

LOCAL GOVERNMENT AREA: The Hills Shire Council

NAME OF PLANNING PROPOSAL: Proposed amendments to The Hills Local Environmental Plan 2012 (Amendment No (#)) to include appropriate criteria for secondary dwellings in rural zones. 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.

ADDRESS OF LAND:

- Land zoned RU1 Primary Production under The Hills Local Environmental Plan 2012;
- Land zoned RU2 Rural Landscape under The Hills Local Environmental Plan 2012;
- Land zoned RU3 Forestry under The Hills Local Environmental Plan 2012; and
- Land zoned RU6 Transition under The Hills Local Environmental Plan 2012.

SUPPORTING MATERIAL:

Attachment A	Assessment against State Environment Planning Policies
Attachment B	Assessment against Section 9.1 Local Planning Directions
Attachment C	Council Report and Minute (30 April 2019)
Attachment D	The Hills Local Planning Panel Report and Minute (24 June 2019)

BACKGROUND:

Secondary dwellings or 'granny flats' allow for greater mix and choice of housing within the Shire. They can provide an income stream for some households, choices in living accommodation for the property owners and an affordable housing option for lower income households.

Under The Hills Local Environmental Plan 2012 (LEP), secondary dwellings are permissible in both residential and rural zones. The size of secondary dwellings is regulated by Clause 5.4(9), which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Under 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 a view to enabling suitable outcomes in both urban residential and rural areas.

Clause 5.4(9) of LEP 2012 is currently producing appropriate outcomes with respect to secondary dwellings in established urban areas and provides suitable flexibility for landowners. The resulting size of secondary dwellings in established urban areas generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

In rural areas however, Clause 5.4(9) has been producing a diversity of outcomes, some of which are less desirable and contrary to the intent of the provision (to provide alternative and affordable housing options). In particular, there exists a dichotomy between:

- Rural land owners with smaller established homes (up to 300m²), who are effectively limited to a maximum secondary dwelling size of 60m²; and
- Rural land owners with larger dwellings, who benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling (resulting in extremely large secondary dwellings which look and function more like a dual occupancy dwelling).

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings to enable secondary dwelling beyond the maximum of 60m². 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.

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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling, and ensure secondary dwellings are contextually appropriate, there still remains a case to limit the overall floor size.

In contrast, 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 – which is equivalent in size to a typical new four (4) bedroom home.

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. These large secondary dwellings are more akin to a dual occupancy development and whilst dual occupancies are already permissible with consent in rural zones, they must be in the form of attached dwellings. 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 strictly permissible or intended.

An example is provided below, where the principal dwelling has a floor area of 1,200m². Reliance on Clause 5.4(9) has enabled a secondary dwelling with an area of 240m² (20% of floor area of the principal dwelling), containing four (4) bedrooms plus a study. Such an outcome is clearly contrary to the intentions of the provision which enable secondary dwellings and results in inequitable and undesirable outcomes within rural areas.



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

(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.

PART 3 JUSTIFICATION

SECTION A - NEED FOR THE PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

No. The planning proposal is the result of concerns raised from the community and inappropriate development outcomes identified with respect to secondary dwellings in rural areas

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes, the planning proposal is considered to be the best way to achieve the intended outcomes for rural secondary dwellings across the Shire. The proposal will help to ensure secondary dwellings are of a suitable scale for their context and reflect an appropriate built form outcome for the rural locality.

The proposed maximum size for all secondary dwellings in rural zones of 110m², with optional attached garage (maximum size of 20m²) and total size of 130m² represents a reasonable outcome for rural land owners across all sizes. This recommended floor area would provide sufficient room for a two bedroom and two bathroom dwelling with comfortable living areas and would enable this outcome to be achieved irrespective of the primary dwelling size. This proposed maximum would also limit the scale of secondary dwellings in rural zones to a more contextually appropriate size and avoid unanticipated outcomes associated with applying a percentage-based floor area to very large principal dwellings.

Consideration was given to the potential to amend the percentage figure within clause 5.4(9)b), however as the issue is two-fold (the unreasonable limitation of the size of some secondary dwellings and the inappropriately large size of other secondary dwellings), amending the maximum percentage within the clause would only resolve one part of the issue whilst concurrently worsening the other. For this reason, the only viable solution to the issues identified by Council is the imposition of a consistent fixed maximum size for all secondary dwellings across rural areas.

SECTION B - RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Yes, a discussion of consistency is provided below. This position was supported by The Hills Local Planning Panel who, on 19 June 2019 unanimously recommended that the Planning Proposal proceed to Gateway Determination.

- **Greater Sydney Region Plan**

The relevant objectives of the Greater Sydney Region Plan are Objective 10 and 11.

The Plan seeks to deliver an ongoing housing supply (Objective 10) and a range of housing types in suitable locations that will create more liveable neighbourhoods and support Greater Sydney's growing population (Objective 11).

The proposal is consistent with these objectives as it seeks to ensure that a diversity of dwelling options are available to residents of rural areas in the Shire. It also seeks to ensure that built form outcomes enabled by the clause are contextually appropriate. In particular, the proposal addresses two key issues which arise from the current application of the clause by:

1. Enabling the delivery of appropriately sized secondary dwellings and avoiding the unreasonable limitation of the size of secondary dwellings where the principal dwelling on a site is of a modest size and scale; and
2. Where a principal dwellings is of a larger scale and size, preventing the delivery of inappropriately large secondary dwellings which are essentially equivalent to a standard house and fail to contribute to housing diversity or appropriate character outcomes.

- **Central City District Plan**

The relevant Priority of the Central City District Plan is Planning Priority C5.

The Plan states that new housing must be located in the right places to meet the need for different housing types, tenure, price points, preferred locations and design (Planning Priority C5). The Plan states that a diverse mix of housing options can provide greater opportunities to cater for a range of changing needs.

Furthermore, the Plan seeks to achieve a 0-5 year housing supply target of 8,550 additional dwellings for The Hills Council based on the District's dwelling needs and existing opportunities to deliver supply. The delivery of these dwellings to reach this housing target is reliant on traditional detached and attached houses, as well as apartments and secondary dwellings.

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. Where existing principal dwellings are of a significant size and scale, the planning proposal would 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.

4. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

Yes, a discussion of consistency with the relevant policies and plans are provided below.

- **The Hills Future Community Strategic Plan**

The Hills Future Community Strategic Direction articulates The Hills Shire community's and Council's shared vision, values, aspirations and priorities with reference to other local government plans, information and resourcing capabilities. It is a direction that creates a picture of where the Hills would like to be in the future. The direction is based on community aspirations gathered throughout months of community engagement and consultation with members of the community.

The planning proposal will assist in realisation of The Hills Future outcome of well-planned and liveable neighbourhoods that meet the growth of targets and maintain amenity. The proposal 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.

- **Draft Hills Future 2036 Local Strategic Planning Statement and Supporting Strategies**

The draft Local Strategic Planning Statement and supporting strategies (currently on exhibition) provide a vision for the future of The Hills' whole community. One of its key themes is that it seeks to ensure a genuine

choice of housing options being available to meet varying needs, lifestyles and financial capacities of future residents.

The draft Rural Strategy states that for residents with more modest established homes in rural areas there is a desire to see an increase in the permissible floor space of secondary dwellings from the current limit of 60m². Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land area mean that both principal dwelling and the secondary dwelling 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.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The planning proposal is consistent with the relevant State Environmental Planning Policies (SEPPs) as outlined in Attachment A, and discussed below:

- SEPP 1 – Development Standards

The Planning Proposal will not contain provisions that would contradict or hinder the application of the SEPP.

- SEPP (Affordable Rental Housing) 2009

The Objectives of SEPP (Affordable Rental Housing) 2009 are to facilitate the effective delivery of new affordable rental housing through incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards. It is noted however that the provisions contained within the SEPP with respect to secondary dwellings apply solely to residential zoned land. The proposal will not contain provisions that would contradict or hinder the application of the SEPP.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. The consistency of the planning proposal with the s.9.1 Ministerial Directions is detailed within Attachment B. A discussion on the consistency of the proposal with each relevant Direction is provided below.

- **Direction 1.2 Rural Zones**

The objectives of this direction are to protect the agricultural production value of rural land. The direction states that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone, and not contain provisions that will increase the permissible density of land within a rural zone.

The percentage clause within the Standard Instrument LEP, as it applies to rural secondary dwellings within the Shire, creates an imbalance and inferior outcome with respect to the delivery of secondary dwellings in rural zones. The application of the Clause with respect to the development potential for smaller sized dwellings are limited by this, while large sized principle dwellings currently benefit from it. It is noted that the proposal would not increase the total number of dwellings permitted on rural lots and would simply ensure that any secondary dwellings are of an appropriate size and scale that better aligns with rural lot sizes and the locality.

- **Direction 4.4 Planning for Bushfire Protection**

Much of the rural land within the Shire is identified as bushfire prone, containing all categories of risk. Any planning proposal for land which is identified as being bushfire prone on a Bushfire Prone Land Map must be consistent with Ministerial Direction 4.4 Planning for Bushfire Protection. The Direction requires that planning proposals:

- (a) have regard to Planning for Bushfire Protection Guideline 2006;
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas; and
- (c) ensure that bushfire hazard reduction is not prohibited within the APZ.

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.

- **Direction 7.1 Implementation of A Plan for Growing Sydney**

The objective of this Direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney. The planning proposal is consistent with the objectives of the relevant regional strategies including NSW State Priorities, the Greater Sydney Region Plan, and Central City District Plan.

SECTION C - ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

7. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

No. The planning proposal is unlikely to adversely impact on any critical habitat, threatened species, population or ecological communities or their habitats.

8. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

While a majority of rural zoned land within the Shire is mapped as bushfire, biodiversity, and flood prone, the proposal simply seeks to amend the criteria used to determine the maximum size of secondary dwellings in rural areas (which are already permissible). There would be no likely environmental impacts which would result from the proposal.

9. *How has the planning proposal adequately addressed any social and economic effects?*

Social impacts

Secondary dwellings or 'granny flats' provide for greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owners and an affordable housing option for lower income households. The proposal seeks to encourage the provision of this form of housing, at an appropriate scale of ensure adequate amenity for future residents and minimal impact on the character of the rural area.

Economic impacts

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

SECTION D - STATE AND COMMONWEALTH INTERESTS

10. *Is there adequate public infrastructure for the planning proposal?*

The proposal does not impact on the permissibility or potential density of secondary dwellings in rural areas and as such, would not impact on public infrastructure.

11. *What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?*

Any Gateway Determination issued will specify relevant agencies to be consulted.

PART 4 MAPPING

The planning proposal seeks to amend the written instrument LEP only and does not include any mapping amendments.

PART 5 COMMUNITY CONSULTATION

It is considered appropriate that any Gateway Determination issued requiring public exhibition of the Planning Proposal for a minimum of 28 days, in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

PART 6 PROJECT TIMELINE

STAGE	DATE
Commencement Date (Gateway Determination)	August 2019
Government agency consultation	September 2019
Commencement of public exhibition period (28 days)	September 2019
Completion of public exhibition period	October 2019
Timeframe for consideration of submissions	November 2019
Timeframe for consideration of proposal post exhibition	December 2019
Report to Council on submissions	February 2020
Planning Proposal to PCO for opinion	March 2020
Date Council will make the plan (delegated)	April 2020
Date Council will forward to department for notification (delegated)	April 2020

ATTACHMENT A: ASSESSMENT AGAINST STATE ENVIRONMENTAL PLANNING POLICIES

STATE ENVIRONMENTAL PLANNING POLICY (SEPP)		APPLICABLE	RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/CONSISTENT
No. 1	Development Standards	YES	YES	CONSISTENT
No. 19	Bushland in Urban Areas	NO	-	-
No. 21	Caravan Parks	NO	-	-
No. 33	Hazardous and Offensive Development	NO	-	-
No. 36	Manufactured Home Estates	NO	-	-
No. 44	Koala Habitat Protection	NO	-	-
No. 47	Moore Park Showground	NO	-	-
No. 50	Canal Estate Development	NO	-	-
No. 55	Remediation of Land	YES	NO	-
No. 64	Advertising and Signage	NO	-	-
No. 65	Design Quality of Residential Flat Development	NO	-	-
No. 70	Affordable Housing (Revised Schemes)	YES	NO	-
Aboriginal Land (2019)		NO	-	-
Affordable Rental Housing (2009)		YES	YES	CONSISTENT
Building Sustainability Index: BASIX 2004		NO	-	-
Coastal Management (2018)		NO	-	-
Concurrences (2018)		YES	NO	-
Education Establishments and Child Care Facilities (2017)		YES	NO	-
Exempt and Complying Development Codes (2008)		YES	NO	-
Gosford City Centre (2018)		NO	-	-
Housing for Seniors or People with a Disability (2004)		NO	-	-
Infrastructure (2007)		YES	NO	-
Kosciuszko National Park – Alpine Resorts (2007)		NO	-	-
Kurnell Peninsula (1989)		NO	-	-
Mining, Petroleum Production and Extractive Industries (2007)		NO	-	-
Miscellaneous Consent Provisions (2007)		NO	-	-
Penrith Lakes Scheme (1989)		NO	-	-
Primary Production and Rural Lands (2019)		YES	NO	-
State and Regional Development (2011)		YES	NO	-
State Significant Precincts (2005)		YES	NO	-
Sydney Drinking Water Catchment (2011)		NO	-	-
Sydney Region Growth Centres (2006)		NO	-	-
Three Ports (2013)		NO	-	-
Urban Renewal (2010)		NO	-	-
Vegetation in Non-Rural Areas (2017)		YES	NO	-
Western Sydney Employment Area (2009)		NO	-	-
Western Sydney Parklands (2009)		NO	-	-
Deemed SEPPs				
SREP No. 8 (Central Coast Plateau Areas)		NO	-	-
SREP No. 9 – Extractive Industry (No. 2 – 1995)		NO	-	-
SREP No. 16 – Walsh Bay		NO	-	-
SREP No. 20 – Hawkesbury – Nepean River (No 2 – 1997)		NO	-	-

STATE ENVIRONMENTAL PLANNING POLICY (SEPP)	APPLICABLE	RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/ CONSISTENT
SREP No. 24 – Homebush Bay Area	NO	-	-
SREP No. 26 – City West	NO	-	-
SREP No. 30 – St Marys	NO	-	-
SREP No. 33 – Cooks Cove	NO	-	-
SREP (Sydney Harbour Catchment) 2005	NO	-	-

