

ITEM-2	LOCAL ENVIRONMENTAL PLANS AMENDMENT (SECONDARY DWELLINGS) ORDER 2020
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	23 FEBRUARY 2021 COUNCIL MEETING
GROUP:	SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS
AUTHOR:	TOWN PLANNER GIDEON TAM
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING NICHOLAS CARLTON

EXECUTIVE SUMMARY

In December 2020 the Department of Planning, Industry and Environment made amendments to the Local Environmental Plan Standard Instrument Order which will permit Councils to set maximum size criteria for secondary dwellings within rural zones (distinct from urban zoned land). In order to include this new *optional* Standard Instrument clause and specify distinct size criteria for secondary dwellings in rural zones, Councils are required to initiate individual planning proposals to amend their Local Environmental Plans.

This optional amendment would achieve Council's goal of better regulating the size of secondary dwellings as set out in our earlier planning proposal.

REPORT

This report recommends that Council initiate a planning proposal to amend The Hills LEP and introduce the new provision relating to the maximum size of secondary dwellings in rural areas. The proposal would ensure that secondary dwellings can be feasibly provided within rural areas, in a form which is compatible with the character of the rural locality.

1. BACKGROUND

Development standards for secondary dwellings have been regulated under Clause 5.4(9), which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Under Clause 5.4(9) of The Hills LEP, Council permits secondary dwellings to have a total floor area of 60m² or 20% of the total floor area of the principal dwelling (whichever is the greater).

Clause 5.4(9) has historically applied to both rural and urban zones. While appropriate outcomes were being achieved in established urban areas, in rural areas Clause 5.4(9) failed to appropriately regulate the scale of secondary dwellings and the quality of

development outcomes. This matter has been a long-standing issue identified by Council and in an attempt to address these issues, Council previously resolved on 30 April 2019 to forward a planning proposal to introduce distinct maximum size criteria for secondary dwellings in rural zones to the Department of Planning, Industry and Environment for Gateway Determination (Attachment 1).

On 14 February 2020, Council received a Gateway Determination which advised that the proposal should *not* proceed (Attachment 2). Council subsequently submitted a request for a Gateway Determination Review which was forwarded to the Independent Planning Commission (IPC) for consideration.

On 10 June 2020, the IPC finalised its 'Gateway Determination Advice Report' (Attachment 3) which was ultimately supportive of the strategic and site-specific merits of Council's proposal, however recommended that in order to enable the amendments sought, the Department would need to either:

- Change the mandatory nature of Clause 5.4(9)(a) in the Standard Instrument; or
- Enact the changes through a relevant State Environmental Planning Policy (SEPP).

The Department determined not to alter the Gateway Determination for Council's planning proposal (see Attachment 4). However, it was advised at that time that an imminent draft discussion paper relating to Housing Diversity would set out a proposal to include provisions in a proposed new Housing Diversity SEPP which would give Councils the discretion to set a maximum size for secondary dwellings in rural zones.

The Department's Discussion Paper / Explanation of Intended Effect on the revised SEPP was publicly exhibited in mid-2020 and at its meeting of 28 August 2020, Council resolved to make a submission to the Department of Planning, Industry and Environment in response to the exhibition (provided as Attachment 5). Acknowledging the intent of the proposed amendment, Council's submission recommended that a mechanism be created within the LEP Standard Instrument to allow Councils to set alternative maximum size criteria for secondary dwellings in rural and urban areas.

2. NEW STANDARD INSTRUMENT CLAUSE

On 16 December 2020 an amendment to the LEP Standard Instrument Order was made which amends the existing Clause 5.4(9) so that it relates specifically to 'urban zones' and introduces a new optional Clause 5.5 which specifically relates to maximum size of secondary dwellings in rural zones. The Order came into effect on 1 February 2021. Through opting to include the new Clause 5.5 within an LEP, Councils now have the discretion to set maximum size criteria for secondary dwellings within rural zones (distinct from urban zoned land).

The new Standard Instrument Clause 5.5 is as follows:

5.5 Controls relating to secondary dwellings on land in a rural zone [optional]

If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—

- (a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater-*

- (i) [insert number] square metres,*

(ii) *[insert number]% of the total floor area of the principal dwelling, and*

(b) the distance between the secondary dwelling and the principal dwelling must not exceed [insert number] metres.

Direction— *This clause may also be adopted without paragraph (a) or without paragraph (b).*

As Clause 5.5 is an optional clause and is not currently utilised in The Hills LEP, Council will need to submit a new planning proposal to the Department of Planning Industry and Environment in order to include Clause 5.5 in The Hills LEP and nominate development standards.

3. DESCRIPTION OF THE PLANNING PROPOSAL

Consistent with Council's previous position and the intent of the previous planning proposal initiated by Council (12/2019/PLP), it is recommended that Council now initiate a new planning proposal seeking to amend The Hills LEP to include the new Standard Instrument Clause 5.5.

Council's previous planning proposal sought to specify a maximum floor area for secondary dwellings in rural areas only. However, the drafting of the new clause requires that Council nominate *both* a maximum floor space *and* a maximum percentage of the principal dwelling area, with the entitlement for the area of a secondary dwelling to be calculated as the *greater* of the two figures.

With respect to the maximum floor space, it is recommended that Council specify a maximum floor space of 110m². The clause is written such that this area is to be calculated excluding any area used for car parking. While Council's previous planning proposal did seek to also limit the area for associated car parking to a further 20m² in addition to the area of the secondary dwelling, the Standard Instrument clause does not provide Council with the ability to specify the size of parking areas.

