state that rural residential development is not consistent with the values of the Metropolitan Rural Area, particularly as the strategic policy settings identify sufficient land to deliver housing needs within the current boundary of the urban area. While future Region and District plans may identify additional need for housing to accommodate growth, this need is not identified at this stage and there is a clear policy position which discourages any densification within the Metropolitan Rural Area.

It is noted that the review of the Region and District Plans have been earmarked to occur in 2023. In considering the previous planning proposal as part of a Proponent-initiated Gateway Determination Review, the Independent Planning Commission (IPC) recommended that the subject site be considered for inclusion for urban development as part of the next review of the District Plan, given the site-specific merit demonstrated. However, the planning framework requires the current Plans to be implemented in

the assessment of any application until such time as a review is completed and adopted. As such, the IPC ultimately concluded that the previous planning proposal (which sought essentially the same development outcome on this site) did not demonstrate strategic merit and should not proceed to Gateway Determination. In its determination of the subject planning proposal in February 2023, the elected Council also recognised the need to enact the Region and District Plan, in their current and in force form, rather than speculating around the potential outcomes and policy positions that may come out of a future review.

The Region and District Plan state that rural residential development is generally not supported as it is not an economic value of the Metropolitan Rural Area. Limited growth may be considered where there are no adverse impacts on the amenity of the local area and where the development provides incentives to maintain and enhance environmental, social and economic values of the land. This could include the creation of protected biodiversity corridors, buffers to support investment in rural industries and protection of scenic landscapes.

The planning proposal does not seek to maintain the values of the Metropolitan Rural Area through any of the above incentives. Further, the proposal would potentially impact on the potential for surrounding rural land to undertake agricultural land uses that are already permitted in the zone. It should be noted that land on the eastern side of Old Northern Road falls within Hornsby Shire Local Government Area and is zoned RU2 Rural Landscape. The objectives of this zone seek to maintain the rural landscape character of the land and provide for extensive agricultural uses, including provision of farm produce directly to the public and sustainable primary industry production.

This is a more intensive rural zone than the site's zoning of RU6 Transition. The objectives of the RU6 Transition zone are to provide a buffer between rural and other land uses of varying intensities and to minimise the conflict between land uses within this zone and land uses within adjoining zones. Importantly, this zone is not "urban land in waiting" and is not envisaged to transition to more intense development, but rather, provide a physical transition and buffer to permissible agricultural uses. The strategic importance of the RU6 Transition zone achieving The Hills' priority to protect and manage the rural urban interface was noted in the elected Council's determination of the proposal.

The proposal to rezone the site to R2 Low Density Residential and facilitate residential subdivision would potentially compromise the ability to achieve the intended outcomes for the site and surrounding rural land. Further, there would be concern that rezoning the subject land would create precedent and additional pressure to rezoning surrounding land and further exacerbate land use conflicts and impacts on the rural landscape.

It is noted that the Council Officer Assessment Report to Council recommended that the planning proposal should proceed to Gateway Determination to allow for full exploration of the opportunity for Council to work towards one of its local strategic transport planning objectives. However, the assessment within the report was balanced across the different elements of the strategic planning framework which, in the view of Council officers, can at times be in conflict. Specifically, the Council officer's report set out the tension between the opportunity offered by the Proposal to further Council's local strategic objective of securing a regional bypass corridor generally in this location and the other policy positions and objectives of the strategic planning framework, particularly as they relate to protecting and managing rural lands and discouraging any densification of development in the Metropolitan Rural Area.

However, the decision of the elected Council was unanimous, that the planning proposal should not proceed to Gateway Determination. This decision of the elected Council reflects the view that the proposal does not satisfy the strategic merit test. While the Council Officer's report presented a pathway for Council to continue to work towards its local strategic vision for a regional bypass corridor, the elected Council's decision not to proceed ultimately places greater weight on the appropriate management and protection of the environmental, social and economic values in the Shire's rural areas. It also acknowledges the current views of TfNSW and that despite the contribution of this proposal, the ultimate provision of a regional bypass corridor is contingent on a number of factors that are becoming increasingly uncertain or unlikely.

The Report was clear that it remained open to the elected Council whether to continue to pursue State Government commitment to a regional bypass corridor and accept the financial risks associated with

the road remaining as a local bypass road in the event that State Government did not accept the road. Ultimately, this risk was not considered acceptable by the elected Council, particularly so given the resulting development outcome would be inconsistent with the adopted approach to managing rural land. The need for a bypass however remains set out in Council's long term strategic documents which remain current.

### **Dural Urban Capacity and Capability Assessment**

In March 2019, the Phase 1 Urban Capacity and Capability Assessment for the Dural locality was completed. This Assessment was undertaken in response to pressure to rezone land on a number of sites within the Dural locality. The Assessment undertook a holistic approach to the development potential and management of land in the broader Dural area, rather than on an ad hoc basis in response to landowner-initiated site specific planning proposals.

The Dural Urban Capacity and Capability Assessment concluded that while some land is environmentally capable of accommodating development, there is insufficient infrastructure capacity to facilitate development uplift in the Dural locality at this time. Council resolved to receive the outcomes of this Assessment, discontinue further investigations with respect to rural rezoning in the locality and further lobby the State Government with respect to regional road upgrades and reclassification along Annangrove Road, Old Northern Road and New Line Road to address existing road capacity problems. Council also resolved to consider the merits of any future planning proposal, where it can be demonstrated that required local and regional infrastructure upgrades can be delivered at no cost to Council.

It is evident that infrastructure provision is a significant impediment to development in the Dural locality. The previous planning proposal sought to resolve these issues with the State Government through the Gateway Determination and public authority consultation process. DPE's Gateway Determination Assessment Report with respect to the previous proposal for the site noted that the proposed regional bypass road was the core element of the proposal's strategic merit, and without this element, DPE would still need to be satisfied that the proposal met the strategic merit test.

