



Planning,
Industry &
Environment

Plan Finalisation Report – PP_2016_THILL_016_01

The Hills Local Environmental Plan 2019 (Amendment
no.13)
360-378 Windsor Road, Baulkham Hills “Bull and Bush
Hotel”

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

The Hills Local Environmental Plan 2019 (Amendment no.13).

1.1.2 Site description

Table 1 Site description

Site Description	Type	Council Name	LGA
The planning proposal (Attachment A1) applies to land at 360-378 Windsor Road, Baulkham Hills (Lots 1 and 2 DP783941), has an approximate area of 9,250m ² and is located at the junction of Windsor Road, Seven Hills Road and Old Northern Road (Figure 1). The site contains a hotel known as the Bull and Bush Hotel, which is listed as a local heritage item under The Hills Local Environmental Plan (LEP) 2019.	Site	The Hills Shire	The Hills Shire

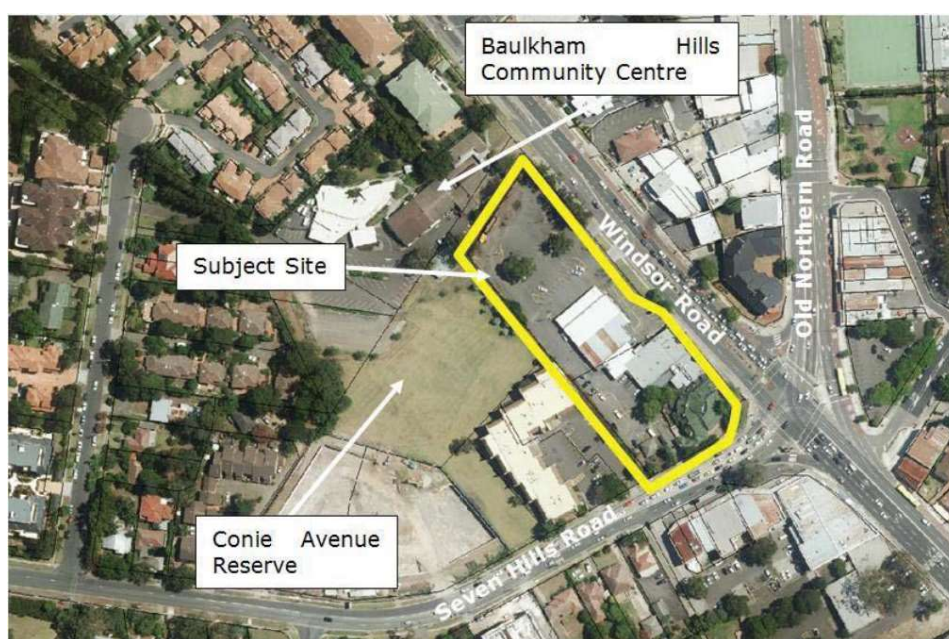


Figure 1 Subject site

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	R1 General Residential	B2 Local Centre
Maximum height of the building	12 m	49 m
Floor space ratio	1:1	3.2:1
Number of dwellings	Nil	200
Number of jobs	40	159 (including existing)

The amendment would facilitate a mixed-use retail/commercial and residential development on the site, which includes the following:

- A minimum of 6,040m² of commercial and retail floor space (including a hotel/pub);
- A minimum of 2,500m² of community floor space (including library and community centre floor space) subject to agreement with The Hills Shire Council; and
- 20,582m² of residential floor space (approximately 200 units).

The built form would consist of three buildings, two being 15 storeys and the third building eight (8) storeys as shown in Figure 2.

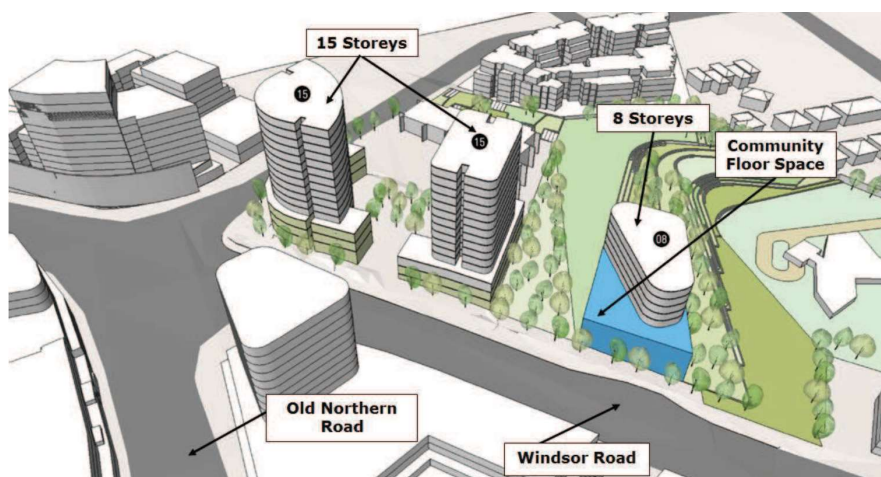


Figure 2 Built Form Photomontage – current concept (Source: Planning Proposal)

1.1.4 State electorate and local member

The site falls within the Baulkham Hills state electorate. David Elliott MP is the State Member.