Council's previous planning proposal sought to specify a separate maximum floor space criteria for car parking so that a reasonably sized garage could be provided without compromising the achievable habitable living space of a secondary dwelling. In this respect, the drafting of the new Standard Instrument to exclude of any area used for car parking from the nominated maximum floor space criteria is considered reasonable to permit this same outcome. Further, despite the absence of maximum floor space criteria for parking, it is considered that adequate controls are contained within The Hills DCP 2012 to ensure that car parking areas associated with secondary dwellings will be of an appropriate size that respects the local rural character and demonstrates a high standard of aesthetic quality and amenity.

With respect to a maximum percentage of the principal dwelling, it is recommended that Council specify a maximum percentage of 1%. Given the clause is drafted such that the area of a secondary dwelling is limited to the *greater* of the specified maximum size or the percentage of the principal dwelling, using this smaller percentage figure will ensure that the maximum floor space criteria of 110m² would predominantly be the control relied upon in applying the clause. Given some principal dwellings within the rural area of the Shire exceed 2,000m², this lower percentage would effectively prevent reliance on the percentage figure to enable delivery of excessively large secondary dwellings that are inconsistent with the local rural character and aligns with the intent of Council's previous planning proposal.

As demonstrated in Table 1 below, the proposal to limit secondary dwellings in rural areas to the *greater* of 110m² (excluding parking areas) or 1% of the principal dwelling size, will effectively reflect Council's previous policy position of limiting all secondary dwellings in rural areas to a maximum size of 110m² (excluding parking areas), even in instances where there is an extremely large principal dwelling on the site. The potential application of the clause and likely sizes of secondary dwellings that could be achievable under the proposed controls is detailed below.

Scenario	Current Controls			Planning Proposal
	Principal Dwelling	Max. Secondary Dwelling (20%)	Bedroom Nos.	Max. Secondary Dwelling (1% or 110m ²)
1	2,200 m ²	440 m ²	7	110 m ²
2	2,000 m ²	400 m ²	6	110 m ²
3	1,200 m ²	240 m ²	4	110 m ²
4	1,043 m ²	208 m ²	3	110 m ²
5	486 m ²	97 m ²	2	110 m ²
6	350 m ²	70 m	2	110 m ²

Table 1: Maximum Secondary Dwelling Size Test Scenarios for Existing Principal Dwellings

In addition to the maximum size of a secondary dwelling, Clause 5.5 also includes an additional option to regulate the distance between a principal dwelling and a secondary dwelling. Currently, The Hills LEP does not specify a standard for building separation between the principal dwelling and secondary dwelling, nor does The Hills Development Control Plan 2012. The absence of this limitation has not facilitated any known inappropriate development outcomes and as such, the inclusion of this further control is considered unnecessary at this time. It is proposed that if the planning proposal is made, secondary dwelling outcomes in rural areas be closely monitored and if the need arises to further regulate this form of development by imposing a minimum separation distance, Council's LEP could be further amended in the future to include this provision.

In accordance with the above, it is recommended that Council resolve to initiate a planning proposal to include the new Clause 5.5 in The Hills LEP as follows:

5.5 Controls relating to secondary dwellings on land in a rural zone [optional]

If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—

- (a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater-*
 - (i) 110 square metres, and*
 - (ii) 1% of the total floor area of the principal dwelling,*

The proposed amendment would only apply to rural zoned land where secondary dwellings are already permitted with consent, including in RU1 Primary Production, RU2 Rural Landscape and RU6 Transition zones.

IMPACTS

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future

The proposed amendments to The Hills LEP will promote improved outcomes with respect to secondary dwellings in rural zones and will provide the community with a greater mix and choice of housing within the Shire.

RECOMMENDATION

1. Council prepare a planning proposal to amend The Hills Local Environmental Plan to include the new Clause 5.5 and specify maximum size criteria for secondary dwellings in rural zones in accordance with Section 3 of this report.
2. The planning proposal be reported to the Local Planning Panel for advice, in accordance with Section 2.19 of the Environmental Planning and Assessment Act 1979.
3. Following receipt of the Local Planning Panel's advice and subject to this advice not requiring any revisions to the planning proposal as detailed within this report, the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination.

ATTACHMENTS

1. Council Report and Resolution, 30 April 2019 (33 pages)
2. Gateway Determination, 14 February 2020 (2 pages)
3. Gateway Determination Advice Report, 10 June 2020 (11 pages)
4. Gateway Review Outcome (1 pages)
5. Council Report and Resolution, 25 August 2020 (8 pages)

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

ATTACHMENT 1

ITEM-2	FURTHER REPORT AND PLANNING PROPOSAL - SECONDARY DWELLINGS IN RURAL ZONES
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	30 APRIL 2019 COUNCIL MEETING
GROUP:	SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS
AUTHOR:	TOWN PLANNER JONATHAN TOLENTINO
RESPONSIBLE OFFICER:	ACTING MANAGER – FORWARD PLANNING NICHOLAS CARLTON

EXECUTIVE SUMMARY

This report recommends that Council initiate a planning proposal to amend The Hills Local Environmental Plan 2012 ('LEP 2012') to include appropriate criteria for secondary dwellings in rural zones. The proposal seeks to ensure that secondary dwellings can be feasibly provided within rural areas, in a form which is compatible with the character of the rural locality. The proposal would facilitate increased potential for housing mix and choice within the Shire.

Council considered a Notice of Motion relating to secondary dwellings in rural zones in July 2018 (Attachment 1), which identified that Clause 5.4 of LEP 2012 was not delivering appropriate outcomes with respect to secondary dwellings in rural areas. Given the range of principal dwellings' sizes within the rural area, in some instances the clause has prevented the delivery of secondary dwellings or restricted the size to 60m² (where the principal dwelling is modest in scale), whilst in other instances it has enabled secondary dwellings which are well in excess of 200m² (where principal dwellings are well over 1,000m²).

