

## PLANNING PROPOSAL

**LOCAL GOVERNMENT AREA:** The Hills Shire Council

**NAME OF PLANNING PROPOSAL:** Proposed The Hills Local Environmental Plan 2012 (Amendment No. (#)) and State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Amendment No. (#)) – planning proposal to limit building height and require a minimum provision of non-residential floorspace for shop top housing and mixed use developments and prohibit shop top housing in certain zones in the North Kellyville and Box Hill Release Areas

**ADDRESS OF LAND:**

- Land zoned B1 Neighbourhood Centre and B2 Local Centre identified on the proposed Key Sites Map under The Hills Local Environmental Plan 2012.
- Land zoned B1 Neighbourhood Centre and B2 Local Centre within the North Kellyville Precinct identified on the proposed Key Sites Map under State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
- All land zoned R1 General Residential within the North Kellyville Precinct under Appendix 2 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
- Land zoned B2 Local Centre within the Box Hill Precincts identified on the proposed Key Sites Map under State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
- All land zoned R2 Low Density Residential and R3 Medium Density Residential under Appendix 11 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Box Hill Precincts).

**SUPPORTING MATERIAL:**

|                        |                                                                                                                                                                                               |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Attachment A</b>    | Assessment against State Environmental Planning Policies                                                                                                                                      |
| <b>Attachment B</b>    | Assessment against Section 117 Local Planning Directions                                                                                                                                      |
| <b>Attachment C</b>    | Council Report and Resolution of 15 December 2015                                                                                                                                             |
| <b>Attachment D(1)</b> | Council Report and Resolution of 13 December 2016 (including Attachments 1 – 5)                                                                                                               |
| <b>Attachment D(2)</b> | Attachment 6 – 8 of Council Report of 13 December 2016 – The Hills DCP 2012 Part B Section 5 – Residential Flat Building, Part C Section 1 – Parking, and Part B Section 8 – Shop Top Housing |
| <b>Attachment D(3)</b> | Attachment 9 of Council Report of 13 December 2016 - North Kellyville Development Control Plan                                                                                                |
| <b>Attachment D(4)</b> | Attachment 10 of Council Report of 13 December 2016 - Box Hill Growth Centre Precincts Development Control Plan                                                                               |
| <b>Attachment E</b>    | Gateway Determination and Alteration to Gateway Determination                                                                                                                                 |
| <b>Attachment F</b>    | Copy of Public Authority Submissions (first consultation)                                                                                                                                     |
| <b>Attachment G</b>    | Copy of Public Authority Submissions (second consultation)                                                                                                                                    |
| <b>Attachment H</b>    | Copy of Public Submissions (first consultation)                                                                                                                                               |
| <b>Attachment I</b>    | Copy of Public Submissions (second consultation)                                                                                                                                              |
| <b>Attachment J</b>    | Proposed Clauses and Land Use Tables (amended planning proposal – post exhibition)                                                                                                            |
| <b>Attachment K</b>    | Proposed Key Sites Maps and Additional Permitted Uses Map                                                                                                                                     |
| <b>Attachment L</b>    | Maps of subject properties identified as Flood Controlled Land                                                                                                                                |
| <b>Attachment M</b>    | Maps of subject properties identified as Bushfire Prone Land                                                                                                                                  |

**BACKGROUND:**

Council adopted its Centres Direction in 2009 to provide a clear strategy to protect and manage the Shire's centres to 2031. The Direction established a network of centres to provide places for residents to shop, work, and have social interaction and recreational opportunities. Centres are classified according to a centres hierarchy, providing a framework for their scale, location and function. This ensures that the population has access to a range of centres that meet their needs and are appropriate in scale and design for their location. A key issue facing

centres as identified in the Direction is the provision of sufficient retail space to meet the needs of the community. A Retail Floor Space and Demand Analysis undertaken by Hill PDA in 2008 assessed supply and demand for retail floor space and found that there was sufficient land and opportunities available within existing and proposed centres to meet retail demand.

Council's Standard Instrument LEP came into force in October 2012. The Standard Instrument provides a consistent format for all new principal LEPs in NSW. It sets out certain mandated permissible land uses and identifies shop top housing as a mandated use within certain residential and business zones. Since LEP 2012 came into force, Council has experienced a growing number of shop top housing proposals across the Shire, predominantly due to recent market conditions and pressure to provide residential development to ease Sydney's housing shortage.

A number of recent development applications and development enquiries to undertake shop top housing and mixed use developments have proposed outcomes that are not in keeping with the objectives of Council's business and residential zones, are not compatible with surrounding development, and compromise the retail and employment role of centres. Most of these have proposed relatively small amounts of retail/business floor space and higher than expected residential densities raising concern regarding the ability of centres to serve surrounding populations and the capacity of existing infrastructure in these locations to support additional population.

The above issues have necessitated a review of the controls applying to shop top housing and mixed use developments across all zones throughout the Shire including land zoned under LEP 2012 and land zoned under the Growth Centres SEPP within the North Kellyville and Box Hill Growth Centre Precincts.

## **PART 1 OBJECTIVES OR INTENDED OUTCOME**

The objective of the planning proposal is to ensure that the type, scale and location of shop top housing and mixed use development is appropriate and that developments reflect the role of centres established within Council's Centres Hierarchy. This will be achieved by limiting the height of shop top housing and mixed use developments, requiring a minimum provision of non-residential floorspace within business zones, and by prohibiting shop top housing in certain residential zones in the North Kellyville and Box Hill release areas.

## **PART 2 EXPLANATION OF THE PROVISIONS**

### **The Hills Local Environmental Plan 2012**

The following amendments are proposed to LEP 2012:

Amend the Key Sites Map to identify certain land zoned B1 Neighbourhood Centre and B2 Local Centre and include a new clause 7.12 'Additional controls applying to shop top housing and residential flat buildings as part of mixed use developments' under Part 7 Additional Local Provisions of LEP 2012. The new clause will provide that:

- The maximum height of buildings for shop top housing on land within the B1 Neighbourhood Centre zone, identified as "Area C" on the Key Sites Map, is 7 metres and that a development application shall not result in less than 50% of the total floor area on the subject land comprising non-residential uses; and
- The maximum height of buildings for shop top housing and residential flat buildings as part of mixed use developments on land within the B2 Local Centre zone, identified as "Area D" on the Key Sites Map, is 10 metres and that a development application shall not result in less than 50% of the total floor area on the subject land comprising non-residential uses.

## **State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

### North Kellyville Growth Centre Precinct

The following amendments are proposed to Appendix 2 North Kellyville Precinct Plan of *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*:

- (a) Introduce a Key Sites Map to identify land zoned B1 Neighbourhood Centre and B2 Local Centre and include a new clause 6.6 'Additional controls applying to shop top housing and residential flat buildings as part of mixed use developments' under Part 6 Additional Local Provisions. The new clause will provide that:
- The maximum height of buildings for shop top housing and residential flat buildings as part of mixed use developments on land zoned B1 Neighbourhood Centre, identified as "Area A" on the Key Sites Map, is 7 metres and that a development application shall not result in less than 50% of the total floor area on the subject land comprising non-residential uses;
  - The maximum height of buildings for shop top housing and residential flat buildings as part of mixed use developments on land zoned B2 Local Centre, identified as "Area B" on the Key Sites Map, is 10 metres and that a development application shall not result in less than 50% of the total floor area on the subject land comprising non-residential uses; and
  - The maximum height of buildings for residential flat buildings as part of mixed use developments on land zoned R1 General Residential, identified as "Area C" on the Key Sites Map, is 7 metres.
- (b) Introduce an Additional Permitted Uses Map to identify Lot 101 DP1082890 (9 Hezlett Road, Kellyville), Lot 201 DP1187326 (21 Hezlett Road, Kellyville) and Lot 2401 DP1213071 (103 Samantha Riley Drive, Kellyville) and amend Schedule 1 'Additional Permitted Uses' of Appendix 2 North Kellyville Precinct Plan of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 to identify that shop top housing is a permitted use on that land.

### Box Hill Growth Centre Precinct

The following amendments are proposed to Appendix 11 The Hills Growth Centre Precincts Plan (known as the Box Hill Precincts) of *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*:

- (a) Introduce a Key Sites Map to identify land zoned B2 Local Centre and include a new clause, 6.8 'Additional controls applying to shop top housing' under Part 6 Additional Local Provisions. The new clause will provide that:
- The maximum height of buildings for shop top housing on land zoned B2 Local Centre, identified as "Area D" on the Key Sites Map (i.e. all land zoned B2 Local Centre apart from the Box Hill Town Centre), is 10 metres and that a development application shall not result in less than 50% of the total floor area on the subject land comprising non-residential uses; and
  - The maximum height of buildings for shop top housing on land zoned B2 Local Centre, identified as "Area E" on the Key Sites Map (i.e. land within the Box Hill Town Centre only), is 20 metres and that a development application shall not result in less than 50% of the total floor area on the subject land comprising non-residential uses.

It is also proposed to prohibit shop top housing within most of the R1 General Residential zone in the North Kellyville Release Area (with the exception of R1 zoned land in the Hezlett Road Neighbourhood Centre) and in the R2 Low Density Residential and R3 Medium Density Residential zones in the Box Hill Release Area.

The Key Sites Map of *The Hills Local Environmental Plan 2012* will be amended and a Key Sites Map will be introduced for *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* to identify the land to which the above provisions apply. Draft clauses and land

use table amendments are provided as Attachment J and snapshots of the proposed Key Sites Maps are provided as Attachment K.

The planning proposal is supported by amendments to The Hills Development Control Plan 2012 and the North Kellyville and Box Hill Growth Centre Precincts DCPs which consolidate and strengthen existing controls from the Business and Residential Flat Building sections of DCP 2012. Additional controls are proposed where existing controls are not available or where alternative controls are considered more suitable for shop top/mixed use development. The proposed and consolidated controls primarily relate to building height, setbacks, common open space, landscaping and access and seek to ensure that developments reflect the desired scale for shop top housing, are of a high quality and provide adequate amenity. Existing controls from other DCP 2012 sections, in particular the Residential Flat Building section, are also proposed to apply including unit size/mix, parking, visual privacy, solar access, private open space, ventilation and storage to ensure appropriate residential outcomes are achieved.

## **PART 3 JUSTIFICATION**

### **SECTION A - NEED FOR THE PLANNING PROPOSAL**

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

The planning proposal is a result of a strategic review of shop top housing and mixed use developments across The Hills Shire. The outcomes of the review were reported to Council on 15 December 2015. The planning proposal also seeks to facilitate strategic outcomes as envisaged within Council's Draft Local Strategy (2008), Residential Direction (2008) and Centres Direction (2009).

#### *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 shop top housing and mixed use developments across the Shire. The proposal will help to ensure developments are of a suitable scale for their location and reflect the desired land use outcomes for zones within which they are located.

The precinct planning for the North Kellyville and Box Hill Growth Centres was finalised over eight years ago for North Kellyville and three years ago for Box Hill, which was prior to the strong market conditions for high density development. Appropriate densities for the precincts were determined based on historic development patterns which have shown relatively low construction of higher density housing types and typically little or no residential development within local and neighbourhood centre business zones. In order to encourage uptake, considerable flexibility has been provided within the Growth Centres planning framework to achieve State government initiatives of boosting housing delivery and affordability across Sydney. However, it has had the unintended consequence of facilitating significant additional density beyond what was anticipated and planned for. The Development Control Plans provide guidance on intended built form outcomes which recommend a scale of development that is being significantly exceeded by recent development proposals that generally meet existing planning controls under the Growth Centres SEPP.

A number of recent development applications and development enquiries to undertake shop top housing and mixed use developments have proposed significant residential densities in commercial areas well beyond the scope of what was intended for shop top housing and where significant residential densities were neither anticipated nor required to meet State government housing targets. These have also proposed a scale of development that is excessive in the context of surrounding lower scale residential development, impacting on the established density, character and amenity of these localities.

One such proposal included a mixed use/shop top development within the Hezlett Road neighbourhood centre in North Kellyville. Council's infrastructure plan anticipated a yield of

less than 10 dwellings in this centre given the focus for the centre is to provide small-scale retail, business and community uses, with some residential development (provided it does not detract from the primary function of the zone). However, consent was granted in July 2015 for a total of 209 units and 3,498m<sup>2</sup> of retail floor space on the site (86% residential and 14% retail) raising significant concern regarding capacity of existing and proposed infrastructure such as roads and open space within this area to support the additional population.