Ultimately, the planning proposal was unable to demonstrate sufficient progress towards resolving infrastructure issues with TfNSW and Schools Infrastructure NSW. While the Council Officer report on the subject planning proposal sought to initiate this same process again to continue these discussions, the elected Council's decision was made cognisant of the Government's position on these matters which had been clearly articulated to date, being that there was no commitment from State Government to the provision of a regional bypass corridor and no timeline for when this position might change.

### **Section 9.1 Ministerial Directions**

The following Section 9.1 Directions are relevant to the subject planning proposal:

- *Direction 3.2 Heritage Conservation*

The site does not comprise any heritage items, however is in the vicinity of a number of locally listed items. These are discussed in detail within the Council Officer Report provided as Attachment 1. The Proponent has submitted a Heritage Impact Statement in support of the proposal. Broadly, it is considered that the proposal will not diminish the values or the views of the surrounding heritage items as there is appropriate separation between the items and the subject site. The Officer Report flagged that should the planning proposal proceed, further discussions may be required with Heritage NSW as part of the intersection and road works at Old Northern Road, given that the road is an archaeological item.

- *Direction 5.1 Integrating Land Use and Transport*

The planning proposal does not seek to integrate land use and transport and does not achieve the planning objectives of this Direction, being to improve access to housing by walking, cycling and public transport, increasing the choice of available transport and reducing dependence on cars, and reducing travel demand including the number of trips generated by development and the distances travelled by car.

The planning proposal would result in car dependent movements as the site is located within the Metropolitan Rural Area where access to public transport services and other active transport infrastructure is limited. Capacity along regional roads is already constrained and anticipated to worsen as planned growth occurs in the North West Growth Centre. As discussed above, road infrastructure is a critical impediment to development in the area. While the subject site would not substantially worsen, nor is it responsible for, the existing local and regional traffic levels, the proposal would facilitate increased car dependence and does not seek to co-locate increased density with public transport infrastructure.

It is acknowledged that the proposal did seek to offer a portion of a future regional bypass corridor through the site, which would contribute towards Council's longer term vision for a solution to regional traffic movements through Dural Round Corner and the locality. While this overall vision may have a positive impact on traffic congestion in the locality, the Proponent is unable to deliver the entire road corridor in isolation and TfNSW has indicated that it has no plans for such a corridor to be delivered.

- *Direction 9.1 Rural Zones*

The objective of this Direction is to protect the agricultural production value of rural land. Under this direction, a planning proposal must not rezone land from a rural zone to a residential zone and must not contain provisions that will increase the permissible density of land within a rural zone.

The planning proposal is inconsistent with this Direction as it seeks to rezone rural land to a residential zone and contains provisions to increase the permissible density of the land by way of reducing the minimum lot size. The proposal may be inconsistent with the Direction if justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this Direction.

The site was used as a peach orchard which ceased operation in mid-2014. The Proponent purchased the site in late 2016/early 2017. The Proponent has submitted an Economic Impact Assessment which comprises an Agriculture Suitability Assessment, involving land capability analysis, economic viability analysis and suitability of surrounding land uses. The Proponent seeks to justify inconsistency with this Direction on the basis that the land has no agricultural production value that warrants protection.

The Proponent submits that parts of the site are substantially sloped, which makes it unviable for some primary production purposes, such that it could be regularly cultivated. The Proponent's Class category analysis concluded that the land would only be able to accommodate some rural land uses such as fruit orchards, cattle grazing and horse agistment. A Class 4 category means that the land is not capable of being regularly cultivated but suitable for grazing with occasional cultivation.

It is considered that the intent of the site is not to facilitate intensive primary production operations, given that the site is not zoned RU1 Primary Production or RU2 Rural Landscape. The RU6 Transition Zone provides for lower impact agricultural uses such as those listed above in the Proponent's land capability assessment. The land being capable of grazing with occasional cultivation does not indicate that there is no agricultural capability associated with the land.

The Proponent has submitted that the size of the land is not conducive to feasible enterprise operations, and therefore has no economic capability for agricultural purposes. However, this is questioned given that the majority of the site was utilised for agricultural purposes as recently as mid-2014, following which the Proponent subsequently purchased the land.

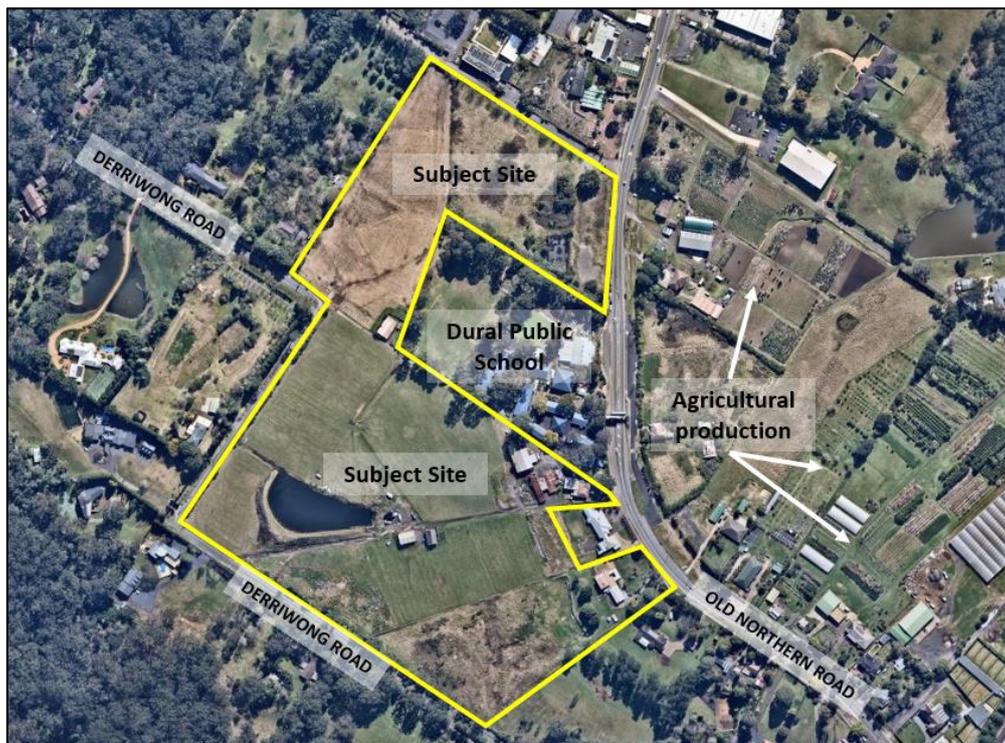
The Proponent's analysis of the suitability of surrounding land uses provides recommended buffer distances for primary industries and relevant areas. The analysis concludes that these buffer distances preclude the subject site from undertaking agricultural production on the land given its proximity to residential areas to the south and the school immediately adjacent to the site. However, this analysis does not consider the site's proximity to surrounding agricultural uses and the objectives of the NSW Right to Farm Policy. This is discussed further in the next section.

