

Planning Proposal 7/2015/PLP for 582-582A Old Northern Road, Dural

Draft VPA and DCP amendments

Objection to the Draft VPA and DCP amendments regarding the Planning Proposal 7/2015/PLP for 582-582A Old Northern Road, Dural.

Draft Voluntary Planning Agreement (VPA)

The monetary contribution from the proposed Voluntary Planning Agreement is considered to be inadequate. It does not cover infrastructure costs for amelioration of the traffic impacts upon the locality nor does it adequately compensate The Hills Shire Council for pedestrian safety measures in the locality.

It is considered to be inadvisable for The Hills Shire Council to position an isolated pedestrian refuge in the single lane each way portion of Old Northern Road so that pedestrians can access the bus stop on the other side of Old Northern Road to the site. Given the quantity, speed and size of vehicles, including semi-trailers, that use that section of road, a simple arch of metal will do nothing to protect a pedestrian. Children would use this refuge in peak hour traffic to access the bus stop to go to school.

Councillors if these were your children would you want them standing with minimal protection in the middle of this busy arterial road with semi trailers thundering past in both directions?

A median strip for at least a distance of 50 metres on either side of the refuge island should be considered to ensure traffic is kept into the lanes prior to reaching the pedestrian refuge. This would not impact upon buses turning into Derriwong Road. Council should ensure the proponent provides best possible practice in pedestrian safety not the minimum permitted when it comes to the lives of the children of the Hills Shire.

It is considered unlikely that all pedestrian activity will come from Derriwong Road. Residents, particularly children, will try to get over their back fence or exit from the onsite dead-end road to get to KFC and McDonalds fast food outlets. They will not walk all the way up to the traffic lights unless they have to, much as Council's planners would like them to. They will run across six lanes of traffic with heart-breaking results. It is felt that Council could be derelict in its duty of care if it does not include in either the VPA or an additional Section C.6.2.7 of the DCP, pedestrian prevention fencing along the median strip between the site and the trading zone on the opposite side of Old Northern Road. This would ensure that pedestrians cross safely at the lights at Quarry Road, not simply having Council hope that they will.

Two of the Objectives of the draft DCP are to avoid the slowing of traffic on Old Northern Road by cars leaving and entering the site and to reduce the potential for vehicle conflicts. All traffic from the site will enter Old Northern Road from Derriwong Rd. It is more than reasonable for the community to expect the developer to contribute financially to ensuring the Objectives of the Vehicular Access section of the DCP are met when this section of the DCP is being written specifically for that development site.

The State Government has made it abundantly clear that funding is not available for road improvement works for this area in the foreseeable future. As Council's reports described, that is the one of the main reasons that the South Dural Planning Proposal did not proceed. Local residents and residents coming from the rural areas should not have to endure ever increasing traffic congestion while individual developers make significant profits from the local area without contributing to improvement of the road and footpath infrastructure in the locality.

Therefore a monetary contribution which covers the infrastructure cost of a slip lane which turns left out of Derriwong Rd and continues to the end of the parking lane prior to the roundabout, is considered reasonable. Parking along that section is no longer needed for the business that is no longer on that site. There is sufficient Council land to accommodate the curb and guttering for this slip lane and the footpath and existing trees on the nature strip would not be affected.

A footpath must be constructed from the site exit onto Derriwong Road up to Old Northern Road as all pedestrian traffic is to be directed onto that road. To preserve the rural-residential landscape amenity and visual amenity, it is considered appropriate that no existing tree along Derriwong Road be removed to accommodate this footpath. A minor curve in the footpath to accommodate these trees would be considered acceptable. Indeed if absolutely necessary the footpath could deviate slightly into the continuous landscape buffer.

While it is nice that the Hills may use the monetary contribution for upgrades to other unspecified infrastructure including parks, sporting fields and community facilities, there is no legal obligation whatsoever under the Voluntary Planning Agreement for Council to undertake these works. Council only has to reasonably endeavour to apply the Monetary Contributions to these public purposes. Council's obligations in this regard should also be secured in the VPA so as to be a binding agreement with the residents of Dural and the surrounding district.