The site falls within the Mitchell federal electorate. Alex Hawke MP is the Federal Member.

The Hon David Elliott MP made representations to the former Minister for Planning for the following:

- 8 August 2018 to advise that he does not support the proposal, or any future proposal, which does not accommodate or implement infrastructure to support the needs of existing and future residents within the Baulkham Hills electorate. The letter refers to existing

inadequate community infrastructure that should be upgraded prior to any future development, mitigating traffic congestion on already congested roads and addressing public education enrolment demands.

- 6 December 2018 on behalf of a constituent concerning the redevelopment of the Bull and Bush hotel, specifically the Sydney Central City Planning Panel being appointed as the Planning Proposal Authority and the lack of public and road infrastructure.
- 12 December 2018, jointly signed by The Hills Shire Council's (the Council) Mayor, Dr Michelle Byrne, expressing disappointment that the subject proposal is allowed to progress after Council rejected the proposal due to the lack of traffic and transport infrastructure to support increased development potential. The letter also commented the proposal would not provide the right dwellings to match The Hills Shire future population, the absence of a development control plan (DCP) which would guide heritage interpretation, the Voluntary Planning Agreement (VPA) was considered by Council and determined to be inadequate.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 12 May 2017 (**Attachment B1**) determined that the proposal should proceed subject to conditions. On 12 December 2017, Council resolved not to proceed with the planning proposal and for the draft VPA not to proceed to public exhibition. Subsequently, Council wrote to the Department requesting for the Department not to proceed with the proposal.

The proponent wrote to the Department requesting an alternate planning proposal authority (PPA) be appointed. On 6 June 2018 the Department's Secretary appointed the Sydney Central City Planning Panel as PPA for the proposal under section 3.32(2) of the *Environmental Planning and Assessment Act 1979*.

On 31 October 2018, the Panel considered a revised planning proposal. The planning proposal had been amended to meet the requirements of Clauses 1(a), (b) and (c) of the Gateway Determination of 12 May 2017 as follows:

- Clause 7.11 – Housing Diversity had been removed;
- The specified specialist studies had been revised satisfactorily; and
- The specific maps have been provided according to the relevant technical standards.

The Panel resolved to proceed to public exhibition.

The Gateway determination has been altered once on the 16 November 2020 to remove Council as the local plan making authority and to extend the timeframe for completion (**Attachment D2**).

In accordance with the Gateway determination (as altered) the proposal is due to be finalised by the 31/12/2020.

3 Public exhibition and post-exhibition consultation

The proposal was publicly exhibited by the Panel from 5/12/2018 to 1/02/2019.

A total of 19 community submissions were received, with three (3) received prior to the commencement of the exhibition period. 14 submissions from the community (**Attachment E2**), a submission from Council and a submission from the Environment, Energy and Science Group (EES) were received. The Panel received two (2) late community submissions and a submission from Transport from NSW (TfNSW) after the close of the exhibition period.

Following exhibition, the Department prepared a Submissions Report (**Attachment E1**), summarising the submissions received, the proponent's response to submissions (**Attachment E6**) and the Department's response to issues raised for the Panel's consideration.

3.1 Submissions during exhibition

As outlined in the Department's Submissions Report (**Attachment E1**), key matters raised by the community included:

- Consideration of heritage matters regarding the Bull and Bush Hotel;
- Visual impacts of the proposed development;
- Suitability of the area for proposed development;
- Traffic congestion and safety;
- Insufficient provision of infrastructure and transport; and
- An insufficient exhibition process.

Some of the matters raised above were also raised by agencies, Council and the Panel, and have not been resolved and remain outstanding. These matters are discussed in the following sections of the report.

3.2 Advice from agencies

In accordance with the Gateway determination, the PPA (the Panel) consulted with agencies listed below. Further detail is provided in the Submissions Report at **Attachment E1**.

3.2.1 Environment, Energy and Science Group (DPIE)

Environment, Energy and Science Group (EES) (formerly Office of Environment and Heritage) submitted its comments to the Panel on 6/2/2019 (**Attachment E3**). A summary of matters raised, any comments made by the Sydney Central City Planning Panel and the Department's response is provided as follows:

- An Aboriginal cultural heritage assessment should be undertaken;
Department response: The proponent notes (**Attachment E6**) that an Aboriginal cultural heritage assessment is not required as the site has been used for an inn/pub for more than 150 years and is situated in a developed urban context. This requirement could be addressed through the site-specific draft DCP that now accompanies the proposal (**Attachment A11**) and includes controls requiring an Aboriginal cultural heritage assessment report to be provided as part of a future development application.
The Panel has not required any further response from the proponent on this matter.
The Department is satisfied with the proposal's response to this matter.
- Further detail on how the proposal addresses relevant sustainability priorities of the Central City District Plan;
Department response: The proponent's response to submissions (**Attachment E6**) provides consideration of the Sustainability Priorities of the Central City District Plan. This is further discussed in Section 5.1.3 of this report.

- The development can incorporate green walls, a green/cool roof and water-sensitive urban design;

Department response: This could be addressed through the site-specific draft DCP which now accompanies the proposal (**Attachment A11**) and includes controls which adequately address these provisions.

The Department is satisfied with the proposal's response to this matter.