Council resolved to write to the Minister for Planning Anthony Roberts (now the "Minister for Planning and Public Spaces" Rob Stokes) and seek a meeting to discuss potential amendments to the Standard Instrument LEP to address this issue. This letter was sent to the Minister in August 2018 (Attachment 2) and a follow-up letter was sent in November 2018 (Attachment 3).

Council has been unable to arrange for a meeting to discuss this issue and despite correspondence received from the Minister in March 2019 (Attachment 4), the Minister or Department has been unable to provide any clear solution for the issues raised by Council.

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

HISTORY**24/07/2018**

Council considered a Notice of Motion and resolved that:

The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Instrument LEP to:

- a. *Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and*
- b. *The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.*

The Notice of Motion and resolution are provided as Attachment 1.

20/08/2018

A Mayoral letter was sent to the former Minister for Planning Anthony Roberts requesting a meeting to discuss amendments to the Standard Instrument Local Environmental Plan in accordance with Council's resolution on 24 July 2018 (Attachment 2).

30/11/2018

A follow-up Mayoral letter was sent to the former Minister for Planning reiterating the request for a meeting to discuss amendments to the Standard Instrument Local Environmental Plan (Attachment 3).

22/03/2019

Council received a letter from the Minister stating that the Department would only consider a planning proposal to amend the percentage figure within the clause, which sets the maximum size of the secondary dwelling relative to the floor area of the principal dwelling (Attachment 4). This would not address the issues raised by Council with respect to the current application of the clause. This letter appears to be dated 10 October 2018, but was only recently received.

REPORT

The purpose of this report is to provide Council with an update on attempts to arrange for discussions with the Minister regarding secondary dwellings in rural zones, in accordance with Council's resolution on 24 July 2018 and to recommend that Council initiate a new planning proposal to amend LEP 2012 to include maximum size criteria for secondary dwellings in rural zones and rectify the issue at a local level.

BACKGROUND

Secondary dwellings or 'granny flats' provide for greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owners and an affordable housing option for lower income households.

Under LEP 2012, secondary dwellings are permissible in both residential and rural zones. The size of secondary dwellings is regulated by Clause 5.4(9), which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Under LEP 2012, the maximum size of a secondary dwelling is limited to *the greater of* 60m² or 20% of the total floor area of the principal dwelling. It is noted that under the Standard Instrument, Council has discretion to

ORDINARY MEETING OF COUNCIL**30 APRIL, 2019**

set the maximum percentage within the Clause. The percentage of 20% was originally applied by Council with a view to enabling suitable outcomes in both urban residential and rural areas.

Clause 5.4(9) of LEP 2012 is currently producing appropriate outcomes with respect to secondary dwellings in established urban areas and provides suitable flexibility for landowners. The resulting size of secondary dwellings in established urban areas generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

In rural areas however, Clause 5.4(9) has been producing a diversity of outcomes, some of which are less desirable and contrary to the intent of the provision (to provide alternative and affordable housing options). In particular, there exists a dichotomy between:

- Rural land owners with smaller established homes (up to 300m²), who are effectively limited to a maximum secondary dwelling size of 60m²; and
- Rural land owners with larger dwellings, who benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling (resulting in extremely large secondary dwellings which look and function more like a dual occupancy dwelling).

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings to enable secondary dwelling beyond the maximum of 60m². In comparison to urban areas, rural sites present fewer constraints in relation to the siting of a secondary dwelling and larger land areas would enable both the principal dwelling and the secondary dwelling to benefit from improved opportunities for private open space and fewer amenity impacts such as overlooking or overshadowing both within the site and to adjoining sites.

In these circumstances, where the potential for negative impact is low, it is considered reasonable that a secondary dwelling might be supported with a floor area larger than 60m², regardless of the size of the principal dwelling. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling, and ensure secondary dwellings are contextually appropriate, there still remains a case to limit the overall floor size.

In contrast, in some rural areas the size of principal dwellings can be significantly larger than those in urban areas, with numerous examples in the Shire of rural dwellings with floor areas in excess of 1,000m². In these cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m² – which is equivalent in size to a typical new four (4) bedroom home.

Allowing secondary dwellings of such a large size is undesirable as it limits their ability to provide an affordable housing option, increases the risk of adverse impacts and often does not accord with the established character of rural areas. These large secondary dwellings are more akin to a dual occupancy development and whilst dual occupancies are already permissible with consent in rural zones, they must be in the form of attached dwellings. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling under Clause 5.4(9) can be seen as a 'loophole' to essentially achieve a detached dual occupancy outcome on rural land, where such an outcome is not strictly permissible or intended.

An example is provided below, where the principal dwelling has a floor area of 1,200m². Reliance on Clause 5.4(9) has enabled a secondary dwelling with an area of 240m² (20% of floor area of the principal dwelling), containing four (4) bedrooms plus a study. Such an outcome is clearly contrary to the intentions of the provision which enable secondary dwellings and results in inequitable and undesirable outcomes within rural areas.