ATTACHMENT B: ASSESSMENT AGAINST SECTION 9.1 MINISTERIAL DIRECTIONS

DIRECTION		APPLICABLE	RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/ CONSISTENT
1. Employment and Resources				
1.1	Business and Industrial Zones	YES	NO	-
1.2	Rural Zones	YES	YES	CONSISTENT
1.3	Mining, Petroleum Production and Extractive Industries	NO	-	-
1.4	Oyster Aquaculture	NO	-	-
1.5	Rural Lands	NO	-	-
2. Environment and Heritage				
2.1	Environment Protection Zone	YES	NO	-
2.2	Coastal Protection	NO	-	-
2.3	Heritage Conservation	NO	-	-
2.4	Recreation Vehicle Area	YES	NO	-
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	NO	-	-
3. Housing, Infrastructure and Urban Development				
3.1	Residential Zones	YES	NO	-
3.2	Caravan Parks and Manufactured Home Estates	YES	NO	-
3.3	Home Occupations	YES	NO	-
3.4	Integrating Land Use and Transport	YES	NO	-
3.5	Development Near Licensed Aerodomes	YES	NO	-
3.6	Shooting Ranges	YES	NO	-
3.7	Reduction in non-hosted short term rental accommodation period	YES	NO	-
4. Hazard and Risk				
4.1	Acid Sulfate Soils	YES	NO	-
4.2	Mine Subsidence and Unstable Land	YES	NO	-
4.3	Flood Prone Land	YES	NO	-
4.4	Planning for Bushfire Protection	YES	YES	CONSISTENT
5. Regional Planning				
5.1	Implementation of Regional Strategies	NO	-	-
5.2	Sydney Drinking Water Catchment	NO	-	-
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	NO	-	-
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	NO	-	-
5.8	Second Sydney Airport: Badgerys Creek	NO	-	-
5.9	North West Rail Link Corridor Strategy	NO	-	-
5.10	Implementation of Regional Plans	YES	NO	-
5.11	Development of Aboriginal Land	NO	-	-

DIRECTION		APPLICABLE	RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/ CONSISTENT
	Council land			
6. Local Plan Making				
6.1	Approval and Referral Requirements	YES	NO	-
6.2	Reserving Land for Public Purposes	YES	NO	-
6.3	Site Specific Provisions	YES	NO	-
7. Metropolitan Planning				
7.1	Implementation of the Metropolitan Plan for Sydney 2036	YES	YES	CONSISTENT
7.2	Implementation of Greater Macarthur Land Release Investigation	NO	-	-
7.3	Parramatta Road Corridor Urban Transformation Strategy	NO	-	-
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	NO	-	-
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	-	-
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	-	-
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	NO	-	-
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	NO	-	-
7.9	Implementation of Bayside West Precincts 2036 Plan	NO	-	-
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	NO	-	-

ITEM-2	FURTHER REPORT AND PLANNING PROPOSAL - SECONDARY DWELLINGS IN RURAL ZONES
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	30 APRIL 2019 COUNCIL MEETING
GROUP:	SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS
AUTHOR:	TOWN PLANNER JONATHAN TOLENTINO
RESPONSIBLE OFFICER:	ACTING MANAGER – FORWARD PLANNING NICHOLAS CARLTON

EXECUTIVE SUMMARY

This report recommends that Council initiate a planning proposal to amend The Hills Local Environmental Plan 2012 ('LEP 2012') to include appropriate criteria for secondary dwellings in rural zones. 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.

Council considered a Notice of Motion relating to secondary dwellings in rural zones in July 2018 (Attachment 1), which identified that Clause 5.4 of LEP 2012 was not delivering appropriate outcomes with respect to secondary dwellings in rural areas. Given the range of principal dwellings' sizes within the rural area, in some instances the clause has prevented the delivery of secondary dwellings or restricted the size to 60m² (where the principal dwelling is modest in scale), whilst in other instances it has enabled secondary dwellings which are well in excess of 200m² (where principal dwellings are well over 1,000m²).

Council resolved to write to the Minister for Planning Anthony Roberts (now the "Minister for Planning and Public Spaces" Rob Stokes) and seek a meeting to discuss potential amendments to the Standard Instrument LEP to address this issue. This letter was sent to the Minister in August 2018 (Attachment 2) and a follow-up letter was sent in November 2018 (Attachment 3).

Council has been unable to arrange for a meeting to discuss this issue and despite correspondence received from the Minister in March 2019 (Attachment 4), the Minister or Department has been unable to provide any clear solution for the issues raised by Council.

HISTORY**24/07/2018**

Council considered a Notice of Motion and resolved that:

The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Instrument LEP to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and*
- b. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.*

The Notice of Motion and resolution are provided as Attachment 1.

20/08/2018

A Mayoral letter was sent to the former Minister for Planning Anthony Roberts requesting a meeting to discuss amendments to the Standard Instrument Local Environmental Plan in accordance with Council's resolution on 24 July 2018 (Attachment 2).

30/11/2018

A follow-up Mayoral letter was sent to the former Minister for Planning reiterating the request for a meeting to discuss amendments to the Standard Instrument Local Environmental Plan (Attachment 3).

22/03/2019

Council received a letter from the Minister stating that the Department would only consider a planning proposal to amend the percentage figure within the clause, which sets the maximum size of the secondary dwelling relative to the floor area of the principal dwelling (Attachment 4). This would not address the issues raised by Council with respect to the current application of the clause. This letter appears to be dated 10 October 2018, but was only recently received.

REPORT

The purpose of this report is to provide Council with an update on attempts to arrange for discussions with the Minister regarding secondary dwellings in rural zones, in accordance with Council's resolution on 24 July 2018 and to recommend that Council initiate a new planning proposal to amend LEP 2012 to include maximum size criteria for secondary dwellings in rural zones and rectify the issue at a local level.

BACKGROUND

Secondary dwellings or 'granny flats' provide for greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owners and an affordable housing option for lower income households.

Under LEP 2012, secondary dwellings are permissible in both residential and rural zones. The size of secondary dwellings is regulated by Clause 5.4(9), which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Under 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 a view to enabling suitable outcomes in both urban residential and rural areas.

Clause 5.4(9) of LEP 2012 is currently producing appropriate outcomes with respect to secondary dwellings in established urban areas and provides suitable flexibility for landowners. The resulting size of secondary dwellings in established urban areas generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

In rural areas however, Clause 5.4(9) has been producing a diversity of outcomes, some of which are less desirable and contrary to the intent of the provision (to provide alternative and affordable housing options). In particular, there exists a dichotomy between:

- Rural land owners with smaller established homes (up to 300m²), who are effectively limited to a maximum secondary dwelling size of 60m²; and
- Rural land owners with larger dwellings, who benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling (resulting in extremely large secondary dwellings which look and function more like a dual occupancy dwelling).

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings to enable secondary dwelling beyond the maximum of 60m². 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.

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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling, and ensure secondary dwellings are contextually appropriate, there still remains a case to limit the overall floor size.

In contrast, 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 – which is equivalent in size to a typical new four (4) bedroom home.

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. These large secondary dwellings are more akin to a dual occupancy development and whilst dual occupancies are already permissible with consent in rural zones, they must be in the form of attached dwellings. 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 strictly permissible or intended.

An example is provided below, where the principal dwelling has a floor area of 1,200m². Reliance on Clause 5.4(9) has enabled a secondary dwelling with an area of 240m² (20% of floor area of the principal dwelling), containing four (4) bedrooms plus a study. Such an outcome is clearly contrary to the intentions of the provision which enable secondary dwellings and results in inequitable and undesirable outcomes within rural areas.



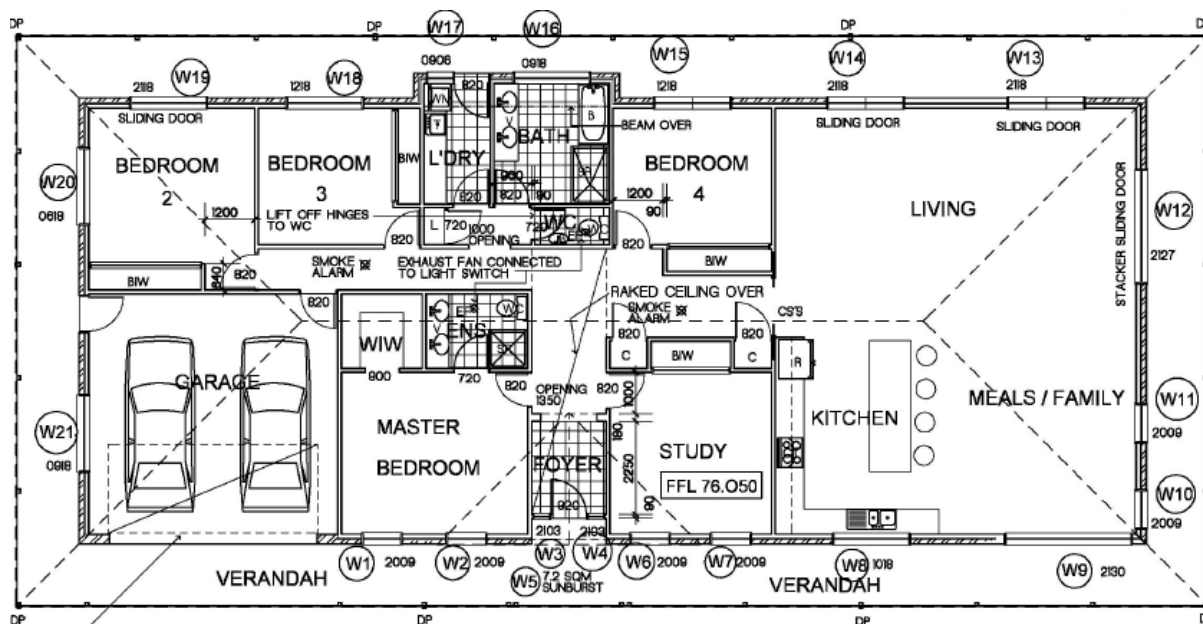


Figure 1

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

Having identified such outcomes, Council considered a Notice of Motion on 24 July 2018 and resolved that:

The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Instrument LEP to:

- a. *Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and*
- b. *The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.*

A Mayoral letter was sent to the former Minister for Planning Anthony Roberts in August 2018 (Attachment 2), with a follow up letter being sent in November 2018 (Attachment 3).

UPDATE ON ATTEMPTS TO ARRANGE FOR A MEETING WITH THE MINISTER

In response to two (2) separate Mayoral letters, verbal advice was given to Council officers on 9 January 2019 advising that in the preparation of a response to the Mayor's letter, the Department was seeking legal advice regarding the wording of the proposed amendments to Clause 5.4(9) of the Standard Instrument.

Subsequently, a letter was received from the then Minister for Planning on 22 March 2019 (although this letter was dated October 2018). The letter indicated that the Department would consider an amendment to Clause 5.4(9)(b), only with respect to the specified maximum percentage (that is, the maximum area of the secondary dwelling relative to the principal dwelling). This letter is provided as Attachment 4.

Based on the advice received, it is apparent that the Department is unwilling to consider any broader amendment to the State-wide Standard Instrument or the Standard Instrument

clause relating to secondary dwellings, beyond a change to the maximum percentage specified. This suggested solution (to amend the maximum percentage within the clause) does not address the issues raised by Council.

Specifically, as the issue is two-fold (the unreasonable limitation of the size of some secondary dwellings *and* the inappropriately large size of other secondary dwellings), amending the maximum percentage within the clause would potentially resolve one part of the issue whilst concurrently worsening the other. For this reason, the only viable solution to the issues raised by Council is the imposition of a consistent fixed maximum size for secondary dwellings across rural areas, as previously identified in Council's resolution on 24 July 2018.

Council's concerns regarding secondary dwellings in rural areas are yet to be addressed and beyond a potential change to the maximum percentage specified in the clause, there has been no indication that any broader amendment to the State-wide Standard Instrument LEP would be supported. Given this, it is recommended that Council initiate a new planning proposal to amend LEP 2012 to address the issue at a local level.

PLANNING PROPOSAL

In the absence of any definitive solution from the Minister or the Department, it is recommended that Council initiate a planning proposal to amend The Hills LEP 2012 to specify that in rural zones, the gross floor area of secondary dwellings must not exceed 110 square metres for habitable rooms plus an optional garage of up to 20 square metres (total permitted 130 square metres).

There would be two potential approaches to amending the clause to achieve this, as demonstrated below (amendments to the existing clause are shown underlined):

Option A

(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

(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.

Both Option A and Option B would achieve the outcomes sought by Council and remain consistent with the intention of Council's resolution of 24 July 2018, albeit as a localised amendment to LEP 2012 rather than an amendment to the State-wide Standard Instrument LEP.

Option A reflects the amendment proposed in the Notice of Motion considered by Council on 24 July 2018 and subsequently requested in the Mayoral letters to the Minister. However, it does represent a more significant amendment to the Standard Instrument clause as it effectively separates the existing provision into two individual clauses (one applicable to urban zones and one applicable to rural zones).

While Option A is the most clear and transparent approach to achieving Council's desired outcomes, Option B is also provided for Council's consideration in light of the advice received from the former Minister for Planning in March 2019. Option B may be more likely to be supported by the Department and Minister as it ensures that the wording of the existing Standard Instrument clause remains unchanged and simply includes a new subclause 'c)' to address this localised issue.

Both approaches propose a maximum size for *all* secondary dwellings in rural zones of 110m² square metres, plus an optional attached garage with a maximum size of 20m² (total size of 130m²). This recommended floor area would provide sufficient room for a two bedroom / two bathroom dwelling, with comfortable living areas (as shown in the examples below) and would enable this outcome to be achieved, irrespective of the size of the principal dwelling on the land.

The proposed maximum size would also limit the scale of secondary dwellings in rural zones to a more contextually appropriate size and avoid unanticipated outcomes associated with applying a percentage-based floor area to very large principal dwellings.

