

Planning Services

Gateway Determination Report

LGA	The Hills Shire
PPA	The Hills Shire Council
NAME	Amendments to <i>Clause 4.1B Exceptions to minimum lot sizes for certain residential development</i>
NUMBER	PP 2018 THILL 002 00
LEP TO BE AMENDED	The Hills Local Environmental Plan 2012
ADDRESS	All land zoned R3 Medium Density Residential and R4 High Density Residential in The Hills Shire
DESCRIPTION	Multiple
RECEIVED	23 April 2018
FILE NO.	IRF18/2038
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The planning proposal seeks to amend The Hills Local Environmental Plan 2012 *Clause 4.1B Exceptions to minimum lot sizes for certain residential development* to require a minimum lot size of 1800m² for the development of small-lot attached and detached housing and to include a new minimum lot size of 180m² for terrace housing with rear-lane access. The planning proposal does not seek to amend the existing minimum lot size for attached or detached housing of 240m² in the R3 Medium Density Residential and R4 High Density Residential zones.

Site description

Clause 4.1B applies to all land zoned R3 Medium Density Residential and R4 High Density Residential within The Hills Shire local government area.

Existing planning controls

Clauses 4.1A and 4.1B of The Hills LEP 2012 provide additional minimum lot size controls for various forms of residential development. Under clause 4.1A, multi-dwelling housing is required to have a minimum lot size of 1800m² in the R3 and R4 zones.

Clause 4.1B provides an important differentiation from clause 4.1A as it enables land to be Torrens title subdivided for attached and detached housing with a minimum lot size of 240m². This is referred to as small-lot housing.

Clause 4.1B of The Hills LEP 2012 enables small-lot housing where:

- land is zoned R3 Medium Density Residential or R4 High Density Residential;

- a single development application is lodged for subdivision resulting in three or more lots and the erection of an attached dwelling or dwelling house on each lot; and
- each resulting lot has a minimum size of 240m².

A key difference between clauses 4.1A and 4.1B is that clause 4.1B does not require a minimum development lot size to enable development for the purpose of small-lot housing to occur, so landowners may be able to utilise the provisions of clause 4.1B if they cannot meet the minimum lot size requirements of clause 4.1A in the R3 and R4 zones. The planning proposal is seeking to introduce a minimum development lot size of 1800m² for attached and detached small-lot housing under clause 4.1B.

Clause 4.1B is as follows:

4.1B Exceptions to minimum lot sizes for certain residential development

- (1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (2) This clause applies to development on land in the following zones:*
 - (a) Zone R3 Medium Density Residential,*
 - (b) Zone R4 High Density Residential.*
- (3) Development consent may be granted to a single development application for development to which this clause applies that is both of the following:*
 - (a) the subdivision of land into 3 or more lots,*
 - (b) the erection of an attached dwelling or a dwelling house on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
 - (i) for the erection of a dwelling house—240 square metres, or*
 - (ii) for the erection of an attached dwelling—240 square metres.*

Summary of recommendation

The proposal is suitable to proceed to the next stage as:

- it has the potential to deliver good built form outcomes for medium-density housing in R3 Medium Density Residential and R4 High Density Residential zones; and
- it has the potential to complement the provisions and best-practice principles of the recently released Low Rise Medium Density Housing Code.

However, it is considered that further information is required to demonstrate consistency with the above. It is recommended the planning proposal proceed subject to conditions.

PROPOSAL

Objectives or intended outcomes

As noted in the planning proposal (**Attachment A**), the proposed amendments aim to discourage the overdevelopment of standard single residential lots and ensure that small-lot housing is delivered in a suitable form on larger allotments (or where lots can be amalgamated) within the R3 Medium Density Residential and R4 High Density Residential land-use zones. The objective of the proposal is to provide

certainty of outcomes for development consents issued under clause 4.1B and facilitate diversity of housing choice without adversely impacting on residential amenity.

The planning proposal also seeks to include new provisions for small lot attached housing where access is provided from a rear lane. Council considers that this form of development has improved urban design outcomes due to the activation of the primary streetscape and removal of garages to the rear of the property, and as such is seeking to reduce the minimum allotment size for this form of housing to 180m².

Explanation of provisions

The planning proposal proposed the following amendments to The Hills LEP clause 4.1B (amendments in bold and underlined):

4.1B Exceptions to minimum lot sizes for certain residential development

- (4) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (5) This clause applies to development on land in the following zones:*
 - (a) Zone R3 Medium Density Residential,*
 - (b) Zone R4 High Density Residential.*
- (6) Development consent may be granted to a single development application for development to which this clause applies that is both of the following:*
 - (a) **The land to be subdivided is not less than 1800 square metres***
 - (b) the subdivision of land into 3 or more lots,*
 - (c) the erection of an attached dwelling or a dwelling house on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
 - (i) for the erection of a dwelling house—240 square metres, or*
 - (ii) for the erection of an attached dwelling—240 square metres, or*
 - (iii) **for the erection of an attached dwelling where rear lane access is provided – 180 square metres.***

Mapping

There are no mapping changes required as part of the planning proposal.

