

## Attachment 7: Comparison of Council Resolution, Department's Option and Council's Response

Date	Stage	Proposed Clause
30 April 2019	<b>Council Resolution (Option A)</b>	<p><b>(9) Secondary dwellings in urban zones</b>  <i>If development for the purposes of a secondary dwelling is permitted in an urban zone under this Plan, the total floor area of the dwelling (excluding any area for parking) must not exceed whichever of the following is greater:</i></p> <ul style="list-style-type: none"> <li>a) 60 square metres,</li> <li>b) 20% of the total floor area of the principal dwelling.</li> </ul> <p><b>(10) Secondary dwellings in rural zones</b>  <i>If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).</i></p>
	<b>Council Resolution (Option B)</b>	<p><b>(9) Secondary dwellings</b>  <i>If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area for parking) must not exceed whichever of the following is greater:</i></p> <ul style="list-style-type: none"> <li>a) 60 square metres,</li> <li>b) 20% of the total floor area of the principal dwelling.</li> <li>c) Notwithstanding (a) and (b), the gross floor area of a secondary dwelling within rural zone must not exceed 110 square metres, plus an optional garage up to 20 square metres.</li> </ul>
6 September 2019	<b>Department's Option</b>	<p><i>If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:</i></p> <p>Secondary dwellings in urban zones:</p> <ul style="list-style-type: none"> <li>a) 60 square metres,</li> <li>b) 20% of the total floor area of the principal dwelling.</li> </ul> <p>Secondary dwellings in rural zones:</p> <ul style="list-style-type: none"> <li>a) 60 square metres,</li> <li>b) ###% [to be nominated by Council] of the total floor area of the principal dwelling.</li> </ul>
19 September 2019	<b>Council's Response</b>	<p><i>If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:</i></p> <p>Secondary dwellings in urban zones:</p> <ul style="list-style-type: none"> <li>a) 60 square metres,</li> <li>b) 20% of the total floor area of the principal dwelling.</li> </ul> <p>Secondary dwellings in rural zones:</p> <ul style="list-style-type: none"> <li>a) 110 square metres,</li> <li>b) 5% of the total floor area of the principal dwelling.</li> </ul>

**From:** Angela Hynes [Angela.Hynes@planning.nsw.gov.au]  
**Sent:** Thursday, 19 September 2019 10:24:17 AM  
**To:** Megan Munari; Nicholas Carlton  
**CC:** Piers Hemphill; Elizabeth Kimbell  
**Subject:** RE: HPE CM: RE: Standard Instrument 5.4(9) to amend maximum size criteria for secondary dwellings in rural zones

Thanks for your respond. I will discuss further with our legal team.

We understand the issue – I am trying to see what is possible in the framework.

**Angela Hynes**

**Acting Place Manager (The Hills Shire)**

Greater Sydney, Place and Infrastructure | Department of Planning, Industry and Environment

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**From:** Megan Munari [mailto:mmunari@thehills.nsw.gov.au]  
**Sent:** Thursday, 19 September 2019 10:16 AM  
**To:** Angela Hynes <Angela.Hynes@planning.nsw.gov.au>; Nicholas Carlton <ncarlton@thehills.nsw.gov.au>  
**Cc:** Piers Hemphill <phemphill@thehills.nsw.gov.au>; Elizabeth Kimbell <Elizabeth.Kimbell@planning.nsw.gov.au>  
**Subject:** RE: HPE CM: RE: Standard Instrument 5.4(9) to amend maximum size criteria for secondary dwellings in rural zones

Hi Angela,

Sorry for the delay in responding. Thank you for sending this option through.

Unfortunately the proposed clause does not resolve the key issue that Council has with the clause, which is that the application of the sliding scale/percentage (sub clause b) results in undesirable outcomes, by either unreasonably limiting the size of a secondary dwelling to 60sqm or alternatively, allowing an extremely large secondary dwellings, as described in our planning proposal. Unfortunately, the issues Council is experiencing is inherently linked to the mechanics of the standard instrument relying on a % to calculate the area of a secondary dwelling, when this is applied to rural areas where principal dwelling sizes can differ vastly from 200m<sup>2</sup> to 2,000m<sup>2</sup>.