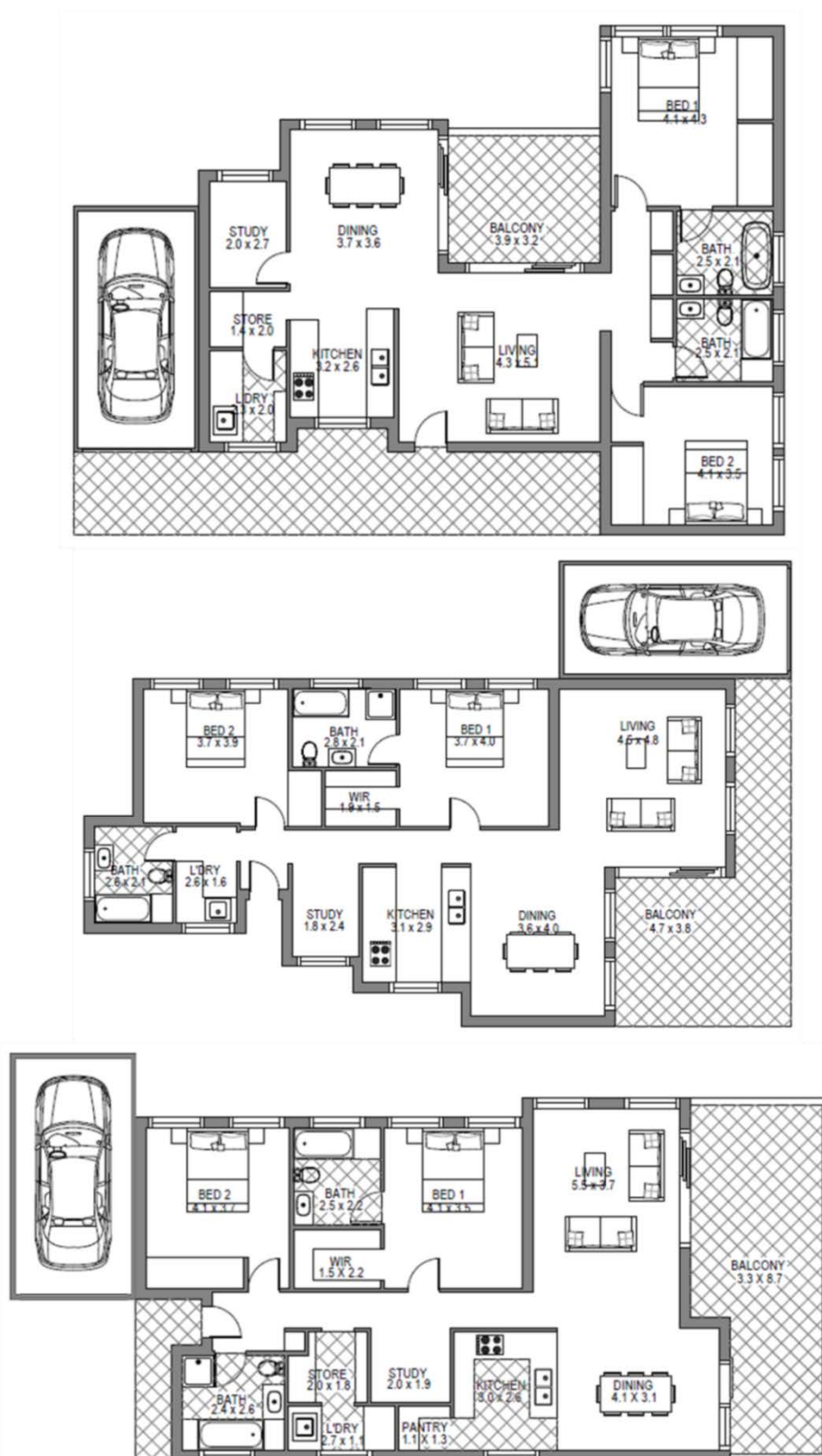


Figure 2
Example floor plans of 110m² dwellings

IMPACTS**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future

The proposed amendments to LEP 2012 will promote improved outcomes with respect to secondary dwellings in rural zones and will provide the community with a greater mix and choice of housing within the Shire.

RECOMMENDATION

A planning proposal to amend The Hills Local Environmental Plan 2012 to provide appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination. The planning proposal shall seek to amend LEP 2012 as per 'Option A' within this report and also include an alternative option ('Option B' within this report), should the Minister and Department be more supportive of this approach.

ATTACHMENTS

1. Notice of Motion and Minutes – 24 July 2018 (9 pages)
2. Mayoral Letter to Minister – 20 August 2018 (4 pages)
3. Mayoral Letter to Minister – 30 November 2018 (1 page)
4. Letter from Minister – Received by Council 22 March 2019 (8 pages)

ORDINARY MEETING OF COUNCIL

24 JULY, 2018

ATTACHMENT 1

ITEM-2

NOTICE OF MOTION - SECONDARY DWELLINGS IN RURAL AREAS

We, the undersigned Councillors, hereby give notice of our intention to move at the next Ordinary Meeting of Council –

MOTION

1. The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:
 - a. enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and
 - b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling.
2. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.



Councillor Preston



Councillor Collins OAM



Mayor – Dr Michelle Byrne

BACKGROUND

Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households. Council's LEP allows secondary dwellings in both residential and rural zones and limits the size in all locations to 60m² or 20% of the total floor area of the principal dwelling, excluding parking.

To explain, Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. It is a 'compulsory' clause under the State wide Standard Instrument LEP and cannot be amended or altered. For secondary dwellings the 60m² part of the control is fixed. The percentage amount was able to be decided by Council when drafting its LEP and 20% was applied at that time in an effort to suit both rural and urban areas.

Some of the development applications lodged for rural zones have not been able to proceed or have needed amendment to comply with the LEP 60m² size criteria. In some other cases the size of existing dwellings can be well over 1,000m², allowing for considerably larger second dwellings that can conflict with the rural character of the area. The problem is that the clause does not work well for the range of dwelling sizes that we have in our rural areas.

ORDINARY MEETING OF COUNCIL**24 JULY, 2018**

A simpler approach would be to restrict the size of secondary dwelling in rural zones to a maximum floor space. A floor area of around 110m² plus parking would provide for a two bedroom dwelling. I have attached some floor plans showing a typical 110m² dwelling plus parking option.

In order to better reflect the characteristics of the rural locality I ask that we approach the Minister for Planning to discuss amendments to the Principal Instrument - Standard Local Environmental Plan, to enable the setting of a maximum size criteria for secondary dwellings in rural zones. A suggested amendment to the Standard Instrument clause is attached.

ATTACHMENT

1. Secondary dwelling option 110m² plus parking (3 pages)
2. Suggested amendment to clause 5.4 of the Standard Instrument LEP (2 pages)



110 SQM DWELLING



110 SQM DWELLING



5.4 Controls relating to miscellaneous permissible uses [compulsory]

- (1) **Bed and breakfast accommodation**
If development for the purposes of bed and breakfast accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than *[insert number not less than 3]* bedrooms.
Note: Any such development that provides for a certain number of guests or rooms may involve a change in the class of building under the *Building Code of Australia*.
- (2) **Home businesses**
If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than *[insert number not less than 30]* square metres of floor area.
- (3) **Home industries**
If development for the purposes of a home industry is permitted under this Plan, the carrying on of the home industry must not involve the use of more than *[insert number not less than 30]* square metres of floor area.
- (4) **Industrial retail outlets**
If development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed:
 - (a) *[insert number not more than 67]* % of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or
 - (b) *[insert number not more than 400]* square metres, whichever is the lesser.
- (5) **Farm stay accommodation**
If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than *[insert number not less than 3]* bedrooms.
- (6) **Kiosks**
If development for the purposes of a kiosk is permitted under this Plan, the gross floor area must not exceed *[insert number not less than 10]* square metres.
- (7) **Neighbourhood shops**
If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed *[insert number not less than 80]* square metres.
- (8) **Roadside stalls**
If development for the purposes of a roadside stall is permitted under this Plan, the gross floor area must not exceed *[insert number not less than 8]* square metres.

(9) **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) *[insert number]* % 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).

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 24 July 2018

Councillor Tracey enquired whether the Bidjigal Trust had provided any

ATTACHMENT 2

The Group Manager - Customer, Community Services & Technology confirmed at the time there had been phone calls and correspondence from the Ward Manager, and was not aware whether Council had received a formal response but would follow this up.

409 BY-ELECTION

Shachi Tiwari of West Pennant Hills requested further information regarding the By-Election this Saturday.

The General Manager advised there is a Councillor vacancy which needs to be filled by a By-Election as Council was too far away from the next General Election. The By-election is for West Ward residents only. Residents can log onto Council's Website to view a map and if you live in West Ward it is compulsory for you to vote.

ITEM-2**NOTICE OF MOTION - SECONDARY DWELLINGS IN RURAL AREAS**

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR COLLINS OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED.

410 RESOLUTION

1. The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:
 - a. enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and
 - b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling.
2. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.

(Councillor Tracey requested his name be recorded as opposing the Resolution of Council in this matter)

Councillors PRESTON and COLLINS OAM rose for a Division. The result of the Division was as follows:

This is Page 5 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 24 July 2018

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 24 July 2018

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr R A Preston
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr A J Hay OAM
Clr A N Haselden
Clr S P Uno

VOTING AGAINST THE MOTION

Clr R M Tracey

ABSENT

Clr R Jethi

CALL OF THE AGENDA

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR UNO THAT items 3, 5 and 7 be moved by exception and the recommendations contained therein be adopted.

THE MOTION WAS PUT AND CARRIED.

411 RESOLUTION

Items 3, 5, and 7 be moved by exception and the recommendations contained therein be adopted.

ITEM-3**PROPERTY DEALINGS RELATING TO DEVELOPMENT MATTERS****412 RESOLUTION**

1. Council consent to the release of three restrictions on the use of land and a positive covenant from the title of Lots 204 and 223 DP 1183480 and Lot 4283 DP 1190104 (No.'s 7-9 Garrawilla Avenue, No. 9 Deepwater Circuit and No. 8 Woko Street, North Kellyville), and the dealings/ request documents be executed under seal and returned to the applicant concurrently with the Subdivision Certificate for DA 118/2014/ZB.
2. Council consent to the cancellation of a 12.78 metre wide right of access (easement) from the title of Lot 305 DP 1214616 (No. 19 Messenger Street, North Kellyville), and the dealing/ request document be executed under seal and returned to the applicant concurrently with the Subdivision Certificate for DA 580/2017/ZA.

This is Page 6 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 24 July 2018



Mayor, Dr **Michelle Byrne**

The Hills Shire Council

3 Columbia Court, Baulkham Hills NSW 2153

PO Box 7064 Baulkham Hills BC 2153

0448 268 140

mayor@thehills.nsw.gov.au



ATTACHMENT 2

20 August 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001

Our Ref: FP176

Dear Minister

Secondary Dwellings in Rural Areas

Council at its meeting of 24 July 2018 considered a Notice of Motion and resolved as follows:

"The mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus a optional attached garage of up to 20m² (total 130m²); and*
- b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling."*

Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households.

The Hills Local Environmental Plan (LEP 2012) allows secondary dwellings in both residential and rural zones. Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. When LEP 2012 was drafted Council were given an option to include a percentage of the floor area of the principal dwelling as an alternative maximum floor area for secondary dwellings to the set 60m². Council adopted a floor area of 20% of the principal dwelling.

In established urban areas the size options of either 60m² or 20% of the floor area of the principal dwelling, provides flexibility for land owners. The resulting size of secondary dwellings generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

The application of Clause 5.4 to land in rural areas however produces significantly different and diverse results. There exists a dichotomy between rural land owners with smaller

- 2 -

established homes seeking secondary dwellings slightly larger than 60m² and rural land owners with vast established dwellings benefitting from the application of a percentage of the principal dwelling's floor area resulting in very large secondary dwellings which function more like a dual occupancy.

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings. Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas means that both the principal dwelling and the secondary dwelling 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.

In such 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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling there remains a case to limit the overall floor size.

By contrast, in some rural areas, the size of principal dwellings can be significantly larger than in urban areas. Numerous examples are available within The Hills where the floor areas of dwellings in some rural areas exceed 1,000m². In such cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m², equivalent to a new 4 bedroom home. Creating secondary dwellings of such a large size 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.

These large secondary dwellings are more akin to a dual occupancy development. Whilst dual occupancies are permissible with consent in rural zones, they must be in the form of attached dwellings. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling using the floor area percentage provisions of Clause 5.4(9) can be seen as an alternative way of achieving a detached dual occupancy outcome on rural land where such an outcome is not strictly permissible under LEP 2012.

In the example below, the principal dwelling has a floor area of 1,200m², 20% of which equates to 241m². The secondary dwelling which was ultimately approved under Clause 5.4(9) has a floor area of 240m² and contains 4 bedrooms plus a study.

- 3 -

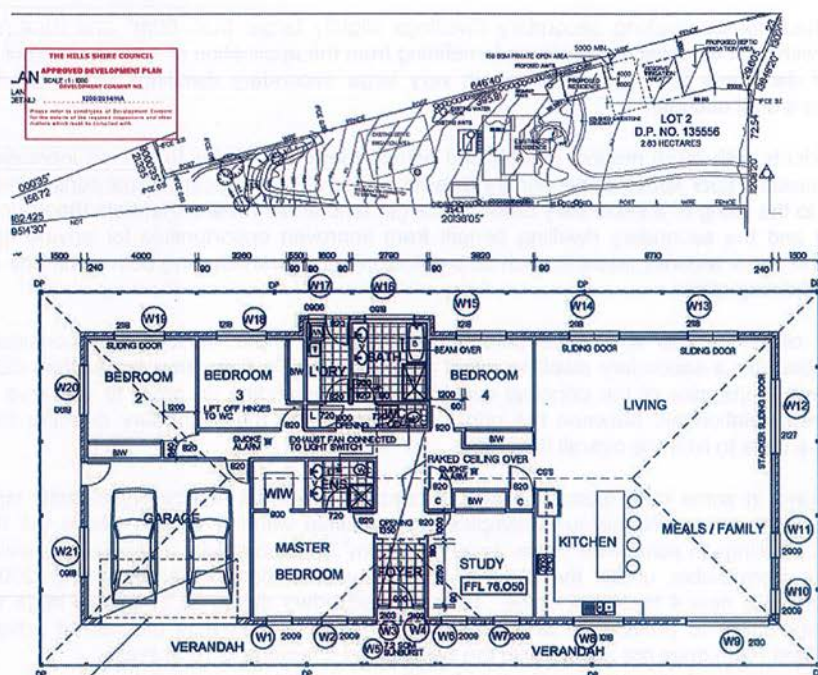


Fig.1 – Example of large secondary dwelling on rural land in Dural.