A further proposal was for 102 dwellings above Winston Hills Mall shopping centre. This application was refused by the Joint Regional Planning Panel in August 2015 on the basis the proposal was inappropriate for the site and incompatible with planning objectives and land uses of adjoining land (note, this application was subsequently approved by the Land and Environment Court with amendments including a reduction in the number of residential units). It is noted the applicable contributions plan did not anticipate any residential density on this land, thus the proposal raises significant concern regarding the capacity of infrastructure in this location to support the proposed additional population. Council's Centres Direction also identifies future retail expansion of this centre to assist its transition to a higher order centre. Therefore, concern was also raised that the proposal would significantly compromise the opportunity for the centre to be developed to its maximum potential as a local provider of retail services and employment.

The proposed amendments to building heights and the imposition of a limit on residential floorspace within shop top housing and mixed use developments will ensure that developments are in keeping with the intended scale and character for the locality and with the primary business and employment role of centres. The prohibition of shop top housing in low and medium density zones in the Growth Centre Precincts will also ensure that shop top housing is limited to within and surrounding centres that are supported by services and public transport.

## **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.

### **• A Plan for Growing Sydney**

On 14 December 2014, the NSW Minister for Planning released A Plan for Growing Sydney. The Plan is intended to guide land use planning decisions for the next 20 years and presents a strategy for accommodating Sydney's forecast population growth over this time. To achieve the Government's vision for Sydney as a "strong global City and a great place to live", the Plan sets out four (4) main goals, for Sydney to be:

- A competitive economy with world-class services and transport,
- A City of housing choice with homes that meet our needs and lifestyles,
- A great place to live with strong, healthy and well-connected communities, and
- A sustainable and resilient City that protects the natural environment and has a balanced approach to the use of land and resources.

The Plan identifies targets for the future growth of Sydney including the provision of an additional 664,000 new homes and 689,000 new jobs over the next 20 years.

Key principles contained within the Plan are to provide housing and employment in and around centres and encourage urban renewal in established areas. The Plan also notes that growth must be supported by essential infrastructure including transport, utilities and social infrastructure such as schools, child care centres, health facilities, open space and recreation.

It is considered that the planning proposal is consistent with the objectives of the Plan given it supports a reasonable level of residential growth whilst ensuring developments are of a

suitable scale and do not place undue pressure on public infrastructure. The planning proposal also seeks to ensure sufficient and well-located employment is available by requiring a minimum provision of non-residential floorspace within centres to ensure that local employment is supported and protected.

The permissibility of shop top housing and mixed use developments under the Standard Instrument provides an opportunity to diversify housing stock and contribute to the revitalisation of established areas. The planning proposal does not seek to prohibit these uses but simply aims to ensure that developments recognise and respond to the context within which they are located and meet the land use objectives for the zones within which they are situated. Importantly, the proposal will not impact on the Shire's capacity to meet established housing targets, given sufficient land has been identified in appropriate locations supported by the necessary infrastructure to accommodate growth.

- **Draft West Central District Plan**

The draft West Central District Plan was released by the Greater Sydney Commission for public exhibition on Monday 21 November 2016. The draft District Plan proposes a 20-year vision for the West Central District, which includes the local government areas of Blacktown, Cumberland (parts of the former Auburn, Parramatta and Holroyd), Parramatta (parts of former Parramatta, The Hills, Auburn, Holroyd and Hornsby) and The Hills. The plans provide district level planning that connects local planning with the longer-term metropolitan planning for Greater Sydney.

The planning proposal is consistent with the following key actions:

- *Direction 3.4.6 Planning for retail floor space provision and demand in the West Central District.* This Direction recognises the importance of reinforcing the strong focus on centres and the need to support the expansion of existing centres to accommodate the growth in demand for retail and associated services.
- *Direction 3.5 Improving access to a greater number of jobs and centres within 30 minutes.* This Direction recognises the importance of increasing the range of jobs and other opportunities that people can access within 30 minutes, which relies on better transport connections and strong centres.

The Planning Proposal is also considered to be consistent with the following Priorities for the West Central District:

- Productivity Priority 3: '*Manage Growth and change in strategic and district centres and, as relevant, local centres*' which requires Councils to consider opportunities for existing centres to grow and new centres to be planned to meet forecast demand across a range of retail types, to reinforce the suitability of centres for retail and commercial uses while encouraging a competitive market, and to consider the commercial requirements of retailers. Councils are required to demonstrate how its planning for centres will meet a range of outcomes including meeting the retail and service needs of the community and managing the transition between higher intensity activity in and around a centre and lower intensity activity that frames a centre. The subject planning proposal seeks to plan for development within centres that meets the retail, service and employment needs of the community. It seeks to retain the commercial and retail hierarchy of centres whilst providing for future growth and change.
- Productivity Priority 8: '*Prioritise the provision of retail floor space in centres*' which requires Councils to consider matters including the existing and future supply and demand for retail floor space within the District, and the accessibility of different types of retail and commercial floor space to communities when preparing a planning proposal. This planning proposal seeks to ensure that centres retain a retail and commercial focus by requiring that a development application for shop top housing or a residential flat building (as part of a mixed-use development) provide at least 50% of the total floor area of the building for non-residential uses.

- Liveability Priority 2: '*Deliver Housing Diversity*' which requires Councils to consider the needs of the local population by aligning local planning controls to address housing diversity to meet the existing and future housing market, and to deliver quality design outcomes for buildings and places. This planning proposal seeks to achieve centres that can support an appropriate level of residential development in conveniently located centres, ensuring developments are of a suitable scale for their location and are supported by appropriate infrastructure.

It is considered that the planning proposal is consistent with the draft West Central District Plan.

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

Yes, a discussion of consistency is 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 help to achieve key strategic outcomes of the Plan, specifically the provision of a modern local economy, vibrant communities and balanced urban growth by ensuring that:

- Business and employment opportunities are protected across centres of varying scales and typologies.
- Developments do not compromise the provision of infrastructure and facilities for existing and future residents.
- The planning framework achieves an appropriate balance of residential and commercial development that is in accordance with community needs and expectations.

- **Local Strategy**

In 2008 Council adopted its Local Strategy to provide the basis for the future direction of land use planning in the Shire and within this context implement the key themes and outcomes of the 'Hills 2026 Looking Toward the Future'. The Residential Direction and Centres Direction are the relevant components of the Local Strategy which have relevance to this Planning Proposal.

- **Residential Direction**

The Residential Direction reflects Council's desired approach to guide the planning, protection and management of the Shire's residential development. It establishes opportunities and mechanisms for ensuring residential development is planned and managed appropriately. Four key Directions have been established for the Shire's residential development including:

- R1 Accommodate population growth
- R2 Respond to changing housing needs
- R3 Provide a sustainable living environment
- R4 Facilitate quality housing outcomes

The Direction includes a target for an additional 36,000 dwellings within the Shire to 2031 based on the State's North West Subregional Strategy. It also demonstrates sufficient capacity to meet this target within existing and proposed residential and mixed use zones. Therefore,

significant residential densities as currently being proposed within the Shire's business zones are neither expected nor required to meet State government dwelling targets.

Objectives of the Direction relevant to the planning proposal include the provision of balanced growth, well located housing supported by infrastructure and a diversity of housing choice appropriate to resident needs. It is considered that the proposal is consistent with these objectives given it supports an appropriate level of residential development in conveniently located centres, ensuring developments are of a suitable scale for their location and are supported by appropriate infrastructure.

#### **- Centres Direction**

The Centres Direction seeks to establish a network of centres that provides places for residents to shop, work, and have social interaction and recreational opportunities. The Direction includes a centres hierarchy which provides a framework for the scale, location and function of centres. This ensures that the population has access to a range of centres that meet their needs and are appropriate in scale and design for their location.

The Centres Direction identifies a hierarchy and desired typology and scale for each centre and planned centre in the Shire. A summary of the typology for neighbourhood and local centres as articulated within the Centres Direction is provided in the table below.

| <b>Centre type</b>   | <b>Typology</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Neighbourhood Centre | <ul style="list-style-type: none"> <li>- Local bus stop</li> <li>- Low scale strip retailing. Retail meets daily needs on a small scale. Medium to large supermarkets are not appropriate</li> <li>- Low density residential development</li> <li>- Services include post box, public phone, public open space</li> <li>- Child care centre, primary school, general practitioner, community centre/facility within vicinity of centre</li> </ul>                                                                                             |
| Village Centre       | <ul style="list-style-type: none"> <li>- Local bus stop</li> <li>- Low scale built form</li> <li>- Retail serves local residents' weekly shopping needs</li> <li>- Medium density housing such as town houses</li> <li>- Services and facilities may include child care centre, public open space, health care, ATM</li> <li>- Schools, private recreation within vicinity of centre</li> </ul>                                                                                                                                               |
| Town Centre          | <ul style="list-style-type: none"> <li>- Local transport node</li> <li>- Local scale built form with civic amenity</li> <li>- Retail meets weekly shopping needs</li> <li>- Medium and higher density housing including seniors living, affordable housing</li> <li>- Services and facilities include Council library branch, banks, post office, private recreation (e.g. gym), community centre.</li> <li>- Pedestrian accessible and convenient car parking</li> <li>- Schools, medical practitioners within vicinity of centre</li> </ul> |

**Table 1**

Typology of local and neighbourhood centres under Centres Direction

The planning proposal will help to facilitate development outcomes which better align with the typologies outlined in the Centres Direction. The proposal will ensure residential development is more appropriately balanced with economic uses and help to ensure centres are vibrant, viable and meet the diverse shopping needs of the community. It is therefore considered that the proposal is consistent with this Direction.

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

Yes. An assessment of the planning proposal against applicable State Environmental Planning Policies is provided in Attachment A. A discussion on the consistency of the proposal with the relevant Policies is provided below.



- **State Environmental Planning Policy No. 19 – Bushland in Urban Areas**

The SEPP seeks to protect and preserve bushland within the urban area and requires consent from Council to disturb or remove bushland. Council's vegetation mapping indicates that there may be remnant native bushland on some urban land to which the planning proposal applies as outlined in the following table.

| <b>Subject Land</b>                                                    | <b>Vegetation Type</b>                                         |
|------------------------------------------------------------------------|----------------------------------------------------------------|
| Stringer Road Neighbourhood Centre                                     | Shale Sandstone Transition Forest                              |
| Land zoned R1 General Residential in the North Kellyville Release Area | Shale Sandstone Transition Forest<br>Cumberland Plain Woodland |
| Land zoned R2 Low Density Residential in the Box Hill Release Area     | Cumberland Plain Woodland                                      |

**Table 2**  
Subject land containing native bushland

The planning proposal will not facilitate the removal of any bushland on the above properties and the necessary approvals will continue to be required to remove vegetation on any land to which the proposal applies. Notwithstanding this, it is noted the land identified in Table 2 is certified under the Growth Centres SEPP which allows the removal of this vegetation without obtaining the usual consent required under NSW legislation. The proposal is therefore not considered to be inconsistent with the objectives of SEPP No. 19.

- **State Environmental Planning Policy (Affordable Rental Housing) 2009**

This SEPP aims to provide a consistent planning regime for the provision of affordable rental housing, to support local business centres by providing affordable rental housing for workers close to places of work, and to facilitate the effective delivery of new affordable rental housing. The planning proposal retains the opportunity to provide an appropriate scale of shop top housing and residential flat buildings as part of mixed use developments in centres and will not undermine the SEPP.

