



THE HILLS
Sydney's Garden Shire

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13 November 2024

Mr Alexander Galea
Manager, Planning Proposal Authority
NSW Department of Planning, Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2124

Our Ref: 6/2024/PLP
Your Ref: RR-2024-31

Dear Mr Galea

REQUEST FOR REZONING REVIEW – DERRIWONG ROAD AND OLD NORTHERN ROAD, DURAL (6/2024/PLP)

I refer to a letter received from the Department of Planning, Housing and Infrastructure (DPHI) dated 23 October 2024 advising that DPHI 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.

Relevant Background – Letter from DPHI to SCCPP Chair, 4 October 2024

On 4 October 2024, the Department of Planning, Housing and Infrastructure also wrote separately to the Chair of the Sydney Central City Planning Panel (SCCPP) about this specific Rezoning Review Application (Attachment 1). A copy of this letter was provided to Council on 1 November 2024, only 11 days prior to the deadline for Council to submit its Rezoning Review response.

The letter from DPHI to the SCCPP Chair advises that DPHI is undertaking a review of the Greater Sydney Region Plan and associated District Plans. It confirms that the review will take into account the previous advice of the Independent Planning Commission that the site *"be seriously considered for urban development and inclusion in the Central City District Plan when reviewed and updated in 2023, and that any subsequent update of Council's Local Strategic Planning Statement and Council's Housing Strategy reflect this position"*.

The letter advises the Panel *"to not place determinative weight on the strategic inconsistency of the proposal with the current Greater Sydney Region Plan, District Plan and The Hills Shire Local Strategic Planning Statement"*. The letter appears to establish bespoke Strategic Merit Test criteria for the Panel to apply to this individual proposal, being primarily the following:

1. *"The current government priority to address the housing crisis and The Hills Shire housing targets"*; and
2. *"The existing infrastructure servicing for this area"*.

Given the unprecedented and significant implications of this advice from the DPHI to the Panel, it is appropriate that this letter be addressed from the outset, in Council's submission on the Rezoning Review Application.

- ***Determinative Weight of the Region Plan***

DPHI's letter states that *"the Greater Sydney Commission Act 2016 was repealed before this review [of the Region and District Plans] could be finalised. Responsibility for the review has now transferred to the department and we have recommenced the review process."*

While it is correct that the Greater Sydney Commission Act 2016 has been repealed, the Environmental Planning and Assessment Act 1979 (the Act) remains in force and Section 3.5 of the Act continues to give determinative weight to the regional strategic plans, with sub-section 3 stating:

(3) The document entitled Greater Sydney Region Plan – A Metropolis of Three Cities continues to be taken to be the regional strategic plan made under this division for the Six Cities Region, but has effect only in relation to the designated Sydney Districts.

DPHI's letter articulates that the review of the Region and District Plans, which was scheduled for 2023, did not occur and appears to assert that as a result, this somehow has bearing on the determinative weight of these Plans. However, Section 3.5 of the Act specifically contemplates this scenario, with sub-section 7 of this section stating:

(7) A failure to comply with a provision of this section does not affect the validity of a regional strategic plan, including the continuing validity of an existing regional strategic plan.

The Act is deliberate and clear in establishing the ongoing validity and determinative weight of the Greater Sydney Region Plan and District Plans, even where a review of these plans has not been undertaken within the required timeframes, including where a review is underway.

It is unclear to Council what authority DPHI is relying upon to advise the Panel not to place determinative weight on the inconsistency with the Region and District Plan in their assessment of one individual Rezoning Review Application. This appears to be in contravention of the provisions of the EP&A Act and associated Ministerial Directions.

- ***Procedural Fairness and Panel Independence***

DPHI's letter was provided to Council nearly 1 month after it was sent to the Panel, and only 11 days prior to the Council's deadline for submitting its Rezoning Review response to the Department. This has not provided Council with adequate time to consider the implications of this information, including most significantly DPHI's attempts to establish bespoke Strategic Merit Test criteria for the Panel to apply to determination of this one individual Rezoning Review Application.

Notwithstanding this, it is particularly concerning that DPHI appears to be directing the Panel, which is an independent decision-making authority, how to reach their determination by advising that, even though the proposal is inconsistent with the strategic planning framework, the Panel should not give determinative weight to this and instead emphasises (with underlined text) that the Panel should give greater weight to the current government priorities.

It also suggests that the internal considerations of the Department's early review of the District and Region Plans, which have not been exhibited, published or finalised, are somehow relevant factors

in the Panel's determination of this individual Rezoning Review Application, superseding the adopted District and Region Plans which have continued legislative weight under the EP&A Act.

DPHI's letter represents a significant departure from their established role in the rezoning review process, as set out in the Local Environmental Plan Making Guidelines (extract below).

The Department prepares and submits to the panel a short briefing report summarising the proposal and background information for the panel. The report does not include an assessment, opinion or recommendation on whether the planning proposal should proceed. This enables the planning panel to form an independent view of the planning proposal.

