



REZONING REVIEW

RECORD OF DECISION

STRATEGIC PLANNING PANEL of the
SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DETERMINATION	5 February 2025
DATE OF DECISION	23 January 2025
PANEL MEMBERS	David Ryan (Acting Chair), Judy Clark and Stacey Miers
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>Abigail Goldberg declared a conflict of interest as she was part of the panel who considered a similar planning proposal on this site, which was refused.</p> <p>Local Council nominated members Janelle Atkins, Cynthia Dugan, Brent Woodhams and Robert Buckham have declared a conflict of interest as council officers who have previously dealt with the proposed development and planning proposal.</p>

REZONING REVIEW

RR-2024-31 – The Hills LGA – PP-2024-450

614 Old Northern Road, 618 Old Northern Road, 626 Old Northern Road, 21 Derriwong Road, and 27 Derriwong Road, Dural (As described in Schedule 1).

Reason for Review:

- ☒ The council has notified the proponent that the request to prepare a planning proposal has not been supported.
- ☐ The council has failed to indicate its support 115 days after the proponent submitted a request to prepare a planning proposal.
- ☐ The council has not submitted the planning proposal for a Gateway determination within 28 days of indicating its support for the proposal.

PANEL CONSIDERATION AND DECISION

The Panel considered the material listed at item 4 and the matters raised and/or observed at briefings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel recommends that the proposed instrument:

- ☒ **should** be submitted for a Gateway determination because the proposal has demonstrated strategic and subject to changes site specific merit
- ☐ **should not** be submitted for a Gateway determination because the proposal has:
 - ☐ not demonstrated strategic merit
 - ☐ demonstrated strategic merit but not site specific merit

The decision was unanimous.

REASONS FOR THE DECISION

The Panel considered the documentation, was briefed by the Department of Planning, Housing and Infrastructure, and heard extensively from The Hills Shire Council and the proponent, Legacy Property and Urbis.

Strategic Merit

The Panel noted and considered the following when concluding the strategic merit of this planning proposal:

- Efforts by the landowner to rezone the site for urban development have been ongoing for several years. The relevant authorities at all levels appear to have held varying views on the merits of these proposals.
- The Panel observes that the Independent Planning Commission (IPC) considered a similar planning proposal for partially the same site and concluded that this particular part of that proposal was suitable for consideration for urban development.
- A subsequent planning proposal to implement that finding obtained gateway approval to proceed. However, that proposal was effectively ‘timed out’ by the Department because of unresolved issues raised by Transport for NSW (TfNSW) and Schools Infrastructure NSW (SINSW).
- The proponent subsequently continued to pursue an outcome in consultation with Council staff, TfNSW and SINSW. The outcome of this consultation has been to obtain SINSW’s in principle support subject to certain conditions, and TfNSW raised no specific objection. In this respect, the key reason for the discontinuance of the previous planning proposal appears to have been resolved. The current planning proposal is very similar to the previous one.
- Whilst acknowledging Council’s fundamental objection to the current planning proposal, the proponent claims that its design and public benefit offer respond to requests and issues raised by Council staff during and subsequent to the previous planning proposal.
- The Panel accepts the Council’s advice that its support for the previous planning proposal was based on the potential public benefit associated with the then proposed bypass road, and that the absence of that element in the current planning proposal provides any counterbalance to what Council claims are the planning proposal’s lack of strategic merit.
- A key reason behind Council’s current objection and previous panels’ conclusions that the various proposals have lacked strategic merit, relates to the site’s location within the Metropolitan Rural Area (MRA).
- The Greater Sydney Region Plan —A Metropolis of Three Cities and associated Central City District Plan remains relevant considerations for the Panel in forming a view on the planning proposal’s strategic merit. The proposed rezoning is inconsistent with the regional and district plan’s planning priorities concerning the MRA.
- The District Plan states that residential rezoning is generally not supported in the MRA. As such, it has been contended, in accordance with the Department’s Local Environmental Plan (LEP) Making Guidelines, that this inconsistency means that the planning proposal cannot demonstrate strategic merit and therefore should not proceed. However, the Panel notes that Part 3 of the LEP Making Guidelines dated August 2023 states that there are alternative considerations through which a proposal may demonstrate strategic merit, other than demonstrating consistency with a strategic plan, which includes:
 - *Respond to a change in circumstances that has not been recognised by the existing planning framework.*
 - *Factors that lead to responding to a change in circumstances may include, but not exclusively relate to:*
 - *Key infrastructure investment or opportunity to plan for future infrastructure unanticipated by the existing strategic planning framework*

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4PSQ 12 Darcy Street, Parramatta NSW 2150 | Locked Bag 5022, Parramatta NSW 2124 | T 02 8217 2060 | strategicpanels@dpie.nsw.gov.au

- *Response to key Government priorities – Premier’s Priorities, climate change, or a shift in government policy (e.g. NSW Government’s Net Zero Plan)*
- *Changes to population and demographic trends and associated needs such as housing or jobs.*