- **State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

The SEPP provides for the coordinated release of land for residential, employment and other urban development in the North West and South West growth centres of the Sydney Region (in conjunction with the *Environmental Planning and Assessment Regulation 2000* relating to precinct planning). The North Kellyville and Box Hill Precincts are zoned under the SEPP and form part of the North West Growth Centre. The aims of the SEPP are as follows:

- (a) *to co-ordinate the release of land for residential, employment and other urban development in the North West Growth Centre, the South West Growth Centre and the Wilton Priority Growth Area,*
- (b) *to enable the Minister from time to time to designate land in growth centres as ready for release for development,*
- (c) *to provide for comprehensive planning for growth centres,*
- (d) *to enable the establishment of vibrant, sustainable and liveable neighbourhoods that provide for community well-being and high quality local amenity,*
- (e) *to provide controls for the sustainability of land in growth centres that has conservation value,*
- (f) *to provide for the orderly and economic provision of infrastructure in and to growth centres,*
- (g) *to provide development controls in order to protect the health of the waterways in growth centres,*
- (h) *to protect and enhance land with natural and cultural heritage value,*
- (i) *to provide land use and development controls that will contribute to the conservation of biodiversity.*

The proposal will help to meet the wider vision and objectives for development within the Growth Centres Precincts. The proposal will provide for vibrant and sustainable centres that meet the needs of the community and contain an appropriate mix of uses with a high level of amenity. The proposal will help to meet growth targets whilst ensuring an appropriate scale of development and availability of sufficient infrastructure to support existing and future populations. Accordingly, it is considered that the planning proposal, along with the amendments to the North Kellyville and Box Hill DCPs, will assist in achieving the aims of the SEPP.

*6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

Yes. The consistency of the planning proposal with the s.117 Ministerial Directions is detailed within Attachment B. A discussion on the consistency of the proposal with each relevant Direction is provided below.

- **Direction 1.1 – Business and Industrial Zones**

This Direction seeks to encourage employment growth in suitable locations, to protect employment land in business and industrial zones, and to support the viability of identified strategic centres. It applies when a planning proposal will affect land within an existing or proposed business or industrial zone.

It is considered the proposal is consistent with the objectives of this Direction given it proposes to retain areas zoned for business uses and does not reduce the permissible floor space on such land. The proposal seeks to protect land for employment purposes and encourages the provision of employment in suitable locations within centres close to housing and transport.

- **Direction 3.1 – Residential Zones**

This Direction applies when a planning proposal will affect land within a residential zone or any zone in which significant residential development is permitted or is proposed to be permitted. The objectives of the Direction are to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services to ensure that new housing has appropriate access to infrastructure and services, and to minimise the impact of residential development on the environment and resource lands.

Where this Direction applies, a planning proposal must include provisions that will broaden the choice of building types and locations available in the housing market, make more efficient use of existing infrastructure and services, reduce the consumption of land for housing and associated urban development on the urban fringe, and encourage the provision of housing that is of good design. Planning proposals must contain a requirement that residential development is not permitted until land is adequately serviced and not contain provisions which will reduce the permissible residential density of land.

The planning proposal seeks to achieve high quality developments that do not place excessive pressure on existing infrastructure and services. Additionally, the proposal seeks to ensure that developments are appropriately located reflecting Council's hierarchical zoning framework which locates higher residential densities within and surrounding higher order centres and in locations that provide a range of services and accessibility to public transport. It also seeks to ensure that lower scale residential development is provided in conjunction with smaller scale centres and in more peripheral locations. Accordingly, the proposal is not considered to be inconsistent with this Direction.

- **Direction 3.4 – Integrating Land use and Transport**

This Direction aims to ensure that development improves access to housing, jobs and services, increases the choice of available transport, reduces travel demand and dependence on cars, supports the viable operation of public transport and provides for the efficient movement of freight. A planning proposal must locate zones for urban purposes and include provisions that are consistent with the aims, objectives and principles of *Improving Transport Choice* –

*Guidelines for planning and development* (DUAP 2001) and *The Right Place for Business and Services – Planning Policy* (DUAP 2001).

The land use planning approach implemented through the Direction is to encourage future growth within areas that are well located to public transport, services, and employment opportunities. This planning proposal aims to protect the employment potential of business zoned land which will ensure that jobs are appropriately located within centres close to housing and transport. The proposal is therefore considered to support the aims of this Direction.

- **Direction 4.3 – Flood Prone Land**

This Direction applies when a planning proposal creates, removes or alters a zone or a provision that affects flood prone land and requires the planning proposal to include provisions that give effect to, and are consistent with, the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005* (including the *Guideline on Development Controls on Low Flood Risk Areas*).

The Direction requires that planning proposals must not permit development that will result in significant flood impacts to other properties, permit a significant increase in the development of land in flood planning areas, or result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services.

Some land to which this proposal applies is identified as a flood control lot under Council's Flood Controlled Land Map (see maps in Attachment L). However, the proposed amendments are not likely to increase the scale of shop top housing and mixed use developments and are therefore unlikely to have any adverse flooding impact beyond what is likely under existing controls.

The Hills LEP 2012 contains flood prone land provisions that seek to minimise risks to property and life and significant impacts on the environment. Furthermore, flood related development controls apply to any flood prone land through The Hills Development Control Plan 2012 Part C Section 6 – Flood Controlled Land. These controls have been prepared in accordance with the NSW Government's Flood Prone Land Policy.

It is not envisaged that the proposal will result in any additional flood mitigation requirements and therefore the proposal is considered to be consistent with the strategic directions and key policy settings of this Direction.

- **Direction 4.4 – Planning for Bushfire Protection**

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 must:

- (a) *have regard to Planning for Bushfire Protection 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.*

Whilst the planning proposal partly applies to land mapped as or in proximity to land mapped as bushfire prone land (see maps in Attachment M), it is unlikely that the proposal will facilitate any intensification of development on the subject land. However, in accordance with this Direction the NSW Rural Fire Service was consulted as part of the public agency consultation for this planning proposal. The Rural Fire Service raised no objection to the planning proposal. They advised that the aims and objectives of *Planning for Bushfire Protection 2006* should be considered in any subsequent development application. Accordingly, it is considered that the planning proposal is consistent with this Direction.

- **Direction 5.9 – North West Rail Link Corridor Strategy**

This Direction applies to planning proposals for land within the Hills Shire that is in the North West Rail Link Corridor, as identified on the NWRL Corridor Strategy. A planning proposal must give effect to the objectives of the Direction and be consistent with the proposals of the NWRL Corridor Strategy.

Some of the land to which the planning proposal applies falls within the Station Precincts identified in the North West Rail Link Corridor Strategy including:

- Rouse Hill Local Centre (Windsor Road)
- Kellyville Local Centre (Windsor Road)
- Kellyville Local Centre (Hector Court)
- Baulkham Hills Neighbourhood Centre (Windsor Road)

Since the subject planning proposal was first considered by Council, draft plans have been exhibited by the Department of Planning and Environment for Showground, Bella Vista and Kellyville Stations. This planning proposal was exhibited with the Carrington Road local centre being included within Key Site D, however the Priority Precinct Planning process has identified site specific outcomes for the centre within the Showground Precinct that are inconsistent with what could be achieved under this planning proposal. Following consideration of the proposal post-exhibition, it is considered appropriate that this centre be excluded from the planning proposal at this time.

For any other centre within the Sydney Metro Northwest Precincts that is subject to site specific planning by Council or the State Government, a clause is included in the new Shop Top Housing Section of The Hills Development Control Plan 2012 (which was adopted by Council on 13 December 2016) to ensure that such planning will prevail to the extent of any inconsistency with the new controls. Further consideration of applicable controls and whether any amendments are necessary will be undertaken as part of the future detailed precinct planning.

It is considered that the proposal is generally consistent with the overall vision for these sites as outlined in the North West Rail Link Corridor Strategy. The proposal will retain a retail/employment outcome for each of these centres whilst facilitating a reasonable level of residential development, provided this does not detract from the primary employment objectives of the land. It is further noted that the proposed controls do not seek to pre-empt or override detailed precinct planning undertaken for the rail station precincts. Should an alternative outcome for these sites be identified through the precinct planning process, the current proposed controls may need to be refined as part of that process to reflect desired outcomes. The proposal is considered to be consistent with the strategic directions and key policy settings of this Direction.

#### • **Direction 6.1 Approval and Referral Requirements**

The objective of this Direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. The planning proposal is consistent with this Direction as it does not include provisions that require the concurrence, consultation or referral of future development applications to a Minister or public authority.

### **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 increase to permissibility of land uses or density is proposed as part of the planning proposal and therefore the planning proposal is considered unlikely to impact on any critical habitat or threatened species, populations or ecological communities, or their habitats. Should any future developments be proposed on land with critical habitat or threatened species, populations or ecological communities, or their habitats, this would need to be appropriately managed at the development application stage, as is currently the case.

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

The planning proposal is considered unlikely to result in any other adverse environmental impacts.

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

The planning proposal supports the economic viability of centres through mandating a minimum provision of non-residential uses and maintaining the opportunity to provide some residential development to support the role and function of centres. The proposal will facilitate the provision of vibrant and attractive centres that are suited to their location and maintain a high level of amenity for residents.

The planning proposal seeks to ensure that the character, type, scale and location of shop top housing and mixed use development is appropriate for the Hills Shire and to achieve development that reflects the role of centres that was established within Council's Centres Hierarchy. Amendments to building heights and the imposition of a limit on residential densities within shop top housing and mixed use developments will ensure that new development maintains the desired existing and future character of the locality. The planning proposal aims to achieve lively, interesting and functional centres that have the capacity to meet the retail, commercial, service and entertainment needs of the community while also providing for a diversity of housing choice. The proposed amendments will better enable Council to ensure that the density and built form of shop top housing and mixed use developments are appropriate, and that developments minimise impacts on surrounding land uses and existing and future public infrastructure.

The planning proposal is accompanied by amendments to various Development Control Plans to achieve improved outcomes for shop top housing and mixed use developments. The DCP amendments were adopted by Council on 13 December 2016 and aim to strengthen existing provisions for shop top housing and mixed use developments. The new DCP controls will improve the amenity, liveability and built form outcomes for future residents and the community. Proposed amendments to the North Kellyville and Box Hill Growth Centre Precincts Development Control Plans will generally align with the standards and controls proposed for LEP 2012 and DCP 2012 which will reduce complexity and improve the consistency and quality of development across the Shire.

## **SECTION D - STATE AND COMMONWEALTH INTERESTS**

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

The proposal is unlikely to place additional demand on public infrastructure given that no increase to the current permissible densities is proposed.

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? (Note: The views of State and Commonwealth Public Authorities will not be known until after the initial gateway determination. This section of the planning proposal is completed following consultation with those public authorities identified in the gateway determination.)*

In accordance with the Gateway Determination, consultation was undertaken with the following public authorities:

- NSW Rural Fire Service
- State Emergency Service
- Transport for NSW
- Roads and Maritime Services
- Endeavour Energy

- Sydney Water
- Telstra

Correspondence was received from five (5) public authorities including Sydney Water, NSW Rural Fire Service, Transport for NSW, Endeavour Energy and Roads and Maritime Services who raised no objection to the planning proposal. Sydney Water generally support the proposal as it will provide a level of certainty on potential servicing impacts, as higher than anticipated residential densities will be limited. No comments were received from the State Emergency Service or Telstra in relation to the changes. A summary of public authority submissions and a response is provided as an attachment to the Council Report in Attachment D.

## **PART 4 MAPPING**

The planning proposal seeks to amend the Key Sites Map of *The Hills Local Environmental Plan 2012* and introduce a Key Sites Map for *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. The Key Sites Maps will identify all of the land to which the proposed new clauses will apply.

Snapshots of the proposed Key Sites Maps under LEP 2012 and the Growth Centres SEPP are provided as Attachment K.

The planning proposal also seeks to introduce an Additional Permitted Uses Map for *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. The Map will identify land at Lot 101 DP1082890 (9 Hezlett Road, Kellyville), Lot 201 DP1187326 (21 Hezlett Road, Kellyville) and Lot 2401 DP1213071 (103 Samantha Riley Drive, Kellyville). A corresponding amendment to Schedule 1 'Additional Permitted Uses' of Appendix 2 North Kellyville Precinct Plan of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 will identify that shop top housing is a permitted use on that land. A snapshot of the proposed Additional Permitted Uses Map is provided as Attachment K.

Land zoned R2 Low Density Residential and R3 Medium Density Residential within the Box Hill Release Area has not been mapped, as the proposed prohibition of shop top housing will apply to all land within that zoning in the precincts, rather than only to specific Key Sites.

A portion of the subject land is identified as either flood controlled land or bushfire prone land under existing planning controls. Maps of these properties are provided as Attachments L and M, respectively. No change is proposed to existing mapping for flood controlled land or bush fire prone land.

## **PART 5 COMMUNITY CONSULTATION**

The planning proposal was exhibited on two (2) occasions due to the complexities of the proposed amendments and changes arising from the finalisation of a separate planning proposal that rezoned land in the Box Hill Release Area.