- The proposal should provide information measuring and addressing whether the site is impacted by overland flow;

Department response: This could be addressed through the site-specific draft DCP. The DCP could ensure as part of any future development application for the site, all of Council's existing policies are to be applied and for on-site requirements to make allowance for the capacity of the existing stormwater system inclusive of overland flow paths.

The Department is satisfied with the proposal's response to this matter.

- The proponent should outline sustainability measures in a supporting DCP or local voluntary planning agreement.

Department response: This could be addressed through the site-specific draft DCP and include controls which adequately address these provisions.

The Department is satisfied with the proposal's response to this matter raised by EES.

3.2.2 Transport for NSW

Transport for NSW (TfNSW) submitted its comments to the Panel on 24/5/2019 (**Attachment E4**). A summary of matters raised, and the Department's response is provided as follows:

- the proponent's traffic study traffic-generation rates are too low;

Department Response: The traffic study (**Attachments A4-A7**) has been updated accordingly following post-exhibition consultation with TfNSW.

The Department is satisfied with the proposal's response to this matter.

- TfNSW will likely require the removal of the right-turn bay from Windsor Road, which access to the proposed development must be left-in and left-out only from Seven Hills Road and Windsor Road

Department Response: The proposal's access arrangements to the site are for left-in and left-out traffic in accordance with TfNSW's advice. This matter has been resolved.

The Department is satisfied with the proposal's response to this matter.

- the traffic and transport study for the Baulkham Hills Town Centre Masterplan should be revised to assess the traffic impacts associated with the town centre and consider viable road infrastructure upgrades. Without the findings of the Town Centre traffic study, TfNSW cannot confirm which infrastructure treatments on surrounding roads and intersections would be needed to support the development of the site. TfNSW recommends setbacks are included within the DCP to allow for potential future road widening.

Department Response: Council's key concerns with the proposal relates to traffic and transport infrastructure. The operation of the Windsor Road, Seven Hills Road and Old Northern Road intersection is already failing and a constraint to further development in Baulkham Hills Town Centre. This masterplan was not endorsed by Council because of the potential need to preserve the opportunity for grade separation of the intersection of Windsor Road, Seven Hills Road and Old Northern Road. This treatment has been supported by TfNSW.

A site-specific draft DCP now accompanies the proposal (**Attachment A11**) and includes controls requiring setbacks on site to enable future road widening of Windsor Road and Seven Hills Road. This is assessed further in Section 5 of this report and is identified as an outstanding matter.

Post exhibition consultation

TfNSW provided comments on 1/3/2020 (**Attachment H**) on the proponent's post exhibition addendum to the Traffic Report dated July 2019 and February 2020 (**Attachments A5-A7**). TfNSW confirmed the revised traffic generation rates are considered to be more representative of the travel behaviour of the subject locality, however, recommends that additional consideration be given to the incorporation of maximum parking rates under The Hills DCP to further encourage the use of active transport infrastructure.

TfNSW notes the proposal's supporting draft DCP requires a 11 metre setback from Windsor Road and a 10 metre setback from Seven Hills Road to enable future road widening.

Department response

While the proposal has addressed TfNSW's post exhibition comments, the broader issue remains to be resolved regarding traffic infrastructure upgrades required to support growth in the Baulkham Hills town centre.

3.2.3 Other agencies – no objections raised

No submissions were received from utility providers - Endeavour Energy, Sydney Water and Telstra.

3.3 The Hills Shire Council's 2018 submission

At a Council meeting on 11/12/2018 (**Attachment E5**), Council raised key issues to form a submission to the Planning Panel during the exhibition period. In summary, Council does not support the proposal for the following reasons:

- The Greater Sydney Region Plan and Central City District Plan identify the need for growth supported by infrastructure to deliver the 30-minute city and TfNSW's Future Transport Strategy identifies city-shaping corridors. Baulkham Hills is identified within the longer-term future city-shaping corridor by 2056. Given it is a longer-term project there is no certainty with respect to infrastructure investment and it would be unwise to increase densities until the strategic context and infrastructure investment align to deliver the best outcomes for the community.
- The subject site is located at the intersection of Seven Hills /Old Northern /Windsor roads (regional roads) which accommodates a significant amount of regional traffic. Any increased development potential that would have impact on this intersection should be not supported until infrastructure upgrades are in place to improve operation of these roads. Council has advocated for either partial or full grade separation at this intersection which has not been supported by TfNSW to date.
- The proposal is inconsistent with Council's policy position on the delivery of diverse housing (LEP Clause 7.11) and the proposed development will not provide the diversity of housing needed to support the incoming population.
- Council considered and rejected a VPA offer for a library or community space offered at a discounted rate. Council is unwilling to invest in the fit-out of the space to make it appropriate for community use. Council considers the VPA offer inadequate. As such, the maximum floor space permissible on the site should be reduced to exclude this floor area.

- Council resolved not to proceed with the proposal therefore the draft heritage and re-development of a hotel development controls no longer form part of the proposal. Council requested the Panel direct the proponent to prepare development controls for the site.
- Council notes that if the proposal proceeds and amends the LEP, Council's DCP will also need to be amended so the two plans are consistent.
- Council has not accounted for the additional 200 dwellings proposed by the planning proposal in its planning for local infrastructure. Council notes that the proposed VPA offer did not offer adequate public infrastructure to counterbalance the increased demand.