- *Direction 9.2 Rural Lands*

The objectives of this Direction are to:

- (a) protect the agricultural production value of rural land,
- (b) facilitate the orderly and economic use and development of rural lands for rural and related purposes,
- (c) assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State,
- (d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,
- (e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land,
- (f) support the delivery of the actions outlined in the NSW Right to Farm Policy.

The northern part of the site immediately adjoins an agricultural business on the opposite side of Old Northern Road, within Hornsby Shire Local Government area. The southern part of the site is within 200-300 metres of a number of sites that are currently utilising rural land for agricultural purposes. This is illustrated in the figure below.



**Figure 7**  
Proximity of agricultural production in relation to the subject site

The key objective of the NSW Right to Farm Policy reflects the desire by farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users. Agricultural production is being undertaken on the sites identified in the figure above in accordance with the current planning permissibility controls. The subject planning proposal seeks to amend the land zone to introduce more dense residential development in close proximity to these operations and would therefore potentially threaten these landowners' right to farm on their land by exacerbating the potential for future land use conflicts and neighbour complaints.

With respect to the Proponent's submission that the site does not comprise sufficient agricultural value, it should be noted that not every parcel of land zoned for rural purposes within The Hills Shire is currently in production. However, this does not mean that a site's agricultural potential is lost, or that the land does not play a strategically important role in buffering surrounding agricultural land uses by minimising land use conflicts. It is therefore insufficient grounds to seek to rezone the land for urban residential development, particularly when the introduction of residential development on the subject land could impact on the ability for surrounding agricultural businesses to continue to operate.

- b) Does the proposal demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan;

**Local Strategic Planning Statement (Assured by GCC), Housing Strategy (Endorsed by DPE) and Rural Strategy (supporting strategy of the LSPS)**

- *Planning Priority 4 – Retain and manage the Shire’s rural productive capacity*

The site is located within one of two distinctly identified agricultural clusters within The Hills Shire, being the cluster that extends from Dural to north of Glenorie. This planning priority states that productive rural uses must be protected from land use conflict arising from incompatible uses. This Priority will be implemented primarily through focusing residential development in the urban area and by implementing an Urban Growth Boundary. This boundary follows the extent of the existing rural urban interface, and the subject site is located within the Metropolitan Rural Area, above the identified growth boundary. The proposal is therefore inconsistent with this Planning Priority.

- *Planning Priority 5 – Encourage support activities and tourism in rural areas*

This priority seeks to value the contribution that rural industries make to Greater Sydney’s economy and protect productive agricultural land from development pressures, particularly along the rural-urban fringe. The LSPS states that Council will discourage planning proposals which seek to rezone viable agricultural land for residential purposes. The planning proposal material seeks to demonstrate that there is no agricultural viability on the subject site, however it is noted that the site was used for orcharding purposes as recent as mid-2014. Further, irrespective of the uses on the site, the site performs a strategically important role of providing a buffer to minimise land use conflicts with surrounding sites that are currently in production for agricultural purposes. The proposal to permit more dense residential development on the site contravenes these objectives and the impact of the rezoning would therefore not merely be limited to the subject site, as surrounding rural land could also be affected by the introduction of residential development nearby.

- *Planning Priority 7 – Plan for new housing in the right locations and Planning Priority 8 – Plan for a diversity of housing*

The intent of these planning priorities is to increase housing supply in the right locations that are well supported by infrastructure and other services to increase public transport patronage. They also seek to facilitate diverse outcomes that respond to a range of budget and lifestyle needs that match the demographic of the Shire. The key locations identified for housing provision include the Sydney Metro Station Precincts and the Growth Centres Precincts of North Kellyville and Box Hill. The LSPS states that Council will limit residential growth to within the existing and planned residential zoned areas below the Urban Growth Boundary.

The subject planning proposal seeks to facilitate housing in a location that is not identified for future residential growth, but rather, an area specifically identified for protection from increased density. The Shire’s forecast dwelling mix still envisages the predominant built form to be low density detached dwellings, despite the increased proportion of apartments to be provided.

The Proponent submits that the planning proposal is consistent with the intent to facilitate limited expansion of rural villages within the Metropolitan Rural Area and that the planning proposal presents a logical extension of the Dural Town Centre. However, while proximate to Dural village, the proposed land is not connected to the Town Centre and as such would not be a logical extension of the town centre. The development outcome is not contiguous and would result in pockets of rural land located between the site and the Round Corner Town Centre. There is concern that the rezoning of this site could be a further catalyst for other rural land to be rezoned in this locality.

While the Proponent has submitted justification in response to the key criteria for considering the expansion of rural villages, it is important to note that the limited expansion of rural villages is earmarked as an action for Council to complete holistically, rather than for a Proponent to seek on an ad hoc site specific basis. Council’s progression with Phase 1 of the Dural Urban Capacity and Capability Assessment reviewed a large study area in the locality (including the subject site) and resolved not to progress with Phase 2 investigations. This was largely on the basis that the infrastructure upgrades required to support growth would necessitate the granting of substantial development uplift to fund these upgrades, of a scale that is incompatible with the character and values of the rural area.

