

Planning proposal to limit the permissibility and scale of shop top housing in certain areas within The Hills local government area

Proposal Title :	Planning proposal to limit the permissibility and scale of shop top housing in certain areas within The Hills local government area		
Proposal Summary :	The planning proposal seeks to amend The Hills Local Environmental Plan 2012 and State Environmental Planning Policy (Sydney Region Growth Centres) 2006 to limit the permissibility and scale of shop-top housing in certain areas and zones.		
PP Number :	PP_2016_THILL_005_00	Dop File No :	16/03243

Proposal Details

Date Planning Proposal Received :	05-May-2016	LGA covered :	The Hills Shire
Region :	Metro(Parra)	RPA :	The Hills Shire Council
State Electorate :	CASTLE HILL	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	Various		
Suburb :	Various	City :	Postcode :
Land Parcel :	Various land in The Hills local government area		

DoP Planning Officer Contact Details

Contact Name :	Chris Browne
Contact Number :	0298601508
Contact Email :	chris.browne@planning.nsw.gov.au

RPA Contact Details

Contact Name :	Alica Iori
Contact Number :	0298430396
Contact Email :	aiori@thehills.nsw.gov.au

DoP Project Manager Contact Details

Contact Name :	Derryn John
Contact Number :	0298601505
Contact Email :	derryn.john@planning.nsw.gov.au

Land Release Data

Growth Centre :	Sydney North West	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Metro North West subregion	Consistent with Strategy :	Yes

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings 0

(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes

Lobbyists Code of

Conduct has been

complied with :

If No, comment :

To the best of the knowledge of the regional team, the Department's Code of Practice in relation to communications and meetings with Lobbyists has been complied with. Sydney Region West has not met with any lobbyist in relation to this proposal, nor has the Director been advised of any meetings between other departmental officers and lobbyists concerning this proposal.

Have there been No

meetings or

communications with

registered lobbyists? :

If Yes, comment :

The Department's Lobbyist Contact Register has been checked on 21 April 2016, and there have been no records of contact with lobbyists in relation to this proposal.

Supporting notes

Internal Supporting

Notes :

External Supporting

Notes :

The planning proposal was initially received on 11 February 2016. Further information was sought from Council, and an amended planning proposal was received on 5 May 2016.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment :

The objective of the proposal is to ensure appropriate use and delivery of shop-top housing within The Hills local government area by tightening controls for and limiting the permissibility of shop-top housing in certain areas and zones.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment :

The proposal seeks to insert a local clause, 'Additional controls for shop top housing', in The Hills Local Environmental Plan 2012 (the LEP) and in two Precinct Plans within State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the SEPP): North Kellyville (Appendix 2) and Box Hill (Appendix 11).

The local clauses are to apply to:

- land zoned B2 Local Centre, B1 Neighbourhood Centre and R1 General Residential in the North Kellyville Precinct (Appendix 2 of the SEPP);
- land zoned B2 Local Centre and B1 Neighbourhood Centre in the Box Hill Precinct (Appendix 11 of the SEPP); and
- certain land zoned B2 Local Centre and B1 Neighbourhood Centre in North Rocks, Castle Hill, West Pennant Hills, Kellyville, Northmead, Beaumont Hills, Rouse Hill, Winston Hills and Carlingford and identified on the Key Sites Map in the LEP.

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Each of these local clauses is to contain a provision that a development application 'shall not result in less than 50% of the total floor area on the subject land comprising non-residential floor area'. This could be more clearly expressed as 'consent must not be granted in respect of a development application for land in the subject area unless at least 50% of the total floor area is intended for non-residential uses'.

Each local clause is also to contain a provision specifying maximum height of buildings which include shop-top housing or which include residential flat buildings as part of mixed use developments.

- Land zoned B2 Local Centre in Box Hill Town Centre: 20 metres.
- All other subject land zoned B2 Local Centre: 10 metres.
- Land zoned B1 Neighbourhood Centre: 7 metres.
- Land zoned R1 General Residential within the North Kellyville Precinct: 7 metres.

The LEP's Key Sites Map is to be amended to identify that land covered by the LEP to which the local provisions apply.

Additionally, Appendix 11 (Box Hill Precinct) of the SEPP is to be amended to prohibit shop-top housing in the R2 Low Density Residential and R3 Medium Density Residential zones. Shop-top housing is already prohibited in these zones in the area covered by the LEP and in the North Kellyville Precinct, so the purpose of this provision is to make the Box Hill Precinct consistent with the rest of The Hills local government area.