Furthermore under the draft VPA if the developer should become subject to external administration, which unfortunately happens to many development companies these days, or if any single company officer of the developer becomes the subject of bankruptcy proceedings, Council will be left with no further monetary contribution and the Hills ratepayers left with no further improvements to infrastructure. That clause should be deleted from the VPA and a new clause included, obviously with legal advice, to ensure Council would be a creditor in any bankruptcy proceedings.

There are no details whatsoever of biodiversity offsetting even though Council's report supports this. Where any tree on the site which is characteristic of the Critically Endangered Ecological Community of Shale Sandstone Transition Forest is to be removed, either an offset of 8 to 1 of trees characteristic that Forest type should be planted in another nearby location or an area of Shale Sandstone Transition Forest equivalent to or greater than the area cleared should be offset elsewhere in The Hills Shire Local Government Area.

Draft Hills Shire Council Development Control Plan (DCP)

C.6.2.1 Site Planning

It is not considered that the proposed future development layout plan either protects or enhances the rural-residential landscape setting as described in the Objective for this clause. The development location proposed for the site does not further improve the quality, value or extent of the rural-residential landscape setting. Indeed the proposed plan detracts from the landscape setting particularly as there is no other visible medium density housing in this locality.

While the proposal has been approved by the Planning Authority, the Hills Council now has the opportunity to secure development controls and objectives that are in line with community expectations with the creation of this new section of the DCP. It is in the public interest that the biodiversity of this site is also protected and enhanced by careful site planning.

If one or two lots need to be deleted to obtain the best outcome, Council should consider this option as being in the public interest. Subdivision of the four larger lots on this site must not be considered to offset the loss of any other lots as these sites are adjacent to the Environmental Protection Zone and Common Open Spaces.

It is therefore considered appropriate that the following Draft Objectives and Development Controls be amended / included as follows:

- (i) *"To protect and enhance the rural-residential landscape setting"*
- (ii) To protect and preserve the biodiversity values of the site**

The sole Development Control for this clause is:

- (a) *"Future development is to be **generally** located in accordance with **(amended)** Figure 7"*
- (b) No lot shall be further subdivided.**
- (c) The area and locations of the Environmental Protection Zone and three (3) Common Open Spaces shall be as indicated in (amended) Figure 7 and of no less size.**
- (b) Future development shall consider the protection and preservation of existing trees that are characteristic of the Critically Endangered Ecological Community Shale Sandstone Transition Forest when considering the position of roads, Common Open Spaces and private lots**

C.6.2.2 Vegetation

This iconic site has been the gateway to Dural for decades. It is widely known throughout the shire. One only has to mention it and people can instantly orientate themselves. That will never happen with a row of townhouses unless in a negative comparison to the previous visual amenity of the site.

Every effort should be made to maintain the boundary trees, particularly those on the south to south-east of the Old Northern Road boundary, to avoid adverse impacts on the visual amenity of this site from the surrounding locality.

The site is nearly 2 hectares which is predominantly covered by Shale Sandstone Transition Forest which is a Critically Endangered Ecological Community under the Biodiversity Conservation Act. The proponent is offering to protect a small 1500 sq metres of this Critically Endangered Forest.

There are some simple changes to the site layout and development controls that would significantly increase the number of the trees of this Forest type that can be retained and therefore reduce the adverse impacts of this proposal on visual amenity and biodiversity. The increased amenity would be in the public interest.