Post exhibition consultation

The Department requested Council confirm the potential value of developer contributions associated with the subject proposal Council would consider sufficient. Council responded on 18 September 2019 (**Attachment G**) outlining two main concerns with this request:

- Council was unclear on the mechanism available to the Panel for securing contributions as Council decided not to proceed with a VPA; and
- Council was not in a position to provide an indicative contribution rate until the potential development yield for Baulkham Hills Town Centre and associated infrastructure requirements are understood.

Council re-iterated it would not be acceptable for the Panel to enable the amendments to the LEP without also putting in place a mechanism to give Council and the community certainty that the significant uplift in density on the land will be accompanied by appropriate contributions towards new local infrastructure and the delivery of key public benefits.

Council objected to TfNSW's recommendation of requiring setbacks in a development control plan to facilitate future road widening without determining the need for this land or identifying it on the land reservation acquisition mapping. In addition, no urban design work has been undertaken on the impact of the setbacks on the site, it reduces the potential development footprint for the development and would exacerbate the significant built form proposed.

TfNSW's approach to this proposal is inconsistent with advice that TfNSW provided for planning proposals within the Sydney Metro Northwest Urban Renewal Corridor. TfNSW stated planning proposals should not proceed until regional traffic modelling has been completed and a funding mechanism has been put into place to secure contributions towards future regional traffic infrastructure upgrades.

Department Response: Matters relating to strategic merit, infrastructure provision and preparation of the DCP remain outstanding and are discussed under Sections 4 and 5 of this report.

4 Sydney Central City Planning Panel

4.1 Consideration of submissions

The Sydney Central City Planning Panel (the Panel) considered the proposal at a public meeting on 18 May 2020. The Panel determined (**Attachment I**) on 20 May 2020 to defer a decision on the planning proposal, in summary, to enable:

- The proponent to review the local VPA offer regarding the provision of community facilities on site.
- The proponent to prepare a site-specific DCP to address design concerns raised by Council and the community, particularly regarding built form and public domain.
- The Department to provide advice on potential clauses to address transport corridor considerations, design excellence, vegetation on site and the provision of local infrastructure.

The Panel encouraged the applicant and Council to provide written updates to the Department on progress on the above matters at six (6) weeks (1 July), three (3) months (late August) and five (5) months (late October) of the deferral. These updates are provided at **Attachments I1-I5**.

Department response: A summary of the updates is provided in Table 3 below. It appears delays were experienced particularly in the preparation of the DCP.

The Department's advice was provided in its letter dated 26 November 2020 (**Attachment M**) which is discussed under Section 4.3 of this report.

Table 3 Summary of Progress Updates

Progress Update	Council	Proponent
Initial Update (due 1 July)	Letter dated 1 July 2020. Proponent contacted Council on 1 June to request a meeting to discuss the deferral. A preliminary meeting was held on 12 June. The proponent advised of its intention to further consider local infrastructure needs.	Letter dated 27 July 2020. Proponent had contacted Council and submitted final draft VPA for council consideration.
Second Update (due late August)	Letter dated 17 August 2020. Proponent submitted a draft VPA on 3 August. Council officers are reviewing the draft with the objective of reporting to Council in September. This will enable Council to determine whether to accept the offer in principle and commence subsequent legal review and public exhibition processes.	Letter dated 17 August 2020. Knight Frank had been engaged to prepare a draft DCP. Council is considering a draft VPA submitted on 3 August.
Final Update (due late October)	Letter dated 3 November 2020. At its Ordinary Meeting of 8 September 2020, Council considered a draft VPA and resolved to progress to public exhibition following legal review and certain amendments. There were a number of issues with the draft VPA submitted by the Proponent. The legal review is in progress.	No formal progress update was provided however all additional information was submitted to the Department on 6 and 12 October 2020.

4.2 Panel briefing by Proponent

The Proponent's consultant team was given an opportunity to brief the Panel on a working draft DCP. The Panel provided advice, the Proponent should address in further detail, development of the draft DCP, in its Record of Briefing dated 15 September 2020 (**Attachment J**). A summary of matters the Panel drew attention to included:

- details on active street frontages;
- the proposed height of building and storey controls;
- function of the through-site link and public plaza and its integration with future buildings on site and community spaces to the south west;
- requirement for design excellence;
- retaining the primacy of the site at the corner of Windsor Road and Seven Hills Road;

- further information on car and bicycle parking; and
- details regarding how the site will be serviced by delivery vehicles.

The Panel also requested the preparation of two specialist consultant reports to inform the draft DCP including:

- a heritage impact statement addressing mitigation measures that respond to the proposed demolition of the Bull and Bush Hotel on the site; and
- an arborist report assessing the health of the trees on site, consideration of how trees can be incorporated in the concept design for the site and a requirement for a design excellence competition.

The Panel also requested the next version of the draft DCP be submitted to the Department by 5 October 2020.

Department response: The Department reviewed the final submitted documentation with consideration given to the Panel's Record of Briefing in its letter to the Panel dated 26 November 2020 (**Attachment M**). A summary is provided under Section 4.3 of this report.

