

Planning Services

Planning Report

Local Government Area: The Hills

PP Number: PP_2015_THILL_006_00

1. NAME OF DRAFT PLAN

The Hills Local Environmental Plan 2012 (Amendment No. 31) (the draft plan). The draft written instrument is at Tab LEP.

2. SUBJECT LAND DESCRIPTION

The draft plan to be finalised includes two provisions.

The first of these is the prohibition of shop-top housing in the B6 Enterprise Corridor zone, and this applies to all land zoned B6 under *The Hills LEP 2012*.

The second provision is the rectification of two mapping errors introduced by *The Hills Local Environmental Plan 2012 (Amendment No 33)*, and this provision applies to land in the North Rocks Employment Precinct as follows.

- 1, 3, 5 and 6 Lenton Place;
- 3, 7, 9 (part of Excelsior Reserve No 45), 12, 12A, 14, 16, 18, 19–21, 20, 22, 23 and 25 Loyalty Road;
- 213, 215, 217, 219 and 219A North Rocks Road;
- 1, 2 and 3 Richard Close; and
- 2 and 3 Trent Road.

3. PURPOSE OF PLAN

The planning proposal originally sought to:

- revitalise the North Rocks Employment Precinct by rezoning the land from IN1 General Industrial to B6 Enterprise corridor and applying appropriate development controls, and
- remove shop-top housing as a permitted use in the B6 Enterprise Corridor zone.

The proposal no longer seeks to rezone land in the North Rocks Employment Precinct.

3.1 North Rocks Employment Precinct

There were transport agency objections to the progression of the component of the planning proposal relating specifically to the North Rocks Employment Precinct (see 6.1 Agency Consultation), and, as a result of the Council amalgamations, the Precinct is now part of the City of Parramatta local government area. The City of Parramatta has resolved not to proceed with the planning proposal in the immediate term (see Council correspondence at Tab E).

3.2 Removal of shop-top housing as a permitted use in B6 zone

The Hills Shire Council has requested that the remaining provision (the prohibition of shop-top housing in the B6 Enterprise Corridor zone) be progressed as soon as possible ([Tab F](#)), and the City of Parramatta has agreed to this ([Tab G](#)). Under *Parramatta LEP 2011*, shop-top housing is not permitted in the B6 Enterprise Corridor zone, so this provision will provide consistency across the City of Parramatta local government area.

3.3 Rectification of mapping errors

In addition to this provision, the draft plan seeks to rectify a mapping anomaly that was introduced when *The Hills Local Environmental Plan 2012 (Amendment No. 33)* accidentally implemented two of the draft maps for *Amendment No. 31*. *Amendment No. 33* was a housekeeping amendment relating to classified road widening; as such, it amended a large number of maps, and two mapping amendments relating to *Amendment No. 31* were included accidentally. These were:

- an amendment to the land zoning map to rezone the North Rocks Employment Precinct from IN1 General Industrial to B6 Enterprise Corridor; and
- an amendment to the lot size map to lower the minimum lot size for the subject land from 8,000m² to 4,000m².

Because these changes are subject to outstanding agency objections and the City of Parramatta has resolved not to progress them at this time, they must be corrected to restore the original controls.

4. STATE ELECTORATE AND LOCAL MEMBER

The local member for Baulkham Hills is The Hon David Elliott, MP, Minister for Corrections, Minister for Emergency Services and Minister for Veterans' Affairs. Mr Elliott has made no direct representations on the draft plan to date.

5. CONSISTENCY WITH GATEWAY REQUIREMENTS

A Gateway determination was issued on 5 March 2015 ([Tab C](#)). Council has met the conditions in the Gateway determination. Of note:

- **Condition 1** required Council to update the planning proposal to include a discussion of 'A Plan for Growing Sydney'. This was done.
- **Condition 2** required Council to consult with the Rural Fire Service, Office of Environment and Heritage, Endeavour Energy, Transport for NSW, Roads and Maritime Services, Sydney Water and Telstra. This was done.
- **Condition 3** required Council to publicly exhibit the planning proposal for at least 14 days. The planning proposal was exhibited from 17 April 2015 to 10 May 2015 (31 days).