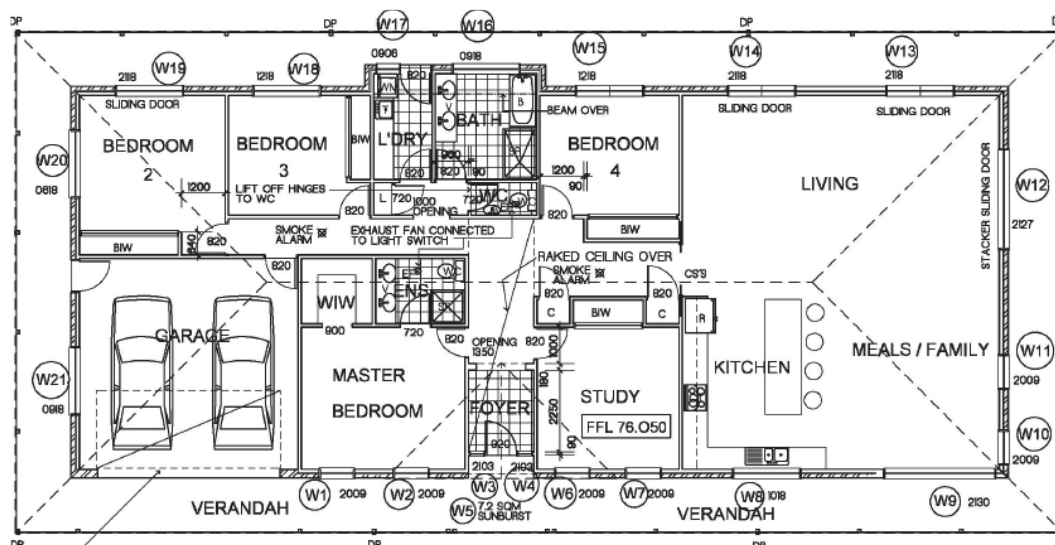


Figure 1

Example of large secondary dwelling on rural land in Dural (DA 2000/2014/HA)

Having identified such outcomes, Council considered a Notice of Motion on 24 July 2018 and resolved that:

The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Instrument LEP to:

- Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and*
- The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.*

A Mayoral letter was sent to the former Minister for Planning Anthony Roberts in August 2018 (Attachment 2), with a follow up letter being sent in November 2018 (Attachment 3).

UPDATE ON ATTEMPTS TO ARRANGE FOR A MEETING WITH THE MINISTER

In response to two (2) separate Mayoral letters, verbal advice was given to Council officers on 9 January 2019 advising that in the preparation of a response to the Mayor's letter, the Department was seeking legal advice regarding the wording of the proposed amendments to Clause 5.4(9) of the Standard Instrument.

Subsequently, a letter was received from the then Minister for Planning on 22 March 2019 (although this letter was dated October 2018). The letter indicated that the Department would consider an amendment to Clause 5.4(9)(b), only with respect to the specified maximum percentage (that is, the maximum area of the secondary dwelling relative to the principal dwelling). This letter is provided as Attachment 4.

Based on the advice received, it is apparent that the Department is unwilling to consider any broader amendment to the State-wide Standard Instrument or the Standard Instrument

ORDINARY MEETING OF COUNCIL

30 APRIL, 2019

clause relating to secondary dwellings, beyond a change to the maximum percentage specified. This suggested solution (to amend the maximum percentage within the clause) does not address the issues raised by Council.

Specifically, as the issue is two-fold (the unreasonable limitation of the size of some secondary dwellings *and* the inappropriately large size of other secondary dwellings), amending the maximum percentage within the clause would potentially resolve one part of the issue whilst concurrently worsening the other. For this reason, the only viable solution to the issues raised by Council is the imposition of a consistent fixed maximum size for secondary dwellings across rural areas, as previously identified in Council's resolution on 24 July 2018.

Council's concerns regarding secondary dwellings in rural areas are yet to be addressed and beyond a potential change to the maximum percentage specified in the clause, there has been no indication that any broader amendment to the State-wide Standard Instrument LEP would be supported. Given this, it is recommended that Council initiate a new planning proposal to amend LEP 2012 to address the issue at a local level.

PLANNING PROPOSAL

In the absence of any definitive solution from the Minister or the Department, it is recommended that Council initiate a planning proposal to amend The Hills LEP 2012 to specify that in rural zones, the gross floor area of secondary dwellings must not exceed 110 square metres for habitable rooms plus an optional garage of up to 20 square metres (total permitted 130 square metres).

There would be two potential approaches to amending the clause to achieve this, as demonstrated below (amendments to the existing clause are shown underlined):

Option A**(9) Secondary dwellings in urban zones**

If development for the purposes of a secondary dwelling is permitted in an urban zone under this Plan, the total floor area of the dwelling (excluding any area for parking) must not exceed whichever of the following is greater:

- a) 60 square metres,*
- b) 20% of the total floor area of the principal dwelling.*

(10) Secondary dwellings in rural zones

If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).

Option B**(9) Secondary dwellings**

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area for parking) must not exceed whichever of the following is greater:

- a) 60 square metres,
- b) 20% of the total floor area of the principal dwelling.
- c) Notwithstanding (a) and (b), the gross floor area of a secondary dwelling within a rural zone must not exceed 110 square metres, plus an optional garage up to 20 square metres.

Both Option A and Option B would achieve the outcomes sought by Council and remain consistent with the intention of Council's resolution of 24 July 2018, albeit as a localised amendment to LEP 2012 rather than an amendment to the State-wide Standard Instrument LEP.

Option A reflects the amendment proposed in the Notice of Motion considered by Council on 24 July 2018 and subsequently requested in the Mayoral letters to the Minister. However, it does represent a more significant amendment to the Standard Instrument clause as it effectively separates the existing provision into two individual clauses (one applicable to urban zones and one applicable to rural zones).

While Option A is the most clear and transparent approach to achieving Council's desired outcomes, Option B is also provided for Council's consideration in light of the advice received from the former Minister for Planning in March 2019. Option B may be more likely to be supported by the Department and Minister as it ensures that the wording of the existing Standard Instrument clause remains unchanged and simply includes a new subclause 'c)' to address this localised issue.

Both approaches propose a maximum size for *all* secondary dwellings in rural zones of 110m² square metres, plus an optional attached garage with a maximum size of 20m² (total size of 130m²). This recommended floor area would provide sufficient room for a two bedroom / two bathroom dwelling, with comfortable living areas (as shown in the examples below) and would enable this outcome to be achieved, irrespective of the size of the principal dwelling on the land.