4.2.1 Submission of additional information

In accordance with the Panel's May Determination (**Attachment I**) and September Record of Briefing (**Attachment J**), the proponent provided the additional supporting material:

- Site-specific DCP (**Attachment A11** - Version 2 – 24/11/2020);
- A peer review of the proposed public domain (**Attachment A3** - 30/9/2020);
- Traffic Statement (**Attachment A7** – 30/9/2020); and
- Preliminary arboricultural assessment (**Attachment A10** – 14/9/2020).

The proponent did not submit a heritage impact statement, this is addressed, together with the Department's review of the above documents, in its letter to the Panel dated 26 November 2020 (**Attachment M**). A summary is provided under Section 4.3 of this report.

No changes to the planning proposal itself have been made.

4.3 Panel Determination of the Proposal

4.3.1 Department 26 November 2020 Advice to the Panel

The Department provided an update to the Panel on 26 November 2020 (**Attachment M**) following the May Determination and September Record of Briefing, containing a review of the information submitted. The letter recognised the significant amount of work undertaken by both parties. This package also included a letter from Council to the Panel (**Attachment L**) providing an update on the draft VPA.

The planning proposal is required to be finalised by 31 December 2020 as per the Gateway alteration (**Attachment D2**). At the date of the letter, additional work was required to address the provision of local infrastructure and draft DCP prior to finalising these documents.

The terms of the draft local VPA have not been agreed upon in respect of a number of matters including components from Council's September 2020 resolution, the VPA had not been executed by the proponent and it had not progressed to public exhibition. Securing the public benefit associated with this planning proposal is fundamental to the Department's support for the scheme. It is critical that the public benefit, particularly the community facility and library, is defined, agreed and secured before the rezoning takes place. The Department's view is that the local contributions have not been agreed to and secured, and therefore the planning proposal is not supported.

The Department noted outstanding matters which need to be resolved in respect of the draft DCP, these are summarised as follows:

- Further review of the reduced site width, investigation of appropriate setbacks and the relationship between the buildings and public areas;
- Details on the activation and use of the public plaza link and through-site link;
- Urban design and architectural solutions to demonstrate how future development will retain the primacy of the site;
- Further consultation with TfNSW regarding required setbacks to accommodate any potential future road widening and whether any other mechanisms can assist with retaining land at the adjoining intersection;
- Further review of how the proposed LEP height and number of storeys correlate;
- A review of how a future building could replicate architectural elements of the Bull and Bush Hotel including its relationship with the adjoining intersection;
- Review the concept design and draft DCP provisions to retain and incorporate significant trees into the concept design; and
- Revise the heritage report to address implications of the road widening setbacks on the Bull and Bush Hotel.

Noting the Department's position on the planning proposal, the Department included advice to the Panel outlining a number of LEP provisions that may have been able to address the outstanding matters if the Panel was to direct the Department to finalise the LEP.

4.3.2 Panel December 2020 Determination

The Panel considered the Department's advice on 3 December 2020 and determined to recommend to the Minister that the proposal should not be made (**Attachment N**).

The Panel's reasons for the decision include:

1. The applicant has failed to address the design issues identified in the determination and record of briefing from both May 2020 and September 2020 in relation to the planning proposal;
2. The Panel does not support the deletion of the minimum non-residential floor space requirement from the planning proposal as amended and submitted for consideration of the Panel;
3. Based on the information submitted in support of the planning proposal the Panel is not convinced that the future development of the site can achieve design excellence. The submitted concept also fails to demonstrate how the built form will acknowledge both the visibility and high profile of the site, link into the local character and facilities of the surrounding area, address the heritage values of the site, deliver compatible public domain and built form and result in quality civic spaces being delivered;
4. Based on the available information the Panel considers there is insufficient detail and clarity regarding the potential urban design outcomes, traffic implications and pedestrian and vehicle access outcomes for the site that would arise from future development under the planning proposal; and
5. The draft voluntary planning agreement was the mechanism for the delivery of [local infrastructure] public benefits associated with the planning proposal. This agreement has not been advanced at this time to a stage where the Panel is convinced that agreement can be reached between the parties.

The Panel also noted the following:

- The draft DCP was inadequate and did not adequately address the matters raised in the September record of briefing;

- The potential options for a draft LEP available to the Panel proffered by the Department in its advice (**Attachment M**), did not consider the nominated mechanisms an appropriate outcome for the proposal as it would defer resolution of critical issues. This was given the nature and extent of unresolved issues in relation to the ultimate built form on site, its relationship to the site and the local context. There was no confidence that these issues could be resolved satisfactorily or in a reasonable period of time;
- The need for design excellence to be achieved on this site having regard to the site's high profile, visibility, local context, heritage value, pedestrian connectivity, delivery of connected civic spaces, impact of future road widening and retention of trees on site in delivering a quality place and outcome;
- If the proponent lodges a new planning proposal for the site in future following the refusal of the subject proposal, the Panel suggests that the Department requests for Council to provide a copy of the legal advice obtained in relation to the proponent's draft VPA and a copy of the specification for a future community space to be delivered on site and where appropriate share with the proponent; and
- The Panel suggested should the proponent elect to lodge a new planning proposal, a public benefit offer and draft VPA with Council should be advanced prior to the submission of a new proposal.