A significant increase in the number of trees retained which are characteristic of this Critically Endangered Ecological Community of Shale Sandstone Transition Forest could be accomplished by increasing the width of the landscaping boundary along Old Northern Road and retaining the existing significant trees within that landscaping. This would go an enormous way towards ameliorating the adverse impact on biodiversity and public amenity. This could be accomplished by the reduction in size of two of the 225 m² corner lots in the central core together with the adjacent 417 m² and 654 m² lots next to the Common Open Space. This would enable the 2-way road which is parallel to Old Northern Road, and consequently the lots along the Old Northern Road boundary, to be repositioned in a more northerly direction, thereby retaining trees along the Old Northern Road eastern boundary.

A further significant increase in the number of trees which are characteristic of this Critically Endangered Ecological Community of Shale Sandstone Transition Forest that could be retained could be accomplished by conditioning that the existing significant trees of this flora type be retained and protected within the lots currently measuring 417.03 m², 654.95 m², 432.80 m² and 425.23 m². The dwelling footprint of any manor house or other dwelling(s) on these sites should be setback greater than 5 metres from any retained tree.

Additional trees should be retained by ensuring that no significant trees are removed in the Common Open Spaces (COS). These trees would provide important shade for these 'mini-parks' which would encourage their use by all ages of residents.

As noted in Council's Report of 24 April, changes to the RFS Clearing Code of Practice allows Council to condition the retention of particular trees even when they are *"within a designated 10/50 clearing entitlement area. This provides the opportunity for a better ecological outcome as it provides greater protection for retained trees that may fall within 10 metres of a building"*.

Where significant trees characteristic of the Shale Sandstone Transition Forest occur within the rear private open space of the lots, Council could also condition their retention. Practically speaking, the lots in the inner core are mostly positioned on the cleared inner area where the business activity of the previous owners took place. The retention and protection of trees in rear private spaces would be most likely occur in the 4 lots that are currently over 400 m² and the lots around the boundary to Old Northern Road.

It should be noted that there has been no Vegetation Management Plan proffered nor has any actual zoning for the Environmental Protection Zone been proposed, apart from a vague "Environmental Protection Zone". E2 Environmental Conservation zoning must be included in this section of the DCP and any Land Mapping as well as reference to a confirmed Vegetation Management Plan (VMP).

- Objective (i) *"To preserve the existing significant vegetation on the site"* cannot be achieved if only 1500 sq metres of Shale Sandstone Transition Forest is preserved.
- Objective (ii) *"To ensure the ongoing maintenance of the significant vegetation on the site, at cost to any future residents on the site"* cannot be assured without the VPM being completed and included in the DCP.
- Objective (iii) *"To ensure a high visual and acoustic amenity is provided"* cannot be met within the short to medium term without the existing significant trees of the Critically Endangered Ecological Community of Shale Sandstone Transition Forest being retained within the continuous landscape buffer along Derriwong Road and Old Northern Road and the Common Open Spaces.

Therefore it is considered appropriate that the following Development Controls be amended/included in C.6.2.2 Vegetation (**amendments to the Draft DCP are notated in red**):

- (a) Future development on the site should include an Environmental Protection Zone of approximately 1,500 m², **zoned as E2 Environmental Conservation**, for the significant vegetation on the site to be located on the northern portion of the site, identified in Figure 7.
- (b) The Environmental Protection Zone should be identified as **an E2 Environmental Conservation Zone on the applicable Land Zoning Map in The Hills LEP and as a Restricted Development Area** on the title.
- (c) Vegetation Management Plan no. xx applies to this site. All trees to be retained shall be drawn to scale on a Survey Plan which is included with the VPM.**
- (d) A continuous landscape buffer along Derriwong Road and Old Northern Road **shall be provided with a minimum depth of five (5) metres along Derriwong Road and ten (10) metres along Old Northern Road.**
- (e) All existing trees within the continuous landscape buffer that are characteristic of the Critically Endangered Ecological Community of Shale Sandstone Transition Forest shall be retained and protected in accordance with the provisions of AS4970 Protection of Trees on Development Sites, as shown hatched in (revised) Figure 7.**
- (f) The design of the landscape buffer shall utilise native vegetation to complement the existing retained trees.**