The proposed maximum size would also limit the scale of secondary dwellings in rural zones to a more contextually appropriate size and avoid unanticipated outcomes associated with applying a percentage-based floor area to very large principal dwellings.

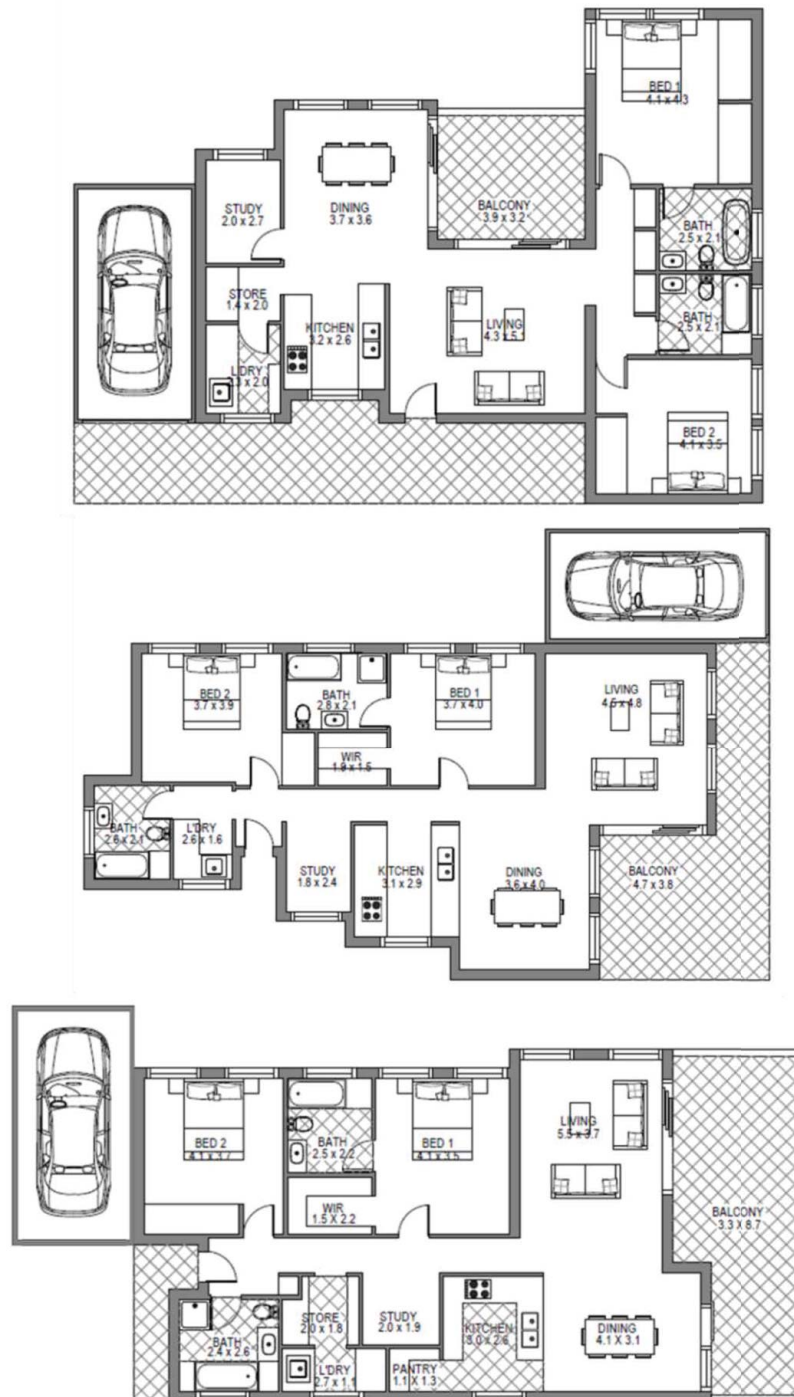


Figure 2
Example floor plans of 110m² dwellings

IMPACTS**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future

The proposed amendments to LEP 2012 will promote improved outcomes with respect to secondary dwellings in rural zones and will provide the community with a greater mix and choice of housing within the Shire.

RECOMMENDATION

A planning proposal to amend The Hills Local Environmental Plan 2012 to provide appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination. The planning proposal shall seek to amend LEP 2012 as per 'Option A' within this report and also include an alternative option ('Option B' within this report), should the Minister and Department be more supportive of this approach.

ATTACHMENTS

1. Notice of Motion and Minutes – 24 July 2018 (9 pages)
2. Mayoral Letter to Minister – 20 August 2018 (4 pages)
3. Mayoral Letter to Minister – 30 November 2018 (1 page)
4. Letter from Minister – Received by Council 22 March 2019 (8 pages)

ITEM-2

NOTICE OF MOTION - SECONDARY DWELLINGS IN RURAL AREAS

We, the undersigned Councillors, hereby give notice of our intention to move at the next Ordinary Meeting of Council –

MOTION

1. The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:
 - a. enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and
 - b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling.
2. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.



Councillor Preston



Councillor Collins OAM



Mayor – Dr Michelle Byrne

BACKGROUND

Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households. Council's LEP allows secondary dwellings in both residential and rural zones and limits the size in all locations to 60m² or 20% of the total floor area of the principal dwelling, excluding parking.

To explain, Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. It is a 'compulsory' clause under the State wide Standard Instrument LEP and cannot be amended or altered. For secondary dwellings the 60m² part of the control is fixed. The percentage amount was able to be decided by Council when drafting its LEP and 20% was applied at that time in an effort to suit both rural and urban areas.

Some of the development applications lodged for rural zones have not been able to proceed or have needed amendment to comply with the LEP 60m² size criteria. In some other cases the size of existing dwellings can be well over 1,000m², allowing for considerably larger second dwellings that can conflict with the rural character of the area. The problem is that the clause does not work well for the range of dwelling sizes that we have in our rural areas.