- *Planning Priority 14 – Plan for a safe and efficient regional road network*

This planning priority seeks to upgrade and maintain existing road infrastructure and facilitate key road connections identified in Future Transport 2056. The planning priority acknowledges that traffic congestion is a source of frustration for many residents and that while there are improvements to public transport to alleviate these concerns in the short term, levels of service on arterial and regional roads is still required to ensure the road network can support growth in the long term.

A key connection flagged to achieve this objective is amending the status of Annangrove Road from sub-arterial to arterial in conjunction with a bypass of Kenthurst Road to connect with New Line Road. This would ease congestion around Dural and Round Corner, facilitating a key east-west traffic movement corridor from the North West Growth Centre to other parts of Greater Sydney. The LSPS states that Council will advocate for regional road projects that will benefit the Shire and Greater Sydney, and work with the NSW Government to revise the status of Annangrove Road to an arterial road.

As part of the previous planning proposal application for this site, Council sought to facilitate its strategic objective of securing a regional bypass corridor to ease congestion around Dural and Round Corner. Detailed consultation with Transport for NSW and Schools Infrastructure NSW occurred as part of the Gateway Determination process. The submissions received are attached to the Council Report provided as Attachment 1. The Council report also comprises further commentary and summarises the outcomes of this consultation.

Transport for NSW advised that it has no current plans, proposals or investigations into a regional bypass corridor in this location. They advised that they are therefore unable to provide commitment to funding or investigating the required upgrades. TfNSW encouraged the Proponent and Council to consider the appropriateness of a local road in this location, alternative to a regional road that would be owned and managed by the State Government. SINSW have requested traffic calming treatments and lower speeds to ensure safety adjacent to Dural Public School, which is not conducive to a high speed bypass road that seeks to prioritise vehicular movements.

While a detailed account of these discussions with Government agencies is provided within the Council report, in determining the current proposal, the elected Council did not choose to progress the planning proposal to Gateway Determination to continue these discussions with State Government agencies.

- *Planning Priority 16 – Manage and protect the rural/urban interface*

This planning priority acknowledges that despite sufficient capacity for residential growth in urban areas of the Shire, there is pressure on land at the rural-urban fringe to be developed for residential uses. This pressure impacts on the availability of viable land for rural activities and also threatens the character of the Shire's rural areas. This planning priority states that Council will implement an Urban Growth Boundary that largely follows the current boundary of the RU6 Transition zone. It also states that Council will not support planning proposals or development applications seeking to intensify urban land uses above the Urban Growth Boundary line. Council's decision not to progress the planning proposal to Gateway Determination on 21 February 2023 is consistent with the implementation of this planning priority.

- c) *Does the proposal respond to a change in circumstances that has not been recognised by the existing planning framework:*

No, there has been no such change in circumstances not recognised in the current planning framework.

## **5. SITE SPECIFIC MERIT ASSESSMENT**

- a) *the natural environment (including known significant environmental values, resources or hazards)*

The site is relatively free of environmental constraints and the known constraints that are present are able to be addressed through more detailed design. Proximity to heritage items was discussed earlier in this response and within the Council Officer Report provided as Attachment 1.

The site is largely cleared of existing vegetation, though there are some remaining patches. The Proponent's material indicates the presence of Northern Foothills Blackbutt Grassy Forest and Sydney Turpentine ironbark Forest (STIF), which are endangered and critically endangered ecological communities respectively under the Biodiversity Conservation Act 2016.

The Proponent's material indicates that attempts will be made at the development application stage to retain areas mapped as STIF, which is predominantly along the site's frontage to Derriwong Road. It is acknowledged that the use of increased lot sizes in key locations and vegetated buffer setbacks could potentially assist in retaining critically endangered vegetation in these instances.

*b) the built environment, social and economic conditions*

The planning proposal does not comprise any proposed built form as it seeks to facilitate a subdivision outcome. Nonetheless, the subdivision outcome would enable low density residential development on lot sizes ranging from 600m<sup>2</sup> to some 1,000m<sup>2</sup> and 2,000m<sup>2</sup> lots. If the planning proposal were to proceed to Gateway Determination, the subdivision outcome may need to be revised as there are a number of lots fronting the proposed bypass road and rely on driveway access from the new road. The provision of driveway access at regular intervals of 600m<sup>2</sup> would not be conducive to the need for the road to function as a bypass that facilitates higher speeds and volumes of traffic movements.

The economic conditions of the subject land with respect to its agricultural viability were discussed earlier in this response.

It was deemed by Council that the proposal to permit increased density in the Metropolitan Rural Area at this location was not compatible with the established character of the surrounding rural land and would alter the scenic landscapes that are valued in this area, particularly along the Old Northern Road ridgeline and its associated district views.

*c) the existing uses, approved uses and likely future uses of land in the vicinity of the proposal*

The existing, approved and likely future uses of land within the vicinity of the subject land have been addressed in great detail throughout the strategic merit assessment of the proposal. It is evident that the proposal's potential to create land use conflicts is a key consideration in the assessment of the planning proposal.

In summary, the following surrounding land use considerations are relevant:

- The site's location adjacent to the Dural Public School and the ability for the proposed road to function as a bypass that accommodates higher speeds and increased traffic volumes whilst also maintaining safe access, egress and pedestrian movements at the School;
- The site's proximity between the Dural Village and the Round Corner Town Centre, which does not represent a logical extension of these villages as it is separated from these centres and could potentially set a precedent for further rezoning of rural land between these centres and the subject site.
- The site's location within the Metropolitan Rural Area represents a spot rezoning that has the ability to impact on the values and scenic landscapes of the rural area, particularly along the Old Northern Road ridgeline and its associated district views.
- The site's proximity to rural land that is currently lawfully being utilised for agricultural production purposes in accordance with the land use permissibility controls. The provision of residential development on the subject land would exacerbate and introduce new land use conflicts for these agricultural operators.