I just want to confirm that the suggestion you have included in your email is a new clause within the Standard Instrument LEP (5.4(x)) which separates the existing clause into two, one to apply to urban zones and other to apply to rural zones. If it is recognised that it may be appropriate to have two clauses in the standard instrument (one for urban areas and one for rural areas), it seems illogical to then require the clauses to remain identical and carry through the particular mechanism that is causing the problem. If there is planning merit in including a new clause to recognise the difference between the urban and rural areas and how they can deliver secondary dwellings, the inclusion of the same maximum standard size of 60m<sup>2</sup> with an associated percentage (irrespective of what that % is) is missing the intent of making the change. It does not respond to the size of rural lots, the character of rural areas and the desire for legitimate secondary dwellings to provide for housing diversity in the rural areas.

Given this, it would be appreciated if further consideration of the original proposal could be undertaken, having regard to the true nature of the problem which the planning proposal is seeking to overcome.

Alternatively, a form of your suggested alternative could be:

**Secondary dwellings in urban zones**

*If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*

- a. 60 square metres,
- b. 20% of the total floor area of the principal dwelling.

**Secondary dwellings in rural zones**

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- a. 110 square metres,
- b. 5% of the total floor area of the principal dwelling.

I would be happy to discuss further or meet with representatives of the Department and PCO to further explain the intricacies of the planning issue which we are seeking to overcome, if this would assist in drafting of an alternative solution.

Kind regards,

Megan.



**Megan Munari**

**Principal Coordinator Forward Planning**

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**From:** Angela Hynes [<mailto:Angela.Hynes@planning.nsw.gov.au>]

**Sent:** Thursday, 19 September 2019 9:17 AM

**To:** Megan Munari; Nicholas Carlton

**Cc:** Piers Hemphill; Elizabeth Kimbell

**Subject:** RE: HPE CM: RE: Standard Instrument 5.4(9) to amend maximum size criteria for secondary dwellings in rural zones

Hi Megan and Nicholas,

Can you please advise if you are able to consider the below?

Thanks in advance.

**Angela Hynes**

**Acting Place Manager (The Hills Shire)**

Greater Sydney, Place and Infrastructure | Department of Planning, Industry and Environment

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**From:** Angela Hynes

**Sent:** Friday, 6 September 2019 10:19 AM

**To:** Megan Munari <[mmunari@thehills.nsw.gov.au](mailto:mmunari@thehills.nsw.gov.au)>

**Cc:** Piers Hemphill <[phemphill@thehills.nsw.gov.au](mailto:phemphill@thehills.nsw.gov.au)>; Gina Metcalfe <[Gina.Metcalfe@planning.nsw.gov.au](mailto:Gina.Metcalfe@planning.nsw.gov.au)>

**Subject:** HPE CM: RE: Standard Instrument 5.4(9) to amend maximum size criteria for secondary dwellings in rural zones

Dear Megan and Piers,

PCO have confirmed DPIE's position below in that there is no scope within the standard instrument clause 5.4(9) to include a variation the 60sqm or to include other sqm provisions for a garage. Further, PCO advise that there is no scope to include a local provision in the LEP which varies the provisions of clause 5.4(9).

Can you please advise if an the following option is supported by your team for us to discuss further with PCO?

**Secondary dwellings in urban zones**

*If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*

- a. 60 square metres,
- b. 20% of the total floor area of the principal dwelling.

**Secondary dwellings in rural zones**

*If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*

- a. 60 square metres,
- b. ###% [to be nominated by Council] of the total floor area of the principal dwelling.

Happy to discuss,

Angela

**Angela Hynes**

**Acting Place Manager (The Hills Shire)**

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**From:** Megan Munari [<mailto:mmunari@thehills.nsw.gov.au>]

**Sent:** Thursday, 25 July 2019 10:59 AM

**To:** Angela Hynes <[Angela.Hynes@planning.nsw.gov.au](mailto:Angela.Hynes@planning.nsw.gov.au)>

**Cc:** Nicholas Carlton <[ncarlton@thehills.nsw.gov.au](mailto:ncarlton@thehills.nsw.gov.au)>; Piers Hemphill <[phemphill@thehills.nsw.gov.au](mailto:phemphill@thehills.nsw.gov.au)>; Sebastian Tauni <[Sebastian.Tauni@planning.nsw.gov.au](mailto:Sebastian.Tauni@planning.nsw.gov.au)>; Christine Gough <[Christine.Gough@planning.nsw.gov.au](mailto:Christine.Gough@planning.nsw.gov.au)>

**Subject:** RE: Standard Instrument 5.4(9) to amend maximum size criteria for secondary dwellings in rural zones

Hi Angela,

Council has now submitted a planning proposal to progress this matter. You will see that there are a number of options included in the proposal for your consideration. I imagine the best path forward now is for you is to seek the view of PCO on the options in the planning proposal.