NEED FOR THE PLANNING PROPOSAL

Council notes in its planning proposal that amending clause 4.1B will ensure certainty of development outcomes, such as desirable amenity and streetscape while increasing housing choice in strategic locations (this is assessed later in this report). Council also notes that the introduction of a minimum lot size of 180m² for attached dwellings with rear-lane access will be an incentive for the provision of laneways and facilitate active laneway frontages.

On 23 May 2018, The Hills Shire LGA was deferred from the commencement of the Low Rise Medium Density Housing Code. This deferral provides Council with the opportunity to review the application of the code to its residential zones. Given that minimum residential lot sizes and provisions for small-lot housing are relevant to the application of the code, it is considered appropriate for the subject planning proposal

and supporting documentation to be updated to consider consistency with the provisions and best-practice guide of the code. This matter is discussed in more detail below.

Background

The Hills Local Environmental Plan 2012

As noted in the planning proposal (**Attachment A**), *Clause 4.1B Exceptions to minimum lot sizes for certain residential development* of The Hills LEP 2012 is an optional model clause introduced by the Department for Standard Instrument Local Environmental Plans. In 2010, Council sought to limit the application of this clause to land zoned R3 Medium Density Residential within the Rouse Hill Development Area (including the Balmoral Road Release Area).

The provisions of the Standard Instrument meant Council was unable to limit the application of the provision to a specific geographic area and instead had to apply it to specific land-use zones. Alongside the introduction of clause 4.1B under The Hills LEP 2012, The Hills Development Control Plan 2012 Part D Section 5 – Kellyville Rouse Hill Release Area was prepared to provide specific controls for small-lot housing in the Rouse Hill Development Area. The development area is a location in which small-lot housing outcomes were envisaged by Council.

Council notes that development applications for small-lot housing are increasingly being lodged LGA-wide, outside of the Kellyville Rouse Hill Release Area nominated in The Hills DCP. The current planning proposal is accompanied by a DCP amendment to provide further controls for small-lot housing.

Development applications

As noted in the planning proposal (**Attachment A**) a development application was lodged with Council on 29 May 2017 for the demolition of a single-storey dwelling, the subdivision of one lot into three Torrens title lots and the construction of three dwellings in accordance with the provisions of clause 4.1B of The Hills LEP 2012 at 32 Sherwin Avenue, Castle Hill. The proposed lot sizes vary from ~250m² to ~320m² (**Attachment E**).

The development application was refused by Council on 14 November 2017. The applicant has appealed Council's refusal of the development application, and amended plans (3 April 2018) are being renotified by Council. As the development application uses clause 4.1B of The Hills LEP 2012, it will potentially be impacted by this planning proposal.

There may also be other development applications lodged with Council that will potentially be impacted by this planning proposal.

It is recommended that the Gateway determination includes a condition requiring Council to provide details of any current development applications lodged with Council that utilise the provisions of Clause 4.1B to consider whether or not savings and transitional provisions should apply to specific development applications.

STRATEGIC ASSESSMENT

Regional / District

Greater Sydney Region Plan

The Greater Sydney Region Plan provides a 40-year vision for the Greater Sydney region. The following objectives are considered relevant for the planning proposal:

- Objective 10 – Greater housing supply; and
- Objective 11 – Housing is more diverse and affordable.

Council's planning proposal notes the amendments will provide an opportunity to ensure high-quality design and diversity outcomes for medium-density housing forms and facilitate capacity in appropriate locations, including Sydney Metro Northwest railway station precincts and local infill areas that are close to local services.

It is considered that further evidence is required to demonstrate the proposed amendments will not adversely affect housing diversity. The requirement for a parent lot size of 1800m² for small-lot housing development in all R3 Medium Density Residential and R4 High Density Residential zones may limit the potential for the delivery of small-lot housing development as it will reduce the flexibility in the required minimum allotment size currently afforded by clause 4.1B and align it with the existing lot size requirements for multi-dwelling housing under clause 4.1A.

Central City District Plan

The Central City District Plan was released in March 2018, after the planning proposal was submitted. The following planning priority of the plan is relevant to the proposal:

- Planning Priority C5: Providing housing supply, choice and affordability, with access to jobs, services and public transport.