The planning proposal was initially exhibited for 32 days from Tuesday 28 June 2016 to Friday 29 July 2016. The amended planning proposal was exhibited for 31 days from Wednesday 12 October 2016 to Friday 11 November 2016.

Council wrote to landowners of all properties to which the proposed amendments apply and to the public authorities listed below, as required by the Gateway Determination:

- NSW Rural Fire Service
- State Emergency Service
- Transport for NSW
- Roads and Maritime Services
- Endeavour Energy
- Sydney Water
- Telstra

## **Public Submissions**

A total of 27 separate submissions were received from the public during the two (2) exhibition periods. Of these, 17 related to the Box Hill and North Kellyville Growth Centres, including one submission which was received on behalf of a single landowner who owns numerous properties in Box Hill, and another submission which was received on behalf of 10 properties in Box Hill. It is noted that some landowners made multiple representations. The remaining 10 submissions were from landowners in Glenorie, Castle Hill, Baulkham Hills, Kellyville and Winston Hills. Five (5) public authorities also made submissions.

One (1) submission from a landowner in the vicinity of the Stringer Road centre in the North Kellyville Release Area supported the proposed changes as they will limit the potential for future developments to have adverse character and traffic impacts. Another landowner in the vicinity of the Glenorie Centre suggested that shop top housing should fit in with the existing nature and character of an area, and in relation to Glenorie such a development should reflect the semi-rural village atmosphere and character.

The remaining submissions raised the following key issues with the proposed changes:

- (a) Impact of changes on development applications currently under assessment;
- (b) Consistency with State planning policies;
- (c) Consistency with local planning policies;
- (d) Consistency with the building heights applicable to surrounding land and other forms of development on the same land;
- (e) Ability for proposed building heights to facilitate certain commercial uses;
- (f) Impact on housing supply, affordability and property values;
- (g) Consistency with intended land use outcomes for Hezlett Road neighbourhood centre;
- (h) Impacts of additional retail provision within the Box Hill Precincts;
- (i) Relationship with existing floor space ratio provisions for Box Hill centres; and
- (j) Development Control Plan issues.

A summary of the above issues and a response is provided in the following sections (a) to (j). A full summary of the submissions and responses is provided as Attachment 3 and 4 of the Council Report of 13 December 2016 (see Attachment D1 of this planning proposal).

### **(a) Impact of changes on development applications currently under assessment**

Three submissions relate to development applications that have been lodged, but not yet determined, for shop top housing development at Glenorie Village, Box Hill Town Centre and Nelson Road Village.

Submissions seek confirmation that the changes proposed by the planning proposal will not affect the development application or modification to development applications if approved. For Glenorie and Nelson Road Village it is requested that a 'savings provision' be included to enable the determination of the applications under the current controls applicable at the time of the lodgement of the development application.

One submission author has also requested that Council hold a public hearing on the issues raised in their submission regarding land within the Glenorie rural centre, pursuant to the provisions of Section 57(5) of the *Environmental Planning and Assessment Act, 1979* due to the significant financial implications that the planning proposal will have on their development application.

**Comment:** The development applications have been lodged under existing controls that allow for shop top housing development at a greater scale than that proposed under the current planning proposal. A comparison of existing and proposed primary controls is provided below.

| Centre               | Maximum permitted Height |          | Minimum required non-residential uses |          |
|----------------------|--------------------------|----------|---------------------------------------|----------|
|                      | Existing                 | Proposed | Existing                              | Proposed |
| Glenorie Village     | 9m                       | 7m       | No minimum                            | 50%      |
| Box Hill Town Centre | 24m                      | 20m      | No minimum                            | 50%      |
| Nelson Road village  | 16m                      | 10m      | No minimum                            | 50%      |

**Table 3**

Comparison of current and proposed controls -centres where DA is under assessment

Under Section 79C of the *Environmental Planning and Assessment Act 1979* a consent authority is required to consider any proposed instrument that has been the subject of public consultation under the Act. Should the planning proposal be supported it will be referred to the Greater Sydney Commission or its delegate for finalisation which will only occur after referral to Parliamentary Counsel for legal drafting. This process generally takes some time and it is possible that the development applications will be determined before the changes are legally made. In this instance the weight given to the draft changes will be determined as part of the development assessment process.

Should the planning proposal changes be finalised prior to the determination of the development application, the applications will need to be assessed under the new regime. It is important to note however, that the planning proposal changes do not seek to prohibit shop top housing or mixed use developments but to ensure developments are of a scale compatible with the local context and the intended role and character of centres. Therefore in such instances there will be a need for applicants to demonstrate whether exceptions to the new standards are justified under clause 4.6 of the LEP or State Policy.

In relation to the request for a public hearing, Section 57(5) of the *Environmental Planning and Assessment Act 1979* is as follows:

*"57 Community Consultation*

*(5) If:*

- (a) a person making a submission so requests, and*
- (b) the relevant planning authority considers that the issues raised in a submission are of such significance that they should be the subject of a hearing, the relevant planning authority is to arrange a public hearing on the issues raised in the submission."*

Consideration has been given to the need for a public hearing in relation to the matters raised in the submission, as requested. The key matters raised in the submission primarily relate to the implications of the planning proposal for the development application for shop top housing currently under assessment in Glenorie (DA 182/2017/HA), its permissibility under the current planning framework and the social and economic benefits that such a development will have for the Glenorie Village. The issues raised have been appropriately addressed in the submission summary table (Attachment 4 to the Council Report of 13 December 2016 – see Attachment D1) and are not considered to be of such significance to warrant a public hearing.

Given the mechanisms already available for applications to continue to be assessed and determined, it is not considered necessary to include a savings provision as part of the planning proposal or to undertake a public hearing.



## **(b) Consistency with State Planning Policies**

### **Precinct planning for North Kellyville and Box Hill**

Concern was raised in a number of submissions that the planning proposal and DCP changes will not achieve the development outcomes that were envisaged by the precinct planning for the North Kellyville and Box Hill Release Areas, particularly in relation to the Box Hill Town Centre, Hezlett Road neighbourhood centre, Stringer Road neighbourhood centre and the Nelson Road village centre.

The submissions were primarily concerned that the requirement to provide 50% of floor space in a shop top housing development or mixed use development as non-residential uses will limit development potential, that the changes will affect the viability of retail centres by limiting building heights and the number of dwellings that can be provided within a mixed use development, and that the proposed changes will result in a different built form and scale for some centres compared to what could be achieved on adjoining land. Submission authors are also concerned that the planning proposal and DCP changes will restrict housing development and choice, and could affect the ability to develop centres in accordance with the indicative centre layout plans in the DCPs that were prepared by the State Government for the release areas.

**Comment:** The precinct planning for the North Kellyville and Box Hill Release Areas was finalised by the State Government in 2008 and 2013, respectively. There are a number of issues with the planning framework for both precincts which were raised by Council throughout the precinct planning process and following further State Government changes to the SEPP and DCPs, such as the Housing Diversity Package in 2014. Most recently by Mayoral Minute 10/2016 Council has urgently requested a meeting with the Minister for Planning encouraging him to set maximum densities for apartment buildings in release areas. The current shop top housing changes are seeking to address some of these issues which are discussed further in the following sections.

The precinct planning for the North Kellyville and Box Hill Growth Centres was finalised prior to the strong market conditions for high density development. Development assumptions for the precincts were informed by historic patterns which have shown relatively low construction of higher density housing types and typically little or no residential development within local and neighbourhood centre business zones. As part of the precinct planning process, assumptions were made regarding the expected mix of development and uptake rates of different development types. These were informed by development patterns of similar release areas within the Shire which have historically shown relatively low construction of higher density housing types and typically little or no residential development within local and neighbourhood centre business zones. Infrastructure such as public open space, roads, and water and sewer services were planned with the expectation of centres having less residential accommodation than has been proposed in recent development applications.

In order to encourage uptake, considerable flexibility has been provided within the Growth Centres planning framework to achieve State Government initiatives of boosting housing delivery and affordability across Sydney. However, it has had the unintended consequence of facilitating significant additional density beyond what was anticipated and planned for. The Development Control Plans for North Kellyville and Box Hill provide guidance on character and intended built form outcomes which recommend a scale of development that is being significantly exceeded by recent development proposals that generally meet existing planning controls under the Growth Centres SEPP. For example, a current development application for 17 Nelson Road, Box Hill (Nelson Road 'village') is proposing a mixed use development with buildings up to five (5) storeys and 187 apartments which generally complies with the applicable SEPP floor space ratio controls. However, the Box Hill DCP identifies this centre should be of neighbourhood scale with a modern character, generous open space and

landscaping and a range of building heights up to a maximum of three (3) storeys which would provide a more sensitive interface with adjoining low density residential land to the west and the adjacent heritage item to the north.

This planning proposal and its accompanying DCP amendments aim to improve development outcomes for shop top housing and mixed use developments. They seek to ensure that the bulk, scale and built form of new development is in keeping with the intended character of the locality, and to ensure that a sustainable mix of retail and residential land uses are provided within centres. The proposed height limits within centres and the requirement to provide a minimum 50% of the floor area within a shop top housing or mixed use development as non-residential uses will assist with achieving a built form that is compatible with the character and scale of existing and future development in the locality and to ensure a high level of amenity for residents and the community.

In determining whether any change was warranted on a site specific basis, the key consideration has been the intended character and built form articulated in the relevant DCP and the surrounding local context. Accordingly, no change to the proposal is recommended apart from those outlined in Section 6(g) of the Council Report of 13 December 2016 (see Attachment D1) in relation to the Hezlett Road centre in North Kellyville.

### **Ministerial Section 117 Directions**

A number of submissions raised concern that the planning proposal is inconsistent with Ministerial Section 117 Direction – 3.1 Residential Zones as it seeks to reduce the permissible density of land.

**Comment:** Section 117 Direction 3.1 Residential Zones applies to planning proposals that affect land within any zone in which significant residential development is permitted. The objectives of this Direction are to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services, to ensure new housing has appropriate access to infrastructure and services and to minimise the impact of residential development on the environment and resource lands. When the Direction applies to a planning proposal, the proposal must, among other things, not contain provisions that will reduce the permissible residential density of land.

Further, Ministerial Section 117 Direction – 1.1 Business and Industrial Zones requires that the total potential floor space for employment and related public services in business zones not be reduced without justification by a strategy. The current development applications, with their bias towards residential, have been effectively reducing the capacity for future growth in retail/commercial space within the Centres which is likely to be required given the residential growth already beyond that anticipated and planned for in the Precincts.

The potential reduction in residential density as a result of the planning proposal is considered justified given it will limit adverse environmental impacts associated with excessive and unforeseen residential densities and ensure that new housing has appropriate access to, and does not place undue pressure on, local infrastructure and services. It will also ensure residential development aligns with Council's hierarchical zoning framework.

A number of submissions suggested that the proposal discourages the provision of a variety of housing types and will fail to provide for existing and future housing needs. However, shop top housing will continue to be permissible in local and neighbourhood centres at an appropriate density which is more in line with the development outcomes originally anticipated for these locations. Additionally, a range of residential uses will continue to be permissible across residential and business zones, with higher density forms being limited to higher order zones where increased densities have been intended and planned for. Accordingly, it is

considered that an appropriate variety and choice of high quality housing types will continue to be provided for future residents.

Whilst the proposal does not strictly comply with the part of the S.117 Direction that requires no reduction in residential density, this is considered to be of minor significance given that the proposal meets the key aims and objectives of the Direction.

### **A Plan for Growing Sydney**

One submission from a landowner located within the future Memorial Avenue/Hector Court Centre in Kellyville suggested that the planning proposal is inconsistent with the State Government Policy 'A Plan for Growing Sydney'. The submission notes that the strategic planning already established for neighbourhood and local centres through A Plan for Growing Sydney will be diminished through reduced height and dwelling densities.

**Comment:** A Plan for Growing Sydney identifies targets for the future growth of Sydney including the provision of an additional 664,000 new homes and 689,000 new jobs over the next 20 years.