A simpler approach would be to restrict the size of secondary dwelling in rural zones to a maximum floor space. A floor area of around 110m² plus parking would provide for a two bedroom dwelling. I have attached some floor plans showing a typical 110m² dwelling plus parking option.

In order to better reflect the characteristics of the rural locality I ask that we approach the Minister for Planning to discuss amendments to the Principal Instrument - Standard Local Environmental Plan, to enable the setting of a maximum size criteria for secondary dwellings in rural zones. A suggested amendment to the Standard Instrument clause is attached.

ATTACHMENT

1. Secondary dwelling option 110m² plus parking (3 pages)
2. Suggested amendment to clause 5.4 of the Standard Instrument LEP (2 pages)



110 SQM DWELLING



110 SQM DWELLING



ATTACHMENT 2

5.4 Controls relating to miscellaneous permissible uses [compulsory]

- (1) **Bed and breakfast accommodation**
If development for the purposes of bed and breakfast accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than *[insert number not less than 3]* bedrooms.
Note: Any such development that provides for a certain number of guests or rooms may involve a change in the class of building under the *Building Code of Australia*.
- (2) **Home businesses**
If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than *[insert number not less than 30]* square metres of floor area.
- (3) **Home industries**
If development for the purposes of a home industry is permitted under this Plan, the carrying on of the home industry must not involve the use of more than *[insert number not less than 30]* square metres of floor area.
- (4) **Industrial retail outlets**
If development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed:
 - (a) *[insert number not more than 67]* % of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or
 - (b) *[insert number not more than 400]* square metres, whichever is the lesser.
- (5) **Farm stay accommodation**
If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than *[insert number not less than 3]* bedrooms.
- (6) **Kiosks**
If development for the purposes of a kiosk is permitted under this Plan, the gross floor area must not exceed *[insert number not less than 10]* square metres.
- (7) **Neighbourhood shops**
If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed *[insert number not less than 80]* square metres.
- (8) **Roadside stalls**
If development for the purposes of a roadside stall is permitted under this Plan, the gross floor area must not exceed *[insert number not less than 8]* square metres.

(9) **Secondary dwellings in urban zones**

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,
- (b) [insert number] % of the total floor area of the principal dwelling.

(10) **Secondary dwellings in rural zones**

If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 24 July 2018

Councillor Tracey enquired whether the Bidjigal Trust had provided any

ATTACHMENT 2

The Group Manager - Customer, Community Services & Technology confirmed at the time there had been phone calls and correspondence from the Ward Manager, and was not aware whether Council had received a formal response but would follow this up.

409 BY-ELECTION

Shachi Tiwari of West Pennant Hills requested further information regarding the By-Election this Saturday.

The General Manager advised there is a Councillor vacancy which needs to be filled by a By-Election as Council was too far away from the next General Election. The By-election is for West Ward residents only. Residents can log onto Council's Website to view a map and if you live in West Ward it is compulsory for you to vote.

ITEM-2**NOTICE OF MOTION - SECONDARY DWELLINGS IN RURAL AREAS**

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR COLLINS OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED.

410 RESOLUTION

1. The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:
 - a. enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and
 - b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling.
2. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.

(Councillor Tracey requested his name be recorded as opposing the Resolution of Council in this matter)

Councillors PRESTON and COLLINS OAM rose for a Division. The result of the Division was as follows:

This is Page 5 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 24 July 2018

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 24 July 2018

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr R A Preston
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr A J Hay OAM
Clr A N Haselden
Clr S P Uno

VOTING AGAINST THE MOTION

Clr R M Tracey

ABSENT

Clr R Jethi

CALL OF THE AGENDA

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR UNO THAT items 3, 5 and 7 be moved by exception and the recommendations contained therein be adopted.

THE MOTION WAS PUT AND CARRIED.

411 RESOLUTION

Items 3, 5, and 7 be moved by exception and the recommendations contained therein be adopted.

ITEM-3

PROPERTY DEALINGS RELATING TO DEVELOPMENT MATTERS

412 RESOLUTION

1. Council consent to the release of three restrictions on the use of land and a positive covenant from the title of Lots 204 and 223 DP 1183480 and Lot 4283 DP 1190104 (No.'s 7-9 Garrawilla Avenue, No. 9 Deepwater Circuit and No. 8 Woko Street, North Kellyville), and the dealings/ request documents be executed under seal and returned to the applicant concurrently with the Subdivision Certificate for DA 118/2014/ZB.
2. Council consent to the cancellation of a 12.78 metre wide right of access (easement) from the title of Lot 305 DP 1214616 (No. 19 Messenger Street, North Kellyville), and the dealing/ request document be executed under seal and returned to the applicant concurrently with the Subdivision Certificate for DA 580/2017/ZA.

This is Page 6 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 24 July 2018



Mayor, Dr **Michelle Byrne**

The Hills Shire Council

3 Columbia Court, Baulkham Hills NSW 2153
PO Box 7064 Baulkham Hills BC 2153

0448 268 140
mayor@thehills.nsw.gov.au

ATTACHMENT 2



20 August 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001

Our Ref: FP176

Dear Minister

Secondary Dwellings in Rural Areas

Council at its meeting of 24 July 2018 considered a Notice of Motion and resolved as follows:

"The mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus a optional attached garage of up to 20m² (total 130m²); and*
- b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling."*

Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households.

The Hills Local Environmental Plan (LEP 2012) allows secondary dwellings in both residential and rural zones. Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. When LEP 2012 was drafted Council were given an option to include a percentage of the floor area of the principal dwelling as an alternative maximum floor area for secondary dwellings to the set 60m². Council adopted a floor area of 20% of the principal dwelling.