*d) the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.*

As part of the Urban Capacity and Capability Assessment, preliminary infrastructure capacity investigations were undertaken with respect to drinking water, wastewater, gas and electricity supply

within the broader Dural locality and instances where augmentation is required. The following conclusions were made:

- Gas Services: Jemena’s policy is to extend gas mains to all developments wherever possible, depending upon economic viability;
- Electrical Infrastructure: Endeavour Energy has no long term plans to increase capacity as the Dural locality has not been identified by the State Government as a growth area. The Dural Load Area has existing capacity to supply small developments of 175 to 230 small/medium sized lots before requiring network upgrades; and
- Potable and Waste Water: the potable water reservoirs and sewage pumping stations in the study area do not have sufficient spare capacity to accommodate development in the study area. Development in the area would require installation of trunk water and sewer networks, including new water reservoir/s, sewer pump stations and potentially a new treatment plant or upgrades to an existing plant.

The Proponent has submitted a Preliminary Infrastructure Review in support of the planning proposal to ascertain the extent utilities servicing available to the site and the potential need to upgrade, extend or alter services to accommodate the additional growth proposed.

The Proponent has demonstrated that the site can be serviced with the required utilities infrastructure through a combination of existing capacity or extension and augmentation of such facilities. The viability of doing so is a commercial matter for the Proponent to consider should the matter progress. Without adequate provision of sewer, power and water, the development would fail in its current form. This is discussed further within the Council Officer Report.

It is noted that traffic infrastructure and the matters arising from the proposed bypass road have been addressed earlier in this response as well as within the Council Officer Report. With respect to impacts on the local road network, the Proponent’s Traffic Impact Assessment concludes that the planning proposal would generate 105 - 109 vehicle trips in the AM and PM peak periods respectively. The Proponent’s assessment concludes that the additional trips generated by the proposal will have negligible impact on existing traffic conditions.

The Traffic Impact Assessment however does not account for drivers conducting illegal right turns into the indented bus bay at Jaffa Road to access the Round Corner Town Centre. This matter would need to be addressed further if the planning proposal was to progress to Gateway Determination.

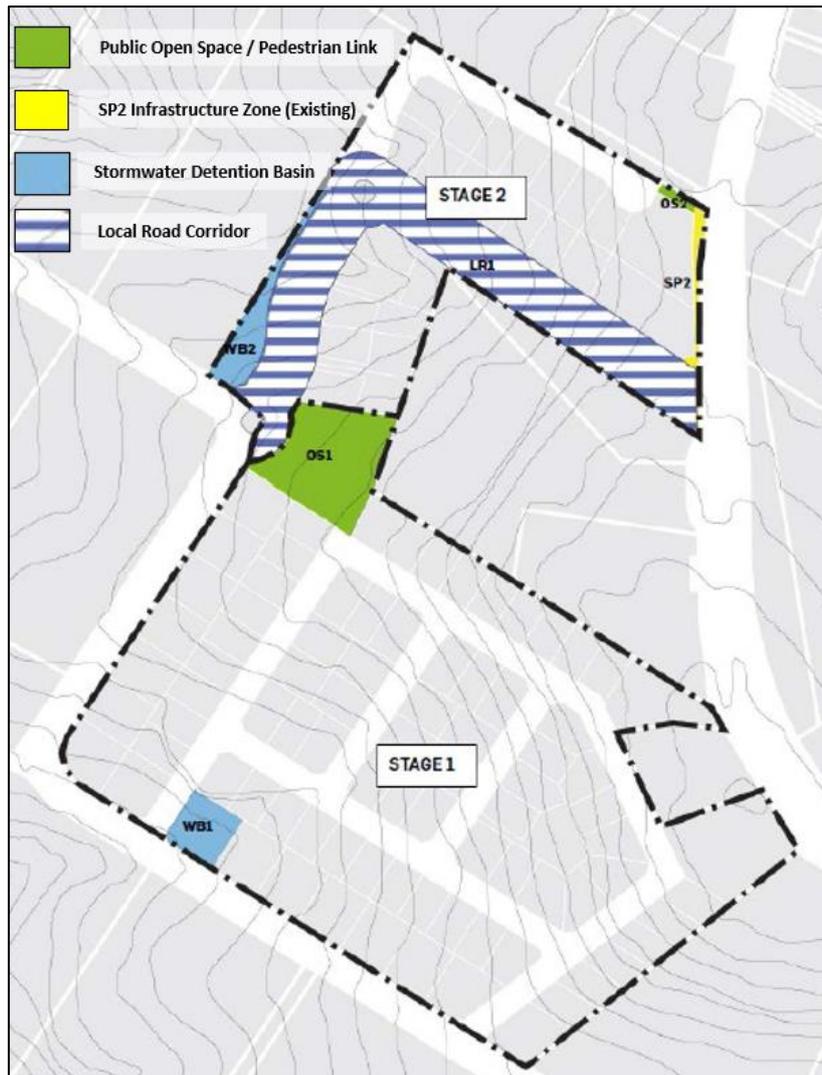
Further detailed discussion of the proposal’s traffic and transport impacts is also provided within the Council Officer Report.

The Proponent has submitted a draft voluntary planning agreement offer to Council to address local infrastructure demand. The following table provides a summary of the items proposed and a Council Officer comment.