Key principles contained within the Plan are to provide housing and employment in and around centres and encourage urban renewal in established areas. The Plan also notes that growth must be supported by essential infrastructure including transport, utilities and social infrastructure such as schools, child care centres, health facilities, open space and recreation. It is considered that the planning proposal is consistent with the primary objectives of the Plan and the Hills Shire plays a significant role in accommodating a share of Sydney's future population growth. The planning proposal supports a reasonable level of residential growth within centres. In order to provide the quality of life and amenity that is enjoyed and expected by the Hills Shire community, Council is seeking to ensure that future development is of a suitable scale and does not place undue pressure on infrastructure and services. Further, the planning proposal seeks to ensure that sufficient and well-located employment opportunities are available by requiring a minimum provision of non-residential premises within centres so that local employment is supported and protected.

The planning proposal does not seek to prohibit shop top housing and mixed use developments but simply aims to ensure that developments recognise and respond to the context where they are located and meet the land use objectives for the zones within which they are situated. It seeks to improve the quality of development, to maintain the character of existing areas and to ensure that development reflects the intended character within new centres as articulated in the DCPs for the growth centres. Importantly, the proposal will not impact on the Shire's capacity to meet established housing targets, given that sufficient land has been identified in appropriate locations that are supported by the necessary infrastructure to accommodate growth.

### **State Environmental Planning Policy No.65**

One submission suggests that the proposed DCP amendments for Box Hill are inconsistent with State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, specifically in relation to apartment size/mix.

**Comment:** The amendments will ensure that the controls applying to shop-top housing within DCP 2012, the Box Hill DCP and the North Kellyville DCP are consistent. The controls within the three development control plans set out Council's position in relation to a number of matters including cross ventilation, private open space and apartment mix and size.

It is acknowledged that SEPP 65 places emphasis on certain sections of the Apartment Design Guide as a method of bypassing locally prepared controls. However, it is imperative that the DCP reflect Council's position with respect to what it considers to be appropriate apartment

and shop top housing design. During the assessment of development applications for high density development consideration is given to both the DCP controls and the Apartment Design Guide. The weight given to a particular control is determined as part of the assessment of the relevant development application.

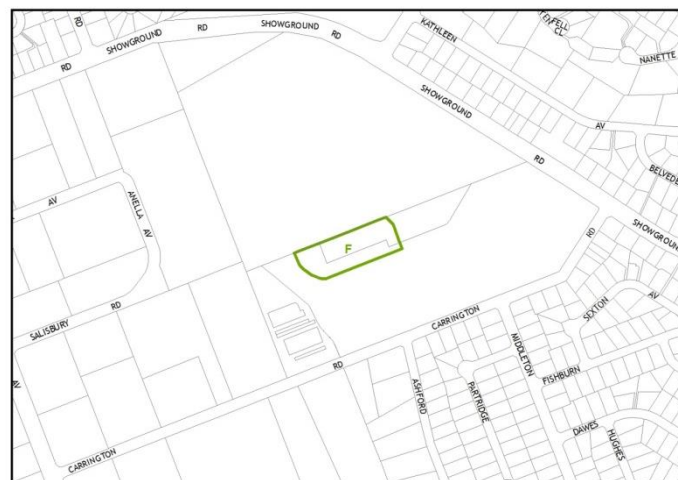
### **Planning for the Sydney Metro Northwest**

One submission from a landowner located in Castle Hill requested that land subject to precinct planning for the Sydney Metro Northwest be exempt from the proposed changes to avoid inconsistencies in areas that are subject to transition as part of planning for the station precincts.

**Comment:** The proposed controls do not seek to pre-empt or override detailed precinct planning for the rail station precincts. Should alternative outcomes for sites to which the planning proposal and DCP changes apply be identified through the precinct planning process, changes to the controls may be warranted at that time.

Since the subject planning proposal was first considered by Council, draft plans have been exhibited by the Department of Planning and Environment for Showground, Bella Vista and Kellyville Stations.

The Priority Precinct Planning process has identified site specific outcomes for the Carrington Road local centre within the Showground Precinct that are inconsistent with what could be achieved under this planning proposal. It is therefore considered appropriate that this centre be excluded from the planning proposal at this time and the land identified as "Key Site F" be removed from the planning proposal (see following figure).



**Key Sites Map**

 Area F

**Figure 1**

Land to be excluded from the planning proposal

For any other centre within the Sydney Metro Northwest Precincts that is subject to site specific planning by Council or the State Government, a clause is included in the draft Shop Top Housing Section of DCP 2012 to ensure that such planning will prevail to the extent of any inconsistency with the new controls. Further consideration of applicable controls and whether any amendments are necessary will be undertaken as part of the future detailed precinct planning.

### **(c) Consistency with Local Planning Policies**

#### **Residential Direction**

Concern was raised that the proposal is inconsistent with Council's Residential Direction and that no study has been prepared to support the changes to the adopted strategy.

**Comment:** The Residential Direction reflects Council's desired approach to guide the planning, protection and management of the Shire's residential development. It establishes opportunities and mechanisms for ensuring residential development is planned and managed appropriately.

The Direction includes a target for an additional 36,000 dwellings within the Shire to 2031 based on the State's North West Subregional Strategy. It also demonstrates sufficient capacity to meet this target within existing and proposed residential and mixed use zones. Therefore, significant residential densities as currently being proposed within the Shire's business zones are neither expected nor required to meet State government dwelling targets.

Whilst new targets will be established as part of the planning process for the West Central District Plan (currently on exhibition), the draft plan has a strong focus on 'liveability' which includes objectives of quality design, enhancement of character, creating great places and access to social infrastructure. Providing capacity for housing does not need to be at the expense of outcomes that provide good amenity for neighbours and future residents.

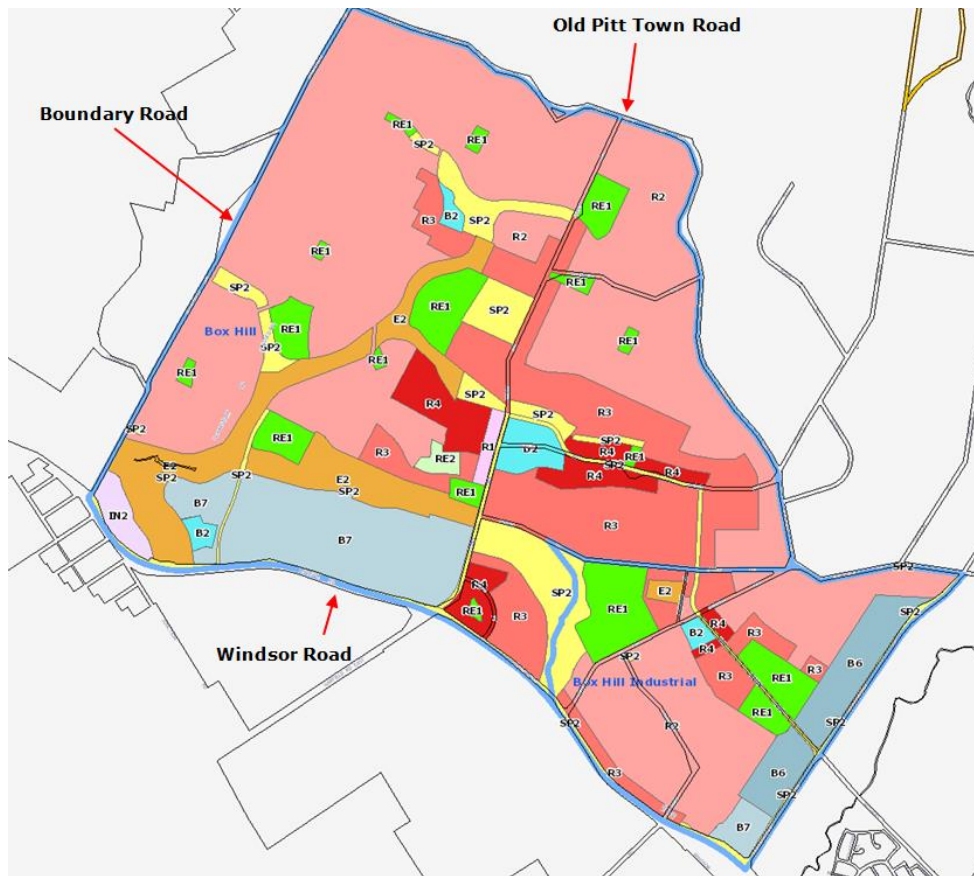
It is considered the proposal is consistent with the Residential Direction given it supports an appropriate level of residential development in appropriate locations, ensuring developments are of a suitable scale and character for their location and are supported by appropriate infrastructure.

### **Centres Direction**

Concern was raised that the proposed changes are inconsistent with Council's Centres Direction, particularly in relation to the typology and zone criteria articulated for town centres such as Box Hill and also the proposed prohibition of shop top housing in the R2 Low Density and R3 Medium Density Residential zones in the Box Hill Release Area. It was also suggested that the rise in shop top housing would not have been predicted in the Centres Direction and it should be reviewed in light of this growing market trend.

**Comment:** It is agreed that the rise in shop top housing was not predicted at the time the Centres Direction was prepared. However, the provision of shop top housing should not be at the expense of delivering retail/commercial services and facilities that support the local community. The current planning proposal recognises this and the inability of the current framework to properly manage growth.

The Box Hill DCP includes the potential for two neighbourhood centres that could be located on Boundary Road in the west of the Precincts and one on Old Pitt Town Road in the north-east. The neighbourhood centres will provide for a maximum of 1,000m<sup>2</sup> of retail and commercial floor space and will service the local catchments and the passing traffic along these main roads. The DCP does not identify an exact location for these two neighbourhood centres, although it does suggest that they would be located on land zoned R2 Low Density Residential, which covers a large part of the Precinct as may be seen in Figure 2.



**Figure 2**

Potential location of Box Hill neighbourhood centres on R2 Low Density Residential land

Whilst the Centres Direction notes that neighbourhood centres should permit shop top housing, the Direction was adopted prior to the rezoning of the Box Hill Precincts. It therefore did not anticipate the approach taken in Box Hill whereby neighbourhood shops and shop top housing are permissible across all land zoned R2 Low Density Residential and R3 Medium Density Residential (note: the B1 Neighbourhood Centre zone has typically been applied to neighbourhood centres throughout the rest of the Shire).

The Box Hill DCP provides some guidance on appropriate locations for neighbourhood centres. However, favourable market conditions for higher density development combined with the limited ability for DCPs to 'override' permissibility within the Growth Centres SEPP, means that allowing for shop top housing across all residential zones could result in a proliferation of higher density housing in inappropriate locations across the Precincts.

The potential for two neighbourhood centres in areas zoned R2 Low Density Residential and R3 Medium Density Residential under the SEPP is noted. Neighbourhood shops will continue to be permissible in those zones, to facilitate development of those centres should there be sufficient demand in the future. The development of shop top housing in conjunction with these centres is not considered appropriate and is not needed to achieve the required dwelling targets for the Box Hill Precincts.

The prohibition of shop top housing in low and medium density zones in Box Hill seeks to limit widespread development of higher density housing forms across these zones. It will also align the controls for the Box Hill Precincts with the controls in Council's LEP to facilitate the future translation of the Growth Centres planning framework into Council's planning instruments.

**(d) Consistency with the building heights applicable to surrounding land and other forms of development on the same land**

Concern was raised that in some instances the proposed height limits for centres would be less than that applicable to surrounding land, for example the Hector Court/Memorial Avenue Centre, Stringer Road in North Kellyville, Nelson Road in Box Hill and the Box Hill Town Centre. Some submissions also suggested that the proposed heights are not appropriate given that other forms of development on the same land, such as retail or commercial developments, would be subject to a greater height limit.

Landowners in the Box Hill Town Centre and Glenorie Rural Village were concerned that the proposed reduction of building heights will result in impacts such as overshadowing from development proposals that are currently under assessment by Council (DA No.945/2016/JP in Box Hill and DA No.182/2017/HA in Glenorie). Concern was also raised by these landowners that approved developments or those currently under assessment by Council will be subject to different building height controls compared to applications that may be lodged in future.