It should be noted that the planning proposal gives the proposed LEP local clause number as clause 7.11. However, the LEP already contains a clause 7.11. Should the planning proposal proceed, it is therefore recommended that the local clause be numbered 7.12.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

1.1 Business and Industrial Zones

* May need the Director General's agreement

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

Is the Director General's agreement required? Yes

c) Consistent with Standard Instrument (LEPs) Order 2006 : Yes

d) Which SEPPs have the RPA identified?

SEPP (Sydney Region Growth Centres) 2006

e) List any other matters that need to be considered :

1.1 Business and Industrial Zones

The planning proposal seeks to limit the application of shop-top housing throughout the local government area. It also seeks to introduce a provision whereby, for certain developments that include shop-top housing, at least 50% of the floor area is given over to non-residential uses (such as retail and commercial).

The 50% requirement will assist in preventing the loss of employment land to residential uses.

The limits to be placed on shop-top housing may result in reduced uptake of land zoned for employment uses. Most of this land also permits various residential uses, and there is a risk that constraining the intensity of shop top housing development will lead land owners to opt instead for purely residential developments. This is particularly true of land zoned R1 General Residential in the North Kellyville Precinct, which is subject to a 9m height limit but in which the proposed height limit for developments containing shop-top housing or residential flat buildings is 7m. A shop-top housing development in the North Kellyville Precinct would be limited to two storeys, and at least 50% of its floor area would have to be non-residential. Conversely, a multi-dwelling housing

development in this area could be three storeys and would not be required to include any non-residential floor area. This may prove a more attractive option for developers.

In practice, the impact of any reduction in non-residential uptake would be very minor, as the land in question is limited to a small number of lots. There is also a market demand for retail uses in the subject land, and particularly that land that is zoned B2 Local Centre.

As such, it is considered unlikely that the proposal will result in any significant adverse impact on land zoned for business or industrial purposes, and the planning proposal is therefore consistent with this Direction.

3.1 Residential Zones

This Direction states, among other things, that a planning proposal that applies to land within a residential zone (or other zone in which significant residential development is permitted) must not contain provisions which will reduce the permissible residential density of the land. This planning proposal seeks to limit the extent of a particular housing type (shop top housing and residential flat buildings) within three residential zones (R1, R2 and R3) and two business zones (B1 and B2) which currently allow significant residential development. It is therefore inconsistent with the Direction.

A planning proposal may be inconsistent with this Direction if it is justified by a study prepared in support of the planning proposal which gives consideration to the objectives of the Direction. The planning proposal is supported by the Review of Shop Top Housing Controls adopted by Council at its meeting of 15 December 2015. The Review was a response to a substantial increase in development applications for shop top housing; many of these proposed developments were very large in scale and, while technically meeting the Standard Instrument definition of shop top housing, were considered by Council to be a misuse of that term, and more appropriately described as large mixed use developments or residential flat buildings with a small retail component. Many of these were located in areas surrounded by low density residential development and were not satisfactorily supported by infrastructure.

The Review of Shop Top Housing Controls analyses the current situation in each of 17 neighbourhood and local centres within The Hills, details recent development applications relating to shop top housing in those centres and proposes measures to rationalise controls for future development applications. These measures form the basis of this planning proposal.

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 and 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. The Review of Shop Top Housing Controls gives consideration to these objectives in that it seeks to establish an evidence basis for the provision of a particular housing type, aims to optimise the use of existing infrastructure and services, and considers the impact of residential development on surrounding land uses.

As the planning proposal is supported by a study that gives consideration to the objectives of the Direction, the inconsistency with this Direction is considered justified.

3.4 Integrating Land Use and Transport

The planning proposal seeks to protect the employment potential of land zoned for employment uses and to restrict the intensification of residential development on land whose transport provisions are based on the assumption that it is employment land. The

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residential intensification that the proposal seeks to prevent would result in altered transport use patterns for the subject land, so the proposal is seeking to avoid the necessity of increased transport services.

As such, the proposal is consistent with this Direction.

4.3 Flood Prone Land

The planning proposal will not result in any increase in the development potential of the subject land, and will in some cases reduce the development potential - particularly the residential development potential - of the subject land. As some of the subject land is identified as flood-prone, this reduction will lead to a reduced risk to human life and property in case of flood.

The proposal is therefore consistent with this Direction.

4.4 Planning for Bushfire Protection

The planning proposal will not result in any increase in the development potential of the subject land, and will in some cases reduce the development potential - particularly the residential development potential - of the subject land. As some of the subject land is identified as bushfire-prone, this reduction will lead to a reduced risk to human life and property in case of fire.

The proposal is therefore consistent with this Direction.

