

## Rezoning Review Briefing Report – RR-2024-24

*The Planning Proposal seeks to amend The Hills Local Environmental Plan 2019 to facilitate a residential subdivision at Derriwong Road and Old Northern Road, Dural (110 residential lots).*

Element	Description
Date of request	4 September 2024
Department ref. no.	RR-2024-31 / PP-2024-450
LGA	The Hills Shire
LEP to be amended	<i>The Hills Local Environment Plan 2019</i> (the Hills LEP 2019)
Address	614, 618 and 626 Old Northern Road and 21 and 27 Derriwong Road, Dural
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment <input type="checkbox"/> Council failed to indicate support for the proposal within 90/115 days
Has council nominated PPA role	No, Council refused to proceed with the planning proposal on 23 July 2024 and notified the proponent that it did not support the proposal, therefore Council cannot nominate to be the PPA.
Consultation	<p>The various planning proposals on the site have been subject to extensive consultation with Transport for NSW (TfNSW) and School Infrastructure New South Wales (SINSW). The matters raised in their latest submissions on the proposal (TfNSW at <b>Attachments F</b> and <b>F1</b> and SINSW at <b>Attachment G</b>) are discussed further in the <b>Key Issues Section</b> of this briefing report.</p> <p>TfNSW in its comments dated 28 July 2022 also reiterates previous advice outlining 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 as a prerequisite to the consideration of future planning proposals in this locality – this is discussed further in the <b>Other Matters Section</b> of this briefing report.</p>
Brief overview of the timeframe/progress of the planning proposal	<p><b>February 2024</b> – Pre-lodgement meeting held with Council and Proponent. Council officers noted that the new application seeks essentially the same outcomes as the previously lodged planning proposal and as such, the findings from the previous assessment are expected to remain consistent.</p> <p><b>15 March 2024</b> – Planning Proposal PP-2024-450 submitted to Council.</p> <p><b>19 June 2024</b> – The Hills Shire Council Local Planning Panel (LPP) consider a Council officer recommendation that the planning proposal should proceed to Gateway Determination.</p> <p>The LPP recommended to Council that that planning proposal not be supported.</p>

Element	Description
	<p>The Council officer and LPP recommendations are discussed further in the <b>19 June LPP Recommendation Section</b> of this rezoning review briefing report.</p> <p><b>23 July 2024</b> – Council Officer report to the ordinary meeting of 23 July 2024 recommending the planning proposal be supported for a Gateway determination.</p> <p>Council resolved to not support the Planning Proposal stating that the proposal did not satisfy the strategic merit test due to inconsistency with the Region Plan, District Plan and Metropolitan Rural Area (MRA) mapping.</p> <p>The Council officer recommendation and Council resolution are discussed further in the <b>23 July 2024 Council Meeting Section</b> of this rezoning review briefing report.</p> <p><b>4 September 2024</b> – Rezoning Review request is submitted.</p> <p><b>4 October 2024</b> – A/Deputy Secretary of Planning Land Use, Strategy, Housing and Infrastructure from the Department writes to the Panel chair.</p> <p>This letter and Councils response is discussed further in the <b>Key Issues Section</b> of this rezoning review briefing report.</p> <p><b>13 November 2024</b> - Council provided its comments on the rezoning review request (<b>Attachment C</b>).</p>

## Background - Previous Planning Proposals on the Site

The subject site has an extensive planning proposal history.

*2019 Planning Proposal* – Lodged in 2016 the first planning proposal proposed to rezone the land to R2 Low Density Residential with a potential dwelling yield of 181 residential allotments. After an extensive time and initial refusal by the Sydney West Central Planning Panel (as it was known then), the Hills Council resolved to forward the proposal to the Department but a gateway determination was issued not proceed with the proposal due to lack of strategic merit in 2020. Whilst a Gateway Review was undertaken by the proponent the gateway was not altered and the proposal did not proceed.