Council's planning proposal notes that Council is seeking to develop its housing strategy and the proposed amendments will contribute to key principles of housing supply, diversity, market demand, amenity, good design and local character.

As discussed previously, the planning proposal needs to provide further evidence to demonstrate the implications of the proposal, particularly in decreasing the flexibility currently afforded by clause 4.1B in enabling small-lot housing in circumstances where the minimum allotment size of 1800m² cannot be achieved in the R3 and R4 zones.

Local

The Hills Future Community Strategic Plan

The following key outcomes and strategies from The Hills Future Community Strategic Plan are relevant to this proposal:

- Outcome: A connected and supported community with access to a range of services and facilities that contribute to health and wellbeing.
 - Strategy: Facilitate the provision of services across the community.
- Outcome: Responsible planning facilitates a desirable living environment and meets growth targets.

- Strategy: Manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.

As discussed previously, the planning proposal needs to provide further evidence to assess the potential impacts of the proposed provisions on housing diversity and consider the policy directions of the new Low Rise Medium Density Housing Code.

Local Strategy

Council's Local Strategy is supported by seven strategic directions. Relevant to this proposal is the residential direction, which is summarised as follows:

Residential Direction

Key directions and objectives

- R1 Accommodate population growth;
 - Ensure that planning controls effectively provide for balanced growth in the Shire's population;
- R2 Respond to changing housing needs;
 - Provide for a diversity of housing choice that is appropriate to residents' needs; and
- R3 Provide a sustainable living environment;
 - Manage potential conflicts between more intense land uses and residential amenity.

Key challenges

- Perceived or real lack of viability for some forms of development.

The planning proposal does not provide sufficient evidence to understand potential implications on the viability of delivering diverse housing choices and multi-dwelling/terrace-style housing in the R3 Medium Density Residential and R4 High Density Residential zones, as discussed further below.

Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all section 9.1 Directions, except Direction 3.1 Residential Zones.

The objectives of this Direction are to encourage a variety of housing types, make efficient use of existing infrastructure and services, ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource land.

The planning proposal is inconsistent with this Direction as it may reduce dwelling potential by reducing flexibility in the application of clause 4.1B and introducing the same parent lot size for small-lot housing that exists under clause 4.1A for multi-dwelling housing. This may impact on the economic viability of small-lot housing when competing against these housing types. To understand the impact on dwelling potential, a Gateway condition is included requiring Council to provide further information in relation to:

- the total area of land zoned R3 Medium Density Residential and R4 High Density Residential in the LGA;

- a summary of the number of small-lot housing developments approved under clause 4.1B in the past five years, the minimum development lot size and the number of small housing lots produced; and
- a summary of the number of multi-dwelling housing developments approved in the R3 and R4 zones under clause 4.1A in the past five years.

It is considered suitable to allow the proposal to progress with the inconsistency with this Direction remaining unresolved. This will allow further consultation and quantitative analysis, which can then be considered prior to plan-making and will determine if the inconsistency is of minor significance.

State environmental planning policies (SEPPs)

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The new Low Rise Medium Density Housing Code came into effect on 6 July 2018.

The code aims to provide greater housing choice and facilitate faster housing approvals. It will allow one-storey and two-storey dual occupancies, manor houses and terraces to be carried out under a complying development approval.

In relation to the planning proposal, the code allows for the development of manor houses, terraces and multi-dwelling housing where multi-dwelling housing is currently permitted.

The subject planning proposal was submitted for a Gateway prior to the finalisation of amendments to the Codes SEPP.

On 23 May 2018, Council sought a deferral of the implementation of the code until 1 July 2019 or until Council has prepared a new local housing strategy and LEP. Deferral was granted to Council on 5 July 2018.

A deferral from the commencement of the code for The Hills Shire LGA provides Council with the opportunity to review the application of the code to its residential zones and to provide a planning proposal to the Department, if required.

A Gateway condition is recommended requiring Council to consider the consistency of the planning proposal with the provisions and best-practice guide within the code, and an analysis of the implications associated with proposing a minimum parent lot size for small-lot housing. Where inconsistencies are identified, it is considered that the proposal should be amended to demonstrate why the revised minimum lot size and development controls would result in a better design outcome.

It is considered that the planning proposal should be amended prior to exhibition to understand the impacts of the planning proposal on the Codes SEPP to determine the acceptability of the proposal, and the Gateway determination has been conditioned accordingly.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The intent of this SEPP is to increase the supply and diversity of affordable rental housing.

Under the SEPP, a multi-dwelling housing development that is used for affordable housing and complies with the requirements of the SEPP may be subject to a bonus floor space ratio.