Kind regards,

Megan.



**Megan Munari**

**Principal Coordinator Forward Planning**

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**From:** Angela Hynes [<mailto:Angela.Hynes@planning.nsw.gov.au>]  
**Sent:** Wednesday, 3 July 2019 9:03 AM  
**To:** Megan Munari  
**Cc:** Nicholas Carlton; Piers Hemphill; Sebastian Tauni; Christine Gough  
**Subject:** RE: Standard Instrument 5.4(9) to amend maximum size criteria for secondary dwellings in rural zones

Dear Megan,

We have reviewed the below and the Department's position is we can amend cl 5.4(9)(b) of the Standard Instrument to say something along the lines of X% of the total floor area of the principal dwelling for land zoned rural and Y% of the total floor area of the principal dwelling for land zoned urban. Please let me know if you are happy with this idea and we will discuss further with PCO.

The proposal to further amend cl 5.4(9) to include a reference to an 'optional garage' is not appropriate and will be beyond the scope of the provision i.e. it will extend the provision to apply beyond secondary dwellings.

Happy to discuss,

**Angela Hynes**

Acting Team Leader

Sydney Region West, Planning Services

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**From:** Megan Munari [<mailto:mmunari@thehills.nsw.gov.au>]  
**Sent:** Friday, 18 January 2019 4:48 PM  
**To:** Ann-Maree Carruthers <[Ann-Maree.Carruthers@planning.nsw.gov.au](mailto:Ann-Maree.Carruthers@planning.nsw.gov.au)>  
**Cc:** Nicholas Carlton <[ncarlton@thehills.nsw.gov.au](mailto:ncarlton@thehills.nsw.gov.au)>; Piers Hemphill <[phemphill@thehills.nsw.gov.au](mailto:phemphill@thehills.nsw.gov.au)>; Sebastian Tauni <[Sebastian.Tauni@planning.nsw.gov.au](mailto:Sebastian.Tauni@planning.nsw.gov.au)>; Christine Gough <[Christine.Gough@planning.nsw.gov.au](mailto:Christine.Gough@planning.nsw.gov.au)>  
**Subject:** (DWS Doc No 187814056) Proposed amended to The Hills LEP 2012 to amend maximum size criteria for secondary dwellings in rural zones

Hi Ann-Maree,

As discussed in our meeting on 9<sup>th</sup> January, I have looked into some possible wording for the amendment to secondary dwellings in rural zones.

In accordance with the Notice of Motion considered by Council and Council's subsequent resolution on 24 July 2018, it is recommended that a maximum size be specified for all secondary dwellings in rural zones, being 110m<sup>2</sup> of habitable rooms plus an optional attached garage with a maximum size of 20m<sup>2</sup> (total size of 130m<sup>2</sup>). The recommended floor area of 110m<sup>2</sup> would provide sufficient room for a two bedroom / two bathroom dwelling, with comfortable living areas.

Our initial thoughts were that the secondary dwellings part of Clause 5.4 would be amended by the addition of the red text as follows:

**Secondary dwellings in urban zones**

*If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*

- a. 60 square metres,
- b. 20% of the total floor area of the principal dwelling.

### **Secondary dwellings in rural zones**

*If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the secondary dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).*

However, I understand from our discussions that there is potentially a preference to include all of the secondary dwelling controls in the one clause by inserting a part (c) that relates specifically to the rural zones.

If this is the case Councils draft wording is as follows:

### **Secondary dwellings**

*If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*

- a. 60 square metres,
- b. 20% of the total floor area of the principal dwelling,
- c. *Notwithstanding (a) and (b) in rural zones, the total floor area of the secondary dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).*

Council preference is not to use the percentage of the principal dwelling as the standard as this has caused the issues in the past, given the large dwelling stock on rural properties and 20% of these becoming very large secondary dwellings.

Please let me know when you receive the legal advice as our executive and Councillors are keen for this one to progress. Call me if you need anything else.

Thank you,

Megan.



**Megan Munari**

**Principal Coordinator Forward Planning**

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