In order to better facilitate secondary dwellings in rural areas which provide for affordability and choice, whilst respecting the unique character of rural areas, it is suggested that the Standard Instrument LEP template be amended to introduce a maximum floor area for secondary dwellings in rural areas. A suggested floor area of 110m² would provide sufficient room for at least two generous bedrooms and comfortable living areas as per the examples in Attachment 1. The suggested maximum floor area would allow greater choice and flexibility for land owners seeking slightly larger secondary dwellings and would at the same time limit the impacts associated with applying a percentage based floor area to very large principal dwellings.

In order to introduce a maximum floor area for secondary dwellings in rural areas, an amendment to the wording of the Standard Instrument template is required. To assist in discussion, suggested wording of an amendment to Clause 5.4 is included below:

- 4 -

5.4 Controls relating to miscellaneous permissible uses [compulsory]

...

(9) 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) [insert number] % 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).

Having regard to the matters raised above, I request a meeting to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely



Dr Michelle Byrne
MAYOR

Attachment 1: Example floor plans based on 110m² gross floor area.

ATTACHMENT 3



Mayor, Dr Michelle Byrne

The Hills Shire Council

3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 21530448 268 140
mayor@thehills.nsw.gov.au

30 November 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001

Our Ref: FP176

Dear Minister

Secondary Dwellings in Rural Areas

I am writing to request a response to my previous letter dated 20 August 2018 (attached) which sought a meeting with you to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Council at its meeting of 24 July 2018 considered a Notice of Motion and resolved as follows:

"The mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage of up to 20m² (total 130m²); and*
- b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling."*

The Councillors and I are seeking to ensure that the planning framework facilitates secondary dwellings in rural areas which provide for affordability and choice, whilst also respecting the unique character of rural areas. However, nearly 4 months have passed since this resolution and any progress towards a solution to this issue has been inordinately delayed while we await your response.

Preliminary discussions between Council staff and the Director, Sydney Region West of the Department of Planning and Environment have indicated that the issues raised by Council are considered unique to The Hills. As such, a planning proposal to amend The Hills LEP 2012 may be more appropriate than amendments to the Standard Instrument. If this is also your position, I would appreciate advice to that effect.

Council is running out of time to progress a solution to the issue this year and as such, it is respectfully requested that you please respond to this letter (and my previous correspondence dated 20 August 2018) as a matter of urgency. If I have not received a response from you by 30 November 2018, I will endeavor to have the matter reconsidered by Council, with a view to initiating a planning proposal to solve this issue at a local level, through amendments to The Hills LEP 2012.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely

Dr Michelle Byrne
MAYOR

Attachment 1: Previous Letter dated 20 August 2018.

Signed Mayoral Letter to Minister Roberts re secondary dwellings in ru...

ATTACHMENT 4

**Anthony Roberts MP**

Minister for Planning, Minister for Housing, Special Minister of State

Your ref: FP176
Our ref: MDPE18/3198

Dr Michelle Byrne
Mayor
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153

A handwritten signature in blue ink, appearing to read 'Michelle', written over the text 'Dear Mayor,'.

Dear Mayor,

Thank you for your correspondence about The Hills Shire Council's request to amend The Hills Local Environmental Plan (LEP) 2012 as it applies to the size of secondary dwellings in rural zones in The Hills.

I acknowledge Council's concerns, particularly given the LEP allows secondary dwellings to be up to 20 per cent of the total floor area of the principal dwelling. I appreciate that this means secondary dwellings on rural properties can vary greatly in maximum size, depending on the size of the principal dwellings.

I understand Council is seeking to amend its LEP to remove this 20 per cent allowance for rural zones, and instead set a maximum size for secondary dwellings in rural zones. Such dwellings are proposed to be restricted to 110 square metres of habitable rooms, with an optional attached garage of up to 20 square metres.

The Department of Planning and Environment has advised that it is willing to consider a planning proposal to amend Clause 5.4(9)(b). However, as this is a compulsory clause in the standard instrument, the Department can only consider a change to the percentage of the total floor area of the principal dwelling at this time.

Departmental staff would be pleased to meet with you to discuss such a planning proposal. To arrange a meeting, or if you have any more questions, please contact Ms Ann-Maree Carruthers, Director, Sydney Region West, at the Department on 9274 6270.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Anthony', written over the text 'Yours sincerely,'.

10 OCT 2018

Anthony Roberts MP
Minister for Planning
Minister for Housing
Special Minister of State



Mayor, Dr **Michelle Byrne**

The Hills Shire Council

3 Columbia Court, Baulkham Hills NSW 2153
PO Box 7064 Baulkham Hills BC 2153

0448 268 140
mayor@thehills.nsw.gov.au



20 August 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001



Our Ref: FP176

Dear Minister

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In established urban areas the size options of either 60m² or 20% of the floor area of the principal dwelling, provides flexibility for land owners. The resulting size of secondary dwellings generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

The application of Clause 5.4 to land in rural areas however produces significantly different and diverse results. There exists a dichotomy between rural land owners with smaller

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- 2 -

established homes seeking secondary dwellings slightly larger than 60m² and rural land owners with vast established dwellings benefitting from the application of a percentage of the principal dwelling's floor area resulting in very large secondary dwellings which function more like a dual occupancy.

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings. Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas means that both the principal dwelling and the secondary dwelling 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.

In such 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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling there remains a case to limit the overall floor size.

By contrast, in some rural areas, the size of principal dwellings can be significantly larger than in urban areas. Numerous examples are available within The Hills where the floor areas of dwellings in some rural areas exceed 1,000m². In such cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m², equivalent to a new 4 bedroom home. Creating secondary dwellings of such a large size 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.

These large secondary dwellings are more akin to a dual occupancy development. Whilst dual occupancies are permissible with consent in rural zones, they must be in the form of attached dwellings. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling using the floor area percentage provisions of Clause 5.4(9) can be seen as an alternative way of achieving a detached dual occupancy outcome on rural land where such an outcome is not strictly permissible under LEP 2012.

In the example below, the principal dwelling has a floor area of 1,200m², 20% of which equates to 241m². The secondary dwelling which was ultimately approved under Clause 5.4(9) has a floor area of 240m² and contains 4 bedrooms plus a study.

- 3 -

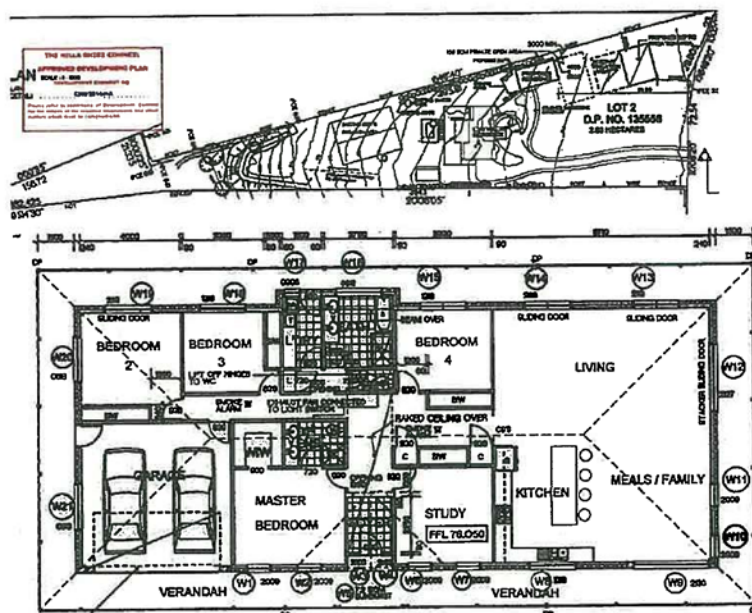


Fig.1 – Example of large secondary dwelling on rural land in Dural.

In order to better facilitate secondary dwellings in rural areas which provide for affordability and choice, whilst respecting the unique character of rural areas, it is suggested that the Standard Instrument LEP template be amended to introduce a maximum floor area for secondary dwellings in rural areas. A suggested floor area of 110m² would provide sufficient room for at least two generous bedrooms and comfortable living areas as per the examples in Attachment 1. The suggested maximum floor area would allow greater choice and flexibility for land owners seeking slightly larger secondary dwellings and would at the same time limit the impacts associated with applying a percentage based floor area to very large principal dwellings.

In order to introduce a maximum floor area for secondary dwellings in rural areas, an amendment to the wording of the Standard Instrument template is required. To assist in discussion, suggested wording of an amendment to Clause 5.4 is included below:

- 4 -

5.4 Controls relating to miscellaneous permissible uses [compulsory]

...

(9) 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) [insert number] % 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).

Having regard to the matters raised above, I request a meeting to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

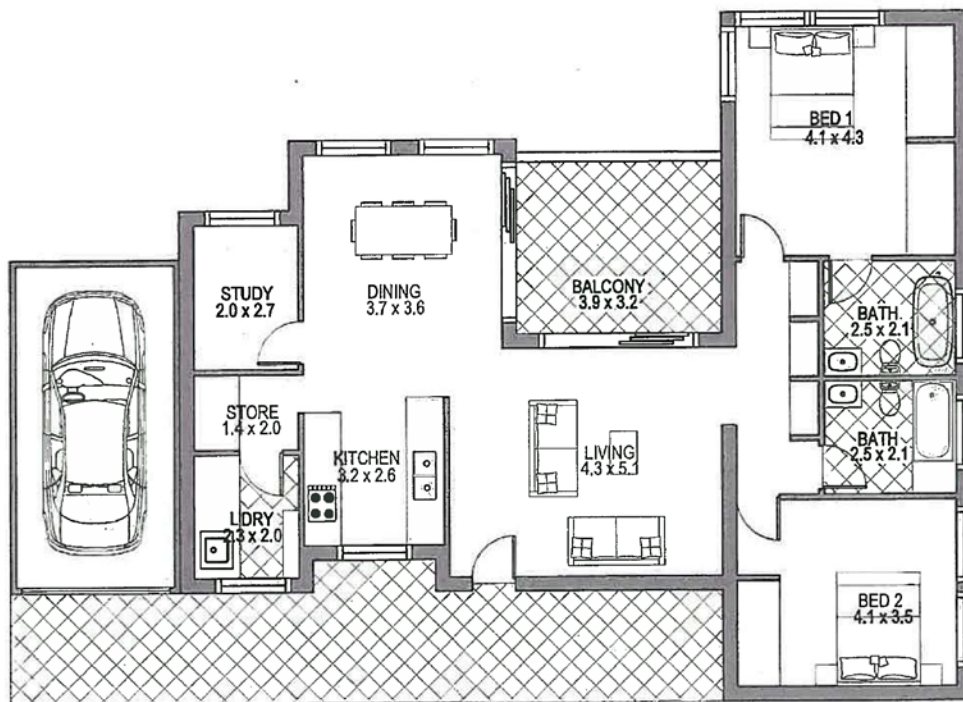
Yours sincerely



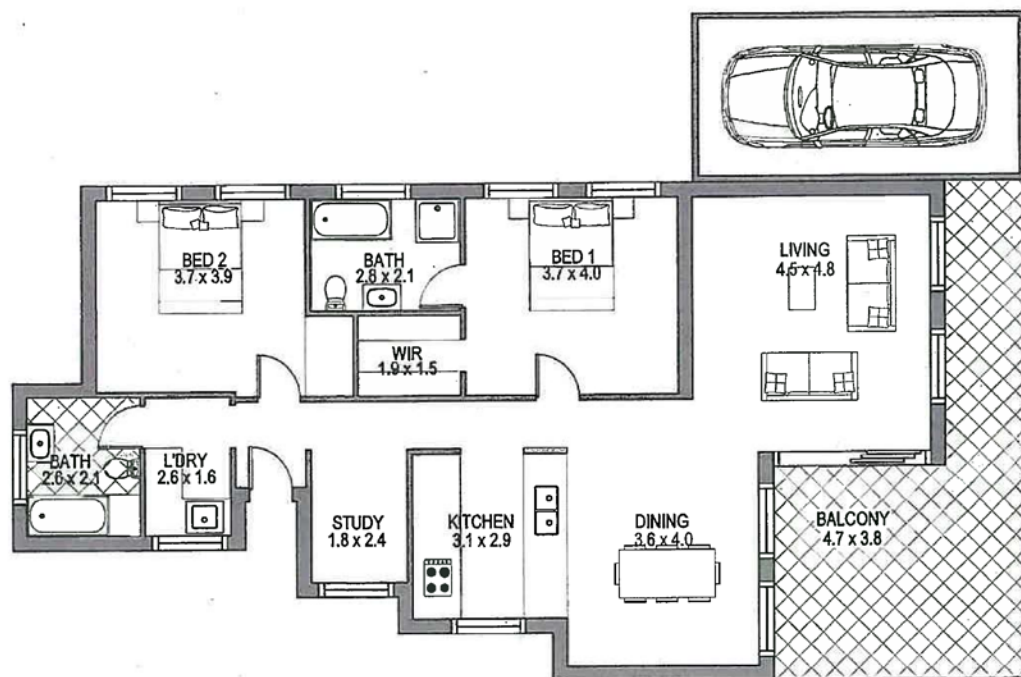
Dr Michelle Byrne
MAYOR

Attachment 1: Example floor plans based on 110m² gross floor area.

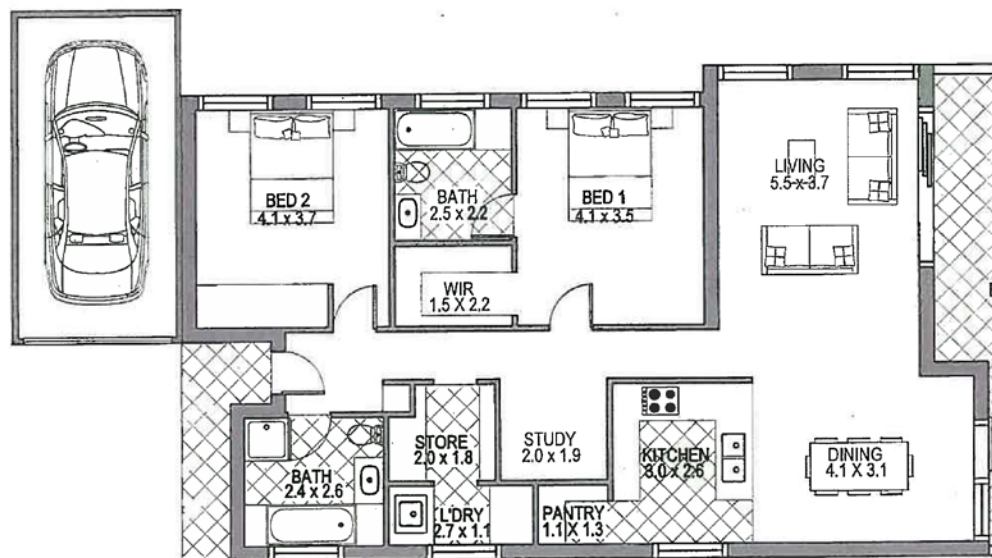
ATTACHMENT 1



110 SQM DWELLING



110 SQM DWELLING



110 SQM DV

ITEM-1 CONFIRMATION OF MINUTES

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR RUSSO THAT the Minutes of the Ordinary Meeting of Council held on 9 April 2019 be confirmed.