**Comment:** Heights applicable to centres owned by the submission authors and the heights generally applicable to the surrounding land are provided in the following table.

| <b>Centre</b>                          | <b>Existing Centre Height</b> | <b>Height of Surrounding Land</b>                                  | <b>Proposed Height for Shop Top Housing</b> |
|----------------------------------------|-------------------------------|--------------------------------------------------------------------|---------------------------------------------|
| Memorial Avenue / Hector Court village | 12m                           | 16m (high density residential)                                     | 10m                                         |
| Stringer Road neighbourhood centre     | 16m                           | 9m (low density and general residential)                           | 7m                                          |
| Box Hill Town Centre                   | 24m                           | 21m (high density residential)<br>14m (medium density residential) | 20m                                         |
| Nelson Road village                    | 16m                           | 16m (high density residential)<br>8.5m (low density residential)   | 10m                                         |

**Table 4**

Summary of existing, proposed and surrounding heights for certain centres

Whilst it is acknowledged the proposed heights will in some instances be less than the heights applicable to surrounding land, the proposal seeks to address potential amenity impacts given that many local and neighbourhood centres in the Shire are surrounded by lower density residential zones. This is the case for Stringer Road neighbourhood centre, for example, which is intended to be surrounded by detached and small lot housing forms. Whilst under the proposed controls these housing types may be built to a taller height than the Centre, this is considered reasonable as such housing would have a lower scale and density and significantly less impact than a shop top housing development.

Whilst the surrounding buildings may be slightly higher than those within centres, it is not considered that this will have any adverse impact on the primacy of the centres. The role of centres will be reinforced through the provision of a diversity of retail, commercial and/or community uses and a high quality urban form that will identify and ensure the vitality of centres. A consistent or taller building height than adjoining land is not considered necessary and has been resulting in a scale of development that is inconsistent with the intended character for centres across the Shire. It is considered that designing centres with a range of heights that are stepped to provide an appropriate interface with the surrounding buildings is sufficient to provide a positive aesthetic and urban design outcome.

With respect to the heights applicable to non-residential development, the proposed controls seek to ensure that developments proposing residential units are compatible with the

surrounding land in terms of character, bulk, scale and density, rather than only considering height. A greater height limit will continue to apply to developments within centres that propose non-residential uses only. This additional height seeks to offer an incentive to developers to encourage uses that provide employment, shopping and services for the community and to discourage provision of excessive residential densities.

It is considered that the outcome of a development application on a nearby site is not suitable justification for an amendment to the proposed height controls. Should the applications for Box Hill Town Centre and Glenorie be approved, it is not considered that slightly lower heights for surrounding properties would provide a poor design outcome. Alternatively, providing a range of heights will provide visual interest and address any interface issues with surrounding land. For example, with Box Hill Town Centre it is considered that providing lower heights south of Mason Road, stepped down towards the adjoining medium density residential land would provide a more sensitive interface with this land which has a maximum building height of 14m. The potential overshadowing of adjoining sites that may arise from current development applications will be a matter for consideration as part of the assessment process.

The reduced height limits are intentionally more restrictive to address the current trend where developers focus primarily on the maximum quantum achievable within the legislative framework, with little regard to the creation of attractive and well-designed centres that meets the needs of a diverse community, or to the guidance on built form provided by DCPs such in North Kellyville and Box Hill. For the Growth Centres, the proposed heights also seek to ensure that the SEPP and DCPs more closely align to address instances where developers have argued that the perceived inconsistency of heights between the SEPP and DCP is justification for varying controls to achieve taller buildings and higher development yields than was intended.

Accordingly, concerns suggesting that the planning proposal will result in inappropriate building heights are not supported and no changes to the heights are considered warranted.

#### **(e) Ability for proposed building heights to facilitate certain commercial uses**

A number of submissions raised concern that the proposed heights are not sufficient in terms of floor to ceiling heights to facilitate certain commercial or retail uses such as supermarkets. There was also a concern that the height limit is too restrictive for sloping sites.

**Comment:** The proposed heights were determined in accordance with Council's typical methodology for calculating building heights under Local Environmental Plan 2012, being 3 metres per residential storey and 4 metres for commercial storeys which accounts for floor structures.

For the B1 Neighbourhood Centre zone where two storey built form is intended, the following recommended heights have been applied:

- Commercial/retail floor – 4 metres
- Residential floor – 3 metres
- **TOTAL – 7 metres (7 metre height limit proposed)**

For the B2 Local Centre zone in which three storey built form is intended, the following heights have been applied:

- Commercial/retail floor – 4 metres
- Residential floors – 6 metres (2 x 3m)
- **TOTAL – 10 metres (10 metre height limit proposed)**



It is acknowledged that sloping sites may not strictly comply with the proposed controls and that some commercial uses may exceed the floor to ceiling heights shown above. For the B2 Local Centre zone, it is further recognised that upper floors may seek to incorporate non-residential uses which would also increase floor to ceiling heights.

However, the purpose of the planning proposal is to ensure that the bulk, scale and density of buildings is compatible with surrounding lower density development. The proposed controls have been determined based on a 'worst case scenario' due to the recent increase in proposals where developers seek to provide buildings with significant bulk and scale in inappropriate locations and propose excessive residential densities with minimal non-residential uses in the Shire's local and neighbourhood centre business zones.

**(f) Impact on housing supply, affordability and property values**

A number of submissions suggested that the proposal will reduce housing supply, affordability and have an adverse impact on property values. Concern was also raised in a number of submissions that the planning proposal will make development less appealing for both landowners and developers as the return is greatly diminished.

**Comment:** The planning proposal intends to limit residential densities in certain locations to ensure that developments provide appropriate amenity and do not impact upon the provision of infrastructure beyond what was planned for. As was discussed previously within this report, the housing densities that are being proposed in various locations across the Shire are well in excess of the yields that were anticipated which will have significant implications for access to infrastructure and services, and on the quality of life for future residents of these areas. Housing supply should not be at the expense of providing quality housing outcomes and a high standard of living for existing and future residents.

Housing affordability is a complex issue and is subject to a number of different market forces. One method of achieving improved housing affordability is to ensure that an appropriate diversity of housing stock is available in the marketplace. This will facilitate housing choice and will also ensure that the housing stock is durable over the long term. It is considered there will continue to be sufficient potential to provide a diversity of housing forms across the Growth Centres Precincts including detached dwellings, townhouses, terraces, small lot housing, apartments and shop top housing at suitable densities and locations as intended by the precinct planning. Comments within the submissions that the proposal will negatively impact on housing affordability are not supported. Rather, it is considered that the amendments will ensure that the yields that are achieved are appropriate, have regard to their context and are capable of being serviced with infrastructure.

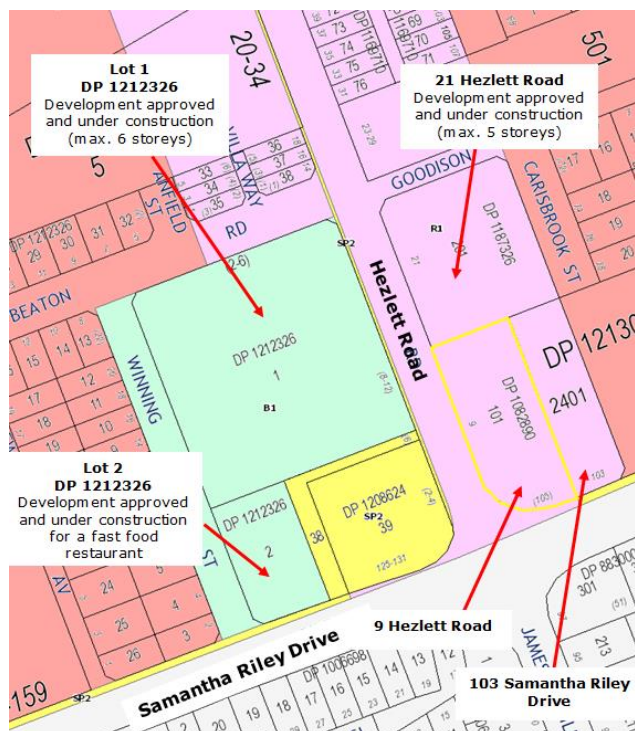
Whilst it is recognised that the planning proposal will in some instances reduce the maximum building height for certain land and will prohibit shop top housing in low and medium density residential locations, there will continue to be sufficient potential to meet housing targets and achieve high quality development outcomes in accordance with Council's strategic policy framework.

**(g) Consistency with intended land use outcomes for Hezlett Road Neighbourhood Centre**

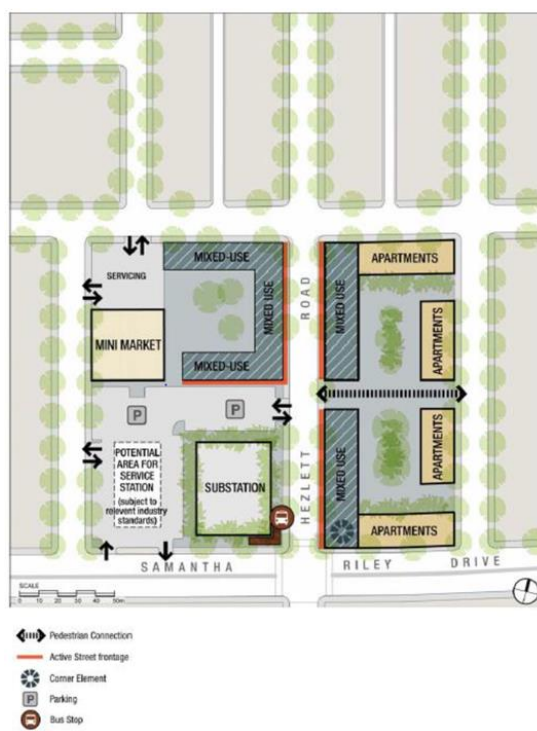
The owners of 9 Hezlett Road, Kellyville (subject site) raised concern that the proposed prohibition of shop top housing in the R1 General Residential zone is inconsistent with the concept initially planned for the intersection of Samantha Riley Drive and Hezlett Road. Also, a mixed use development comprising ground level mixed use space and 52 residential units above is currently under construction at 21 Hezlett Road, Kellyville (immediately to the north of the subject site). They suggest that the proposed planning changes will not achieve orderly

development and will potentially result in the poor planning outcome of a gateway site that contains two storey townhouse development being located next to multi-storey shop top housing. They are concerned that the proposed change to building heights will result in a development that is unsuitable for the location.

The owners' preference is that no change occurs to the site and its development potential by leaving shop top housing as a permissible use, and the height of buildings at 16m, in accordance with building heights as approved and under construction on the surrounding sites (refer figure below).



**Figure 3**  
9 Hezlett Road, Kellyville and surrounds



**Figure 4**  
Indicative layout of the Hezlett Road  
Neighbourhood Centre (from North Kellyville DCP)

**Comment:** The subject site is zoned R1 General Residential with an existing height limit of 16m. Shop top housing and residential flat buildings are currently both permissible on the site. The planning proposal is seeking to prohibit shop top housing and to impose a maximum height limit of 7 metres for residential flat buildings that are part of mixed use developments on land in the R1 General Residential zone in North Kellyville. A residential flat building would continue to be permissible on the subject site at a maximum height of 16m.

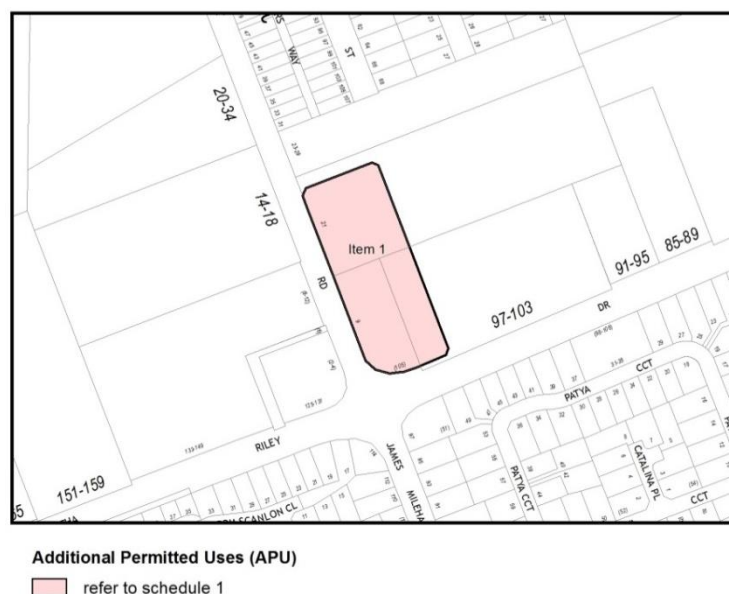
The North Kellyville DCP identifies the subject site and immediately surrounding properties as being part of the Hezlett Road Neighbourhood Centre, despite having a residential zoning rather than the B1 Neighbourhood Centre zone which has been applied to the remainder of the centre (refer figure above). The subject site is one of the only remaining sites within the neighbourhood centre for which no development applications have been approved or lodged (along with the adjoining property to the east at 103 Samantha Riley Drive).