5 Department's Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (12 May 2017 **Attachment B1-B2**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement (October 2019). It also reassesses any potential key impacts associated with the proposal.

5.1 Strategic Planning Framework Assessment

The following section provides details of the Department's assessment of key matters.

5.1.1 Section 9.1 Directions

As assessed in the Gateway determination report, the proposal is consistent with the following relevant Section 9.1 Directions:

- Direction 1.1 Business and Industrial Zones;
- Direction 2.6 Remediation of Contaminated Land (provisions previously under State Environmental Planning Policy No 55 – Remediation of Land);
- Direction 3.1 Residential Zones; and
- Direction 3.4 Integrating Land Use and Transport.

The Gateway determination report noted that a future development application for the site might involve the demolition of the heritage listed Bull and Bush Hotel, and so it was determined that it might be possible that the proposal could achieve consistency with Direction 2.3 Heritage Conservation – either through the retention of the item, or through appropriate interpretation in the new design.

Since the Gateway was issued, and the proposal has been progressed, it is clear the proposal will result in the demolition of the heritage item. Further, the applicant has not provided the Heritage Impact Statement requested by the Panel, and the draft DCP does not provide adequate strategies for heritage interpretation or mitigating the impacts of the loss of a local item.

Considering the above, the proposal's consistency with this Direction has been reassessed. The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. This Direction requires a planning proposal contain provisions that facilitate the conservation of a heritage item.

A Heritage report (2016 Planning Proposal Option Assessment Heritage report) was submitted with the planning proposal. The Panel requested the preparation of a Heritage Impact Statement to inform the draft DCP but the proponent sought to rely on the existing 2016 heritage report. The justification for this decision is that it considered the history of the heritage item, the impact of a potential redevelopment of the site and provided a range of mitigation measures. The report considered the impact of upgrades within Windsor and Seven Hills Roads would have resulted in the substantial partial demolition of the Bull and Bush hotel.

In the above circumstances, the report found that a proposal for redevelopment that included a new hotel and provided for appropriate site interpretation is acceptable in heritage terms. The Department notes the following from the Heritage report:

- Commentary on the architecture of the building, in particular the Inter War character. A strong element of the Inter War design is the symmetry of the building around the central and axial gabled two storey form. The lower wings to the north and south are deliberately subservient to this with their low spreading roofs and use of gables for first floor accommodation;
- The road widening works (grade separation) will remove a substantial portion of the northern wing destroying the symmetry and the original design intent of the building addressing the intersection; and
- Heritage item inventory states 'significance lies in the site and is continuity of use from 1822 to the present as an inn at the junction of the two major roads...'. Council's heritage listing does not mention the existing building as having particular significance.

As outlined under Section 4.3.1 of this report, the Department recommended opportunities should be investigated for heritage interpretation, including how the future building could replicate the Bull and Bush Hotel's current relationship with the intersection. It is noted that urban design report supporting the original proposal included preliminary work on how future built form may respond to the geometry of the existing hotel. This work has not been completed for the revised design and requires further investigation. This work should also be supported by a revised heritage report.

The appropriate treatment and response to heritage on the site remains unresolved, the planning proposal does not meet the objectives of this Direction and as such, the proposal is inconsistent with this Direction.

5.1.2 State Environmental Planning Policies

The LEP amendment is consistent with relevant SEPPs.

5.1.3 Greater Sydney Region Plan and Central City District Plan

Since the Gateway determination (12 May 2017), the strategic planning framework has changed. The Greater Sydney Region Plan is the overarching strategy for growing and shaping the Greater Sydney Area. It sets a 40-year vision (to 2056) and establishes a 20-year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters. It is underpinned by the Central Sydney District Plan, which includes The Hills Shire LGA, that sets the 20-year vision for the District through planning priorities that are linked to the Regional Plan.

The Greater Sydney Commission (GSC) released the Central City District Plan on 18 March 2018. The Gateway determination for the site was issued prior to the District Plan coming into effect, therefore an assessment is provided as follows.

The Department considers in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979* that the planning proposal does not give effect to the Central City District Plan and is inconsistent with the following planning priorities:

- Planning Priority C1 Planning for a city supported by infrastructure;
- Planning Priority C3 Providing services and social infrastructure to meet people's changing needs;
- Planning Priority C5 Providing housing supply, choice and affordability, with access to jobs, services and public transport;
- Planning Priority C6 Creating and renewing great places and local centres, and respecting the District's heritage; and
- Planning Priority C9 Delivering integrated land use and transport planning and a 30-minute city.

The District plan emphasises creating capacity for new housing in the right locations, to optimise existing infrastructure and maximise investment in new infrastructure. While the planning proposal will facilitate the delivery of 200 dwellings, Baulkham Hills is identified within the longer term future city-shaping corridor by 2056 (Future Transport 2056). As such, there is no certainty with respect to infrastructure investment and in this way, the proposal is not aligning land use and infrastructure planning.

In respect of social infrastructure, there is an intention to deliver the community facility and library however the proposal provides insufficient mechanisms to secure local and regional infrastructure provision to support growth and the community's needs.