THE MOTION WAS PUT AND CARRIED.

155 RESOLUTION

The Minutes of the Ordinary Meeting of Council held on 9 April 2019 be confirmed.

APOLOGIES

A MOTION WAS MOVED BY COUNCILLOR UNO AND SECONDED BY COUNCILLOR RUSSO THAT the apology from Councillor Hay OAM be accepted and leave of absence granted.

THE MOTION WAS PUT AND CARRIED.

156 RESOLUTION

The apology from Councillor Hay OAM be accepted and leave of absence granted.

COMMUNITY FORUM

There were no addresses to Council during Community Forum.

**ITEM-2 FURTHER REPORT AND PLANNING PROPOSAL -
SECONDARY DWELLINGS IN RURAL ZONES**

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR COLLINS OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

157 RESOLUTION

A planning proposal to amend The Hills Local Environmental Plan 2012 to provide appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination. The planning proposal shall seek to amend LEP 2012 as per 'Option A' within this report and also include an alternative option ('Option B' within this report), should the Minister and Department be more supportive of this approach.

ITEM-5 PLANNING PROPOSAL - SECONDARY DWELLINGS IN RURAL ZONES (12/2019/PLP)

THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	19 JUNE 2019 LOCAL PLANNING PANEL
AUTHOR:	TOWN PLANNER JONATHAN TOLENTINO
RESPONSIBLE OFFICER:	MANAGER - FORWARD PLANNING NICHOLAS CARLTON

Proponent	COUNCIL INITIATED
Consultants	NIL
List of Relevant Strategic Planning Documents	GREATER SYDNEY REGION PLAN CENTRAL CITY DISTRICT PLAN STATE ENVIRONMENTAL PLANNING POLICIES S 9.1 MINISTERIAL DIRECTIONS LOCAL STRATEGY
Recommendation	THAT THE PLANNING PROPOSAL TO AMEND CLAUSE 5.4 OF THE HILLS LOCAL ENVIRONMENTAL PLAN 2012 PROCEED TO GATEWAY DETERMINATION

EXECUTIVE SUMMARY

This report provides a summary and assessment of the planning proposal which seeks to amend Clause 5.4 (Controls relating to miscellaneous permissible uses) of The Hills LEP 2012, as it relates to the maximum size of secondary dwellings within rural areas.

This proposal seeks to amend Clause 5.4 of LEP 2012 to include a new subclause which specifies 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 20m² (with a combined gross floor area of 130m²). The proposed amendments seek to address localised character issues currently being experienced within The Hills Shire and would ensure that secondary dwellings can be feasibly provided within rural areas, in a form in which is compatible with the character of the rural locality.

It is recommended that the planning proposal should proceed to Gateway Determination.

REPORT

The purpose of this report is to present the planning proposal which seeks to amend Clause 5.4 of LEP 2012 to the Local Planning Panel for advice, in accordance with Section 2.19 of the Environmental Planning and Assessment Act 1979.

1. BACKGROUND

Secondary dwellings or 'granny flats' provide for greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owners and an affordable housing option for lower income households.

Under LEP 2012, secondary dwellings are permissible in both residential and rural zones. The size of secondary dwellings is regulated by Clause 5.4(9), which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Under 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 a view to enabling suitable outcomes in both urban residential and rural areas.

Clause 5.4(9) of LEP 2012 is currently producing appropriate outcomes with respect to secondary dwellings in established urban areas and provides suitable flexibility for landowners. The resulting size of secondary dwellings in established urban areas generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

In rural areas however, Clause 5.4(9) has been producing a diversity of outcomes, some of which are less desirable and contrary to the intent of the provision (to provide alternative and affordable housing options). In particular, there exists a dichotomy between:

- ☐ Rural land owners with smaller established homes (up to 300m²), who are effectively limited to a maximum secondary dwelling size of 60m²; and
- ☐ Rural land owners with larger dwellings, who benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling (resulting in extremely large secondary dwellings which look and function more like a dual occupancy dwelling).

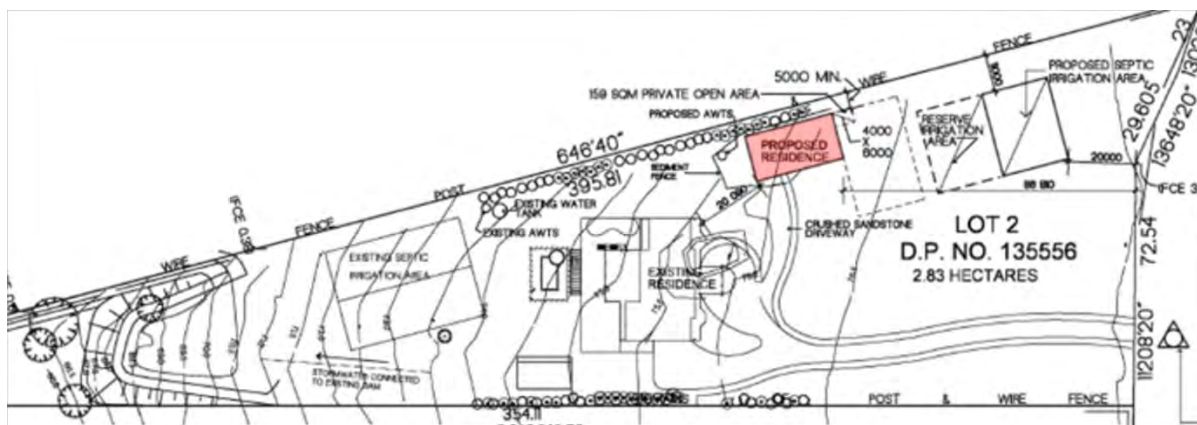
For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings to enable secondary dwelling beyond the maximum of 60m². In comparison to urban areas, rural sites present fewer constraints in relation to the siting of a secondary 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.

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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling, and ensure secondary dwellings are contextually appropriate, there still remains a case to limit the overall floor size.

In contrast, 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 – which is equivalent in size to a typical new four (4) bedroom home.

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. These large secondary dwellings are more akin to a dual occupancy development and whilst dual occupancies are already permissible with consent in rural zones, they must be in the form of attached dwellings. 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 strictly permissible or intended.

An example is provided below, where the principal dwelling has a floor area of 1,200m². Reliance on Clause 5.4(9) has enabled a secondary dwelling with an area of 240m² (20% of floor area of the principal dwelling), containing four (4) bedrooms plus a study. Such an outcome is clearly contrary to the intentions of the provision which enable secondary dwellings and results in inequitable and undesirable outcomes within rural areas.



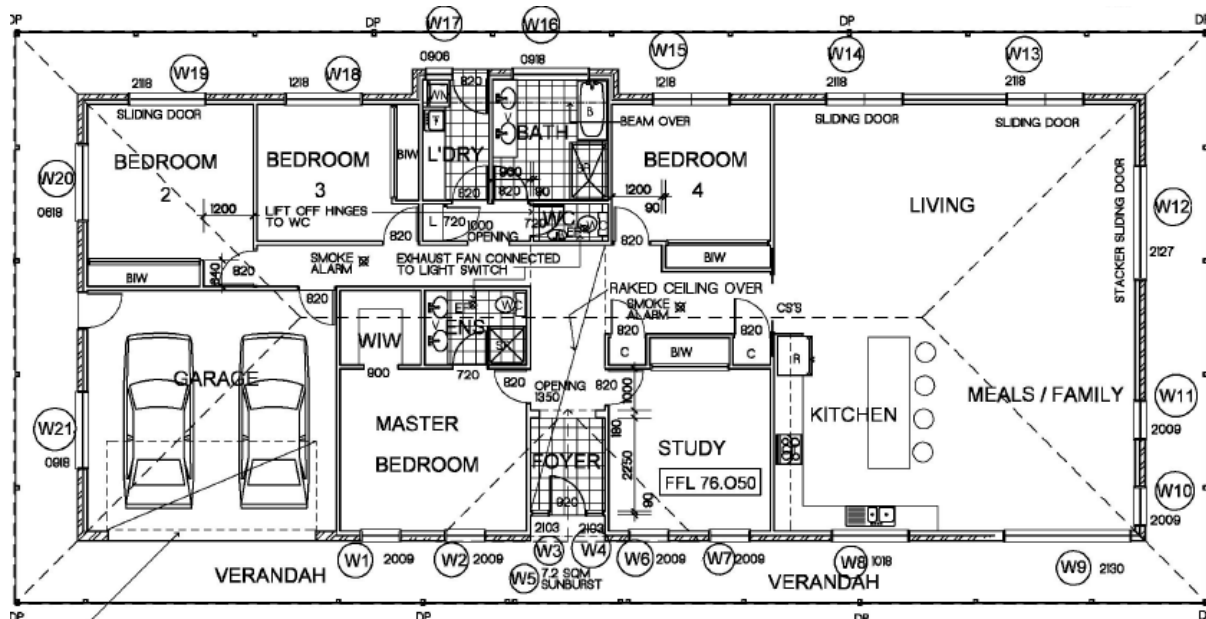


Figure 1

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

On 30 April 2019, Council considered a report relating to secondary dwellings in rural areas and resolved to initiate a new planning proposal to amend LEP 2012 to include maximum size criteria for secondary dwellings in rural zones. Council's resolution was as follows:

A planning proposal to amend The Hills Local Environmental Plan 2012 to provide appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination. The planning proposal shall seek to amend LEP 2012 as per 'Option A' within this report and also include an alternative option ('Option B' within this report), should the Minister and Department be more supportive of this approach.

A full copy of this report and Council's resolution is provided as Attachment 1 to this report.

DESCRIPTION OF THE PLANNING PROPOSAL

The planning proposal seeks to amend Clause 5.4 of LEP 2012 to include a new subclause which specifies maximum size criteria for secondary dwellings in rural zones. Currently, Clause 5.4(9) is as follows:

(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 greater:

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

The proposed Clause 5.4(9) and new Clause 5.4(10) would read as follows:

(9) 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 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).

Council also resolved to include within the planning proposal an alternate option (referred to as "Option B" in the attached Council report), which would achieve the same outcome with marginally less changes required to the Standard Instrument clause. The alternate "Option B" would simply amend Clause 5.4(9) to include a new subclause (c), as shown below:

(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.*

It is noted that the final drafting of any clause would ultimately be subject to consideration by Parliamentary Counsel.

2. MATTERS FOR CONSIDERATION

The planning proposal requires consideration of the following key matters:

- a) Strategic Framework; and
- b) Suitability of larger secondary dwellings in rural areas.

a) Strategic Framework

The planning proposal is consistent with the applicable strategic planning framework. Discussion of the relevant strategic documents including the Greater Sydney Region Plan, Central City District Plan, State Environmental Planning Policies and The Hills Local Strategy are provided below.

Greater Sydney Region Plan

The relevant objectives of the Greater Sydney Region Plan are Objectives 10 and 11.

The Plan seeks to deliver an ongoing housing supply (Objective 10) and a range of housing types in suitable locations that will create more liveable neighbourhoods and support Greater Sydney's growing population (Objective 11). The planning proposal seeks to ensure that a diversity of dwelling options are available to residents of rural areas in the Shire. It also seeks to ensure that built form outcomes enabled by the clause are contextually appropriate. In particular, the proposal addresses two key issues which arise from the current application of the clause by:

1. Enabling the delivery of appropriately sized secondary dwellings and avoiding the unreasonable limitation of the size of secondary dwellings where the principal dwelling on a site is of a modest size and scale; and
2. Where a principal dwellings is of a larger scale and size, preventing the delivery of inappropriately large secondary dwellings which are essentially equivalent to a standard house and fail to contribute to housing diversity or appropriate character outcomes.

The proposal is consistent with the objectives and relevant actions within the Greater Sydney Region Plan.

Central City District Plan

The relevant Priority of the Central City District Plan is Planning Priority C5.

The Plan states that new housing must be located in the right places to meet the need for different housing types, tenure, price points, preferred locations and design (Planning Priority C5). The Plan states that a diverse mix of housing options can provide greater opportunities to cater for a range of changing needs.

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. Where existing principal dwellings are of a significant size and scale, the planning proposal would 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.

The Hills Future Community Strategic Plan

The Hills Future Community Strategic Direction articulates The Hills Shire community and Council's shared vision, values, aspirations and priorities with reference to other local government plans, information and resourcing capabilities. It is a direction that creates a picture of where the Hills would like to be in the future. The direction is based on community aspirations gathered throughout months of community engagement and consultation with members of the community.

The planning proposal will assist in realisation of The Hills Future outcome of well-planned and liveable neighbourhoods that meet the growth of targets and maintain amenity. The proposal 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.

The Hills Local Strategy

The Local Strategy is the principal document for communicating the future planning of the Shire and includes long term objectives on seven key areas of direction. The relevant Direction that applies to the proposal is the Residential Direction.

The objectives of the Residential Direction are to ensure that planning controls effectively provide for balanced growth in the Shire's population and the provision of well-located housing close to services and supported by appropriate infrastructure. The proposal satisfies the objectives of this Direction as the amendment to Clause 5.4(9) would promote the delivery of secondary dwellings in rural areas, whilst ensuring that built form outcomes align with the scale and character of the rural locality. Many rural land owners would be provided with more development opportunities and improved revenue options. A greater supply of housing options would also be available for future residents.

Section 9.1 Ministerial Directions

Section 9.1 of the EP&A Act enables the Minister for Planning to issue directions that Councils must address when preparing planning proposals. The proposal is consistent with the applicable Direction, being Direction 1.2 – Rural Zones, as detailed below.

☐ Direction 1.2 – Rural Zones

The objectives of this direction are to protect the agricultural production value of rural land. The direction states that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone, and not contain provisions that will increase the permissible density on land within a rural zone. The proposal seeks to ensure that when already permitted in rural areas, secondary dwellings are of an appropriate size and scale to contribute to housing diversity and protect the character of the rural locality.