5.9 North West Rail Link Corridor Strategy

Some of the land to which the planning proposal applies falls within North West Rail Link precincts: Rouse Hill, Kellyville, Norwest and Castle Hill.

The Corridor Strategy is silent on the subject of shop-top housing, but offers general guidance on the expected uses in station precincts. The proposed strictures on development of shop-top housing and mixed use residential flat buildings are not inconsistent with the uses put forward by the Corridor Strategy. It is also worth noting that Council has indicated a willingness to further revise the controls should that be recommended by any future precinct planning process.

As such, it is considered that the planning proposal is consistent with this Direction.

SEPP (Sydney Region Growth Centres) 2006

The proposal includes amendments to the SEPP. The aims of the SEPP are:

- (a) To co-ordinate the release of land for residential, employment and other urban development in the North West and South West growth centres of the Sydney Region;
- (b) To enable the Minister from time to time to designate land in those growth centres as ready for release for development;
- (c) To provide for comprehensive planning for those 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 those growth centres that has conservation value;
- (f) To provide for the orderly and economic provision of infrastructure in and to those growth centres;
- (g) To provide development controls in order to protect the health of the waterways in those growth centres;

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- (h) To protect and enhance land with natural and cultural heritage value; and
- (i) To provide land use and development controls that will contribute to the conservation of biodiversity.

The planning proposal will assist in coordinating the release of land for urban development, will help to provide for comprehensive planning, and will reduce the need for disorderly and uneconomic provision of infrastructure. As such, it is consistent with such aims of the SEPP as are applicable.

The Department's Land Release team has been consulted regarding the planning proposal and has raised no objection. It is noted that the Land Release team is working on an amendment to the SEPP that includes, among other things, the removal of shop-top housing as a permitted use in the R3 Medium Density Residential zone in the Box Hill precinct (which overlaps with a provision of the planning proposal), and the removal of shop-top housing as a permitted use in the R1 General Residential zone in the North Kellyville precinct.

Given the likelihood that shop-top housing will soon be prohibited in the R1 General Residential zone in the North Kellyville precinct (and the possibility that the Department-driven SEPP amendment will precede the finalisation of this planning proposal), it is unclear why Council is pursuing a reduced height limit for development of shop-top housing or mixed use residential flat buildings on this land. Council should therefore consider the option of simply removing shop-top housing (and mixed use residential flat buildings) as a permitted use in the R1 General Residential zone in the North Kellyville precinct, and should decide on its preferred option prior to exhibition.

The planning proposal is considered to be broadly consistent with SEPP (Sydney Region Growth Centres) 2006.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Council has provided existing and proposed versions of the key sites map in The Hills Local Environmental Plan 2012. This does not identify all of the land to which the planning proposal applies, and nor does it show the intent of the proposed changes.**

Should the planning proposal proceed, the exhibition materials should include mapping that identifies all the land to which the proposal applies, as well as the height limits which will be de facto altered by the planning proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The planning proposal does not nominate a particular timeframe for community consultation. Given the broad scope of the proposal and the number of properties affected, it is considered that an exhibition period of 28 days would be appropriate.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

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Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Hills LEP 2012 is a principal LEP.**

Assessment Criteria

Need for planning proposal :

The planning proposal has been prepared in order to implement the findings of a strategic review of shop-top housing and mixed use developments across the local government area. The review was adopted at The Hills Shire Council's meeting of 15 December 2015.

The Review was a response to a substantial increase in development applications for shop top housing; many of these proposed developments were very large in scale and, while technically meeting the Standard Instrument definition of shop top housing, were considered by Council to be a misuse of that term, and more appropriately described as large mixed use developments or residential flat buildings with a small retail component. Many of the proposed developments were located in areas surrounded by low density residential development and were not satisfactorily supported by infrastructure.

The Review of Shop Top Housing Controls analysed the current situation in each of 17 neighbourhood and local centres within The Hills, detailed recent development applications relating to shop top housing in those centres and proposed measures to rationalise controls for future development applications. These measures form the basis of this planning proposal.

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Consistency with strategic planning framework :

LOCAL STRATEGY

The proposal seeks to effect strategic outcomes envisaged by the Residential Direction and Centres Direction of Council's Adopted Draft Local Strategy (2008).

The Residential Direction seeks to ensure that residential development in The Hills is planned and managed appropriately. The Direction includes a target for 36,000 additional dwellings in the local government area by 2031 (based on the draft North West Subregional Strategy) and demonstrates that there is sufficient capacity in existing and proposed residential areas to meet this target. As such, any reduction in residential density resulting from this planning proposal would have only a minor impact. The Residential Direction also emphasises the need for housing to be appropriately supported by infrastructure and services; the planning proposal is consistent with this goal in that it will limit the potential for large shop-top housing and mixed use developments in areas not well supported by infrastructure and services.