*2021 Planning Proposal* – A further proposal was supported by Council to proceed to gateway determination in February 2021 and a Gateway determination to proceed was issued by the Department on 9 July 2021. After consultation with both TfNSW and SINSW and unresolved issues remaining, the Department altered the Gateway to not proceed on 5 April 2022.

*2022 Planning Proposal* – The 2022 Planning Proposal included a local bypass and approximately 110 residential lots. The Hills Council did not support the proposal proceeding to the Department and a Rezoning Review was considered by the Sydney Central City Planning Panel (The Panel). On 18 July 2023 the Panel decided not to support the Proposal as it did not demonstrate strategic merit.

A detailed history of these proposals is included in **Attachment D**.

## Planning Proposal

**Table 1. Overview of planning proposal**

Element	Description
Site Area	12.88 hectares
Site Description	<p>The site comprises five lots known as 614, 618 and 626 Old Northern Road and 21 and 27 Derriwong Road, Dural (<b>Figure 1</b>).</p> <p>The site falls to the west and south-west towards O'Hara Creek and currently comprises rural residential development, including a dam.</p> <p>It is predominantly cleared of vegetation although some on the northern portion of the site.</p> <p>The site is located approximately:</p> <ul style="list-style-type: none"> <li>• 500m north of Round Corner Town Centre;</li> <li>• Immediately adjoins Dural Public School on three of its four sides; and</li> <li>• Is approximately 5km north of Castle Hill Metro Station.</li> </ul>
Proposal summary	<p>This planning proposal (<b>Attachment A</b>) seeks to facilitate redevelopment of the site for the purposes of creating 110 residential lots and a local collector road bypass corridor.</p> <p>To provide for this outcome, the planning proposal seeks to amend The Hills LEP 2019. Details of the existing and proposed LEP provisions can be found in <b>Table 2</b> of this report.</p> <p><u>Development Concept Scheme</u></p> <p>The planning proposal is supported by a development concept scheme (<b>Figure 2</b>) including:</p> <ul style="list-style-type: none"> <li>• 92x 600m<sup>2</sup> lots, 15x 1000m<sup>2</sup> lots and 3x 2000m<sup>2</sup> lots;</li> <li>• a local park;</li> <li>• two storm water detention basins; and</li> <li>• a local collector road bypass corridor.</li> </ul> <p><u>Public Benefit Offer</u></p> <p>A public benefit offer dated 29 February 2024 has been provided as part of the proposal (<b>Attachment A16</b>) and includes:</p> <ul style="list-style-type: none"> <li>• works and land dedication associated with a portion of a future Round Corner bypass road (approx. 13,223m<sup>2</sup> forming a 32m road reservation and 21.5m wide collector road);</li> <li>• embellishment and dedication of 4,000m<sup>2</sup> of land for the purpose of a new local park;</li> <li>• embellishment and dedication of 141m<sup>2</sup> of land for the purpose of a pedestrian link;</li> <li>• embellishment and dedication of two stormwater detention basins; and</li> </ul>

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Element	Description
	<ul style="list-style-type: none"> <li>active open space and community facility monetary contributions.</li> </ul> <p><u>Development Control Plan (DCP):</u></p> <p>The planning proposal is supported by a draft site specific DCP (<b>Attachment A12</b>). The accompanying draft DCP includes development controls for subdivision requirements, dwelling design, road network, vehicular access, public open space and bushfire management.</p>
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> <li>Greater Sydney Region Plan</li> <li>Central City District Plan</li> <li>The Hills Future 2036: Local Strategic Planning Statement</li> <li>The Hills Housing Strategy 2019</li> <li>The Hills LEP 2019</li> <li>The Hills Development Control Plan 2012</li> <li>Relevant State Environmental Planning Policies (SEPP) include State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>Relevant Section 9.1 Ministerial Direction include: 4.3 Planning for bushfire protection, 6.1 Residential Zones, 9.1 Rural Zones and 9.2 Rural Lands</li> </ul>