- (g) All existing trees within the community open space (COS) that are characteristic of the Critically Endangered Ecological Community of Shale Sandstone Transition Forest shall be retained and protected in accordance with the provisions of AS4970 Protection of Trees on Development Sites.**
- (h) On each private lot exceeding 300 m² consideration shall be given to the positioning of any dwelling(s) to allow for the retention of significant trees in the private lots.**
- (i) The dwelling(s) on each private lot exceeding 300 m² shall be setback from the trees in the Environmental Protection Zone and Common Open Spaces in accordance with the provisions of AS 4970 Protection of Trees on Development Sites.**
- (j) On each private lot less than 300 m² consideration shall be given to the retention of significant trees in the rear open private space, in addition to the continuous landscape buffer along Derriwong Road and Old Northern Road.**
- (k) The cost of the ongoing maintenance of the significant vegetation on the site, including the landscape buffer, must be borne by any future residents on the site.**

While there is some additional cost and inconvenience for the developer in retaining and protecting existing trees on the site it is considered in the public interest to do so.

C.6.2.3 Vehicular Access

The State Government has made it abundantly clear that funding is not available for road improvement works for this area in the foreseeable future. As Council's report describes, that is the main reason that the South Dural Planning Proposal was scrapped. Local residents and residents coming from the rural areas should not have to endure ever increasing traffic congestion. In the absence of State Government Funding, where medium density developments are sited on arterial rural-residential roads, it is considered reasonable for the development to provide road infrastructure in the immediate locality which ameliorates the impacts of the individual medium density development.

To achieve the Objectives of this clause:

- (ii) to reduce the potential for vehicle conflicts, and
- (iii) to avoid the slowing of traffic on Old Northern Road by cars leaving and entering the site,

it is therefore considered appropriate to include the following Development Controls:

- (c) A No Right Turn during Peak Hours - Buses Excepted, sign shall be installed on New Line Road opposite Derriwong Road.**
- (d) A left turn slip lane shall be constructed from Derriwong Road along the Old Northern Road boundary of the site. The slip lane shall end at the No Stopping sign before the roundabout. Lanes markings shall be repainted to facilitate traffic flow.**

C.6.2.4 Site Contamination

The site contamination must be remediated and final certification provided prior to the lodgement of any development application. Care must be taken during remediation not to cause any adverse impacts upon, or future adverse impacts upon, the unnamed tributary of O'Hara's Creek present on the site or on existing trees that are characteristic of the Critically Endangered Ecological Community Shale Sandstone Transition Forest.

Therefore it is considered appropriate that the following be included / amended in the DCP:

Objectives:

- (i) To ensure the land is made suitable for residential purposes
- (ii) To ensure that there are no adverse impacts upon, or future adverse impacts upon, the unnamed tributary running through the property or on existing trees that are characteristic of the Critically Endangered Ecological Community Shale Sandstone Transition Forest, as a result of remediation of the site contamination.**

Development Controls:

- (a) Site contamination must be remediated and certified in accordance with Environmental Planning Authority Guidelines prior to lodgement of any development application.**

C.6.2.5 Water Quality

The Planning Authority did not consider that the proposal adequately addressed the impacts of the proposal on water quality and the environmental values for the Hawkesbury River. The nearest wastewater main is located on Pellitt Land and connection may require upsizing the system. The proposal does not adequately address overland flow issues.