The Panel considers that the planning proposal demonstrates strategic merit for the following reasons:

- The NSW government has made it abundantly clear through a myriad of public announcements and correspondence to Councils and panels, that housing delivery is a key government priority, as identified in the Minister for Planning and Public Spaces’ letter to all panels and councils dated August 2023 and the LEP Making Guidelines.
- The Panel is satisfied that notwithstanding any inconsistency with the District Plan in terms of development within the MRA, it is open to the Panel and consistent with the Guidelines, to conclude that the proposal has strategic merit, based on its delivery of additional housing supply on a site and in a location, otherwise suitable for housing development.
- The panel does conclude that the proposal has strategic merit based on the modest addition to housing supply and the public benefits it offers, particularly in relation to the adjoining school. The provision of additional housing in this location, directly adjoining essential school infrastructure, has strategic merit as it responds to key Government priorities of delivering housing supply and associated needs as well as the improved outcomes the planning proposal can provide for Dural Public School through the public benefit offer.
- The Panel also notes the potential inconsistency with Section 9.1 Ministerial Direction 1.1 Implementation of Regional Plans, as it also relates to the inconsistency with the MRA within the Regional Plan. The Panel considers that the inconsistencies are reasonably able to be justified on the grounds outlined in that Direction as it is of minor significance, with the planning proposal achieving the overall intent of the Regional Plan whilst not undermining the achievement of the Regional Plan’s vision, land use strategy, goals, directions or actions. This includes not undermining the planning priorities concerning the MRA because of the site’s unique circumstances immediately adjoining Dural Public School and the improved outcomes the planning proposal can provide for the school.
- The Panel supports the associated public benefit offering providing these improved outcomes; including the provision of a safer drop off point for Dural Public School in the proposed kiss and drop area, traffic improvements on Old Northern Road, dedication of two stormwater basins, the provision of a potential future bypass corridor, the undergrounding of power supply, facilitating the opportunity to connect the School to reticulated sewer, pedestrian through-site-links and a local park.
- Proposals on the site have received support from The Hills Shire Council and DPHI at one stage or another, previously reaching Gateway Determination in 2021 after the Independent Planning Commission noted that the site (northern portion of a former planning proposal) should be seriously considered for urban development. The Gateway was amended to not proceed due to outstanding agency consultation issues. These issues no longer preclude the progression of this planning proposal for a Gateway determination.
- The Panel notes advice to the Panel Chair in a letter from the Department dated 4 October 2024 in relation to this planning proposal, that the MRA is under review as it applies to this site. The Panel observes that any change or indeed reinforcement of the MRA as it applies to this site that may be reflected in any updated District Plan, is a matter for the Minister and the Department and not one that the Panel has attempted to pre-empt. As the Department is both strategic plan making and gateway determination authority, the Panel assumes that it will consider the relevant status of and weight to be given to the MRA when it makes its gateway determination of this planning proposal. This does not affect the Panel’s conclusions.

Site Specific Merit

The Panel agreed that the planning proposal should be able to achieve Site Specific Merit subject to revisions addressing site constraints noting that:

- The Panel is of the opinion that an R2 zoning (instead of SP2) is more appropriate for proposed road corridors.
- The Panel seeks further assurance that the dwelling cap and subsequent likely lot size for future development is appropriate, given the site's topographic condition. The Panel requests consideration and analysis by the Department of site topography and the provision of advice to the Panel of any subsequent required changes to the proposed dwelling cap.

Panel recommendations

The Panel recommends that prior to submitting the Planning Proposal for a Gateway determination, the Planning Proposal is to be revised to address the following:

- That the proposed SP2 zone corridor be zoned R2 Low Density Residential.
- That further detailed analysis is undertaken to address impacts of the proposed lot sizes and configuration on the naturally sloping topography of the site, to avoid excessive cutting and, filling and support maintaining the retaining of existing landscape and landform character. Consideration should also be given to promoting pedestrian access through the site to the school to limit unnecessary private vehicle trips. An updated reference scheme reflecting the outcomes of this analysis should be prepared and exhibited with the proposal and should inform appropriate lot sizes and dwelling yield in the LEP and any future DCP for the site.
- That the planning proposal and supporting technical reports should be updated to address the current scheme and provisions.
- That during public exhibition, further consultation occurs with Council, SINSW, TfNSW and the Rural Fire Service in relation to the proposed LEP amendments, public benefit offer and site specific DCP provisions.

The Panel requires confirmation from the proponent that they agree to:

- a) revise the planning proposal to be consistent with the Panel's recommendations; and
- b) subsequently provide a revised planning proposal to address the Panel's concerns.

The proponent has up to two weeks from the date of this determination to confirm whether they agree to revise their planning proposal to be consistent with the Panel's recommendations. Should the proponent not agree to revise their proposal, then the Panel will reconvene to determine that the planning proposal does not have site specific merit and will not be submitted for a Gateway determination.