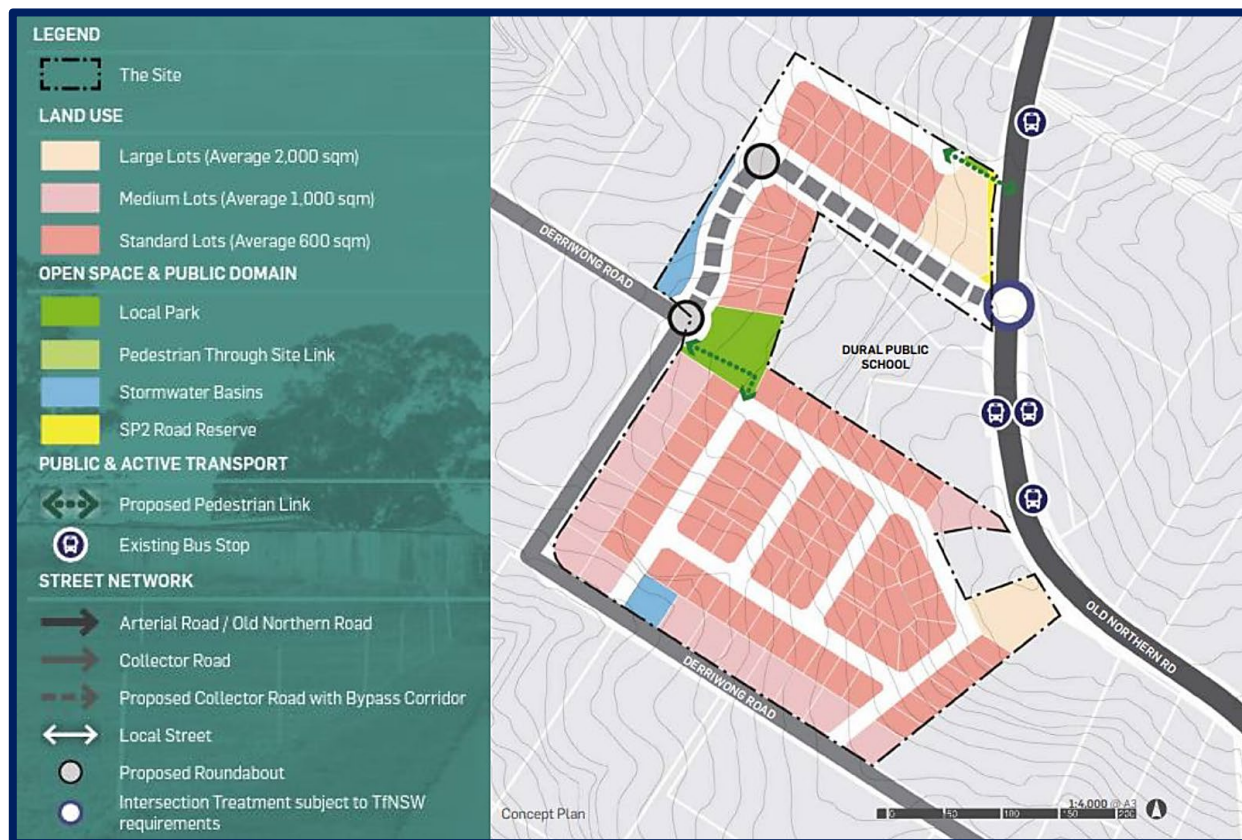


Figure 1: The site (highlighted red) and surrounding area (source: Council Report July 2024)



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**Figure 2: Concept plan (source: Council report – 23 July 2024)**

The planning proposal seeks to amend The Hills LEP 2019 per the changes below.