Condition 5 gave a timeframe of 9 months for completion of the planning proposal. Due to the complicating factors of unresolvable agency objections, Council amalgamations, mapping errors and the need to seek internal advice regarding comments from a land owner, the planning proposal has exceeded this timeframe. However, *Section 56(8)* of the *Act* provides that a 'failure to comply with a requirement of a determination under this section in relation to a proposed instrument does not prevent the instrument from being made or invalidate the instrument once it is made', which means that a failure to finalise the proposal within the Gateway timeframe does not constitute an invalidation of the planning proposal.

6. PUBLIC CONSULTATION

6.1 Agency Consultation

Council consulted seven public authorities, as per Gateway Condition 2: Rural Fire Service, Office of Environment and Heritage, Endeavour Energy, Transport for NSW, Roads and Maritime Services, Sydney Water and Telstra. No responses were received from the Office of Environment and Heritage or Telstra, and the responses from the Rural Fire Service, Endeavour Energy and Sydney Water contained no objections.

Transport agency submissions

Roads and Maritime Services (RMS) lodged a submission (Tab H) requiring that a detailed Transport Impact Study be prepared prior to gazettal and assessed by RMS. The submission outlined the terms of reference for such a study.

Transport for NSW lodged a submission (Tab I) requiring that a detailed Transport and Access Assessment be prepared prior to exhibition. The submission outlined the terms of reference for such an assessment.

The submissions of both agencies were based on the likelihood of increased traffic generation as a result of the proposed changes to development controls in the North Rocks Employment Precinct. They did not make any comment on the proposed removal of shop-top housing as a permitted use in the B6 Enterprise Corridor zone.

Council response to transport agency submissions

The Hills Shire Council argued in response (Tab J) that sufficient traffic impact investigation had already been carried out, and that the transport agencies' requests were unreasonably onerous, particularly in so far as they would lead to expensive network upgrades to areas distant from the subject site.

Negotiations and outcome

Because The Hills Shire Council and the transport agencies were unable to reach an agreement, the planning proposal was returned to the Department of Planning and Environment for finalisation. When councils were amalgamated, the North Rocks Employment Area became part of the City of Parramatta, and a meeting was held between staff of the two councils, the Department, and the two transport agencies. This meeting established that, due to the costly nature of necessary upgrades to the local traffic network, it was unlikely that it would be viable to pursue the proposed changes to the North Rocks Employment Precinct in the immediate term.

None of the above discussions related to the removal of shop-top housing as a permitted use in the B6 Enterprise Corridor zone, to which provision there were no agency objections.

6.2 Community Consultation

Public exhibition

The planning proposal was publicly exhibited from 17 April 2015 to 10 May 2015 (31 days). Nine submissions were received from members of the public. Of these, seven related specifically to the North Rocks Employment Precinct; as this provision is not being progressed at this time, these submissions are not relevant to this report.

The remaining two submissions were from owners of land zoned B6 Enterprise Corridor in North Parramatta and Rouse Hill.

Submission from Bunnings North Parramatta

The North Parramatta submission (from the owners of Bunnings, 1-9 North Rocks Road) argued that recent high density residential development in the area would lead to land use conflict, and that their site should therefore be rezoned to B4 Mixed Use to allow for apartment development on their land should the proposed removal of shop-top housing as a permitted use in the B6 zone go ahead. This argument fails to acknowledge that the Bunnings site is sterilised by its location in a wedge between James Ruse Drive, Windsor Road and North Rocks Road, however if Bunnings wishes to progress investigation of a B4 rezoning it will require consideration through a separate planning proposal.

Submission from Rouse Hill land owner

The submission from the land owner at Rouse Hill argued that the proposed removal of shop-top housing as a permitted use in the B6 zone should not proceed, because it was not mentioned in the objectives of the planning proposal, was not supported by any strategic work, and would have a significant impact on the land owner's ability to develop his land. The land owner wished to undertake a 200-unit shop-top housing development on land zoned B6, but did not lodge the development application until after the planning proposal had been exhibited.

