

Greater Sydney, Place and Infrastructure

IRF19/4881

Gateway determination report

LGA	The Hills Shire
PPA	The Hills Shire Council
NAME	Secondary dwellings in rural zones
NUMBER	PP_2019_THILL_003_00
LEP TO BE AMENDED	The Hills Local Environmental Plan 2012
ADDRESS	All land zoned RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry and RU6 Transition
DESCRIPTION	As above
RECEIVED	15 July 2019
FILE NO.	IRF19/4881
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal (**Attachment A2**) seeks to amend The Hills Local Environmental Plan (LEP) 2012 to ensure that secondary dwellings within rural areas (i.e. land zoned RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry and RU6 Transition) can be provided in a form that is compatible with the character of the rural locality. This involves altering subclause 9 of clause 5.4 Controls relating to miscellaneous permissible uses in the LEP which is a Standard Instrument – Principal Local Environmental Plan ‘compulsory’ clause.

1.2 Site description

The planning proposal applies to all rural zoned land under The Hills LEP 2012 (Figure 1 next page), as follows:

- RU1 Primary Production;
- RU2 Rural Landscape;
- RU3 Forestry; and
- RU6 Transition.

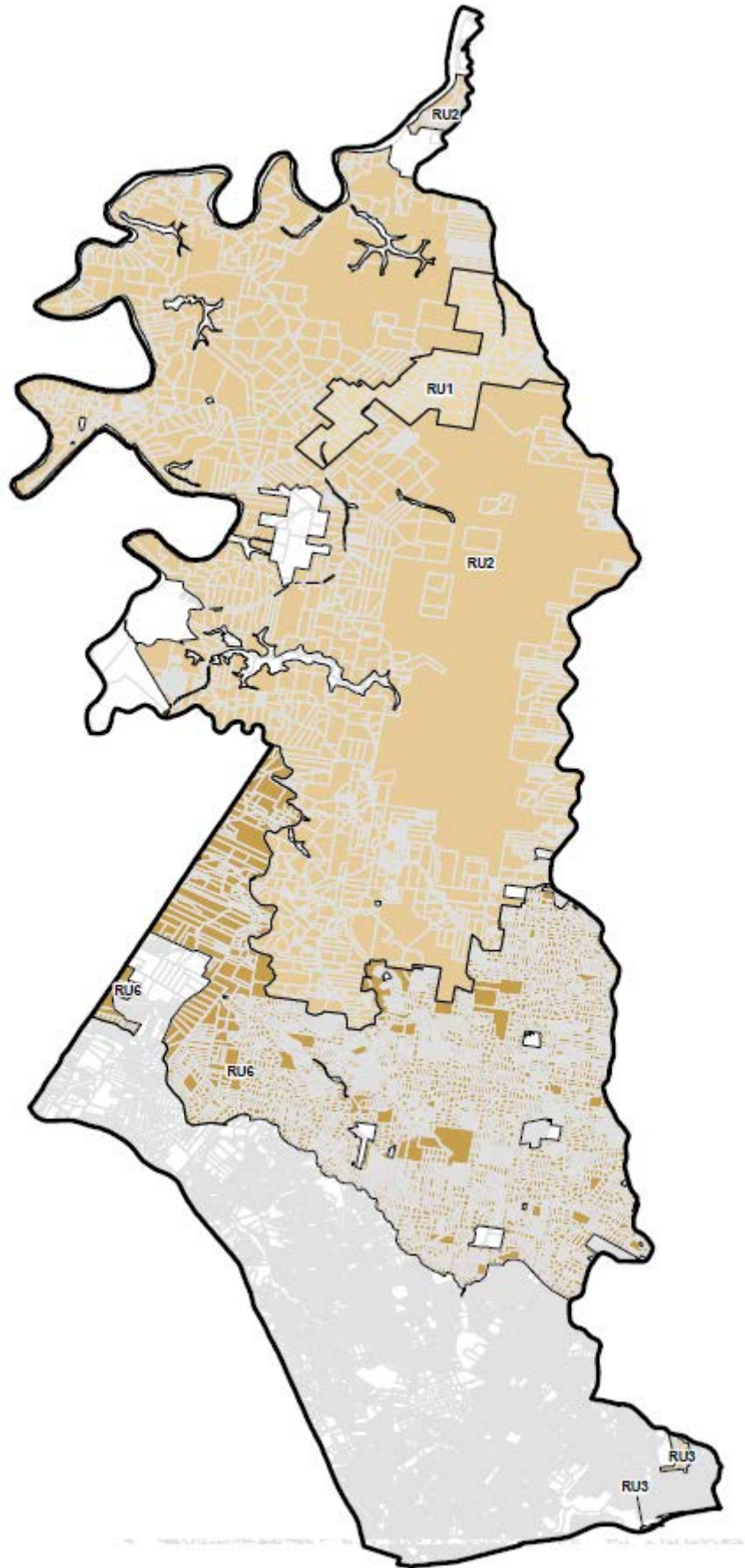


Figure 1: Rural zoned land in The Hills Shire (where this proposal applies)

1.3 Existing planning controls

The Hills LEP 2012 clause 5.4(9) is a Standard Instrument – Principal Local Environmental Plan ‘compulsory’ clause and reads as follows:

5.4 Controls relating to miscellaneous permissible uses

(9) 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.

For secondary dwellings the 60m² (as per clause 5.4(9)(a)) is fixed, while the percentage amount (as per clause 5.4(9)(b)) can be decided by Council when drafting its LEP. The 20% was applied at that time by Council to suit both rural and urban areas as stated in Council’s Notice of Motion dated 24 July 2018 (page 24 of **Attachment A3**).

1.4 Surrounding area

As stated in The Hills’ Draft Rural Strategy, The Hills has over 27,600 hectares of rural zoned land, making up 70% of all zoned land which is rich in biodiversity, scenic and productive qualities. Activities undertaken in the rural area range from agriculture, mining and forestry to tourism and recreational facilities. Most productive rural uses within The Hills are found within the RU1 Primary Production and RU6 Transition land use zones, whilst the RU2 Rural Landscape zone supports fewer productive uses, it is home to distinctive landscapes with high biodiversity value.