**Table 2. Current and proposed controls**

Control	Current	Proposed
<b>Zone</b>	- RU6 Transition - SP2 Infrastructure (Classified Road)	- R2 Low Density Residential - SP2 Infrastructure (Classified Road) - SP2 Infrastructure (Local Road)
<b>Maximum height of the building</b>	10m	9m
<b>Floor space ratio</b>	N/A	No change
<b>Minimum lot size</b>	20,000m <sup>2</sup>	600m <sup>2</sup> , 1000m <sup>2</sup> and 2000m <sup>2</sup>
<b>Local Provision/number of dwellings</b>	N/A	Limit yield to a maximum of 110 residential lots
<b>Number of jobs</b>	N/A	N/A

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## Mapping

The planning proposal includes the following map amendments to The Hills LEP 2019: land zoning map (**Figure 3**), maximum building height map (**Figure 4**); and minimum lot size map (**Figure 5**).





Figure 5: Current and proposed minimum lot size maps (source: Council Meeting Agenda 23 July 2024)

## LPP recommendation – 19 June 2024

On 19 June 2024, the Hills Shire Council LPP considered the proposal, the LPP provided a unanimous decision that the planning proposal should not proceed to Gateway Determination (**Attachment C3**).

The LPP recommended to Council not to support the proposal proceeding to Gateway, for reasons including (**Attachment C3**):

- The planning proposal fails the strategic merit test based on the current state and local policies
- The planning proposal would create an undesirable precedent for ad hoc rezoning in the area
- Concerns were raised over the ability of the bypass road to operate as an arterial road in this location adjacent to the school, noting the requirements of Schools Infrastructure regarding traffic management measures and safety

The LPP acknowledged that there were positive aspects to the proposal in meeting local planning objects such as securing part of a possible bypass route, improved access for the public school and the increased provision of public space. In this regard, the Panel recognised that in the absence of the Greater Cities Commission, the Gateway process may be a mechanism to secure clarification from State agencies.

## Council Meeting – 23 July 2024

The Council officer's report to Council included two options for the proposal, Option 1 proceed to Gateway and Option 2 it not proceed to Gateway.

Council officers recommended that the planning proposal be forwarded to the Department for Gateway determination in accordance with Option 1 for reasons including (**Attachment C4**):

- the public benefits to regional infrastructure associated with the planning proposal's proximity to Dural Public School and the supporting upgrades offered through the planning proposal, such as kiss and drop facilities, improved pedestrian and vehicular access and provision of new sewer and electrical infrastructure to the school.

- aligns with the current objectives and priorities of the NSW Government to increase housing supply, notwithstanding that the majority of the Government's reforms appear to be promoting these outcomes in highly serviced urban areas, rather than the Metropolitan Rural Area.
- The planning proposal is unique and would not necessarily create a precedent for similar rezonings in the Metropolitan Rural Area, noting it relates to the land area immediately surrounding the Dural Public School and has the opportunity to provide significant public benefits for the School.
- It would also result in a fully contained and serviced residential development surrounding the catchment of the Public School, which SINSW has confirmed has capacity to accommodate additional student numbers, unlike many other schools within urban areas of The Shire.
- The provision of larger lots around the periphery of the site will assist in transitioning back into the rural character of the surrounding RU6 Transition land.
- The planning proposal would secure a portion of a possible alignment of a potential future bypass corridor, however at this time it does appear unlikely that this will fulfil Council's regional transport objectives in this locality, without significant investment and commitment from Council in the future to design, identify and acquire the road corridor and fund the construction of the bypass corridor.

Irrespective of this, it remains open to Council to accept the portion of the corridor through this site at this time, in the knowledge that if a bypass corridor is not ultimately achieved at this location, this road would then simply serve as a local collector road servicing this development and the school site.

Council subsequently resolved to not support the planning proposal proceeding for a Gateway determination in accordance Option 2 (**Attachment C4**). The reasons are identified in detail in the **Key Issues Section** of this briefing report.

## Key Issues

### STRATEGIC MERIT

#### **Issue - The proposal is inconsistent with the objectives of the Metropolitan Rural Area**

##### **Council View**

- Council's resolution on the planning proposal considered that:
  - The inconsistency of the proposal with the Region Plan, District Plan and LSPS, having regard to the treatment of land within the MRA and that the proposal does not technically satisfy the strategic merit test; and
  - It would 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 been updated to identify any urban development on this land and the consideration of site-specific merits of a proposal is only a relevant factor once a proposal has first satisfied the strategic merit test.