The proposal will not increase the permissible density of development in rural areas and as such, it is consistent with this Direction.

b) Suitability of larger secondary dwellings in rural areas

Currently under Clause 5.4(9) of The Hills LEP 2012, the maximum size of a secondary dwelling is limited to the greater of 60m² or 20% of the principal dwelling. The application of this clause is currently producing appropriate outcomes with respect to secondary dwellings in urban zones and provides suitable flexibility for owners.

However, within rural areas Clause 5.4(9) has been producing a diversity of outcomes, some of which are less desirable and contrary to the intent of the provision to provide alternative and affordable housing options. The planning proposal seeks to address a localised issue which is two-fold (unreasonable limitation on the size of some secondary dwellings *and* the inappropriately large size of other secondary dwellings). The only possible solution to address both components of this issue is to impose a fixed maximum size for secondary dwellings in rural areas.

As shown below, a maximum dwelling size of 110m² (or 130m² including garage) would provide sufficient room for a two bedroom / two bathroom dwelling, with comfortable living areas and would enable this outcome to be achieved, irrespective of the size of the principal dwelling on the land.

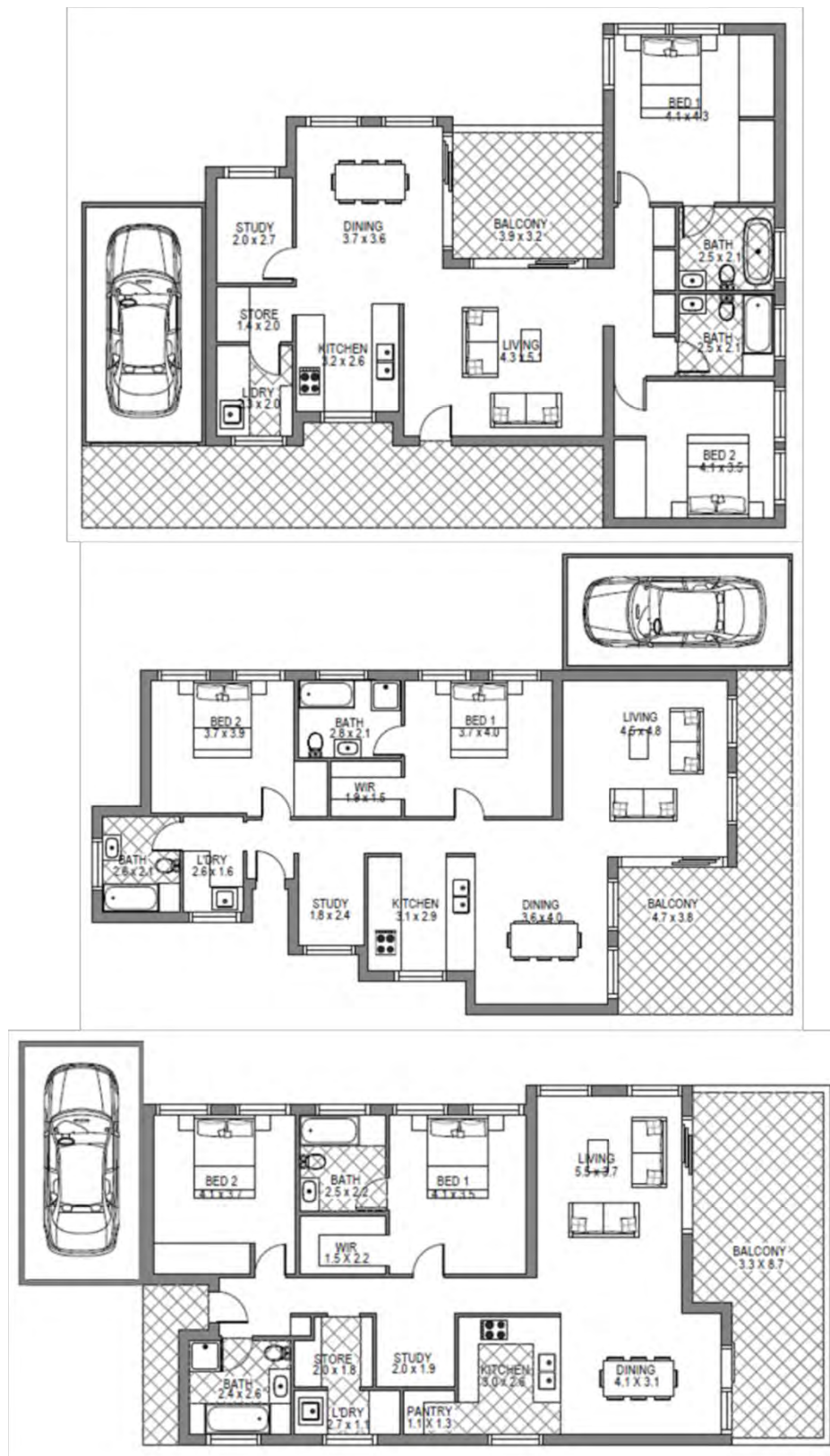


Figure 2
Example floor plans of 110m² dwellings

In contrast to urban areas, enabling secondary dwellings in rural areas with areas of up to 130m² presents fewer constraints in relation to the siting of a secondary dwelling. Larger land areas enable both the principal dwelling and secondary dwelling to benefit from improved opportunities for private open space and fewer amenity impacts such as overshadowing and visual privacy both within and to adjoining sites.

In these instances in rural areas, 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. Notwithstanding, in order to maintain the subservient relationship between the principal and secondary dwelling and ensure that secondary dwellings remain contextually appropriate, the proposed size limitation on the secondary dwellings is considered a suitable control.

RECOMMENDATION

The planning proposal to amend Clause 5.4 of The Hills Local Environmental Plan 2012 to include appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination.

ATTACHMENTS

1. Attachment 1 - Council Report and Minute, 30 April 2019 (33 pages)

ATTACHMENT 1**ORDINARY MEETING OF COUNCIL****30 APRIL, 2019**

ITEM-2	FURTHER REPORT AND PLANNING PROPOSAL - SECONDARY DWELLINGS IN RURAL ZONES
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	30 APRIL 2019 COUNCIL MEETING
GROUP:	SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS
AUTHOR:	TOWN PLANNER JONATHAN TOLENTINO
RESPONSIBLE OFFICER:	ACTING MANAGER – FORWARD PLANNING NICHOLAS CARLTON

EXECUTIVE SUMMARY

This report recommends that Council initiate a planning proposal to amend The Hills Local Environmental Plan 2012 ('LEP 2012') to include appropriate criteria for secondary dwellings in rural zones. 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.

Council considered a Notice of Motion relating to secondary dwellings in rural zones in July 2018 (Attachment 1), which identified that Clause 5.4 of LEP 2012 was not delivering appropriate outcomes with respect to secondary dwellings in rural areas. Given the range of principal dwellings' sizes within the rural area, in some instances the clause has prevented the delivery of secondary dwellings or restricted the size to 60m² (where the principal dwelling is modest in scale), whilst in other instances it has enabled secondary dwellings which are well in excess of 200m² (where principal dwellings are well over 1,000m²).

Council resolved to write to the Minister for Planning Anthony Roberts (now the "Minister for Planning and Public Spaces" Rob Stokes) and seek a meeting to discuss potential amendments to the Standard Instrument LEP to address this issue. This letter was sent to the Minister in August 2018 (Attachment 2) and a follow-up letter was sent in November 2018 (Attachment 3).

Council has been unable to arrange for a meeting to discuss this issue and despite correspondence received from the Minister in March 2019 (Attachment 4), the Minister or Department has been unable to provide any clear solution for the issues raised by Council.

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

HISTORY

24/07/2018

Council considered a Notice of Motion and resolved that:

The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Instrument LEP to:

- a. *Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and*
- b. *The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.*

The Notice of Motion and resolution are provided as Attachment 1.

20/08/2018

A Mayoral letter was sent to the former Minister for Planning Anthony Roberts requesting a meeting to discuss amendments to the Standard Instrument Local Environmental Plan in accordance with Council's resolution on 24 July 2018 (Attachment 2).

30/11/2018

A follow-up Mayoral letter was sent to the former Minister for Planning reiterating the request for a meeting to discuss amendments to the Standard Instrument Local Environmental Plan (Attachment 3).

22/03/2019

Council received a letter from the Minister stating that the Department would only consider a planning proposal to amend the percentage figure within the clause, which sets the maximum size of the secondary dwelling relative to the floor area of the principal dwelling (Attachment 4). This would not address the issues raised by Council with respect to the current application of the clause. This letter appears to be dated 10 October 2018, but was only recently received.

REPORT

The purpose of this report is to provide Council with an update on attempts to arrange for discussions with the Minister regarding secondary dwellings in rural zones, in accordance with Council's resolution on 24 July 2018 and to recommend that Council initiate a new planning proposal to amend LEP 2012 to include maximum size criteria for secondary dwellings in rural zones and rectify the issue at a local level.

BACKGROUND

Secondary dwellings or 'granny flats' provide for greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owners and an affordable housing option for lower income households.

Under LEP 2012, secondary dwellings are permissible in both residential and rural zones. The size of secondary dwellings is regulated by Clause 5.4(9), which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Under 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

ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

set the maximum percentage within the Clause. The percentage of 20% was originally applied by Council with a view to enabling suitable outcomes in both urban residential and rural areas.

Clause 5.4(9) of LEP 2012 is currently producing appropriate outcomes with respect to secondary dwellings in established urban areas and provides suitable flexibility for landowners. The resulting size of secondary dwellings in established urban areas generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

In rural areas however, Clause 5.4(9) has been producing a diversity of outcomes, some of which are less desirable and contrary to the intent of the provision (to provide alternative and affordable housing options). In particular, there exists a dichotomy between:

- Rural land owners with smaller established homes (up to 300m²), who are effectively limited to a maximum secondary dwelling size of 60m²; and
- Rural land owners with larger dwellings, who benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling (resulting in extremely large secondary dwellings which look and function more like a dual occupancy dwelling).

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings to enable secondary dwelling beyond the maximum of 60m². 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.

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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling, and ensure secondary dwellings are contextually appropriate, there still remains a case to limit the overall floor size.

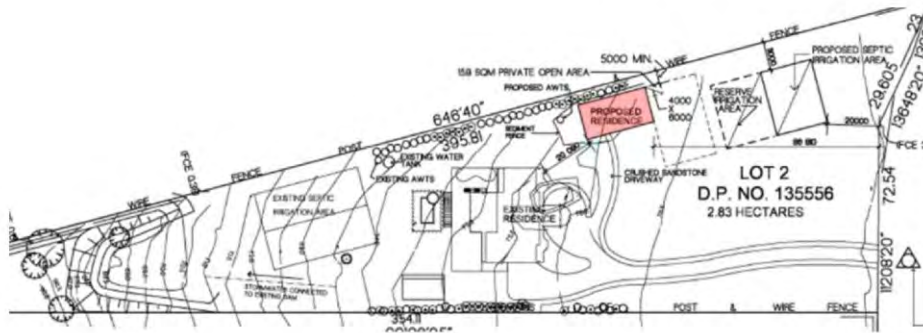
In contrast, in some rural areas the size of principal dwellings can be significantly larger than those in urban areas, with numerous examples in the Shire of rural dwellings with floor areas in excess of 1,000m². In these cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m² – which is equivalent in size to a typical new four (4) bedroom home.

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. These large secondary dwellings are more akin to a dual occupancy development and whilst dual occupancies are already permissible with consent in rural zones, they must be in the form of attached dwellings. 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 strictly permissible or intended.

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

An example is provided below, where the principal dwelling has a floor area of 1,200m². Reliance on Clause 5.4(9) has enabled a secondary dwelling with an area of 240m² (20% of floor area of the principal dwelling), containing four (4) bedrooms plus a study. Such an outcome is clearly contrary to the intentions of the provision which enable secondary dwellings and results in inequitable and undesirable outcomes within rural areas.



ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

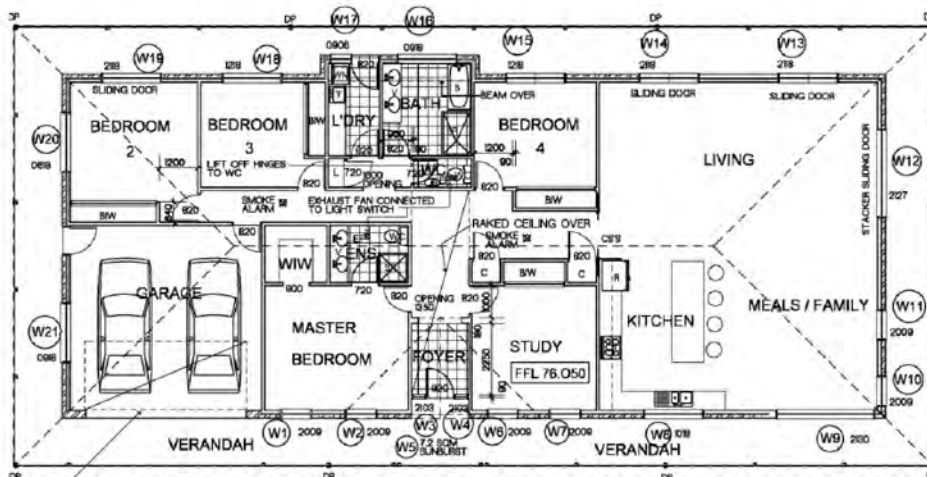


Figure 1

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

Having identified such outcomes, Council considered a Notice of Motion on 24 July 2018 and resolved that:

The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Instrument LEP to:

- a. *Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and*
- b. *The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.*

A Mayoral letter was sent to the former Minister for Planning Anthony Roberts in August 2018 (Attachment 2), with a follow up letter being sent in November 2018 (Attachment 3).

UPDATE ON ATTEMPTS TO ARRANGE FOR A MEETING WITH THE MINISTER

In response to two (2) separate Mayoral letters, verbal advice was given to Council officers on 9 January 2019 advising that in the preparation of a response to the Mayor's letter, the Department was seeking legal advice regarding the wording of the proposed amendments to Clause 5.4(9) of the Standard Instrument.

Subsequently, a letter was received from the then Minister for Planning on 22 March 2019 (although this letter was dated October 2018). The letter indicated that the Department would consider an amendment to Clause 5.4(9)(b), only with respect to the specified maximum percentage (that is, the maximum area of the secondary dwelling relative to the principal dwelling). This letter is provided as Attachment 4.