Figure 1

Extract of DPHI's Local Environmental Plan Making Guideline – Rezoning Review Process

The Sydney District and Regional Planning Panels Operational Procedures state that *“the Strategic Planning Panel's review and determination are to be in accordance with the LEP Making Guidelines. The Strategic Planning Panel will assess the rezoning planning proposal, having regard to the matters outlined in the LEP Making Guidelines”*.

Both the Department's "Planning Circular 22-003: Independent Review of Plan-Making Decisions" and the Local Environmental Plan Making Guideline stipulates the Strategic Merit Test criteria that must be taken into account by the independent planning panel. Both documents require consideration of the Greater Sydney Region Plan, Central City District Plan and The Hills Local Strategic Planning Statement, in addition to other factors.

This level of intervention by DPHI is unprecedented in Council's experience and seems prejudicial in the Panel's ability to operate as an independent decision-making authority for this matter.

- *Response to Bespoke Criteria in DPHI's Letter to SCCPP Chair, 4 October 2024*

Council contests the notion that a letter from DPHI to the SCCPP Chair can invalidate core elements of the strategic planning framework and establish bespoke Strategic Merit Test criteria for one individual Rezoning Review Application.

However, it is noted that Council is required to provide a response by 13 November 2024. On this basis, some brief comments on the Strategic Merit Test factors referred to in DPHI's letter dated 4 October 2024 are included below.

1. *Current Government Priority to Address the Housing Crisis and The Hills Shire Housing Targets*

If the Panel is to give greater determinative weight to *“the current government priority to address the housing crisis and The Hills Shire housing targets”*, it is important to first understand these factors in greater detail.

With respect to current government priorities, it is clear that the Government is committed to addressing the housing crisis by focusing on *“well-located homes close to transport, jobs and existing infrastructure”* (Government media release dated 7 December 2023). The Government's suite of policy reforms are all focused on Transport Oriented Development Program and Low and Mid Rise

housing, with the stated priority of increasing housing supply in centres and well located areas and the continued roll-out of development capacity in pre-planned greenfield release areas such as Box Hill, North Kellyville and Gables.

The subject site is not located within a station precinct or within the walkable catchment of high frequency public transport or any agglomeration of local services. It is not in an area, or along a corridor, that has existing underutilised traffic and transport capacity. Rather, the proposal would represent an isolated urban footprint in a rural area that would likely exacerbate existing regional traffic and transport issues that are already being experienced in this locality (further discussed in response to Point 2 below).

While the proposal would result in a marginal increase in housing, it clearly does not align with the current Government's stated priority of delivering more *"well-located homes close to transport, jobs and existing infrastructure"*.

There has been no reference to, or justification for, further rezoning of land in the Metropolitan Rural Area in any Government policy reforms or announcements to date, clearly indicating that this form of rezoning is not the Government's intended solution to the housing supply crisis.

The Hills Shire Council has been given a housing target of approximately 23,000 dwellings to be delivered by 2029. There is current zoned capacity of land in The Hills Shire for around 44,000 new dwellings available, all of which are in more appropriate, accessible and serviceable locations in comparison to the planning proposal, aligning with the government's priority of more well-located housing. Council is continuing to work on coordinated planning to rezone capacity for a further 12,000 dwellings in areas strategically identified by Council but not yet rezoned.

Of the 44,000 dwellings available under the current zoned capacity, approximately 17,500 dwellings have already been approved but are not yet completed by the market. That is, Council has already approved 76% of its 5-year housing target and it is increasingly apparent in areas such as The Hills that the housing supply crisis is more closely linked to completions, not zoned capacity or approvals.

Council has responded and continues to respond to the Government's priority of addressing the housing crisis by facilitating more homes in well-located, serviceable areas and in accordance with Government policy and good planning principles. Council's 5-year housing target could be achieved nearly twice-over, on land that is already rezoned, in well-located areas with planned infrastructure to support the growth. In contrast, the subject site has not been rezoned, is not already serviced by existing infrastructure, is in an area where all layers of strategic planning policy specifically discourage rezoning and is not in an area where any Government announcement or reforms to date have sought to facilitate or encourage additional housing supply.

Given Council and Government's strong response to the housing crisis in well-located areas serviced by infrastructure and the notable lack of any Government policy or messaging endorsing rezoning of land in the Metropolitan Rural Area, even if an assessment did rely predominantly on "Government priorities" as the test for determining merit of this proposal (as suggested by DPHI's letter dated 4 October 2024) the proposal would not satisfy this test to warrant progression.

2. The existing infrastructure servicing for this area

The site, in isolation, is able to address the utilities servicing requirements for 110 lots through augmentation works to the network. The potable water reservoirs and sewage pumping stations do not have sufficient spare capacity to accommodate development in the 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.