##### **Proponent view**

- *Planning Circular PS 22-003* sets out three possible tests to demonstrate that a planning proposal has strategic merit and should proceed to Gateway.

Whilst the planning proposal has demonstrated consistency with the first and second strategic merit tests, it is also consistent with the third strategic merit test, in responding to



a change in circumstances that has not been recognised by the existing strategic planning framework.

The proposal has previously been considered under the policy settings for the MRA within the District Plan. Importantly, the Minister has acknowledged that the current strategic planning framework for Sydney has failed to adequately to meet the housing supply needs of Sydney.

In August 2023, the Minister has explicitly directed councils and planning panels to consider the housing crisis and prioritise housing supply.

An earlier iteration of the Proposal was considered by the IPC through a Gateway Review. While the IPC acknowledged strategic inconsistency with the MRA at the time, the IPC clearly acknowledged the overarching merit of the proposal.

The Department recognised the inherent merit of the proposal in issuing a Gateway Determination for the prior planning proposal to proceed. As part of its determination, the Department acknowledged that it was appropriate to: *'consider limited growth in the Metropolitan Rural Area where the proposal is otherwise consistent with the District Plan and will result in a good planning outcome and public benefit.'*

The Proponent has been waiting four years for the IPC recommendation to be implemented to provide certainty for a land use outcome on the site. Given the Region Plan and District Plan have not been updated as required, and there is ongoing uncertainty about any timeframe for updates, it is incumbent on the Panel to be guided by the Minister's clear statement of priorities for housing supply: *'While I await the publication of updated region and cities plans by the Greater Cities Commission, I ask that you and your council teams prioritise the opportunity to deliver homes as part of merit considerations'* *'The Strategic Merit Test...exists for such times and provides a framework for responding to a change in circumstances'*.

- The application of a local 'place-based planning focus' should prevail over the District Plan's outdated MRA boundary. The planning proposal presents a scale of development in a low-density configuration that is commensurate with surrounding residential areas and is not in conflict with a desired transition to and retention of the viable agricultural rural lands north of Dural. This residential accommodation will be delivered with and supported by a range of public benefits.
- The District Plan acknowledged the need that limit changed is required in rural towns and villages, and that *'...limited growth of residential development could 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 the environmental, social and economic values of the MRA'*.
- The site has not been used for agricultural purposes for a significant period of time and the potential use of the site for agricultural purposes is commercially unviable. In addition, intensive and other agricultural pursuits if sought to be undertaken on the site would present a land use conflict with existing sensitive land uses such as the Dural Public School and the ability to provide necessary buffers is limited. The planning proposal facilitates the orderly and economic use of land that is otherwise under-utilised. The subdivision layout is an urban design outcome for the site that can incorporate complementary landscape and open space elements.
- Avoids land use conflicts by positioning new housing adjacent to the existing urban areas in the RU6 Transition zone, on land that is already precluded from agricultural uses.
- The planning proposal provides a logical outcome to deliver new housing supply and choice that meets local demand in accordance with the LHS and which is consistent with

the 2019 Rural Strategy which allows for limited residential expansion in rural villages such as Dural. The planning proposal is consistent with the eight criteria for rural village expansion outlined in the Rural Strategy.

## PPA comment

On 4 October 2024, the A/Deputy Secretary of PLUSHI within the Department wrote to advise the Panel of work underway by the Department that are of relevance to the Panel's consideration of this proposal (**Attachment C1**).

The Hills Shire Council responded to this letter as part of its rezoning review request (**Attachment C**), including:

- concerns around the determinative weight of the region plan;
- concerns with procedural fairness and panel independence; and
- a response to what Council considers bespoke criteria in DPHI's letter to the Panel Chair.

The PPA team notes Council's concerns. In response, the Panel should note that the A/Deputy Secretary's letter seeks to provide advice to the Panel:

- on the ongoing review of the Districts Plans in the context of the IPC's previous advice and previous decisions on previous proposals by the LPP, Council, the Panel and Department.