Rural uses within The Hills are largely contained within two distinct clusters – Middle Dural to Glenorie and Maroota – and cover a range of activities including fruit and vegetable production, poultry, the operation of nurseries, and grazing of animals. The Hills is the highest contributor to the state’s cut flower industry, and second highest to the state’s nursery industry. Extractive industries are located in Maroota in the north of The Hills and produce sand and materials for the construction and landscape supply industries. The combined economic output of rural industries (agriculture, forestry and fishing and mining) in 2017/18 was \$303.3 million, which accounted for approximately 1.5% of the total economic output of The Hills.

Beyond their productive purposes, the rural areas contribute to The Hills’ diverse mix of housing. The RU6 Transition zone provides a transition or buffer between urban areas and the environmental characteristics of the RU2 Rural Landscape zone. A significant element of the identity of The Hills area is connected to the urban/rural interface within this land use zone, with large acreage lots that accommodate very large homes in relatively close proximity to the strategic centres of Castle Hill and Rouse Hill.

Significant expected growth in population across The Hills to 2036 and necessary increases in density in The Hill’s urban area will place increasing pressure on our rural lands. Land at the edge of the rural area is under pressure from urban development, creating challenges in the management of land use conflict, enhancement of rural productivity, sympathetic growth of rural villages and growth of a viable rural support and tourism sector.

1.5 Summary of recommendation

The planning proposal does not have sufficient strategic merit and should not proceed to Gateway as the proposed amendments to clause 5.4(9) cannot be legally made.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal (**Attachment A2**) seeks to amend The Hills LEP 2012 clause 5.4(9) (controls relating to miscellaneous permissible uses - secondary dwellings) to ensure that secondary dwellings within rural areas can be provided in a form that is compatible with the character of the rural locality (i.e. land zoned RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry and RU6 Transition).