The proposed minimum parent lot size requirements may have implications for this type of development from being carried out under the SEPP, and the quantitative analysis required to be undertaken as part of the Gateway determination will enable a better understanding of the impact of the proposal on housing supply and diversity.

SITE-SPECIFIC ASSESSMENT

Social

The proposal aims to retain the existing character of the R3 Medium Density Residential and R4 High Density Residential zones and ensure that development remains consistent with the existing level of access to social and utility infrastructure.

Environmental

The planning proposal is not anticipated to have any adverse impacts on critical habitats or threatened species.

In terms of built form outcomes, it is understood that Council has concerns with the redevelopment of traditional allotment sizes that have been rezoned for medium-density and high-density purposes for small-lot housing. The planning proposal refers to a development application that was recently considered by Council that proposes a three-lot subdivision on 830m² where only one of the allotments is provided with street frontage (**Attachment E**).

However, the Department considers there is merit in affording flexibility for small-lot housing developments and providing a point of difference to the development of multi-dwelling where minimum lot sizes of 1800m² cannot be generated. Therefore, it is considered that Council should carry out an urban design study that considers:

- the minimum lot size required to achieve the intent of the planning proposal; or
- an alternative solution that achieves the intent of the planning proposal, while retaining a point of difference between small-lot housing and multi-dwelling housing in the R3 and R4 zones in terms of minimum development lot sizes.

Economic

The planning proposal introduces parent development lot size provisions that are the same as those for multi-dwelling housing and residential flat buildings in the R3 and R4 zones. The development of small-lot housing is a viable alternative to these housing forms where a minimum lot size of 1800m² is not able to be created.

It is recommended that landowners within the R3 and R4 zones be informed about the proposal and its exhibition and given suitable time to make their own assessment on the matter.

The issues raised will need to be addressed prior to the planning proposal being exhibited, including reconsideration of section 9.1 Direction 3.1 Residential Zones and the impacts of the Low Rise Medium Density Housing Code.

CONSULTATION

Community

A Gateway condition is included requiring that Council write to all affected landowners about the exhibition of the proposal explaining details on how to make a submission, proposed amendments and how they may affect future development of residential land.

An exhibition period of 28 days is considered acceptable to allow all affected landowners to review the material, seek their own advice and make a submission to Council.

Agencies

Consultation with other state agencies is not considered necessary. The proposal will not increase demands on infrastructure, nor does it have the potential to impact on the natural environment or heritage values.

TIME FRAME

The LEP is to be made by 1 July 2019.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the plan-making authority. Given the implications this planning proposal may have on state policy, it is recommended that Council not be granted plan-making authority.

CONCLUSION

The proposal is suitable to proceed to the next stage as:

- it has the potential to deliver good built form outcomes for medium-density housing in R3 Medium Density Residential and R4 High Density Residential zones; and
- it has the potential to complement the provisions and best-practice principles of the recently released Low Rise Medium Density Housing Code.

However, it is considered that further information is required to demonstrate consistency with the above. It is recommended the planning proposal proceed subject to conditions.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Directions 3.1 Residential Zones is unresolved.

It is recommended that the delegate of the Greater Sydney Commission determine that the planning proposal should proceed subject to the following conditions:

1. Council is to amend the planning proposal to include:
 - (a) the total area of land zoned R3 Medium Density Residential and R4 High Density Residential in the LGA;
 - (b) a summary of the number of small-lot housing developments approved under clause 4.1B in the past five years, the minimum development lot size and the number of small housing lots produced;

- (c) a summary of the number of multi-dwelling housing developments approved in the R3 and R4 zones under clause 4.1A in the past five years;
 - (d) details of any current development applications lodged with Council that utilise the provisions of Clause 4.1B to enable consideration of the need to introduce a savings and transitional provision for certain development applications;
 - (e) provide further evidence to demonstrate how the proposed minimum parent lot size of 1800m² was derived and whether this minimum lot size can be reduced as a result of further urban design testing. The planning proposal should also address how housing diversity in the R3 and R4 zones will be achieved if small lot housing can no longer be constructed on development lots less than 1800m²; and
 - (f) consideration of the consistency of the planning proposal with the provisions and best-practice guide within the Low Rise Medium Density Housing Code, and an analysis of the implications associated with proposing a minimum parent lot size for small lot housing. Where inconsistencies are identified, the planning proposal should include information demonstrating why the revised minimum lot size and development controls would result in a better design outcome.
- 2. The planning proposal is required to be referred to the Department for review and approval prior to exhibition.
 - 3. Council is to write to all affected landowners about the exhibition of the proposal explaining how to make a submission, the proposed amendments and how they affect the future provision of small lot housing
 - 4. The LEP is to be completed by 1 July 2019.
 - 5. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



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31/07/2018

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