The District Plan identifies principles for the development of local centres, which includes Baulkham Hills Town Centre. Councils will need to consider which centres will be appropriate to accommodate additional housing as part of their housing strategy. The Hills Draft Housing Strategy has stated future uplift in the Baulkham Hills town centre would only be supported once investment in infrastructure is secured. The draft housing strategy identifies 600 dwellings till 2036, 1,300 dwellings for beyond 2036.

It is noted the planning proposal supports the District Plan's direction to provide opportunity for the centre's employment function to grow through protecting and expanding retail and/or commercial floor space and employment opportunities.

The District Plan emphasises the importance of heritage and history as components of local identity and contributing to great places. Respectfully combining heritage and history with modern design achieves an urban environment that demonstrates shared values and contributes to a sense of place and identity. Sympathetic built form controls, adaptive re-use of heritage to manage the conservation of heritage significance within new developments is recommended under the District Plan. As discussed under Section 5.1.1 the proposal is inconsistent with the Section 9.1 Direction, 2.3 Heritage Conservation.

In addition, several District Plan sustainability priorities are relevant to this proposal as raised by EES (discussed in Section 3.2.1 of this report). These are discussed as follows:

- Planning Priority 16 Increasing urban tree canopy cover and delivering Green Grid connections and Planning Priority 17 Delivering high quality open space:
The proponent states the overall amount of landscaped area will increase on site as a result of the proposal and will be addressed in a future development application for the site. The site is not identified as part of a Green Grid link and it is not appropriate to apply this to the site in an urban town centre context. However, the proposal does not adequately demonstrate how existing trees on site will be integrated into the concept design as discussed previously.

The proposal does not give effect to these Priorities.

- Planning Priority 19 Reducing carbon emissions and managing energy, water and waste efficiently:

These matters could be adequately addressed in the site-specific draft DCP. In addition, they can be assessed further as part of any future development application for the site.

The proposal gives effect to this Priority.

5.1.4 The Hills Local Strategic Planning Statement

The Hills Local Strategic Planning Statement 2036 (LSPS) was endorsed by the Greater Sydney Commission on 4/3/2020 and provides the land use vision for The Hills Shire and gives effect to the Greater Sydney Region Plan and Central City District Plan.

Council's LSPS notes the following in respect of Baulkham Hills town centre and the subject site:

- Council will prepare a precinct public domain strategy for the Baulkham Hills town centre.
- Baulkham Hills is a housing growth location with 600 dwellings expected by 2036.
- Planning Priority 9 Renew and create great places - Council discourages commercial and residential uplift in Baulkham Hills Town Centre until transport and traffic matters are resolved.
- Planning Priority 11 Planning for convenient, connected and accessible public transport references TfNSW's Future Transport 2056 which identifies Baulkham Hills as part of a city shaping corridor/mass transit link between Parramatta and Norwest. Council note, assuming this would be a metro system, identifying a station location would reaffirm a commitment to the link and provide an opportunity to develop a bus interchange to service this route while planning for mass transit link is underway. A possible location could be behind the Bull and Bush site.
- Planning Priority 14 Plan for a safe and efficient regional road network advocates Council's request for construction of an overpass or underpass (known as grade separation) at Windsor Road and Seven Hills/Old Northern Road will improve intersection capacity and functionality.

Consistent with the Central City District Plan and Council's LSPS, the Department will support Council in liaising with TfNSW to resolve the regional traffic congestion experienced at the intersection of Windsor, Seven Hills and Old Northern roads.

The Department supported TfNSW's requirement of a 10m and 11m setback from Seven Hills Road and Windsor Roads respectively to future proof the intersection for upgrades, it is noted the intention for that land is unknown.

Considering the above, the proposal is inconsistent with the LSPS.

5.1.5 Strategic merit

Since the Gateway determination in 2017, the strategic planning framework has evolved and it is clear Baulkham Hills town centre is not a location that has been identified for short to medium term planning and growth to meet the residential and employment targets for the Hills local government area. The proposal doesn't demonstrate strategic merit because:

- The proposal is inconsistent with several priorities in the Central City District Plan (refer to Section 5.1.3 of this report) and therefore does not give effect to the District Plan. In particular:
 - the proposal is inconsistent with 'Planning Priority C1 Planning for a city supported by infrastructure' and 'Planning Priority C5 Providing housing supply, choice and affordability, with access to jobs, services and public transport' because the LSPS and TfNSW's Future Transport 2056 recognises the need for a comprehensive review of the infrastructure requirements for Baulkham Hills and that the infrastructure and land use planning for Baulkham Hills is a long-term project (2056). The LSPS nominates other centres where short term and medium-term growth can be delivered and supported by infrastructure;
 - the proposal is inconsistent with 'Planning Priority C3 Providing services and social infrastructure to meet people's changing needs' because there is remaining uncertainty about the delivery of the community facility and library to Council's satisfaction;
 - the proposal is inconsistent with 'Planning Priority C6 Creating and renewing great places and local centres and respecting the District's heritage' because the concept supporting the planning proposal is for the demolition of the local heritage listed hotel on site, and does not provide adequate strategies for mitigating the impacts of this loss. The Panel requested that a Heritage Impact Statement be provided to inform the development concept that informed the recommended height and FSR controls and the draft DCP, and this was not provided by the proponent.
- The proposal is inconsistent with Council's LSPS, in particular, 'Planning Priority 9 Renew and create great places' where Council discourages commercial and residential uplift in Baulkham Hills Town Centre until transport and traffic matters are resolved.