The North Kellyville Development Control Plan provides guidance on desired built form outcomes for the neighbourhood centre and it envisaged that mixed use and residential flat buildings would be appropriate across the Centre, including on land at 9 Hezlett Road (see indicative layout in the figure above). To ensure orderly development and avoid isolation,

future development on 9 Hezlett Road should also incorporate the adjoining property at 103 Samantha Riley Drive, Kellyville.

The subject site is prominently located next to the Samantha Riley Drive/Hezlett Road intersection. Given the unique location of the site at the entrance to the North Kellyville Release Area, its identification as part of the neighbourhood centre which is predominantly already under construction and the intent of the North Kellyville DCP, it is recommended that Schedule 1 'Additional permitted uses' in the North Kellyville Precinct Plan of the Growth Centres SEPP be amended to identify that shop top housing is a permitted use on Lot 101 DP1082890 (9 Hezlett Road, Kellyville), Lot 201 DP1187326 (21 Hezlett Road, Kellyville) and Lot 2401 DP1213071 (103 Samantha Riley Drive, Kellyville). This measure will retain the opportunity for future development on the site to incorporate a component of retail floor space that will serve the neighbourhood centre, whilst providing a suitable and orderly built form outcome. It is also proposed that these sites be excluded from the mapped "Area C" which limits the height of residential flat buildings as part of a mixed use development to 7m. This will ensure that the height of a residential flat building as part of a mixed use development remains at 16m.

The property at 21 Hezlett Road, Kellyville is proposed to be included in the Schedule 1 Amendment to the North Kellyville Precinct Plan of the Growth Centres SEPP for consistency and to recognise its location within the centre although a mixed use development is currently under construction on this site. To achieve further consistency within the centre, Lots 1 and 2 DP1212326 will be excluded from the mapped "Area A" which limits the height of shop top housing and residential flat buildings as part of a mixed use development to 7m. As identified on Figure 3 above, these sites already have existing approvals. The proposed Additional Permitted Uses Map for land zoned R1 General Residential within the centre is shown below.



**Figure 5**  
Proposed Additional Permitted Uses Map

These controls will allow development that is of a scale consistent with the character established by current approvals. It is recognised that this is not an ideal outcome however the introduction of new DCP controls will facilitate development that is appropriate in terms of form and scale, and will allow for development that was envisaged in the North Kellyville DCP to occur. A future development application for shop top housing or a residential flat building as part of a mixed use development on this site will be subject to the new development controls contained in the North Kellyville DCP. The amended controls relating to apartment

size/mix, common open space, solar access and setbacks adjoining low density development will ensure that future development in this location more closely aligns with Council's desired outcome for multi-unit developments and will provide improved amenity for residents. It is noted that the draft clause requiring a minimum 50% of non-residential uses to be provided within shop top housing or mixed use developments will not apply to the properties zoned R1 General Residential in the Hezlett Road centre as they are located within a residential zone.

A post-exhibition amendment to the North Kellyville DCP is proposed to leave the maximum building height at four storeys rather than two storeys as was originally proposed for the neighbourhood centre. Table 18 in Section 4.3.4 'Key controls for residential flat buildings, manor homes and shop top housing' of the DCP will also be amended to include reference to shop top housing in the R1 zone in the Hezlett Road Centre. A further administrative amendment is also proposed to Figure 3 'Character Areas' to accurately identify the whole extent of the Hezlett Road centre and identify the Stringer Road centre which is currently not identified on the map.

#### **(h) Retail provision within the Box Hill Precincts**

A number of submissions raised concern that the requirement for at least 50% of the total floor area to comprise non-residential uses is inappropriate and inconsistent with the original intent for the Box Hill Precinct. One submission in relation to the Box Hill Town Centre suggests that the proposed provision of retail floor space as part of an existing application (945/2016/JP) provides sufficient retail floor space to meet demand and achieve the identified role for the Town Centre. Concern was also raised that developers may seek to maximise potential upon individual sites for residential development which may result in the unintended consequence of constructing additional unnecessary commercial floor space that could undermine the performance of the centre and that reducing the residential population would impact on the viability of centres.

**Comment:** The precinct planning undertaken for Box Hill included an assessment of future retail demand and envisaged approximately 10,000 dwellings across the precinct. However, as discussed in previous sections, the planning framework for the growth centres is allowing for significant additional residential development beyond what was anticipated when the precinct planning was undertaken. Based on trends to date, it is likely that the eventual yield that is achieved within Box Hill will be well in excess of the yield planned for as part of the precinct planning process. For instance, 93 apartments have already been approved in the precinct with a further 1,259 under assessment whereas the anticipated apartment yield was only 841 in total across the Precinct. Given the current strong market conditions for apartment construction, it is likely that the significant remaining land where apartments are permissible will be taken up, resulting in significant additional overall dwelling yields within the Precinct.

The expected additional dwellings will have significant implications for access to infrastructure and services including provision of sufficient retail and commercial floor space for residents into the future. Accordingly, it is anticipated there will be demand for additional retail and commercial floor space beyond what has been planned for as part of the precinct planning process. It is considered that the Box Hill Town Centre provides a good opportunity to meet any additional demand due to its central location and designation as the higher order retail centre for the Precinct. Accordingly, submissions that suggest there will be inadequate demand for additional retail floor space are not supported.

An amendment to Section 2.3.1 'Centres' and 8.1.2 'Box Hill Town Centre' within the Box Hill DCP is proposed to reflect the potential demand for additional retail and commercial uses and note these will be considered within the Town Centre subject to an assessment of demand as part of any future development application.

**(i) Relationship with existing bonus floor space ratio provisions for Box Hill centres**

Concerns were raised regarding the relationship between the requirement for 50% of the total floor space to comprise non-residential uses and the existing floor space ratio and 'bonus' floor space ratio where shop top housing is provided. It was raised that the mapped floor space ratio of 0.5:1 for the Box Hill Town Centre and the requirement for a minimum 50% of non-residential floor space would limit the achievable residential floor space. This would be inconsistent with existing Clause 4.4A 'Development of certain land within Zone R1 General Residential or Zone B2 Local Centre—additional floor space ratio' of the Box Hill Precinct Plan in the Growth Centres SEPP which permits a higher floor space ratio of 2:1 where shop top housing is provided. Submission authors generally noted that the existing height and floor space ratio controls would be sufficient to achieve the intended outcomes as identified through the precinct planning process.

**Comment:** Clause 4.4A of the Box Hill Precinct Plan allows a 'bonus' floor space ratio for the Box Hill Town Centre where the development site is 3 hectares or more in area to encourage the centre to develop in a holistic manner. Also, the clause allows additional floor space for shop top housing within the Box Hill Town Centre and village centres, as well as the town centre 'interface' which is zoned R1 General Residential and adjoins the town centre.

As set out in section 6(b) of the Council Report of 13 December 2016 (see Attachment D1) considerable flexibility has been provided within the Growth Centres planning framework to encourage development uptake when the market was not as strong as it is today. An unintended consequence has been significant additional residential density beyond what was anticipated and articulated within the Development Control Plan. The intended character and built form in the DCP and the surrounding local context are key considerations in determining whether change is warranted to the planning proposal.

A review of Clause 4.4A of the Box Hill Precinct Plan in the Growth Centres SEPP has been undertaken and it is agreed that clarification is needed of the relationship between the existing and proposed clauses, to ensure consistency of provisions and facilitate an appropriate scale of development consistent with the built form outcomes envisaged by the relevant Development Control Plans. To this end, a further separate planning proposal is recommended to amend clause 4.4A and the Floor Space Ratio Map. Details of the separate recommended planning proposal are set out in section 8 of the Council Report of 13 December 2016 (see Attachment D1).

**(j) Development Control Plan**

Some submissions raised concern with anomalies in the Box Hill DCP such as incorrect cross-referencing. A review has been undertaken to correct anomalies within the North Kellyville, Box Hill and shop top housing DCPs as outlined in Section 7 of the Council Report of 13 December 2016 (see Attachment D1). The DCPs with post-exhibition amendments are provided in Attachments 7, 8, 9 and 10 of the Council Report of 13 December 2016 (see Attachment D1). Highlighting in yellow denotes changes as exhibited. Highlighting in blue denotes a post-exhibition amendment.

A full summary of the submissions and responses are provided as an attachment to the Council Report of 13 December 2016 (see Attachment D1).

## **Post-Exhibition Planning Proposal and Development Control Plan Changes**

Following a review of the exhibited proposal and the consideration of submissions, the following post-exhibition amendments were considered at the Council Meeting of 13 December 2016:

### **The Hills Local Environmental Plan 2012**

#### *Carrington Road:*

- Exclude the local centre near Carrington Road from draft Clause 7.12 'Additional controls applying to shop top housing and residential flat buildings as part of mixed use developments' and the mapped Key Sites F for the B2 Local Centre zone ("Area F") under LEP 2012 (Figure 1) to reflect the exhibition of planning changes for the Sydney Metro Northwest Priority Precincts.

### **State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – North Kellyville**

#### *Hezlett Road Neighbourhood Centre:*

- Amend Schedule 1 'Additional permitted uses' to identify that shop top housing is a permitted use on Lot 101 DP1082890 (9 Hezlett Road, Kellyville), Lot 201 DP1187326 (21 Hezlett Road, Kellyville) and Lot 2401 DP1213071 (103 Samantha Riley Drive, Kellyville).
- Exclude 9 Hezlett Road, Kellyville, 21 Hezlett Road, Kellyville and 103 Samantha Riley Drive, Kellyville from draft Clause 6.6 'Additional controls applying to shop top housing and residential flat buildings as part of mixed use developments' and the mapped Key Sites C for the R1 General Residential Zone ("Area C") in the North Kellyville Release Area to ensure that the height of any future residential flat building as part of a mixed use development on the site remains at 16m.
- Exclude Lots 1 and 2 DP1212326 from the mapped "Area A" which limits the height of shop top housing and residential flat buildings as part of a mixed use development to 7m.

### **The Hills DCP 2012 Part B Section 8 – Shop Top Housing**

- Include a note within Section 1 'Site Planning' – Setbacks that 'active frontages' are defined within Section 2 to improve clarity.
- Remove the provision that a zero setback may be considered where a development adjoins a business zone or laneway to avoid conflict with the front, side and rear setbacks also listed in the DCP. It is considered appropriate setbacks based on adjoining zoning or rear laneways be considered on merit on a site-by-site basis.
- Refine the definition of 'active frontages' to be consistent with the current work being undertaken for the Sydney Metro Northwest Priority Precincts.

### **The Hills DCP 2012 Part C Section 1 – Parking**

- Amend Table 1 'Required Minimum Car Parking Provisions' to identify that the rate for 'residential flat buildings' and 'multi dwelling housing' also applies to the land use 'shop top housing'.

### **North Kellyville DCP**

- Include a reference in Section 1.3 'Relationship to other plans' clarifying that the Residential Flat Building Section of The Hills DCP 2012 should be read in conjunction with the North Kellyville DCP.
- Amend Figure 2 'Indicative Layout Plan', Figure 3 'North Kellyville Character Areas', Figure 21 'Public Transport' and Figure 22 'Pedestrian and Bicycle Network' to identify the whole extent of the Hezlett Road and Stringer Road centres where the centres are not currently identified.
- Amend Table 18 in Section 4.3.4 'Controls for residential flat buildings, manor homes and shop top housing' to:

- Clarify that common open space at ground level must only be accessible by residents to be consistent with the proposed approach within the new Shop Top Housing section of The Hills DCP 2012;
- Remove the provision that a zero setback may be considered where a development adjoins a business zone or laneway to avoid conflict with the front, side and rear setbacks also listed in the DCP. It is considered appropriate setbacks based on adjoining zoning or rear laneways be considered on merit on a site-by-site basis;
- Include reference to shop top housing in the R1 General Residential zone for land at Nos.9 and 21 Hezlett Road and 103 Samantha Riley Drive, Kellyville;
- Remove reference to 'residential flat buildings' within section that relates only to 'manor homes' within B1 Neighbourhood Centre and B2 Local Centre zones.
- Identify that cross reference to the Residential Flat Building and Business Sections of The Hills DCP 2012 is for 'additional' controls to ensure that controls such as those relating to waste management currently within the North Kellyville DCP are also considered.
- Include provision within Section 5.1.4 'Parking' to refer to the Parking Section of The Hills DCP 2012 for shop top housing parking rates.
- No change to stated height of four storeys (maximum 16m in Growth Centres SEPP) within Section 5.2.1 'Hezlett Road Neighbourhood Centre'.