2.2 Explanation of provisions

The proposal seeks to ensure that secondary dwellings can be feasibly provided within rural areas, in a form which is compatible with the character of the rural locality. The proposal would facilitate increased potential for housing mix and choice within the Shire.

The proposal seeks to achieve this outcome by amending The Hills LEP 2012 to specify that in rural zones, the gross floor area of secondary dwellings must not exceed 110m² for habitable rooms plus an optional garage of up to 20 square metres (total permitted 130m²).

To achieve these development outcomes, the proposal (**Attachment A2**) seeks to amend clause 5.4(9) of The Hills LEP 2012, as it applies to rural zoned land by way of two potential approaches, demonstrated as the following options:

- Option A is Council's preferred option which seeks the following changes to the clause:

(9) Secondary dwellings in urban zones

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:

(a) 60 square metres,

(b) 20% of the total floor area of the principal dwelling.

(10) 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 dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).

- Option B is an alternative option which seeks the following changes to the clause:

(9) 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 for parking) must not exceed whichever of the following is greater:

- (a) 60 square metres,
- (b) 20% of the total floor area of the principal dwelling,
- (c) Notwithstanding (a) and (b), the gross floor area of a secondary dwelling within a rural zone must not exceed 110 square metres, plus an optional garage up to 20 square metres.

Department comment

The proposal is inconsistent with the intent of clause 5.4(9) under the Standard Instrument – Principal Local Environmental Plan, which is a compulsory clause and under which Council has discretion to set the maximum percentage within the clause.

Ministerial correspondence was sent to Council on 10 October 2018 (**Attachment D**) advising that the Department is willing to consider a planning proposal to amend clause 5.4(9)(b). However, as it is a compulsory clause in the standard instrument, the Department could only consider a change to the percentage of the total floor area of the principal dwelling.

The Department met with Council staff on 9 January 2019 to discuss the proposal and further advised Council on 3 July 2019 that the only amendment that could be made to the clause is to the percentage under clause 5.4(9)(b), as per the letter sent 10 October 2018.

Council's proposed amendments to clause 5.4(9) cannot legally be made as it affects a non-variable part of the compulsory clause of the Standard Instrument – Principal Local Environmental Plan.

Council responded 25 September 2019 stating the suggested alternative of varying the percentage of the total floor area of the principal dwelling in all zones 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.

The Department notes the only way in which Council's proposal could be considered is if there was an amendment to the Standard Instrument (Local Environmental Plans) Order 2006 or the *Environmental Planning and Assessment Act 1979*; or for a State Environmental Planning Policy to override the effect of clause 5.4(9).

Therefore, it is recommended the Department does not support the proposal to proceed to Gateway as the proposal does not demonstrate sufficient strategic merit to amend clause 5.4(9) as proposed.

2.3 Mapping

No mapping requires amendments as part of this proposal.

3. NEED FOR THE PLANNING PROPOSAL

Clause 5.4(9) is a compulsory provision under the Standard Instrument – Principal Local Environmental Plan. Under The Hills LEP 2012, the maximum size of a secondary dwelling is limited to the greater of 60m² or 20% of the total floor area of the principal dwelling. It is noted that under the Standard Instrument, Council has discretion to set the maximum percentage within the clause. The percentage of 20% was originally applied by Council with to enable suitable outcomes in both urban residential and rural areas.

Council states (**Attachment A2**) the clause is producing appropriate outcomes in established urban areas. However, in rural areas the clause results in varied outcomes dependent on the size of the principal dwelling in rural zones.

Council notes the particular issue is two-fold:

1. the unreasonable limitation of the size of some secondary dwellings; and
2. the inappropriately large size of other secondary dwellings.

Amending the maximum percentage within the clause would potentially resolve one part of the issue, allowing reasonably sized secondary dwellings in rural areas with a smaller principal dwelling. However, this would not address the other, allowing for unreasonably large secondary dwellings in rural areas with a large principal dwelling.