Based on the advice received, it is apparent that the Department is unwilling to consider any broader amendment to the State-wide Standard Instrument or the Standard Instrument

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

clause relating to secondary dwellings, beyond a change to the maximum percentage specified. This suggested solution (to amend the maximum percentage within the clause) does not address the issues raised by Council.

Specifically, as the issue is two-fold (the unreasonable limitation of the size of some secondary dwellings and the inappropriately large size of other secondary dwellings), amending the maximum percentage within the clause would potentially resolve one part of the issue whilst concurrently worsening the other. For this reason, the only viable solution to the issues raised by Council is the imposition of a consistent fixed maximum size for secondary dwellings across rural areas, as previously identified in Council's resolution on 24 July 2018.

Council's concerns regarding secondary dwellings in rural areas are yet to be addressed and beyond a potential change to the maximum percentage specified in the clause, there has been no indication that any broader amendment to the State-wide Standard Instrument LEP would be supported. Given this, it is recommended that Council initiate a new planning proposal to amend LEP 2012 to address the issue at a local level.

PLANNING PROPOSAL

In the absence of any definitive solution from the Minister or the Department, it is recommended that Council initiate a planning proposal to amend The Hills LEP 2012 to specify that in rural zones, the gross floor area of secondary dwellings must not exceed 110 square metres for habitable rooms plus an optional garage of up to 20 square metres (total permitted 130 square metres).

There would be two potential approaches to amending the clause to achieve this, as demonstrated below (amendments to the existing clause are shown underlined):

Option A**(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**(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:

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

- 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.

Both Option A and Option B would achieve the outcomes sought by Council and remain consistent with the intention of Council's resolution of 24 July 2018, albeit as a localised amendment to LEP 2012 rather than an amendment to the State-wide Standard Instrument LEP.

Option A reflects the amendment proposed in the Notice of Motion considered by Council on 24 July 2018 and subsequently requested in the Mayoral letters to the Minister. However, it does represent a more significant amendment to the Standard Instrument clause as it effectively separates the existing provision into two individual clauses (one applicable to urban zones and one applicable to rural zones).

While Option A is the most clear and transparent approach to achieving Council's desired outcomes, Option B is also provided for Council's consideration in light of the advice received from the former Minister for Planning in March 2019. Option B may be more likely to be supported by the Department and Minister as it ensures that the wording of the existing Standard Instrument clause remains unchanged and simply includes a new subclause 'c)' to address this localised issue.

Both approaches propose a maximum size for *all* secondary dwellings in rural zones of 110m² square metres, plus an optional attached garage with a maximum size of 20m² (total size of 130m²). This recommended floor area would provide sufficient room for a two bedroom / two bathroom dwelling, with comfortable living areas (as shown in the examples below) and would enable this outcome to be achieved, irrespective of the size of the principal dwelling on the land.

The proposed maximum size would also limit the scale of secondary dwellings in rural zones to a more contextually appropriate size and avoid unanticipated outcomes associated with applying a percentage-based floor area to very large principal dwellings.

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

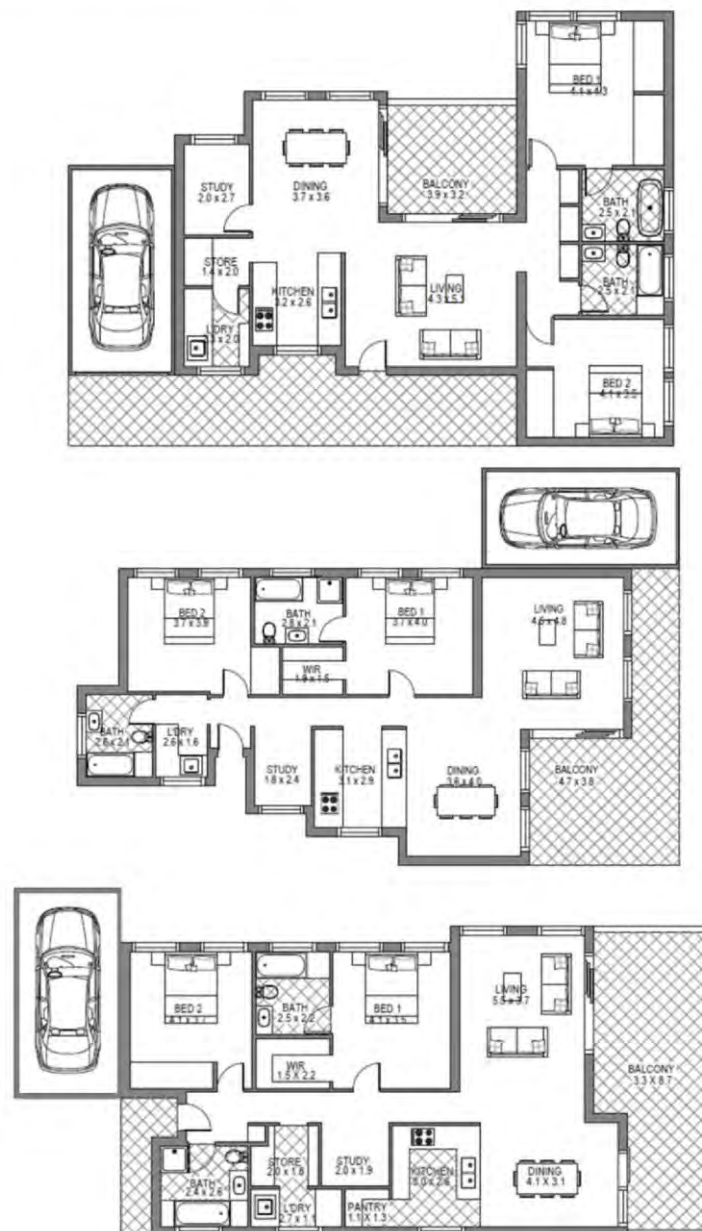


Figure 2
Example floor plans of 110m² dwellings

ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

IMPACTS**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future

The proposed amendments to LEP 2012 will promote improved outcomes with respect to secondary dwellings in rural zones and will provide the community with a greater mix and choice of housing within the Shire.

RECOMMENDATION

A planning proposal to amend The Hills Local Environmental Plan 2012 to provide appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination. The planning proposal shall seek to amend LEP 2012 as per 'Option A' within this report and also include an alternative option ('Option B' within this report), should the Minister and Department be more supportive of this approach.

ATTACHMENTS

1. Notice of Motion and Minutes – 24 July 2018 (9 pages)
2. Mayoral Letter to Minister – 20 August 2018 (4 pages)
3. Mayoral Letter to Minister – 30 November 2018 (1 page)
4. Letter from Minister – Received by Council 22 March 2019 (8 pages)

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ORDINARY MEETING OF COUNCIL

24 JULY, 2018

ATTACHMENT 1

ITEM-2

NOTICE OF MOTION - SECONDARY DWELLINGS IN RURAL AREAS

We, the undersigned Councillors, hereby give notice of our intention to move at the next Ordinary Meeting of Council -

MOTION

1. The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:
 - a. enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and
 - b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling.
2. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.



Councillor Preston



Councillor Collins OAM



Mayor - Dr Michelle Byrne

BACKGROUND

Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households. Council's LEP allows secondary dwellings in both residential and rural zones and limits the size in all locations to 60m² or 20% of the total floor area of the principal dwelling, excluding parking.

To explain, Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. It is a 'compulsory' clause under the State wide Standard Instrument LEP and cannot be amended or altered. For secondary dwellings the 60m² part of the control is fixed. The percentage amount was able to be decided by Council when drafting its LEP and 20% was applied at that time in an effort to suit both rural and urban areas.

Some of the development applications lodged for rural zones have not been able to proceed or have needed amendment to comply with the LEP 60m² size criteria. In some other cases the size of existing dwellings can be well over 1,000m², allowing for considerably larger second dwellings that can conflict with the rural character of the area. The problem is that the clause does not work well for the range of dwelling sizes that we have in our rural areas.

PAGE 20

PAGE 24

ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

ORDINARY MEETING OF COUNCIL**24 JULY, 2018**

A simpler approach would be to restrict the size of secondary dwelling in rural zones to a maximum floor space. A floor area of around 110m² plus parking would provide for a two bedroom dwelling. I have attached some floor plans showing a typical 110m² dwelling plus parking option.

In order to better reflect the characteristics of the rural locality I ask that we approach the Minister for Planning to discuss amendments to the Principal Instrument - Standard Local Environmental Plan, to enable the setting of a maximum size criteria for secondary dwellings in rural zones. A suggested amendment to the Standard Instrument clause is attached.

ATTACHMENT

1. Secondary dwelling option 110m² plus parking (3 pages)
2. Suggested amendment to clause 5.4 of the Standard Instrument LEP (2 pages)

PAGE 21

PAGE 25

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ORDINARY MEETING OF COUNCIL

24 JULY 2018

ATTACHMENT 1



110 SQM DWELLING

PAGE 22

PAGE 26

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ORDINARY MEETING OF COUNCIL

24 JULY 2018



110 SQM DWELLING

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ORDINARY MEETING OF COUNCIL

24 JULY 2018



PAGE 24

PAGE 28

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ORDINARY MEETING OF COUNCIL

24 JULY, 2018

ATTACHMENT 2

5.4 Controls relating to miscellaneous permissible uses [compulsory]

- (1) **Bed and breakfast accommodation**
If development for the purposes of bed and breakfast accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than *[insert number not less than 3]* bedrooms.
Note: Any such development that provides for a certain number of guests or rooms may involve a change in the class of building under the *Building Code of Australia*.
- (2) **Home businesses**
If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than *[insert number not less than 30]* square metres of floor area.
- (3) **Home industries**
If development for the purposes of a home industry is permitted under this Plan, the carrying on of the home industry must not involve the use of more than *[insert number not less than 30]* square metres of floor area.
- (4) **Industrial retail outlets**
If development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed:
 - (a) *[insert number not more than 67]* % of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or
 - (b) *[insert number not more than 400]* square metres, whichever is the lesser.
- (5) **Farm stay accommodation**
If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than *[insert number not less than 3]* bedrooms.
- (6) **Kiosks**
If development for the purposes of a kiosk is permitted under this Plan, the gross floor area must not exceed *[insert number not less than 10]* square metres.
- (7) **Neighbourhood shops**
If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed *[insert number not less than 80]* square metres.
- (8) **Roadside stalls**
If development for the purposes of a roadside stall is permitted under this Plan, the gross floor area must not exceed *[insert number not less than 8]* square metres.

PAGE 25

PAGE 29

ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

ORDINARY MEETING OF COUNCIL**24 JULY, 2018**

- (9) **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) [insert number] % 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).

PAGE 26

PAGE 30

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 24 July 2018

ATTACHMENT 2

Councillor Tracey enquired whether the Bidjigal Trust had provided any

The Group Manager - Customer, Community Services & Technology confirmed at the time there had been phone calls and correspondence from the Ward Manager, and was not aware whether Council had received a formal response but would follow this up.

409 BY-ELECTION

Shachi Tiwari of West Pennant Hills requested further information regarding the By-Election this Saturday.

The General Manager advised there is a Councillor vacancy which needs to be filled by a By-Election as Council was too far away from the next General Election. The By-election is for West Ward residents only. Residents can log onto Council's Website to view a map and if you live in West Ward it is compulsory for you to vote.

ITEM-2**NOTICE OF MOTION - SECONDARY DWELLINGS IN RURAL AREAS**

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR COLLINS OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED.

410 RESOLUTION

1. The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:
 - a. enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and
 - b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling.
2. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.

(Councillor Tracey requested his name be recorded as opposing the Resolution of Council in this matter)

Councillors PRESTON and COLLINS OAM rose for a Division. The result of the Division was as follows:

This is Page 5 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 24 July 2018

ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 24 July 2018

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr R A Preston
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr A J Hay OAM
Clr A N Haselden
Clr S P Uno

VOTING AGAINST THE MOTION

Clr R M Tracey

ABSENT

Clr R Jethi

CALL OF THE AGENDA

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR UNO THAT items 3, 5 and 7 be moved by exception and the recommendations contained therein be adopted.

THE MOTION WAS PUT AND CARRIED.

411 RESOLUTION

Items 3, 5, and 7 be moved by exception and the recommendations contained therein be adopted.

ITEM-3**PROPERTY DEALINGS RELATING TO DEVELOPMENT MATTERS****412 RESOLUTION**

1. Council consent to the release of three restrictions on the use of land and a positive covenant from the title of Lots 204 and 223 DP 1183480 and Lot 4283 DP 1190104 (No.'s 7-9 Garrawilla Avenue, No. 9 Deepwater Circuit and No. 8 Woko Street, North Kellyville), and the dealings/ request documents be executed under seal and returned to the applicant concurrently with the Subdivision Certificate for DA 118/2014/ZB.
2. Council consent to the cancellation of a 12.78 metre wide right of access (easement) from the title of Lot 305 DP 1214616 (No. 19 Messenger Street, North Kellyville), and the dealing/ request document be executed under seal and returned to the applicant concurrently with the Subdivision Certificate for DA 580/2017/ZA.

This is Page 6 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 24 July 2018

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019



Mayor, Dr Michelle Byrne

The Hills Shire Council

3 Columbia Court, Baulkham Hills NSW 2153
PO Box 7064 Baulkham Hills BC 2153

0448 268 140

mayor@thehills.nsw.gov.au

20 August 2018

ATTACHMENT 2



The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001

Our Ref: FP176

Dear Minister

Secondary Dwellings in Rural Areas

Council at its meeting of 24 July 2018 considered a Notice of Motion and resolved as follows:

"The mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus a optional attached garage of up to 20m² (total 130m²); and*
- b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling."*

Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households.

The Hills Local Environmental Plan (LEP 2012) allows secondary dwellings in both residential and rural zones. Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. When LEP 2012 was drafted Council were given an option to include a percentage of the floor area of the principal dwelling as an alternative maximum floor area for secondary dwellings to the set 60m². Council adopted a floor area of 20% of the principal dwelling.

In established urban areas the size options of either 60m² or 20% of the floor area of the principal dwelling, provides flexibility for land owners. The resulting size of secondary dwellings generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

The application of Clause 5.4 to land in rural areas however produces significantly different and diverse results. There exists a dichotomy between rural land owners with smaller

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ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

- 2 -

established homes seeking secondary dwellings slightly larger than 60m² and rural land owners with vast established dwellings benefitting from the application of a percentage of the principal dwelling's floor area resulting in very large secondary dwellings which function more like a dual occupancy.