The letter clarifies to the Panel that the Department's review is taking into account the previous advice of the IPC dated September 2020.

It is noted that the Panel's most recent rezoning review decision did acknowledge the district plan review process; and

- identifies that current government priority to address the housing crisis. It is noted that the Minister's letter to all councils and panels asks to prioritise the opportunity to deliver homes. Similarly, the Minister's letter identifies that the strategic merit test exists for such times and provides a framework for responding to a change in circumstances.

The Minister's letter (**Attachment B2**) was issued after the last rezoning review decision by the Panel on 13 July 2023 (**Attachment H**).

## SITE SPECIFIC MERIT

### Issue - Bypass corridor

#### Council view

- A key driver of merit of previous iterations of the planning proposal related to the potential to secure a portion of a future bypass corridor having regard to Council's strategic transport objectives for a bypass corridor between Annangrove Road and Old Northern Road. However, the views and likelihood of State Government support being provided to secure Council's regional transport objectives in this locality have been tested as part of previous proposals for this land and the reservation of part of a regional bypass corridor is contingent on several factors that are becoming increasingly uncertain or unlikely, therefore presenting a speculative risk or financial burden to Council.

For this reason, Council has previously determined not to proceed with the previous version of this same proposal.

#### TfNSW comments dated 13 April 2022 and 28 July 2022 (**Attachments F and F1**)

In summary, TfNSW states it:

- has no current plans, proposals or investigations for a regional bypass road that connects Annangrove Road to Old Northern Road. Therefore, there is no funding or commitment to the delivery of a regional bypass road, including corridor design, alignment and future reservation; and
- recommends that should Council determine to deliver a future local bypass; Council would need to be satisfied through its own studies and technical work with respect to the appropriate width and alignment. This should be undertaken by Council, not the Proponent. TfNSW encouraged, but did not require, this assessment to be undertaken prior to Gateway Determination, however, advised that it should be undertaken prior to finalisation of the LEP amendments.

## **SINSW comments dated 3 July 2023 (Attachment G)**

In summary, SINSW provided in principle support for a proposed 25 kiss and drop spaces on a new collector road (on the Dural Public school's northern boundary) subject to several matters, including:

- installation of Local Area Traffic Management measures on all proposed intersections and roads to physically reduce speeds; and
- noting the reports commentary on the low utility of imposing a 30km p/h speed limit along the proposed collector road (and that final approval and application of any alternate speed limits lies with the road authority), SINSW request that the proponent funds an annual 'traffic safety education programme' for future residents of the development, which addresses 'pedestrian, passenger and wheels' safety around the existing school site; and
- SINSW's support of alternative safety measures for the proposed collector road (other than the low-speed zone above) is reliant on the proposed development yield (120 dwellings). Should development be further intensified in the study area, SINSW will advocate for application of the above speed limit, which has been successfully tested at other school sites.

## **Proponent view**

- Consultation with TfNSW occurred in early 2022 where they indicated that there was no objection to the concept of a local (not regional) bypass road through the site. The Council staff have supported the provision of a local bypass through the site to enable the future realisation of their plans to deliver an Annangrove Road bypass to alleviate traffic impacts in the local area from development in the North West Growth Area.
- Council has identified that a minimum 32m wide road reservation is required to accommodate the future bypass road providing connection between Old Northern Road and Annangrove Road to the West through Derriwong Road. This is proposed to run through Derriwong Road and the site along the northern boundary of Dural Public School. A new signalised intersection is proposed at Old Northern Road and future bypass road. Access from Old Northern Road will be provided from the new intersection subject to TfNSW requirements to the northeast corner of Dural Public School.
- Dedication of land towards the bypass includes a works in kind for the delivery of a local collector road with a pickup and drop off facility adjacent to Dural Public School.
- The alternative outcome to the planning proposal is to retain the existing zoning, representing a 'no change' outcome. There would be no public benefits arising for the Dural Public School including the provision of additional open space, the connection of sewer infrastructure up to the boundary of school, the undergrounding of overhead powerlines across the school site, and the inclusion of safe pick up and drop off zones.