Council notes there is inconsistency in applying the clause in rural areas as:

- Rural land owners with smaller established homes (up to 300m²), are limited to a maximum secondary dwelling size of 60m²; and
- Rural land owners with larger dwellings, can achieve secondary dwellings with a size of up to 20% of the principal dwelling, results in large secondary dwellings which function more like a dual occupancy dwelling. While dual occupancies are permissible with consent in rural zones, they are required to be attached to the principal dwelling. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling under clause 5.4(9) can be seen as a 'loophole' to essentially achieve a detached dual occupancy outcome on rural land, where such an outcome is not permissible or intended.

The proposal notes in comparison to urban areas, rural sites present fewer constraints in relation to the siting of a secondary dwelling and larger land areas would enable both the principal dwelling and the secondary dwelling to benefit from improved opportunities for private open space and fewer amenity impacts such as overlooking or overshadowing both within the site and to adjoining sites. Council states in these circumstances, where the potential for negative impact is low, it is considered reasonable that a secondary dwelling might be supported with a floor area larger than 60m², regardless of the size of the principal dwelling.

The proposal also notes in some rural areas the size of principal dwellings can be significantly larger than those in urban areas, with numerous examples in the Shire of rural dwellings with floor areas in excess of 1,000m². In these cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m². Council's proposal provides an example of this outcome in the proposal shown in Figure 2 (next page).

Council states allowing secondary dwellings of such a large size is undesirable as it limits their ability to provide an affordable housing option, increases the risk of adverse impacts and often does not accord with the established character of rural areas.

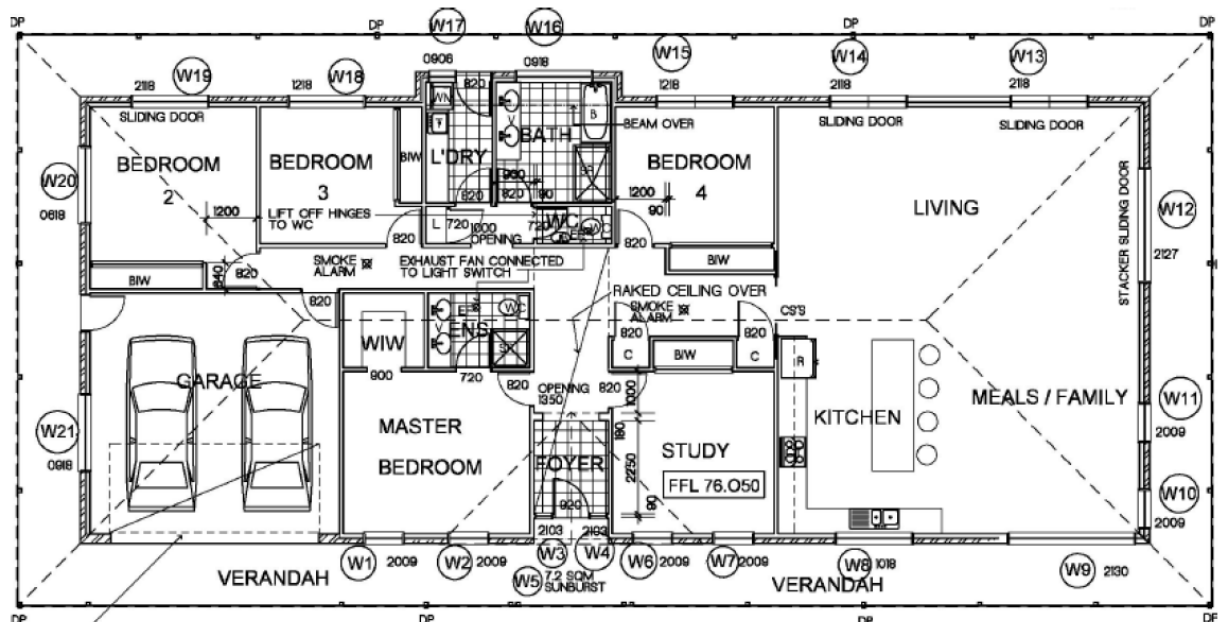
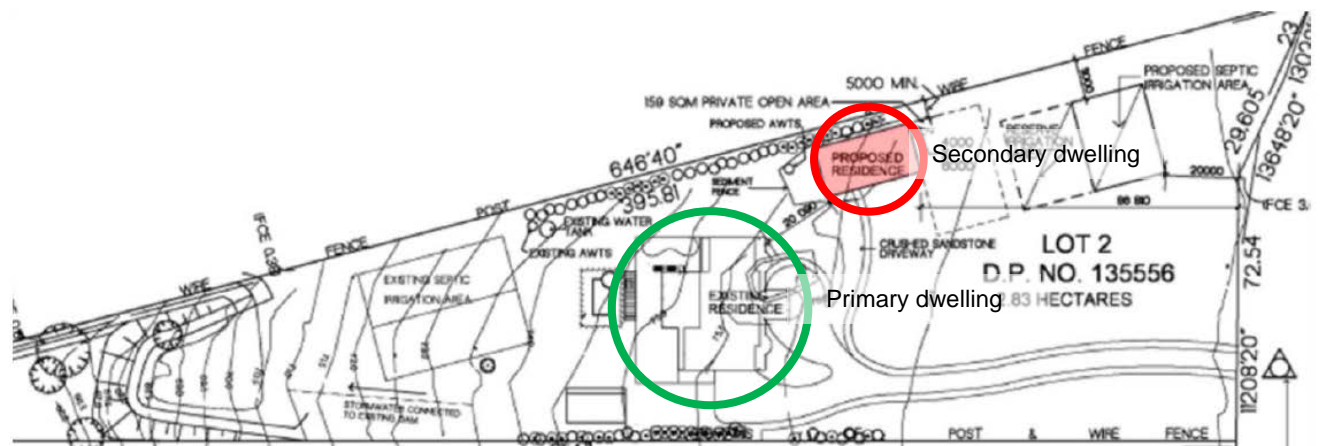