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings. Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas means that both the principal dwelling and the secondary dwelling 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.

In such 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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling there remains a case to limit the overall floor size.

By contrast, in some rural areas, the size of principal dwellings can be significantly larger than in urban areas. Numerous examples are available within The Hills where the floor areas of dwellings in some rural areas exceed 1,000m². In such cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m², equivalent to a new 4 bedroom home. Creating secondary dwellings of such a large size 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.

These large secondary dwellings are more akin to a dual occupancy development. Whilst dual occupancies are permissible with consent in rural zones, they must be in the form of attached dwellings. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling using the floor area percentage provisions of Clause 5.4(9) can be seen as an alternative way of achieving a detached dual occupancy outcome on rural land where such an outcome is not strictly permissible under LEP 2012.

In the example below, the principal dwelling has a floor area of 1,200m², 20% of which equates to 241m². The secondary dwelling which was ultimately approved under Clause 5.4(9) has a floor area of 240m² and contains 4 bedrooms plus a study.

- 3 -

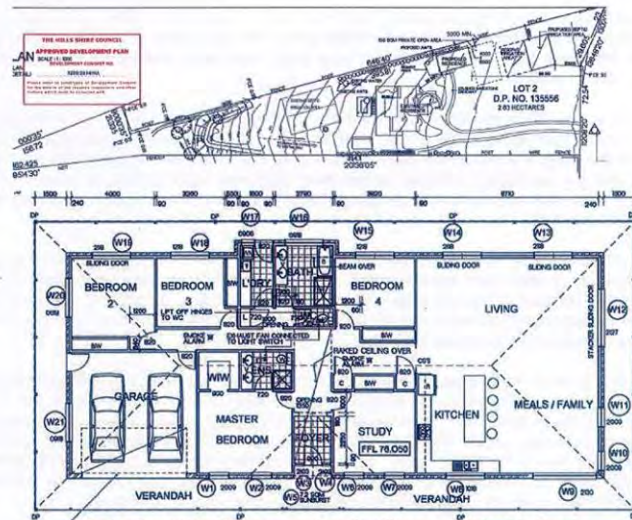


Fig.1 – Example of large secondary dwelling on rural land in Dural.

In order to better facilitate secondary dwellings in rural areas which provide for affordability and choice, whilst respecting the unique character of rural areas, it is suggested that the Standard Instrument LEP template be amended to introduce a maximum floor area for secondary dwellings in rural areas. A suggested floor area of 110m² would provide sufficient room for at least two generous bedrooms and comfortable living areas as per the examples in Attachment 1. The suggested maximum floor area would allow greater choice and flexibility for land owners seeking slightly larger secondary dwellings and would at the same time limit the impacts associated with applying a percentage based floor area to very large principal dwellings.

In order to introduce a maximum floor area for secondary dwellings in rural areas, an amendment to the wording of the Standard Instrument template is required. To assist in discussion, suggested wording of an amendment to Clause 5.4 is included below:

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

- 4 -

5.4 Controls relating to miscellaneous permissible uses [compulsory]

...

(9) 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) [insert number] % 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).

Having regard to the matters raised above, I request a meeting to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely



Dr Michelle Byrne
MAYOR

Attachment 1: Example floor plans based on 110m² gross floor area.

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ATTACHMENT 3



Mayor, Dr Michelle Byrne

The Hills Shire Council

3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 21530448 268 140
mayor@thehills.nsw.gov.au

30 November 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001

Our Ref: FP176

Dear Minister

Secondary Dwellings in Rural Areas

I am writing to request a response to my previous letter dated 20 August 2018 (attached) which sought a meeting with you to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Council at its meeting of 24 July 2018 considered a Notice of Motion and resolved as follows:

"The mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage of up to 20m² (total 130m²); and*
- b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling."*

The Councillors and I are seeking to ensure that the planning framework facilitates secondary dwellings in rural areas which provide for affordability and choice, whilst also respecting the unique character of rural areas. However, nearly 4 months have passed since this resolution and any progress towards a solution to this issue has been inordinately delayed while we await your response.

Preliminary discussions between Council staff and the Director, Sydney Region West of the Department of Planning and Environment have indicated that the issues raised by Council are considered unique to The Hills. As such, a planning proposal to amend The Hills LEP 2012 may be more appropriate than amendments to the Standard Instrument. If this is also your position, I would appreciate advice to that effect.

Council is running out of time to progress a solution to the issue this year and as such, it is respectfully requested that you please respond to this letter (and my previous correspondence dated 20 August 2018) as a matter of urgency. If I have not received a response from you by 30 November 2018, I will endeavor to have the matter reconsidered by Council, with a view to initiating a planning proposal to solve this issue at a local level, through amendments to The Hills LEP 2012.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely

A handwritten signature in blue ink that reads 'Michelle Byrne'.
Dr Michelle Byrne
MAYOR

Attachment 1: Previous Letter dated 20 August 2018.

[Signed Mayoral Letter to Minister Roberts re secondary dwellings in ru...](#)

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ATTACHMENT 4



Anthony Roberts MP
Minister for Planning, Minister for Housing, Special Minister of State

Your ref: FP176
Our ref: MDPE18/3198

Dr Michelle Byrne
Mayor
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153


Dear Mayor,

Thank you for your correspondence about The Hills Shire Council's request to amend The Hills Local Environmental Plan (LEP) 2012 as it applies to the size of secondary dwellings in rural zones in The Hills.

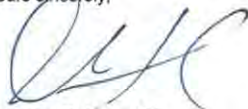
I acknowledge Council's concerns, particularly given the LEP allows secondary dwellings to be up to 20 per cent of the total floor area of the principal dwelling. I appreciate that this means secondary dwellings on rural properties can vary greatly in maximum size, depending on the size of the principal dwellings.

I understand Council is seeking to amend its LEP to remove this 20 per cent allowance for rural zones, and instead set a maximum size for secondary dwellings in rural zones. Such dwellings are proposed to be restricted to 110 square metres of habitable rooms, with an optional attached garage of up to 20 square metres.

The Department of Planning and Environment has advised that it is willing to consider a planning proposal to amend Clause 5.4(9)(b). However, as this is a compulsory clause in the standard instrument, the Department can only consider a change to the percentage of the total floor area of the principal dwelling at this time.

Departmental staff would be pleased to meet with you to discuss such a planning proposal. To arrange a meeting, or if you have any more questions, please contact Ms Ann-Maree Carruthers, Director, Sydney Region West, at the Department on 9274 6270.

Yours sincerely,



10 OCT 2018

Anthony Roberts MP
Minister for Planning
Minister for Housing
Special Minister of State

GPO Box 5341 Sydney NSW 2001 • P: (02) 8574 5600 • F: (02) 9339 5544 • E: office@roberts.minister.nsw.gov.au

PAGE 38

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

Mayor, Dr **Michelle Byrne****The Hills Shire Council**3 Columbia Court, Baulkham Hills NSW 2153
PO Box 7064 Baulkham Hills BC 2153

0448 268 140

mayor@thehills.nsw.gov.au



20 August 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001

Our Ref: FP176

Dear Minister

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Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households.

The Hills Local Environmental Plan (LEP 2012) allows secondary dwellings in both residential and rural zones. Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. When LEP 2012 was drafted Council were given an option to include a percentage of the floor area of the principal dwelling as an alternative maximum floor area for secondary dwellings to the set 60m². Council adopted a floor area of 20% of the principal dwelling.

In established urban areas the size options of either 60m² or 20% of the floor area of the principal dwelling, provides flexibility for land owners. The resulting size of secondary dwellings generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

The application of Clause 5.4 to land in rural areas however produces significantly different and diverse results. There exists a dichotomy between rural land owners with smaller

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ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

- 2 -

established homes seeking secondary dwellings slightly larger than 60m² and rural land owners with vast established dwellings benefitting from the application of a percentage of the principal dwelling's floor area resulting in very large secondary dwellings which function more like a dual occupancy.

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings. Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas means that both the principal dwelling and the secondary dwelling 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.

In such 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. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling there remains a case to limit the overall floor size.

By contrast, in some rural areas, the size of principal dwellings can be significantly larger than in urban areas. Numerous examples are available within The Hills where the floor areas of dwellings in some rural areas exceed 1,000m². In such cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m², equivalent to a new 4 bedroom home. Creating secondary dwellings of such a large size 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.

These large secondary dwellings are more akin to a dual occupancy development. Whilst dual occupancies are permissible with consent in rural zones, they must be in the form of attached dwellings. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling using the floor area percentage provisions of Clause 5.4(9) can be seen as an alternative way of achieving a detached dual occupancy outcome on rural land where such an outcome is not strictly permissible under LEP 2012.

In the example below, the principal dwelling has a floor area of 1,200m², 20% of which equates to 241m². The secondary dwelling which was ultimately approved under Clause 5.4(9) has a floor area of 240m² and contains 4 bedrooms plus a study.

- 3 -

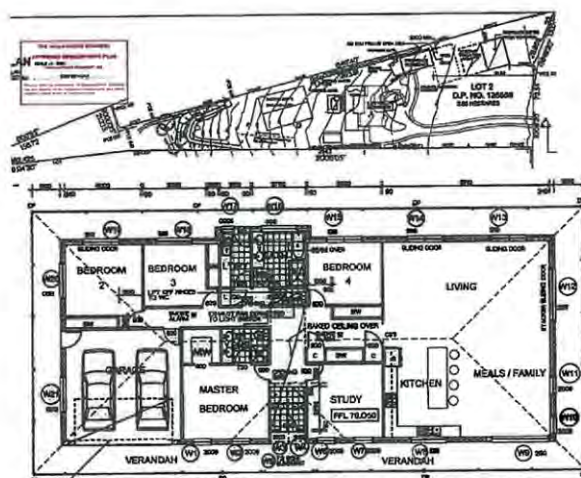


Fig.1 – Example of large secondary dwelling on rural land in Dural.

In order to better facilitate secondary dwellings in rural areas which provide for affordability and choice, whilst respecting the unique character of rural areas, it is suggested that the Standard Instrument LEP template be amended to introduce a maximum floor area for secondary dwellings in rural areas. A suggested floor area of 110m² would provide sufficient room for at least two generous bedrooms and comfortable living areas as per the examples in Attachment 1. The suggested maximum floor area would allow greater choice and flexibility for land owners seeking slightly larger secondary dwellings and would at the same time limit the impacts associated with applying a percentage based floor area to very large principal dwellings.

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ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

- 4 -

5.4 Controls relating to miscellaneous permissible uses [compulsory]

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- (a) 60 square metres,*
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(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).

Having regard to the matters raised above, I request a meeting to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely


Dr Michelle Byrne
MAYOR

Attachment 1: Example floor plans based on 110m² gross floor area.

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019



110 SQM DWELLING

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019



110 SQM DWELLING

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019



110 SQM DV

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 30 April 2019

ITEM-1 CONFIRMATION OF MINUTES

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR RUSSO THAT the Minutes of the Ordinary Meeting of Council held on 9 April 2019 be confirmed.

THE MOTION WAS PUT AND CARRIED.

155 RESOLUTION

The Minutes of the Ordinary Meeting of Council held on 9 April 2019 be confirmed.

APOLOGIES

A MOTION WAS MOVED BY COUNCILLOR UNO AND SECONDED BY COUNCILLOR RUSSO THAT the apology from Councillor Hay OAM be accepted and leave of absence granted.

THE MOTION WAS PUT AND CARRIED.

156 RESOLUTION

The apology from Councillor Hay OAM be accepted and leave of absence granted.

COMMUNITY FORUM

There were no addresses to Council during Community Forum.

ITEM-2 FURTHER REPORT AND PLANNING PROPOSAL - SECONDARY DWELLINGS IN RURAL ZONES

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR COLLINS OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

157 RESOLUTION

A planning proposal to amend The Hills Local Environmental Plan 2012 to provide appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination. The planning proposal shall seek to amend LEP 2012 as per 'Option A' within this report and also include an alternative option ('Option B' within this report), should the Minister and Department be more supportive of this approach.

This is Page 3 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 30 April 2019

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 30 April 2019

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr A N Haselden
Clr R A Preston
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr R Jethi
Clr J Jackson
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr R M Tracey
Clr S P Uno

VOTING AGAINST THE MOTION

None

MEETING ABSENT

Clr A J Hay OAM

ITEM-3 POST EXHIBITION - REVIEW OF DISABILITY CONTROLS (FP230)

A MOTION WAS MOVED BY COUNCILLOR TRACEY AND SECONDED BY COUNCILLOR HASELDEN THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

158 RESOLUTION

Draft amendments to The Hills Development Control Plan 2012 Part B Sections 3-7 as detailed within this report and provided as Attachments 1-5 be adopted.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr A N Haselden
Clr R A Preston
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr R Jethi
Clr J Jackson
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr R M Tracey
Clr S P Uno

This is Page 4 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 30 April 2019

ITEM 5: PLANNING PROPOSAL – SECONDARY DWELLINGS IN RURAL ZONES (12/2019/PLP)

SPEAKERS:

Nil

COUNCIL OFFICER’S RECOMMENDATION:

That the Planning Proposal proceed to Gateway Determination.

LOCAL PLANNING PANEL ADVICE:

That the Planning Proposal proceed to Gateway Determination.

REASONS:

The Panel generally agrees with the Council Officer’s report.

VOTING:

Unanimous

ITEM 6: PLANNING PROPOSAL – OLD NORTHERN ROAD AND DERRIWONG ROAD, DURAL (23/2016/PLP)

SPEAKERS:

- Clare Brown, Director Urbis (Applicant)

COUNCIL OFFICER’S RECOMMENDATION:

That the Planning Proposal proceed to Gateway Determination.

LOCAL PLANNING PANEL ADVICE:

That the Planning Proposal not proceed to Gateway Determination.

REASONS:

1. The proposal does not demonstrate strategic merit.
2. The proposal is not consistent with the Greater Sydney Commission Central Sydney City Plan, specifically planning priority C18 “Better Managing Rural Areas”.
3. The proposal is not consistent with Section 9.1 Ministerial Direction 1.2 Rural Zones.
4. The proposal is not consistent with Council’s Rural Lands Strategy.
5. The proposal has the potential to generate conflict with the RU2 zoned land in the Hornsby Local Government Area.
6. The proposal will have an adverse impact on the character of the Dural Precinct.

VOTING:

Unanimous