### **Box Hill DCP**

- Include a reference in Section 1.3 'Relationship to other plans' clarifying that the Residential Flat Building Section of The Hills DCP 2012 should be read in conjunction with the Box Hill DCP.
- Amend Section 2.3.1 'Centres' and 8.1.2 'Box Hill Town Centre' within the Box Hill DCP to reflect the potential demand for additional retail and commercial uses and note these will be considered within the town centre subject to an assessment of demand as part of any future development application.
- Amend Table 19 in Section 5.4 'Controls for residential flat buildings, manor homes and shop top housing' to:
  - Clarify that common open space at ground level must only be accessible by residents to be consistent with the proposed approach within the new Shop Top Housing section of The Hills DCP 2012;
  - Remove the provision that a zero setback may be considered where a development adjoins a business zone or laneway to avoid conflict with the front, side and rear setbacks also listed in the DCP. It is considered appropriate setbacks based on adjoining zoning or rear laneways be considered on merit on a site-by-site basis;
  - Remove reference to building heights for shop top housing and mixed use developments in the R1 General Residential and R4 High Density Residential zones as the proposed new SEPP clause for shop top housing does not apply to residential zones in Box Hill; and
  - Update references refer to the Box Hill Precinct Plan and the building heights in draft Clause 6.8 under the Growth Centres SEPP. Remove references to the North Kellyville Precinct Plan and the duplicate reference to the Residential Flat Building Section of the Hills DCP.
  - Identify that cross reference to the Residential Flat Building and Business Sections of The Hills DCP 2012 is for 'additional' controls to ensure that controls such as those relating to waste management currently within the Box Hill DCP are also considered.
- Include a note within Table 24 'Side and rear setbacks' and Table 27 'Open Space Provision' to identify that the table refers only to developments comprising commercial uses only and that controls for shop top housing are contained within Table 19.
- Include provision within Section 8.1.1.4 'Parking' to refer to the Parking Section of The Hills DCP 2012 for shop top housing parking rates.

### Key Site References

References to proposed Key Sites 'E' and 'F' under LEP 2012 have been amended to Key Sites 'C' and 'D' post-exhibition, in accordance with the next available Key Site references at the current time.

## PART 6 PROJECT TIMELINE

| STAGE                                                   | DATE          |
|---------------------------------------------------------|---------------|
| Commencement Date (Gateway Determination)               | May 2016      |
| Government agency consultation                          | June 2016     |
| Commencement of public exhibition period                | June 2016     |
| Completion of public exhibition period                  | July 2016     |
| Commencement of second public exhibition                | October 2016  |
| Completion of second public exhibition                  | November 2016 |
| Timeframe for consideration of submissions              | November 2016 |
| Timeframe for consideration of proposal post exhibition | November 2016 |
| Report to Council on submissions                        | December 2016 |
| Date of submission to Department for finalisation       | December 2016 |



**ATTACHMENT A: ASSESSMENT AGAINST STATE ENVIRONMENTAL PLANNING POLICIES**

| <b>STATE ENVIRONMENTAL PLANNING POLICY (SEPP)</b>             |                                                                   | <b>APPLICABLE</b> | <b>RELEVANT? (YES/NO)</b> | <b>(IF RELEVANT) INCONSISTENT/CONSISTENT</b> |
|---------------------------------------------------------------|-------------------------------------------------------------------|-------------------|---------------------------|----------------------------------------------|
| No. 1                                                         | Development Standards                                             | NO                | -                         | -                                            |
| No. 14                                                        | Coastal Wetlands                                                  | NO                | -                         | -                                            |
| No. 19                                                        | Bushland in Urban Areas                                           | YES               | YES                       | CONSISTENT                                   |
| No. 21                                                        | Caravan Parks                                                     | YES               | NO                        | -                                            |
| No. 26                                                        | Littoral Rainforests                                              | NO                | -                         | -                                            |
| No. 30                                                        | Intensive Agriculture                                             | YES               | NO                        | -                                            |
| No. 33                                                        | Hazardous and Offensive Development                               | YES               | NO                        | -                                            |
| No. 36                                                        | Manufactured Home Estates                                         | NO                | -                         | -                                            |
| No. 44                                                        | Koala Habitat Protection                                          | NO                | -                         | -                                            |
| No. 47                                                        | Moore Park Showground                                             | NO                | -                         | -                                            |
| No. 50                                                        | Canal Estate Development                                          | YES               | NO                        | -                                            |
| No. 52                                                        | Farm Dams and Other Works in Land and Water Management Plan Areas | NO                | -                         | -                                            |
| No. 55                                                        | Remediation of Land                                               | YES               | NO                        | -                                            |
| No. 62                                                        | Sustainable Aquaculture                                           | YES               | NO                        | -                                            |
| No. 64                                                        | Advertising and Signage                                           | YES               | NO                        | -                                            |
| No. 65                                                        | Design Quality of Residential Flat Development                    | YES               | NO                        | -                                            |
| No. 70                                                        | Affordable Housing (Revised Schemes)                              | YES               | NO                        | -                                            |
| No. 71                                                        | Coastal Protection                                                | NO                | -                         | -                                            |
| Affordable Rental Housing (2009)                              |                                                                   | YES               | YES                       | CONSISTENT                                   |
| Building Sustainability Index: BASIX 2004                     |                                                                   | YES               | NO                        | -                                            |
| Exempt and Complying Development Codes (2008)                 |                                                                   | YES               | NO                        | -                                            |
| Housing for Seniors or People with a Disability (2004)        |                                                                   | YES               | NO                        | -                                            |
| Infrastructure (2007)                                         |                                                                   | YES               | NO                        | -                                            |
| Integration and Repeals (2016)                                |                                                                   | NO                | -                         | -                                            |
| Kosciuszko National Park – Alpine Resorts (2007)              |                                                                   | NO                | -                         | -                                            |
| Kurnell Peninsula (1989)                                      |                                                                   | NO                | -                         | -                                            |
| Mining, Petroleum Production and Extractive Industries (2007) |                                                                   | YES               | NO                        | -                                            |
| Miscellaneous Consent Provisions (2007)                       |                                                                   | YES               | NO                        | -                                            |
| Penrith Lakes Scheme (1989)                                   |                                                                   | NO                | -                         | -                                            |
| Rural Lands (2008)                                            |                                                                   | NO                | -                         | -                                            |
| State and Regional Development (2011)                         |                                                                   | YES               | NO                        | -                                            |
| Sydney Drinking Water Catchment (2011)                        |                                                                   | NO                | -                         | -                                            |
| Sydney Region Growth Centres (2006)                           |                                                                   | YES               | YES                       | CONSISTENT                                   |
| Three Ports (2013)                                            |                                                                   | NO                | -                         | -                                            |
| Urban Renewal (2010)                                          |                                                                   | NO                | -                         | -                                            |
| Western Sydney Employment Area (2009)                         |                                                                   | NO                | -                         | -                                            |
| Western Sydney Parklands (2009)                               |                                                                   | NO                | -                         | -                                            |
| <b>Deemed SEPPs</b>                                           |                                                                   |                   |                           |                                              |
| SREP No. 8 (Central Coast Plateau Areas)                      |                                                                   | NO                | -                         | -                                            |
| SREP No. 9 – Extractive Industry (No. 2 –                     |                                                                   | YES               | NO                        | -                                            |

| <b>STATE ENVIRONMENTAL PLANNING<br/>POLICY (SEPP)</b>    | <b>APPLICABLE</b> | <b>RELEVANT?<br/>(YES/NO)</b> | <b>(IF RELEVANT)<br/>INCONSISTENT/<br/>CONSISTENT</b> |
|----------------------------------------------------------|-------------------|-------------------------------|-------------------------------------------------------|
| 1995)                                                    |                   |                               |                                                       |
| SREP No. 16 – Walsh Bay                                  | NO                | -                             | -                                                     |
| SREP No. 20 – Hawkesbury – Nepean<br>River (No 2 – 1997) | YES               | NO                            | -                                                     |
| 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 117 MINISTERIAL DIRECTIONS**

| DIRECTION                                               |                                                                                   | APPLICABLE | RELEVANT?<br>(YES/NO) | (IF RELEVANT)<br>INCONSISTENT/<br>CONSISTENT |
|---------------------------------------------------------|-----------------------------------------------------------------------------------|------------|-----------------------|----------------------------------------------|
| <b>1. Employment and Resources</b>                      |                                                                                   |            |                       |                                              |
| 1.1                                                     | Business and Industrial Zones                                                     | YES        | YES                   | CONSISTENT                                   |
| 1.2                                                     | Rural Zones                                                                       | NO         | -                     | -                                            |
| 1.3                                                     | Mining, Petroleum Production and Extractive Industries                            | NO         | -                     | -                                            |
| 1.4                                                     | Oyster Aquaculture                                                                | NO         | -                     | -                                            |
| 1.5                                                     | Rural Lands                                                                       | NO         | -                     | -                                            |
| <b>2. Environment and Heritage</b>                      |                                                                                   |            |                       |                                              |
| 2.1                                                     | Environment Protection Zone                                                       | YES        | NO                    | -                                            |
| 2.2                                                     | Coastal Protection                                                                | NO         | -                     | -                                            |
| 2.3                                                     | Heritage Conservation                                                             | YES        | 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         | -                     | -                                            |
| <b>3. Housing, Infrastructure and Urban Development</b> |                                                                                   |            |                       |                                              |
| 3.1                                                     | Residential Zones                                                                 | YES        | YES                   | CONSISTENT                                   |
| 3.2                                                     | Caravan Parks and Manufactured Home Estates                                       | YES        | NO                    | -                                            |
| 3.3                                                     | Home Occupations                                                                  | YES        | NO                    | -                                            |
| 3.4                                                     | Integrating Land Use and Transport                                                | YES        | YES                   | CONSISTENT                                   |
| 3.5                                                     | Development Near Licensed Aerodomes                                               | NO         | -                     | -                                            |
| 3.6                                                     | Shooting Ranges                                                                   | NO         | -                     | -                                            |
| <b>4. Hazard and Risk</b>                               |                                                                                   |            |                       |                                              |
| 4.1                                                     | Acid Sulfate Soils                                                                | NO         | -                     | -                                            |
| 4.2                                                     | Mine Subsidence and Unstable Land                                                 | NO         | -                     | -                                            |
| 4.3                                                     | Flood Prone Land                                                                  | YES        | YES                   | CONSISTENT                                   |
| 4.4                                                     | Planning for Bushfire Protection                                                  | YES        | YES                   | CONSISTENT                                   |
| <b>5. Regional Planning</b>                             |                                                                                   |            |                       |                                              |
| 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                                                   | NO         | -                     | -                                            |

| DIRECTION                       |                                                                | APPLICABLE | RELEVANT?<br>(YES/NO) | (IF RELEVANT)<br>INCONSISTENT/<br>CONSISTENT |
|---------------------------------|----------------------------------------------------------------|------------|-----------------------|----------------------------------------------|
|                                 | Creek                                                          |            |                       |                                              |
| 5.9                             | North West Rail Link Corridor Strategy                         | YES        | YES                   | CONSISTENT                                   |
| <b>6. Local Plan Making</b>     |                                                                |            |                       |                                              |
| 6.1                             | Approval and Referral Requirements                             | YES        | YES                   | CONSISTENT                                   |
| 6.2                             | Reserving Land for Public Purposes                             | YES        | NO                    | -                                            |
| 6.3                             | Site Specific Provisions                                       | YES        | NO                    | -                                            |
| <b>7. Metropolitan Planning</b> |                                                                |            |                       |                                              |
| 7.1                             | Implementation of A Plan for Growing Sydney                    | NA         | NA                    | NA                                           |
| 7.2                             | Implementation of Greater Macarthur Land Release Investigation | NO         | -                     | -                                            |