Figure 2: Example of large secondary dwelling on rural land in Dural (DA 2000/2014/HA)

4. STRATEGIC ASSESSMENT

4.1 District

Central City District Plan

The Greater Sydney Commission released the Central City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the Western City District while improving the district's social, economic and environmental assets. Relevant priorities of the District Plan are discussed on the next page.

Priority 5 Providing housing supply, choice and affordability, with access to jobs and services aims to provide greater housing supply and diversity and affordability through well designed, well located housing and a variety of housing stock to suit all stages of life.

Council states the planning proposal is consistent with the District Plan as it seeks to ensure that secondary dwellings can be feasibly delivered in rural areas, by addressing current limitations which can arise where the principal dwelling on a site is of a modest size and scale.

Council also states where existing principal dwellings are of a significant size and scale, the planning proposal will ensure that secondary dwellings are appropriately sized to contribute to a diversity of housing options and meet the intended role of secondary dwellings within the housing typology. However, the proposal does not adequately demonstrate secondary dwelling outcomes and test scenarios of different percentages under clause 5.4(9)(b).

Priority 18 Better managing rural areas aims to use place-based planning to maintain or enhance the values of and limit urban development in the Metropolitan Rural Area. The Plan states that maintaining and enhancing the distinctive rural village character is a high priority and that further rural residential or urban development of a larger scale is generally not supported.

Although the proposal could give effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979* the amendment cannot be legally made as advised previously.

4.2 Local

The Hills Future Community Strategic Plan

Hills Future is the guiding strategic document for The Hills Shire until the Local Strategic Planning Statement is finalised. Council states the planning proposal will assist in the realisation of The Hills Future outcome of liveable neighbourhoods that meet the growth of targets and maintain amenity. The proposal is consistent with The Hills Future as it contributes to the liveability of rural lands by ensuring that secondary dwellings are of an appropriate size and scale to contribute to the diversity of housing stock, without adversely impacting on the character of rural areas. However, as discussed in this report, Council's proposed amendment cannot be legally made and the proposal does not sufficiently test secondary dwelling outcomes and different percentages under clause 5.4(9)(b).