It is therefore considered that the following Objectives and Development Controls be included / amended:

Objectives:

- (i) To ensure future development is consistent with the relevant Water Quality Objectives.
- (ii) To ensure that the water quality and environmental values for the Hawkesbury River are not adversely impacted by any decontamination of the site, subdivision works or future development of the site.**
- (iii) To ensure that all necessary wastewater infrastructure improvement costs are borne by the development.**

Development Controls:

- (a) Decontamination of the site, subdivision works and future development shall be carried out in accordance** with the relevant Water Quality Objectives (found at <http://www.water.nsw.gov.au/water-management/water-quality>) and shall address **and ameliorate any decontamination, subdivision and** development's impact on hydrology and hydrogeology.
- (b) Any necessary wastewater and/or stormwater infrastructure improvements shall be undertaken prior to the lodgement of any development application and any such improvement costs are to be borne by the development.**

C.6.2.6 Density

The sole Objective for this clause is:

- (i) "To provide an appropriate density on the site that is consistent with the local character"*

The sole Development Control for this clause is:

- (a) "Development on the site should not exceed 57 dwellings"*

However 53 out of those 57 dwellings are on lot sizes that are smaller than the smallest standard lot size zoning anywhere in the Hills Shire, including the Sydney Region Growth Centres in the Hills Shire, which are only located around the main transport hubs.

- The minimum standard lot size for Hills Shire is 230 m²

- The minimum lot size for Sydney Region Growth Centres for R3 Medium Density Residential zones for:
 - a single dwelling house is 300 m²
 - a semi-detached dwelling is 125 m²
 - an attached dwelling is 375 m²
- The minimum lot size for this development, which is bounded on all sides by RU6 Transition Zone, and is currently itself zoned as RU6 Transition Zone, with a notable minimum lot size of 2 hectares, is 120.6 m²
- This is less than anything mandated by the State Government for the Growth Centres and is totally incompatible with the rural-residential local character. This cannot in any way be considered as "*density on the site that is consistent with the local character*". The site has only limited public transport and is not located near any regional shopping centre. While the proposal has approval from the Planning Authority and Council considers this integrated housing lot to be an appropriate methodology of ensuring no further subdivision, it is difficult to see how lots as small as 120.6 m² could be subdivided any further.

It is not up to the Hills Council to ensure that the development is financially successful. That is the responsibility of the developer within the strictures of the site.

Therefore it is considered appropriate that the Development Control for this clause be amended to be:

- (a) "Development on the site should not exceed 54 dwellings"**
- (b) Any manor home shall contain no more than 4 residences.**

The deletion of the first two lots on Derriwong Road from the corner of Old Northern Road and a single lot on the south east corner of the central core (thereby reducing the number of dwellings from 57 to 54), will assist the repositioning of the 2-way road northwards to accommodate the increased width of the landscaping buffer on Old Northern Road. This will also provide more rear open private space for the lots along Old Northern Road, reducing the perceived density of the site.

C.6.2.7 Pedestrian Safety (new recommended clause)

The development site is situated on the corner adjacent to the busiest roundabout in the rural areas of the Hills Shire. There is currently no low or medium density residential zones within 200 metres of that roundabout. Given the site's proximity to take away food outlets opposite one side of the site and the bus stop to schools and Castle Hill town centre opposite the other side of the site, it is crucial that the safety of pedestrians is ensured.

Children in particular do not have the skills necessary to cross four and six lanes of busy traffic especially during peak hours. Particular attention should be paid to the positioning of the refuge island as it should not be close to the two-to-one merging lanes between Derriwong Road and the bus stop. It is considered imperative that the following Objectives and Development Controls be included in the DCP:

Objectives:

- (i) To ensure pedestrians cross Old Northern Road at appropriate points**
- (ii) To provide pedestrians with protective measures for crossing Old Northern Road at an appropriate point**

Development Controls:

- (a) A pedestrian prevention fence consistent with the relevant safety standards shall be installed on the median strip between the New Line Road roundabout and Quarry Road.**

- (b) A refuge island shall be installed between Derriwong Road and the bus stop on the opposite side of Old Northern Road. The refuge island shall be at least 50 metres west of the two-to-one merging lanes.**
- (c) A median strip shall be installed approximately 100 metres in either direction from the refuge island, ending a sufficient distance from Derriwong Road to permit safe turning for buses.**

C.6.2.8 Vehicular Safety - Obtrusive Lighting *(new recommended clause)*

The properties that back onto Old Northern Road should have strict obtrusive lighting Objectives and Development Controls to ensure that no spill lighting, from outdoor floodlighting or security lighting mounted on the eaves of multi-storey residences, impacts upon drivers navigating the roundabout on Old Northern Road / New Line Road.