In 2019, the Council-commissioned Dural Urban Capacity and Capability Assessment was completed. The need for this study arose, in part, due to a number of ad-hoc landowner-initiated planning proposals submitted to Council in the absence of any holistic or coordinated approach to planning for the area. The study investigates the potential for more intensive development to occur in the Dural locality. The study concluded that while there is land capable of accommodating urban development (i.e. relatively free of any environmental constraints), there are infrastructure capacity issues in the locality that if unresolved, would prevent any such development from occurring in an orderly and feasible manner.

The study included detailed traffic analysis of the existing road network in the Dural locality. It concluded that road capacity and traffic issues are already being experienced in Dural, with further delays to be expected as planned development occurs within the North West Growth Centre, unless upgrade works are undertaken to cater for increased demand. The planning proposal would facilitate development in addition to this planned growth and as such, the additional traffic would likely exacerbate (albeit to a very small extent) the existing traffic issues, in the absence of any firm commitment from Government for the funding of the required road upgrades. The proposal in isolation would contribute a minimal extent, however the precedent set by rezoning rural land in this locality within the MRA could see other landowners justify their proposals on similar grounds and the incremental unchecked traffic impacts would continue to worsen.

The completion of any major road upgrades in Dural will come at a significant cost to Government as a consequence of high property values, difficult topography and other environmental constraints. In 2018, Transport for NSW estimated that the upgrading of Old Northern Road and New Line Road alone would exceed \$300 million (approximately \$360 million indexed to 2024). This upgrade could not feasibly be delivered in association with the former South Dural planning proposal for 3,000 dwellings and is not considered feasible in association with the subject proposal for 110 lots. The Australian and NSW Governments have invested \$20 million to investigate improvements on New Line Road, however the last update regarding this project was the release of a consultation report in December 2022. This report indicated that the investigations into upgrading New Line Road end at the intersection with Old Northern Road (approximately 1.3km south of the subject site) which would not assist in the traffic congestion and delays being experienced through the Dural/Round Corner town centre.

There has been extensive consultation undertaken with TfNSW as part of all iterations of this planning proposal. TfNSW advised that it has no current plans, proposals or investigations for a regional bypass road to avoid congestion and delays through the Dural/Round Corner town centre, by connecting Annangrove Road to Old Northern Road. Therefore, there is no suitable funding or commitment to the delivery of a regional bypass road and increases to the capacity on the regional road network.

In August 2023, the NSW Productivity Commission released a paper entitled *'Building more homes where infrastructure costs less: Comparing the marginal costs of servicing growth in different areas of Sydney'*. The report identifies a need to 'do density better' and for the NSW Government to consider the costs associated with the provision of new housing. The Commission's report states that building more homes where infrastructure costs less will ensure that taxpayers' infrastructure dollars are being utilised more efficiently and the Government will have more money to maintain and improve government services.

Importantly, the report found that growth costs associated with new housing are substantially lower in inner-ring suburbs. The Hills Shire LGA was specifically referenced within the report as one of the highest-cost areas, up to \$75,000 per dwelling higher than for inner-city areas. The report found that

these higher infrastructure costs were mostly reflected in higher traffic congestion and water and wastewater costs but were also reflected in the costs of expanding school capacity in some areas.

The report reflects DPHI's rhetoric of building more homes in well-located places and fundamentally underpins the policy approach to addressing the housing crisis through the Low and Mid Rise Reforms, the Transit Oriented Development Precincts and the continued roll-out of development in holistically planned greenfield release areas. The provision of new housing within the Metropolitan Rural Area would create a higher cost to Government through the funding of the necessary associated infrastructure and divert existing resources from delivering infrastructure in well located areas.

Other Procedural Matters

Council's confirmation of the material received from the Proponent is provided as Attachment 2 to this letter.

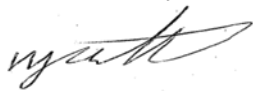
The advice of The Hills Local Planning Panel from 19 June 2024 in relation to this proposal is provided as Attachment 3 to this letter.

The Council report and minute from its Ordinary Meeting of 23 July 2024 is provided as Attachment 4 to this letter.

Attachment 5 provides Council's detailed response to the Rezoning Review assessment criteria, as it has been established under the currently applicable strategic planning framework. Thus, this response includes the relevant commentary required to be taken into account by the Panel with respect to the proposal's consistency with the Greater Sydney Region Plan, Central City District Plan, Section 9.1 Ministerial Directions and The Hills Local Strategic Planning Statement and supporting strategies. It also provides a summary of how the proposal does not align with the Government's priorities with respect to the provision of additional housing in well-located homes close to transport, jobs and existing infrastructure.

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. Letter from DPHI to SCCPP Chair, 4 October 2024
2. Confirmation of Material Received
3. Local Planning Panel Advice, 19 June 2024
4. Council Report and Minute, 23 July 2024
5. Detailed Response to Rezoning Review Assessment Criteria established under the currently applicable Strategic Planning Framework