Draft Hills Future 2036 Local Strategic Planning Statement and Supporting Strategies

The draft The Hills LSPS provides land use vision for The Hills Shire and gives effect to the Greater Sydney Region Plan and Central City District Plan. The draft LSPS includes planning priorities to retain and manage the Shire's rural productive capacity and to manage and protect the rural/urban interface. The proposal is consistent with the planning priorities of the LSPS and supporting draft Rural Strategy. However, Council's proposed amendment cannot be legally made and the proposal does not sufficiently test secondary dwelling outcomes and different percentages under clause 5.4(9)(b).

Local Planning Panel

On 19 June 2019, The Hills Shire Local Planning Panel resolved that the planning proposal should proceed to Gateway as the Panel generally agrees with the Council Officer's report (**Attachment A4**).

4.3 Section 9.1 Ministerial Directions

Inconsistent: The planning proposal is inconsistent with the following Section 9.1 directions, as discussed below.

Direction 4.4 Planning for Bushfire Protection

The objectives of this Direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and to encourage sound management of bush fire prone areas. Any planning proposal for land which is identified as being bushfire prone on a Bushfire Prone Land Map must be consistent this Direction.

Much of the rural land within The Hills is identified as bushfire prone, containing all categories of risk. The planning proposal would not impact on the application of the Bushfire Protection Guideline 2006 or the consideration of bushfire protection as part of any Development Application for a secondary dwelling.

However, the proposal is inconsistent with this Direction as it does not introduce controls that avoid placing inappropriate developments in hazardous areas.

Consistent: The planning proposal is consistent with the following Section 9.1 directions as discussed below.

Direction 1.2 Rural Zones

This Direction seeks to protect the agricultural production value of rural land and applies to this proposal as it will affect land within the existing rural zones.

The proposal is consistent with this Direction as it will not increase the total number of dwellings already permitted on rural lots and aims to ensure that any secondary dwellings are of an appropriate size and scale that aligns with rural lot sizes and the locality.

4.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with the relevant State Environmental Planning Policies (SEPPs).

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal seeks to encourage the provision of secondary dwellings, at an appropriate scale to ensure adequate amenity for future residents and minimal impact on the character of the rural area. Secondary dwellings or 'granny flats' provide for greater mix and choice of housing. However, Council's proposed amendment cannot be legally made and the proposal does not sufficiently test secondary dwelling outcomes and different percentages under clause 5.4(9)(b).

5.2 Environmental

The planning proposal is unlikely to adversely impact on any critical habitat, threatened species, population or ecological communities or their habitats. While a majority of rural zoned land within the Shire is mapped as bushfire, biodiversity, and flood prone, the proposal seeks to amend the criteria used to determine the maximum size of secondary dwellings in rural areas (which are already permissible).

5.3 Economic

There are no foreseeable economic impacts which could arise as a result of the provision of this proposal.

6. CONSULTATION

Consultation is not required as the proposal is not recommended to proceed.

7. TIME FRAME

No timeframe is required as the proposal is not recommended to proceed.

8. LOCAL PLAN-MAKING AUTHORITY

There is no requirement to appoint a local plan-making authority as it is not recommended for the proposal to proceed.

9. CONCLUSION

It is recommended that the delegate of the Minister determine that the planning proposal should not proceed.

Although the proposal has strategic merit as it gives effect to the Central City District Plan, the Hills Future Community Strategic Plan and draft Hills Future 2036 Local Strategic Planning Statement; the proposal does not demonstrate sufficient strategic merit to amend clause 5.4(9) as proposed. The proposed provisions for the percentage of the total floor area of the principal dwelling in rural zones and the maximum size of secondary dwellings under clause 5.4(9)(b) cannot be legally made.

10. RECOMMENDATION

It is recommended that the delegate of the Minister determine that the planning proposal should not proceed as it does not demonstrate sufficient strategic or site-specific merit as the proposal:

- cannot be legally made as clause 5.4(9) under the Standard Instrument – Principal Local Environmental Plan which is a ‘compulsory’ clause for local environmental plans;
- is inconsistent with Section 9.1 Direction 4.4 Planning for Bushfire Protection; and
- does not sufficiently test secondary dwelling outcomes and different percentages under clause 5.4(9)(b).



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