<b>Item</b>	<b>Council Officer Comment</b>
1. Embellishment and dedication to Council of 4,000m <sup>2</sup> of land for use as a local park.	Public benefit.
2. Embellishment and dedication to Council of 141m <sup>2</sup> of land for use as a pedestrian link (north east corner of the site).	The pedestrian pathway does not link to a broader pedestrian network and is considered to be of minimal public benefit. Crossing Old Northern Road at this location is not permeable for pedestrians and the proposed through site link appears to be provided in isolation from broader pedestrian movements in the locality.
3. Dedication of a maximum of 13,223m <sup>2</sup> of land forming a 32 metre road reservation through the site for the future Round Corner Bypass.	Potential public benefit. The road reservation has the potential to accommodate a regional bypass road however, as detailed above, the achievement of this bypass corridor would ultimately be contingent on a number of other factors external to this proposal.

<p>4. Construction of a 21.5m wide collector road within the road reservation, including two roundabouts, kiss and drop lane adjacent to Dural Public School and widened verges to accommodate future expansion.</p>	<p>Potential public benefit. The widened verges have the potential to accommodate a regional bypass road, however the offer does not secure works or funding for any future upgrade of the road that would be necessary, beyond the 21.5m wide local collector road.</p> <p>It is also unclear whether Council or the Proponent would be responsible for funding the construction of intersection upgrade works where the local collector road connected to Old Northern Road (any intersection at this location would be subject to TfNSW approval).</p> <p>The local road in isolation from its potential regional status is not required to improve the existing local road network and would primarily service the Proponent's development.</p> <p>There are however benefits to the Dural Public School and as such, this would represent a public benefit to regional infrastructure.</p>
<p>5. Embellishment and dedication to Council of two stormwater detention basins</p>	<p>The stormwater infrastructure is required to service the proposed development and does not provide a broader public benefit to the community.</p>
<p>6. Monetary contribution to Council of \$363,305.80 towards active open space</p>	<p>Public benefit.</p>
<p>7. Monetary contribution to Council of \$101,242.90 towards community facilities</p>	<p>Public benefit.</p>
<p>8. Section 7.12 monetary contribution to Council (estimated at a <i>minimum</i> of \$550,000)</p>	<p>Neutral. This Plan is already applicable to the subject site however does not plan or cater for the extent of uplift proposed through this proposal.</p>

The location of the proposed items is shown in the figure below.



**Figure 8**  
Location of items proposed to be dedicated to Council

It is noted from the above analysis that there are a number of uncertainties with respect to the items offered, or in some cases it could create potential additional costs to Council. The elected Council resolved that the planning proposal (and as such, the associated VPA offer) should not proceed to Gateway Determination and as part of this decision it was ultimately determined that Council would not accept or pursue the local road in this location as it offered little benefit without the ability for it to be upgraded and dedicated to Government as part of a broader regional bypass corridor.

## 6. CONCLUSION

Council resolved not to progress the planning proposal to Gateway Determination, given the proposed outcome is inconsistent with the Region Plan, District Plan and Council's LSPS, with respect to the treatment of land within the Metropolitan Rural Area. While the proposal did offer the opportunity for Council to continue to pursue its local strategic objective of securing key regional road upgrades and connections in the locality, Council ultimately resolved not to progress with the proposal or accept the public benefit offer at this time, for the reasons set out within this report.

Despite the site-specific merit demonstrated by the proposal and the advice of the IPC with respect to the previous proposal, the consideration of site-specific merit is only a relevant factor once a proposal has first satisfied the strategic merit test, based on assessment against the current and in force strategic planning policies for State and Local Government.



**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

5 August 2022

Urbis Pty Ltd  
Level 8 Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

Attention: Ms Ashleigh Ryan – Director, Planning

Via Email: [aryan@urbis.com.au](mailto:aryan@urbis.com.au)

Our Ref: FP35

Dear Ms Ryan,

## **PRE-LODGEMENT MEETING - PROPERTIES ON DERRIWONG RD & OLD NORTHERN RD**

I refer to the meeting held with Urbis, Legacy Property and Council officers on Thursday 28<sup>th</sup> July, 2022 regarding the potential planning proposal for land at Derriwong Road and Old Northern Road, Dural.

The purpose of this letter is to document and expand on the comments and feedback provided by Council officers during this meeting.

### **1. Overview of the Revised Planning Proposal and Road Reservation Width**

A summary of the revised planning proposal was presented which outlined two options for the proposal, with the bypass corridor being located to the north of Dural Public School in two width options, being 21.5m and 32m. The option preferred by Urbis and Legacy Property would be the 'collector road' type at 21.5m width, which would be constructed as a fully functional road. If a 32m wide corridor is still required by Council, the road would not be built to this width. The relocation of the road to the north of the school and the new location of the intersection with Old Northern Road was intended to respond to the previous feedback from Schools Infrastructure NSW (SINSW) and Transport for NSW (TfNSW).

Council officers reiterated that in Council's assessment, the regional bypass corridor was key to the strategic merit of the proposal and as such, it is expected that a fundamental component of the proposal will be demonstrating that any proposed road corridor will be capable of serving a regional arterial function in the future, even if TfNSW does not agree with this proposal at this time. Council officers had previously flagged the need for a road reservation of wider than 32m, in reflection of the North West Growth Centre Road Framework report (dated 10 May 2011 and prepared by Jackson Teece on behalf of the then RTA), which identified Annangrove Road as being upgraded to a Principal Arterial Road, with a 47m wide road corridor. A lesser road reservation width of 32m adjoining the subject site *may* be capable of accommodating an arterial road link in the future, however it is expected that this width would be the minimum width possible to satisfy this requirement

and further engineering work would be required to justify that the road profile for an arterial road could be accommodated within this reservation width.

## **2. Potential Inclusion of Adjoining property at 614 Old Northern Road, Dural**

Council officers indicated that if an additional property was to be included within the revised planning proposal, the technical studies that support the proposal would need to be updated to include this land. The planning proposal would need to demonstrate and justify why this is a more appropriate boundary for the proposal and how it provides a superior outcome in comparison to the previous proposal that Council considered. It is ultimately a matter for the Proponent to determine and seek to justify as part of any revised application which will then of course be assessed on its merits.