While it is proposed that there will be a landscape buffer along that boundary, unless Council ensures that the existing trees are retained, by the time any landscaping is effective there will have been a long period whereby obtrusive lighting could adversely impact upon motorists approaching, entering and exiting the roundabout.

Therefore it is considered appropriate that the following Objectives be included:

- (i) To avoid impact of obtrusive lighting on vehicles travelling on Old Northern Road and New Line Road.**
- (ii) To protect motorists and pedestrians from the impacts of obtrusive lighting.**

It is appropriate for Council's traffic management committee and traffic management engineers to detail the necessary Development Controls to attain these objectives.

C.6.2.9 Site Boundary Fencing *(new recommended clause)*

To ensure residents of the site and construction workers for the development do not access Old Northern Road for the purposes of accessing the trading zone and fast food outlets by way of the rear boundary fencing of the properties, an appropriately scaled continuous boundary fence must be installed prior to construction of any dwelling. The fence should be of solid durable construction to ensure safety and longevity.

Given the prominent position of the site the fencing should be aesthetically pleasing and include decorative elements to break up any sheer wall effect. No signage should be permitted to limit distraction at close range for motorists approaching, entering and exiting the roundabout. To ensure there is no unacceptable noise impacts on the residents of the site, particularly from trucks braking for the roundabout, acoustic attenuation measures may need to be considered.

Crucially, the boundary fencing must be on the INSIDE of the continuous landscape buffer to preserve and enhance the rural-residential landscape setting.

It is therefore considered appropriate that the following Objectives and Development Controls be included in the DCP:

Objectives:

- (i) To reduce the potential for pedestrian / vehicular conflicts.**
- (ii) To ensure the boundary fencing along Old Northern Road is of a scale that deters entrance from and to the properties that back onto Old Northern Road.**
- (iii) To ensure the fencing is durable.**

- (iv) To ensure the fencing is aesthetically pleasing given the prominent position of the site.
- (v) To avoid conflict between the boundary fence and retained trees.

Development Controls:

- (a) The boundary fencing to Old Northern Road is to be of brick construction of a continuous design.
- (b) The height of the Old Northern Road boundary fencing is to be 3 metres.
- (c) Decorative elements are to be included in the design of the boundary fence to break up any sheer wall effect.
- (d) The boundary fence shall be constructed on the inner side of the continuous landscape buffer.
- (e) The position of any retained tree within the landscape buffer must be considered during design and construction of the boundary fence.
- (e) No signage of any kind is permitted on the boundary fence.
- (f) Acoustic attenuation measures shall be considered in accordance with the NSW Road Noise Policy and Infrastructure SEPP 2007.

C.6.2.10 Landscaping (*new recommended clause*)

In addition to Part C Section 3 Landscaping of the DCP, it is considered appropriate that the Common Open Space include seating.

Objectives:

- (i) To encourage use of the Common Open Spaces by residents of all ages.

Development Controls:

- (a) Durable fixed seating shall be installed in the Common Open Spaces in accordance with the Australian Standard AS xxxxx
- (b) The cost of ongoing maintenance and replacement of any seating must be borne by any future residents on the site.

C.6.2.11 Setbacks (*new recommended clause*)

While this clause is contained in Part B Section 4 - Multi Dwelling Housing it is worth reiterating here.

Objectives:

- (a) To provide an open streetscape with substantial areas for retained existing trees, landscaping and screen planting.

Development Controls:

- (i) Setbacks to protect trees - setbacks are to be established so that any trees located within 10 metres of the front boundary and 4.5 metres of any rear or side boundary can be retained.