In established urban areas the size options of either 60m² or 20% of the floor area of the principal dwelling, provides flexibility for land owners. The resulting size of secondary dwellings generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

The application of Clause 5.4 to land in rural areas however produces significantly different and diverse results. There exists a dichotomy between rural land owners with smaller

www.thehills.nsw.gov.au

- 2 -

established homes seeking secondary dwellings slightly larger than 60m² and rural land owners with vast established dwellings benefitting from the application of a percentage of the principal dwelling's floor area resulting in very large secondary dwellings which function more like a dual occupancy.

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings. Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas means that both the principal dwelling and the secondary dwelling benefit from improved opportunities for private open space and fewer amenity impacts such as overlooking or overshadowing both within the site and to adjoining sites.

In such circumstances where the potential for negative impact is low, it is considered reasonable that a secondary dwelling might be supported with a floor area larger than 60m², regardless of the size of the principal dwelling. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling there remains a case to limit the overall floor size.

By contrast, in some rural areas, the size of principal dwellings can be significantly larger than in urban areas. Numerous examples are available within The Hills where the floor areas of dwellings in some rural areas exceed 1,000m². In such cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m², equivalent to a new 4 bedroom home. Creating secondary dwellings of such a large size limits their ability to provide an affordable housing option, increases the risk of adverse impacts and often does not accord with the established character of rural areas.

These large secondary dwellings are more akin to a dual occupancy development. Whilst dual occupancies are permissible with consent in rural zones, they must be in the form of attached dwellings. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling using the floor area percentage provisions of Clause 5.4(9) can be seen as an alternative way of achieving a detached dual occupancy outcome on rural land where such an outcome is not strictly permissible under LEP 2012.

In the example below, the principal dwelling has a floor area of 1,200m², 20% of which equates to 241m². The secondary dwelling which was ultimately approved under Clause 5.4(9) has a floor area of 240m² and contains 4 bedrooms plus a study.

- 3 -

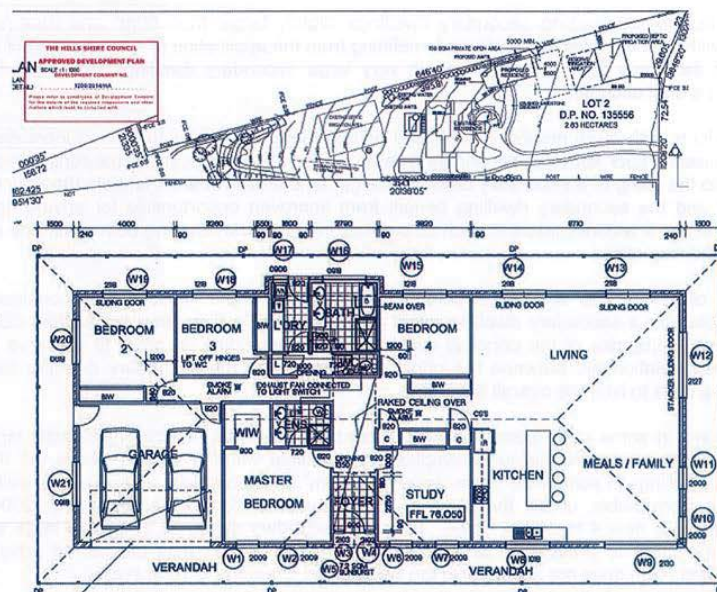


Fig.1 – Example of large secondary dwelling on rural land in Dural.

In order to better facilitate secondary dwellings in rural areas which provide for affordability and choice, whilst respecting the unique character of rural areas, it is suggested that the Standard Instrument LEP template be amended to introduce a maximum floor area for secondary dwellings in rural areas. A suggested floor area of 110m² would provide sufficient room for at least two generous bedrooms and comfortable living areas as per the examples in Attachment 1. The suggested maximum floor area would allow greater choice and flexibility for land owners seeking slightly larger secondary dwellings and would at the same time limit the impacts associated with applying a percentage based floor area to very large principal dwellings.

In order to introduce a maximum floor area for secondary dwellings in rural areas, an amendment to the wording of the Standard Instrument template is required. To assist in discussion, suggested wording of an amendment to Clause 5.4 is included below:

- 4 -

5.4 Controls relating to miscellaneous permissible uses [compulsory]

(9) Secondary dwellings in urban zones

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,*
- (b) [insert number] % of the total floor area of the principal dwelling.*

(10) Secondary dwellings in rural zones

If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).

Having regard to the matters raised above, I request a meeting to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely



Dr Michelle Byrne
MAYOR

Attachment 1: Example floor plans based on 110m² gross floor area.



Mayor, Dr **Michelle Byrne**

The Hills Shire Council

3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153

0448 268 140

mayor@thehills.nsw.gov.au



ATTACHMENT 3

30 November 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001

Our Ref: FP176

Dear Minister

Secondary Dwellings in Rural Areas

I am writing to request a response to my previous letter dated 20 August 2018 (attached) which sought a meeting with you to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Council at its meeting of 24 July 2018 considered a Notice of Motion and resolved as follows:

"The mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:

- a. *Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage of up to 20m² (total 130m²); and*
- b. *Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling."*

The Councillors and I are seeking to ensure that the planning framework facilitates secondary dwellings in rural areas which provide for affordability and choice, whilst also respecting the unique character of rural areas. However, nearly 4 months have passed since this resolution and any progress towards a solution to this issue has been inordinately delayed while we await your response.

Preliminary discussions between Council staff and the Director, Sydney Region West of the Department of Planning and Environment have indicated that the issues raised by Council are considered unique to The Hills. As such, a planning proposal to amend The Hills LEP 2012 may be more appropriate than amendments to the Standard Instrument. If this is also your position, I would appreciate advice to that effect.