## **3. Local Environmental Plan/Development Control Plan Mechanisms**

A number of options were put forward with respect to the planning controls that could be proposed to facilitate the proposed development. It is the view of Council officers that controls relating to the zone, minimum lot size and maximum building height must all be included in the Local Environmental Plan.

With respect to the zoning of the proposed road corridor, it is agreed that it may be appropriate to zone this land SP2, however this would only be on the basis that the dedication of this land to Council at no cost is secured through the concurrent public benefit offer, thereby ensuring there is no acquisition liability over the land for Council.

It was also flagged that other planning mechanisms and policy reform may now need to be addressed as part of the revised proposal, including in particular the recent amendments to the Housing SEPP and the potential this creates for seniors housing development on the land, if the zoning is amended to R2 Low Density Residential (while it is acknowledged that this is not the development outcome articulated within the previous proposal or revised material, it would nonetheless be a potential development outcome if the amendments sought through the planning proposal were to occur).

It is reiterated that it will be necessary for the draft DCP to be fully formed and submitted as part of the initial submission of the planning proposal application. This will then be considered concurrently with the planning proposal and public benefit offer as one single package.

## **4. Public Benefit Offer**

Under the previous proposal, local passive open space was included in the public benefit offer. In July 2021, Council officers provided feedback on the draft Voluntary Planning Agreement offer made in association with the previous planning proposal, which is provided below:

- *With respect to the proposed passive open space contribution, it is considered that the offer is adequate in terms of quantum, however the proposed location is questioned given it is sited adjoining an arterial road and public accessibility would be limited. It is recommended that further consideration be given to the land proposed to be dedicated as local passive open space. Any future VPA offer including dedication and embellishment of local passive open space needs to clearly identify the location, dimensions, embellishment design and associated costs to enable a complete assessment of the item as part of the overall VPA offer. Council would also require the ability to have input into the level of embellishment to ensure that it remains in keeping with Council's Recreation Strategy with respect to its level of service and whole of life costs from an asset management perspective.*
- *The VPA offer does not include any solutions or contributions towards active open space (playing fields). Based on Council's adopted benchmarks, a residential yield of 101 dwellings in a greenfield context would generate demand for approximately 16% of a new playing field. As there is inadequate capacity to absorb this demand in the existing open*

*space network, consideration should be given to how this demand can be addressed. This may take the form of monetary contributions to be pooled by Council and expended on the provision of new facilities in the future or alternatively, monetary contributions towards specific works which increase the capacity of an existing facility accessible to the site.*

In summary, local passive open space requirements could potentially be satisfied within the development site, through the delivery of works and allocation of land for this purpose. However, active open space requirements were unlikely to be able to be resolved within the subject site and as such, a monetary contribution to active open space would likely be required which would enable Council, over time, to collect contributions toward a new facility that would cater for unplanned growth.

Council's Recreation Strategy identifies that passive recreation (local parks) should be provided within 400m of dwellings and have an area of 0.5-1ha. These parks service the daily and weekly needs of surrounding residents, who can access the park by walking and cycling. These parks include basic infrastructure, such as a playground. It is suggested that further consideration be given to the potential for a local park within the development site, which aligns with these above criteria, in order to ensure future residents have adequate access to public open space.

It is reiterated that it will be necessary for the public benefit offer to be fully formed and submitted as part of the initial submission of the planning proposal application. This will then be considered concurrently with the planning proposal and DCP amendments as one single package.

## **5. Agency Consultation**

Urbis and Legacy Property indicated that further meetings had been held with TfNSW, where TfNSW had indicated they would be in touch with Council. It is noted that following our meeting, correspondence was received from TfNSW. A copy of this letter is attached for completeness and the key matters are discussed further below.

### *TfNSW Letter – 28 July 2022*

The key matters raised within TfNSW's letter dated 28 July 2022 are summarised below:

- TfNSW indicate that they have reviewed the presentation and notes provided. TfNSW's key concerns relate to the future corridor design and reservation being identified only within the subject site, separate to the remaining corridor. They indicate that Council should identify and design the entire corridor.
- TfNSW reiterates the need for a regional land use and transport assessment that assesses future development uplift and associated traffic and transport improvements required to support housing growth. TfNSW advises that this should be a pre-requisite to the consideration of future planning proposals in this locality. TfNSW states that Council should undertake this work, not the Proponent.
- Consultation with SINSW should be undertaken prior to the lodgement of a planning proposal.

Critically, Council is not in a position to fund a regional land use and transport assessment at this time, as requested by TfNSW. While Council has previously given support to a planning proposal at this location, it should be noted that this was contingent on the proposal being able to service the proposed residential yield with new local and regional infrastructure, at no cost to Council, including the resolution of ongoing discussions with State and Federal Government surrounding the funding for required regional road upgrades.

Council had previously commissioned the "*Urban Capability and Capacity Assessment of the Dural Locality*" which was prepared by Cardno in 2019. This report concluded that:

*“The investigations have found that there are no state government plans to intensify development within the investigation area. The Central City District Plan maps the investigation area within the Metropolitan Rural Area, the intention being that the area would remain rural in character and development density would reflect this. The investigation area has not been identified for future growth in the District Plan. Nor have other state or local strategic plans identified the area as having potential for future growth.*

*Based on the results of the investigation, Cardno concludes that:*

- There are no government plans to encourage additional growth in the investigation area.*
- The investigation area has some physical capability for development uplift.*
- Constraints arising from lack of capacity in transport and service infrastructure would be likely to preclude any development uplift in the investigation area. At this time, there is no government will to invest in upgrades to these services. Private investment in infrastructure would be necessary to facilitate any substantial development uplift.”*

On 26 March 2019, Council considered the outcomes of this Cardo investigation and resolved, in part, that:

- 1. Council receive the report outlining the outcomes of the Urban Capability and Capacity Assessment for the Dural locality.*
- 2. Council discontinue any further investigations with respect to the rezoning of rural land for urban development within the Dural locality at this time.*
- 3. If the proponent of any future planning proposal to rezone land within the Dural locality is able to demonstrate that they can deliver the required local and regional infrastructure upgrades at no cost to Council, Council consider such a planning proposal and review its position with respect to rezoning within the Dural locality at that time.*

The Cardno report was supported by a Traffic Assessment, which was prepared to identify the current baseline capacity conditions and constraints based on existing traffic volume data. The Assessment included:

- A review of the existing road network including traffic, public transport, cycling and walking networks within the study area;
- An assessment of intersection performance and mid-block performance against RMS and Austroads requirements; and
- The identification of potential short term capacity improvements to address existing deficiencies in the road network.