5.1.6 Site-Specific merit

The Panel and the Department have concluded the proposal does not have site-specific merit due to the following:

- The proposal has not demonstrated that the height of building and floor space ratio could result in an appropriate development on the site with consideration of public domain, SEPP 65 and design excellence. The public domain peer review and draft DCP do not provide adequate information about the proposed built form and the implications of the increased setbacks, which have been increased since the submission of the original design report.
- The proposal does not appropriately assess and mitigate the proposed demolition of the local heritage item
- As mentioned above, there is no certainty that the social infrastructure required to support the development will be delivered.
- The Department does not support the deletion of the minimum non-residential floor space requirement from the planning proposal and draft DCP as amended and submitted for consideration of the Panel. It is noted that the draft DCP provides minimum area requirements for the Bull and Bush Hotel (1,150m²) and the library/community facilities (2,500m²), but does not secure the 6,040m² of commercial and retail floor space previously proposed to be part of the planning proposal.

5.1.7 Local Planning Panel recommendation

The planning proposal was not referred to the local planning panel under Section 2.19(1)(b) of the Act. The requirement for councils to seek advice from the Local Planning Panel on planning proposals prior to reporting to Council for a Gateway Determination came into effect in mid-2018. Council considered whether to forward this planning proposal to the Department for a Gateway Determination on 12/05/2017. Therefore, the requirement to refer the matter to the Panel does not apply in this instance.

5.2 Local Infrastructure Provision

A community facility is required in this location to support the new residents and workers. That there is still no certainty that the community facility will be provided and dedicated to Council is a key outstanding issue for this proposal.

The proponent and Council have been progressing the preparation of a VPA to secure this outcome, but discussions are still ongoing. We understand that Council is yet to provide its comments on the latest offer.

The proponent has explored alternative means for securing this outcome, including a Deed, additional permissible use provisions, and other covenants on title.

These mechanisms may well have the potential to require that the facility be provided as part of the site's renewal and make arrangements for design and dedication. However, they do not resolve the issue that there is still no agreement between the proponent and Council as to the finishes and details of the facility. These decisions are important as Council will be the owner and operator of the facility.

In regard to the Deed, this was a mechanism recommended by Department officers as a potential way to reinforce the effect of a draft VPA, in the instance that the VPA had not been executed and registered to Title at the time of rezoning. In this instance, a draft VPA has not been finalised, and the Deed does not serve to resolve the final design issues with Council.

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine not to make the draft LEP under clause 3.36(2)(b) of the *Environmental Planning and Assessment Act 1979* because:

- The proposal has not demonstrated strategic and site-specific merit.
- The proposal has unresolved objections from the community, Council and agencies.
- The proposal does not resolve issues raised by the Sydney Central City Planning Panel, particularly in relation to design excellence, appropriate bulk and scale for the context, impacts on local character and minimum employment floor space, and the Panel recommended that the planning proposal not proceed.
- The proposal has unresolved inconsistencies with Section 9.1 Direction 2.3 Heritage Conservation.
- The proposal does not give effect to the Central City District Plan in accordance with section 3.8 of the Act.
- The proposal has not demonstrated consistency with The Hills Local Strategic Planning Statement.
- Any additional development capacity for the site should be considered as part of the Council's strategic forward planning under its Local Strategic Planning Statement and Local Housing Strategy and coordinated with planning for supporting infrastructure and services.

- The proposal has not demonstrated how the regional and local infrastructure requirements of the area can be met.



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Attachments

Attachment A1 – Planning proposal

Attachment A2 – Urban design assessment

Attachment A3 – Peer review of public domain

Attachment A4 – Traffic impact assessment

Attachment A5 – Addendum to traffic report July 2019

Attachment A6 – Addendum to traffic report February 2020

Attachment A7 – Addendum to traffic report September 2020

Attachment A8 – Heritage report

Attachment A9 – Phase 1 environmental site assessment report

Attachment A10 – Draft DCP

Attachment B1 – Gateway determination

Attachment B2 – Gateway planning team report

Attachment C – Council report December 2017

Attachment D1 – DPIE letter to Panel – alternate PPA

Attachment D2 – Alteration of Gateway determination

Attachment E1 – Submissions report

Attachment E2 – Community submissions

Attachment E3 – EES submission

Attachment E4 – TfNSW submission

Attachment E5 – Council submission December 2018

Attachment E6 – Proponent response to EES and community submissions

Attachment E7 – Proponent response to TfNSW submission

Attachment F – The Hon David Elliott MP representations

Attachment G – Council letter September 2019

Attachment H – TfNSW comments on traffic report addendums

Attachment I – Panel deferral decision May 2020

Attachment I1 – 15 – Council and proponent progress updates

Attachment J – Panel update September 2020

Attachment K – DPIE legacy proposal letter to Council October 2020

Attachment L – Council letter to Panel November 2020

Attachment M – DPIE letter to Panel November 2020

Attachment N – Panel decision December 2020