While it is true that the provision was not mentioned in the objectives of the exhibition version of the planning proposal, the provision was detailed in the explanation of provisions, on the same page as the objectives. Given that all owners of land zoned B6 were notified of the planning proposal by mail, it is considered that the omission from the objectives would not have created confusion regarding the planning proposal's intent.

Likewise, while the provision is not the result of any strategic study or report, it is a consistent policy position of The Hills Shire Council, having been applied to land in Box Hill under *The Hills Local Environmental Plan Amendment (Sydney Region Growth Centres – The Hills Growth Centre Precincts) 2016* (notified 22 August 2016) and featuring in another planning proposal currently in progress. The provision is intended to prevent further misuse of the permissibility of shop-top housing in the B6 zone, which has led to the delivery of a number of developments with outcomes that are considered not in the spirit of the zone. The Rouse Hill land owner's proposed 200-unit shop-top housing development on a green-field site close to the Mile End Road sewage treatment plant and unsupported by transport or other infrastructure would be one such development.

Further correspondence from Rouse Hill land owner

Following the council amalgamations and the process of discussion with The Hills Shire Council and the City of Parramatta Council which led to the current approach to finalisation, the Rouse Hill land owner, wrote to the Department ([Tab K](#)) objecting to the finalisation of the planning proposal. The grounds of the objection were:

- the B6 provision was not included in the objectives of the exhibition version of the planning proposal;
- the planning proposal is now several months past the due date specified in the Gateway determination and has not received a Gateway alteration revising this date; and
- the planning proposal should be re-exhibited now that the North Rocks Employment Precinct is in the City of Parramatta rather than The Hills.

The Department's view is that the objection offers no impediment to the finalisation of the planning proposal. The omission of the provision from the objectives is considered irrelevant due to its inclusion in the more authoritative explanation of provisions and its inclusion in the objectives of the finalisation version. *Section 56(8) of the Environmental Planning and Assessment Act* provides that a 'failure to comply with a requirement of a determination under this section in relation to a proposed instrument does not prevent the instrument from being made or invalidate the instrument once it is made', which means that a failure to finalise the proposal within the Gateway timeframe does not constitute an invalidation of the planning proposal. Finally, the argument that the planning proposal should be re-exhibited because of the change of local government area is not considered to have merit, because all affected land owners were notified of the planning proposal regardless of which local government area their land now falls within.

7. STRATEGIC ASSESSMENT

It has been agreed by the two relevant councils and the Department that the proposed amendments to zoning and development controls relating specifically to the North Rocks Employment Precinct are to be deferred, and do not form part of this finalisation. The two provisions to be finalised at this time are:

- the rectification of mapping errors introduced by *The Hills LEP 2012 (Amendment No 33)*; and
- the removal of shop-top housing as a permitted use in the B6 Enterprise Corridor zone.

The rectification of mapping errors is a technical necessity and does not need strategic justification.

The removal of shop-top housing as a permitted use in the B6 Enterprise Corridor zone is a provision which has come about primarily in response to a number of shop-top housing developments in The Hills which have delivered large numbers of residential apartments on top of negligible commercial developments, undermining the purpose of B6 Enterprise Corridor as primarily an employment zone. As such, the proposed removal of this land use will assist in protecting the employment value of land zoned B6 Enterprise Corridor, and is consistent with Section 117 Direction 1.1 Business and Industrial Zones, as well as the economic directions of *A Plan for Growing Sydney*, particularly *Direction 1.4 Transform the productivity of Western Sydney through growth and investment* and *Direction 1.6 Expand the Global Economic Corridor*.

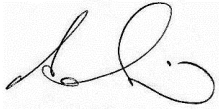
8. SECTION 117 DIRECTIONS

The relevant section 117 Directions were identified and addressed in Council's planning proposal ([Tab B](#)). It is considered that the proposal is either consistent or justifiably inconsistent with the relevant section 117 Directions.

9. CONCLUSION

The planning proposal is supported, as it will rectify mapping anomalies and prevent inappropriate development outcomes on land zoned B6 Enterprise Corridor. It will provide consistency in this zone throughout The Hills and City of Parramatta local government areas, and it will assist in protecting the employment potential of land zoned B6 Enterprise Corridor.

Given the above, the planning proposal should proceed to finalisation.



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