The *Urban Capability and Capacity Assessment of the Dural Locality* and associated Traffic Assessment could potentially partially satisfy TfNSW’s request, however given the specific nature of some of TfNSW’s requirements (in particular, the requirement for the entire corridor to be designed and identified and the need to assess future potential development uplift along this corridor and within the locality), it is considered unlikely that the existing body of work will be adequate to respond to their request.

Given this, and the context of previous Council decisions which clearly set out that any rezoning in this locality must be at no cost to Council (including costs associated with further investigations) and must be contingent on a proponent of any future planning proposal being able to demonstrate that they can deliver the required local and regional infrastructure upgrades at no cost to Council, the persistent position of TfNSW with respect to the rezoning proposal, the future regional bypass

corridor and the need for further work and investigations remains to be reconciled with Council's previously adopted positions.

It is suggested that prior to any proposal being lodged, there will be a need for further consultation with TfNSW as their current position would seemingly make it difficult for Council officers to demonstrate that some of Council's key pre-requisites for supporting any uplift in the Dural locality can, or have been, satisfied.

### SINSW

It is also expected that further consultation will be undertaken with SINSW with respect to the revised proposal, layout and road corridor, prior to lodgement of the proposal. Preliminary comments arising from pre-lodgement consultation with SINSW should form part of any planning proposal application to Council.

## **6. Lodgement Requirements**

The following information would likely be required with any Planning Proposal Application;

- a) Application Form, Owners Consent and completed Political Donations forms;
- b) A Planning Proposal Report, which addresses the Department of Planning and Environment's Local Environmental Plan Making Guideline;
- c) Master Plan, Structure Plan, Concept Development Plans, Urban Design Report and/or Architectural Plans that include a site and concept plan and depict landscaped areas, car parking, setbacks, shadow diagrams, building footprints and building heights (at a minimum);
- d) A draft Development Control Plan;
- e) Traffic, Parking and Accessibility Report;
- f) Environmental constraints reports (stormwater, flooding, biodiversity & bushfire);
- g) Utilities Servicing Report;
- h) Economic and Residential Demand Analysis;
- i) Pre-lodgement Government Agency Constulation;
- j) Local Infrastructure Analysis and Mechanism – which considers the impacts of the proposal local infrastructure and recommends a suitable development contributions framework in association with any development uplift on the land, along with the proposed development contributions plan or draft Voluntary Planning Agreement; and
- k) Briefing Presentation material for Councillor briefing session.

## **7. Lodgement Fees**

Council's recently adopted 2022/2023 Fees and Charges schedule sets planning proposal application fees based on the planning proposal categories set by the Department of Planning and Environment, within the Local Environment Plan Making Guidelines. Based on these cateogires and the associated fee schedule, this proposal is classified as a 'Complex' proposal, given the need for substantial merit assessment, potential inconsistency with the strategic framework and the likely

increase in demand for infrastructure that will lead to consideration of a public benefit offer / voluntary planning agreement. On this basis, a fee of **\$177,850** must be paid at the time of lodgement.

An extract of the fee structure is provided below for your reference:

Pre-Lodgement and Scoping	each	\$3,500.00	\$0.00	\$3,500.00	N
Lodgement of scoping proposal to Council, meeting with Council officers and provision of written advice to a Proponent identifying issues and planning proposal submission requirements, prior to lodgement of an application.					
Basic	each	\$29,665.00	\$0.00	\$29,665.00	N
Administrative, housekeeping and minor local matters such as listing a local heritage item, supported by a study endorsed by the Department's Environment, Energy and Science group, reclassifying land where the Governor of NSW's approval is not required, attaining consistency with an endorsed local strategy, such as a local housing strategy (where the proposed changes do not otherwise meet the definition of either a 'Standard' or 'Complex' proposal), or attaining consistency with Section 3.22 (fast-tracked changes of environmental planning instruments of the EP&A Act).					
Standard	each	\$74,155.00	\$0.00	\$74,155.00	N
Applications which are consistent with the District Plan, Region Plan and Council's Local Strategic Planning Statement, are not captured by the 'Complex' proposal category, and seek to change the planning controls applicable to land, such as the land-use zone, alter the principal development standards of the LEP (including, but not limited to, floor space ratio, building height or minimum lot size), add a permissible land use or uses and/or amend any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP, or classify or reclassify public land through the LEP.					
Complex	each	\$177,850.00	\$0.00	\$177,850.00	N
Applications that seek to change the planning controls applicable to land, such as the land use zone, principal development standards, classification or permissible land uses and/or conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP, which also meet any one or a combination of the following criteria: - requires substantial strategic merit assessment, including where the potential for inconsistency with the strategic framework has been identified, - will likely increase demand for infrastructure beyond that planned and catered for under the applicable contributions framework and requires an amendment to or preparation of a contributions plan or voluntary planning agreement; - responds to a change in circumstances, such as the investment in new infrastructure or changing demographic trends, - is not captured by either the standard or basic planning proposal categories.					

Should you wish to discuss the matter further, please contact me on 9843 0416.

Yours faithfully



**Nicholas Carlton**  
**MANAGER - FORWARD PLANNING**

ATTACHMENTS: Letter from TfNSW dated 28 July 2022