- Existing road and pedestrian safety issues adjacent to the Dural Public School on Old Northern Road would remain unresolved.

## Other Matters

### Zoning of the proposed Bypass Corridor

Council officers consider that should the planning proposal progress to Gateway determination, the proposed Land Zone Map should be amended to remove the identification of the 32m wide road reservation corridor as SP2 Infrastructure. The road corridor should instead be identified as proposed R2 Low Density Residential zone and secured as an outcome through the associated VPA.

### Regional land use and transport assessment

TfNSW in its comments dated 28 July 2022 reiterates previous advice outlining 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 as a prerequisite to the consideration of future planning proposals in this locality.

Council officers in their response to the rezoning review consider that while the site would not substantially worsen, nor is it responsible for, the existing local and regional traffic levels, the proposal would facilitate increased car dependence.

The proponent considers that TfNSW's requests for a regional land use and traffic study are unreasonable given the scale of the proposal. The proponent raised that TfNSW maybe concerned that this proposal will result in much wider development in the Dural area. This concern is addressed with extensive commentary in the planning proposal demonstrating why the site is unique and will not set an undesirable precedent.

### Rezoning Review Documents

Council's response to the rezoning review noted that 'Further Modelling Scoping Note' prepared by SCT Consulting dated 12 September 2022 should be disregarded by the Panel as it was not submitted to Council as part of planning proposal. Council officers consider the document appears to be a scoping note prepared by the traffic consultant to inform further discussions with the Proponent about the future preparation of a more detailed traffic study.

## Attachments

**Attachment A** – Planning Proposal

**Attachment A1** – Urban Design Report

**Attachment A2** –Traffic Impact Assessment

**Attachment A3** –Ecological Assessment

**Attachment A4** – Bushfire Hazard Report

**Attachment A5** – Economic Impact Assessment

**Attachment A6** – Heritage Impact Statement

**Attachment A7** – Detailed Site Investigation Report

**Attachment A8** – Infrastructure Services Report

**Attachment A9** – Survey Plan

**Attachment A10** – Acoustic Assessment



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**Attachment A11** – LEP Mapping

**Attachment A12** – Draft Site Specific DCP

**Attachment A13** – Aboriginal Heritage Assessment Report

**Attachment A14** – School Safety Assessment

**Attachment A15** – SINSW Correspondence

**Attachment A16** – Draft Voluntary Planning Agreement

**Attachment B** – Rezoning Review Application

**Attachment B1** – Planning proposal package (see Attachment A of this briefing report for complete package)

**Attachment B2** – Minister for Planning and Public Spaces letter to The Hills Shire Council dated 5 August 2023

**Attachment C** – Council Response Comments to Rezoning Review (13 November 2024)

**Attachment C1** – Letter from DPHI to the Panel Chair dated 4 October 2024

**Attachment C2** – Confirmation of Material Received

**Attachment C3** – Local Planning Panel Advice dated 19 June 2024

**Attachment C4** – Council Report and Minutes dated 23 July 2024

**Attachment C5** – Detailed Response to Rezoning Review Assessment Criteria

**Attachment D** – Rezoning Review Site – Planning Proposal History

**Attachment E** – NSW Independent Planning Commission's Gateway Determination Advice Report dated 4 September 2020

**Attachment F** – TfNSW Submission dated 13 April 2022

**Attachment F1** – TfNSW Submission dated 28 July 2022

**Attachment G** – SINSW Submission dated 3 July 2023

**Attachment H** – Previous rezoning review decision RR-2023-7 dated 13 July 2023

**Attachment I** – LPP Meeting Agenda (19 June 2024)

17 December 2024

Alexander Galea

Manager, Planning Proposal Authority

7 January 2025

Louise McMahon

Director, Planning Proposal Authority

# Rezoning Review – Briefing Report

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## Assessment officer

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