The Centres Direction establishes a hierarchy of centres within the local government area and identifies desired typologies and scales for each tier of centre. The three types of centre covered by this planning proposal are Neighbourhood Centre, Village Centre and Town Centre. The provisions of the planning proposal have been drafted with a view to delivering development that is consistent with the typology and scale of each of these centre types.

As the planning proposal seeks to implement the strategic goals of the Residential Direction and Centres Direction, it is considered that the proposal is consistent with the Local Strategy.

A PLAN FOR GROWING SYDNEY

The planning proposal seeks to rationalise the development of shop-top housing and mixed use residential flat buildings. In doing so, it will impose some limits on provision of new housing supply and specifically on a particular housing type. This is contrary to Direction 2.1 (Accelerate housing supply across Sydney) and Direction 2.3 (Improve housing choice to suit different needs and lifestyles) of A Plan for Growing Sydney.

However, the proposal will also protect employment land (as per Direction 1.7: Grow Strategic centres - providing more jobs closer to home), provide retail floor space to support existing centres (as per Direction 2.2: Accelerate urban renewal across Sydney - providing homes closer to jobs), and provide a more rational use of existing infrastructure and services (as per Direction 3.1: Revitalise existing suburbs).

As such, it is considered that the proposal is broadly consistent with A Plan for Growing Sydney in terms of employment, urban renewal and infrastructure and services outcomes, and that this outweighs any inconsistency with housing outcomes.

Environmental social economic impacts :

ENVIRONMENTAL

The planning proposal will result in very little change to built form, and any change is likely to occur as a reduction in development potential. As such, any environmental impacts are likely to be positive.

SOCIAL

The proposal seeks to rationalise development of shop-top housing and ensure that developments which include shop-top housing comprise at least 50% non-residential development. This will ensure the availability of land for shops and services within neighbourhood and local centres, which will have a positive social impact. No negative social impacts are foreseen.

ECONOMIC

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By ensuring that at least 50% of the floor area of developments which include shop-top housing are given over to non-residential uses, the proposal seeks to protect land zoned for employment and commercial uses. As such, it is likely to have an overall positive economic impact, and no negative economic impacts are anticipated.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) : **Integral Energy
Transport for NSW
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services
State Emergency Service
Sydney Water
Telstra**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Cover letter 29 Jan 2016.pdf	Proposal Covering Letter	Yes
Amended Planning Proposal - 5 May 2016.pdf	Proposal	Yes
Attachment A - Existing and proposed key sites maps.pdf	Map	Yes
Council Report and Minute - 15 December 2015.pdf	Determination Document	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.1 Business and Industrial Zones
3.1 Residential Zones**

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3.4 Integrating Land Use and Transport
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection

Additional Information :

1. Prior to exhibition, Council must update the planning proposal to include mapping that clearly identifies all land to which the planning proposal applies, as well as the height limits which will de facto apply to particular forms of development as a result of the planning proposal.

2. Prior to exhibition, Council must liaise further with the Department's Land Release team regarding the Department's proposed amendment to, among other things, remove shop top housing as a permissible use on land zoned R1 General Residential in Appendix 2 (North Kellyville Precinct Plan) of State Environmental Planning Policy (Sydney Region Growth Centres) 2006. Council should then update the planning proposal if appropriate.

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:

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

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and be given at least 21 days to comment on the proposal.

4. Community consultation is required under Section 56(2)(c) and 57 of the EP&A Act as follows:

(a) the planning proposal must be publicly exhibited for a minimum of 28 days; and

(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with the planning proposal as identified in section 5.5.2 of A Guide to preparing local environmental plans (Department of Planning and Environment 2013).

5. A public hearing is not required to be held in relation to this matter by any person or body under section 52(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the local environmental plan is to be 9 months from the week following the date of the Gateway determination.

DELEGATION TO COUNCIL

As the planning proposal is to amend both The Hills Local Environmental Plan and State Environmental Planning Policy (Sydney Region Growth Centres) 2006, it is recommended that Council not be issued with delegation to make the Plan.

Supporting Reasons :

The planning proposal has merit, in that it will help to rationalise development of shop-top housing and mixed use residential flat buildings in The Hills local government area. The proposal is supported by a strategic study, will have little to no adverse impact on housing supply, and will assist in protecting employment lands in local centres.

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Signature:

Derryn John

Printed Name:

DERRYN JOHN

Date:

12 MAY 2016