Should the proponent agree to revise their planning proposal to address the Panel's concerns, then the proponent has up to a further four months to provide the revised planning proposal, including supporting reports and studies to the Panel.

The Hills Shire Council has resolved not to support the planning proposal, and thus are unable to accept the role of Planning Proposal Authority (PPA) for this planning proposal. In accordance with Section 3.32(1) of the *Environmental Planning and Assessment Act 1979*, the Planning Panel as delegate of the Minister for Planning has determined to appoint itself as the PPA for this planning proposal.

Should the proponent fail to pay the PPA fee by the designated date, then the Panel will no longer proceed with the planning proposal and the making of a local environmental plan amendment.

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4PSQ 12 Darcy Street, Parramatta NSW 2150 | Locked Bag 5022, Parramatta NSW 2124 | T 02 8217 2060 | strategicpanels@dpie.nsw.gov.au

PANEL MEMBERS	
 David Ryan (Acting Chair)	 Judy Clark
 Stacey Miers	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2024-31 – The Hills LGA – PP-2024-450 – at 614 Old Northern Road, 618 Old Northern Road, 626 Old Northern Road, 21 Derriwong Road, and 27 Derriwong Road, Dural
2	LEP TO BE AMENDED	The Hills Local Environmental Plan (LEP) 2019
3	PROPOSED INSTRUMENT	<p>The proposal seeks to:</p> <ul style="list-style-type: none"> • Rezone from RU6 Transition to part R2 Low Density Residential and part SP2 Infrastructure (local road); • Change the minimum lot size requirement from 20,000m² to sizes between 600m² and 2,000m²; • Lower the maximum height of building control from 10 metres to 9 metres; and • Limit yield to a maximum of 110 residential lots.
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Rezoning review request documentation • Department of Planning, Housing and Infrastructure, Rezoning Review Briefing Report, 7 January 2025 • Slide presentations from DPHI, 23 January 2025; The Hills Shire Council, 22 January 2025; and Urbis, 16 January 2025
5	SITE INSPECTIONS AND BRIEFINGS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection with Department of Planning, Housing and Infrastructure (DPHI): 10:15am – 10:50am, 23 January 2025 <ul style="list-style-type: none"> ○ Panel members in attendance: David Ryan (Acting Chair), Judy Clark and Stacey Miers ○ DPHI staff in attendance: Alex Galea, Patrick Connor and Lara Levy ○ Key issues discussed: <ul style="list-style-type: none"> • Site's history • Interface with Dural Public School • Local of Kiss and drop and bypass corridor • Traffic along Old Northern Road • Minimum lot sizes and its topography/slope • Bushfire affectation on the site and • Surrounding development • Briefing with Department of Planning, Housing and Infrastructure (DPHI): 1:00pm – 1:45pm, 23 January 2025 <ul style="list-style-type: none"> ○ Panel members in attendance: David Ryan (Acting Chair), Judy Clark and Stacey Miers ○ DPHI staff in attendance: Louise McMahon, Alex Galea, Patrick Connor, Lara Levy, Kate McKinnon and Taylah Fenning ○ Key issues discussed: <ul style="list-style-type: none"> • Particulars of the Planning Proposal and attributes of the site and surrounds

		<ul style="list-style-type: none"> • Proposal and site history and background • Proponent and Council's positions on site specific and strategic merit <ul style="list-style-type: none"> • Briefing with The Hills Shire Council: 1:45pm – 2:35pm, 23 January 2025 <ul style="list-style-type: none"> ○ Panel members in attendance: David Ryan (Acting Chair), Judy Clark and Stacey Miers ○ DPHI staff in attendance: Louise McMahon, Alex Galea, Patrick Connor, Lara Levy, Kate McKinnon and Taylah Fenning ○ Council representatives in attendance: Nicholas Carlton, Megan Munari and Kayla Atkins ○ Key issues discussed: <ul style="list-style-type: none"> • Site and proposals strategic context • Council's objection to DPHI letter to Panel with respect to interpretation and consideration of the lands inclusion within the MRA • Council's position on site specific and strategic merit • Briefing with Legacy Property and Urbis (Proponent): 2:45pm – 3:42pm, 23 January 2025 <ul style="list-style-type: none"> ○ Panel members in attendance: David Ryan (Acting Chair), Judy Clark and Stacey Miers ○ DPHI staff in attendance: Louise McMahon, Alex Galea, Patrick Connor, Lara Goldstein, Kate McKinnon and Taylah Fenning ○ Proponent representatives in attendance: Clare Brown and Mike Williams ○ Key issues discussed: <ul style="list-style-type: none"> • Proponent's position on site specific and strategic merit • Current traffic issues around Dural Public School • Panel Discussion: 3:47pm – 4:40pm, 23 January 2025 <ul style="list-style-type: none"> ○ Panel members in attendance: David Ryan (Acting Chair), Judy Clark and Stacey Miers ○ DPHI staff in attendance: Louise McMahon, Alex Galea, Patrick Connor, Lara Levy, Kate McKinnon and Taylah Fenning
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