Council is running out of time to progress a solution to the issue this year and as such, it is respectfully requested that you please respond to this letter (and my previous correspondence dated 20 August 2018) as a matter of urgency. If I have not received a response from you by 30 November 2018, I will endeavor to have the matter reconsidered by Council, with a view to initiating a planning proposal to solve this issue at a local level, through amendments to The Hills LEP 2012.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely


Dr Michelle Byrne
MAYOR

Attachment 1: Previous Letter dated 20 August 2018.

[Signed Mayoral Letter to Minister Roberts re secondary dwellings in ru...](#)

ATTACHMENT 4



Anthony Roberts MP

Minister for Planning, Minister for Housing, Special Minister of State

Your ref: FP176
Our ref: MDPE18/3198

Dr Michelle Byrne
Mayor
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153


Dear Mayor,

Thank you for your correspondence about The Hills Shire Council's request to amend The Hills Local Environmental Plan (LEP) 2012 as it applies to the size of secondary dwellings in rural zones in The Hills.

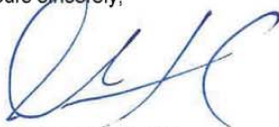
I acknowledge Council's concerns, particularly given the LEP allows secondary dwellings to be up to 20 per cent of the total floor area of the principal dwelling. I appreciate that this means secondary dwellings on rural properties can vary greatly in maximum size, depending on the size of the principal dwellings.

I understand Council is seeking to amend its LEP to remove this 20 per cent allowance for rural zones, and instead set a maximum size for secondary dwellings in rural zones. Such dwellings are proposed to be restricted to 110 square metres of habitable rooms, with an optional attached garage of up to 20 square metres.

The Department of Planning and Environment has advised that it is willing to consider a planning proposal to amend Clause 5.4(9)(b). However, as this is a compulsory clause in the standard instrument, the Department can only consider a change to the percentage of the total floor area of the principal dwelling at this time.

Departmental staff would be pleased to meet with you to discuss such a planning proposal. To arrange a meeting, or if you have any more questions, please contact Ms Ann-Maree Carruthers, Director, Sydney Region West, at the Department on 9274 6270.

Yours sincerely,



10 OCT 2018

Anthony Roberts MP
Minister for Planning
Minister for Housing
Special Minister of State



Mayor, Dr **Michelle Byrne**

The Hills Shire Council

3 Columbia Court, Baulkham Hills NSW 2153
PO Box 7064 Baulkham Hills BC 2153

0448 268 140

mayor@thehills.nsw.gov.au



20 August 2018

The Hon. Anthony Roberts MP
Minister for Planning, Minister for Housing &
Special Minister of State
GPO BOX 5341
SYDNEY NSW 2001



Our Ref: FP176

Dear Minister

Secondary Dwellings in Rural Areas

Council at its meeting of 24 July 2018 considered a Notice of Motion and resolved as follows:

"The mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Local Environmental Plan to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus a optional attached garage of up to 20m² (total 130m²); and*
- b. Remove the allowance for secondary dwellings in rural zones to be 20% of the total floor area of the principal dwelling."*

Secondary dwellings or 'granny flats' allow a greater mix and choice of housing. They can provide an income stream for some households, choices in living accommodation for the property owner and a housing affordability option for lower income households.

The Hills Local Environmental Plan (LEP 2012) allows secondary dwellings in both residential and rural zones. Clause 5.4 of LEP 2012 sets out the size criteria for a range of land uses, including secondary dwellings. When LEP 2012 was drafted Council were given an option to include a percentage of the floor area of the principal dwelling as an alternative maximum floor area for secondary dwellings to the set 60m². Council adopted a floor area of 20% of the principal dwelling.

In established urban areas the size options of either 60m² or 20% of the floor area of the principal dwelling, provides flexibility for land owners. The resulting size of secondary dwellings generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

The application of Clause 5.4 to land in rural areas however produces significantly different and diverse results. There exists a dichotomy between rural land owners with smaller

www.thehills.nsw.gov.au

- 2 -

established homes seeking secondary dwellings slightly larger than 60m² and rural land owners with vast established dwellings benefitting from the application of a percentage of the principal dwelling's floor area resulting in very large secondary dwellings which function more like a dual occupancy.

For residents with more modest established homes there is a desire to see an increase in the permissible floor space of secondary dwellings. Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas means that both the principal dwelling and the secondary dwelling benefit from improved opportunities for private open space and fewer amenity impacts such as overlooking or overshadowing both within the site and to adjoining sites.

In such circumstances where the potential for negative impact is low, it is considered reasonable that a secondary dwelling might be supported with a floor area larger than 60m², regardless of the size of the principal dwelling. Notwithstanding, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling there remains a case to limit the overall floor size.

By contrast, in some rural areas, the size of principal dwellings can be significantly larger than in urban areas. Numerous examples are available within The Hills where the floor areas of dwellings in some rural areas exceed 1,000m². In such cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m², equivalent to a new 4 bedroom home. Creating secondary dwellings of such a large size limits their ability to provide an affordable housing option, increases the risk of adverse impacts and often does not accord with the established character of rural areas.

These large secondary dwellings are more akin to a dual occupancy development. Whilst dual occupancies are permissible with consent in rural zones, they must be in the form of attached dwellings. Therefore, on sites containing a large principal dwelling, construction of a secondary dwelling using the floor area percentage provisions of Clause 5.4(9) can be seen as an alternative way of achieving a detached dual occupancy outcome on rural land where such an outcome is not strictly permissible under LEP 2012.

In the example below, the principal dwelling has a floor area of 1,200m², 20% of which equates to 241m². The secondary dwelling which was ultimately approved under Clause 5.4(9) has a floor area of 240m² and contains 4 bedrooms plus a study.

- 3 -

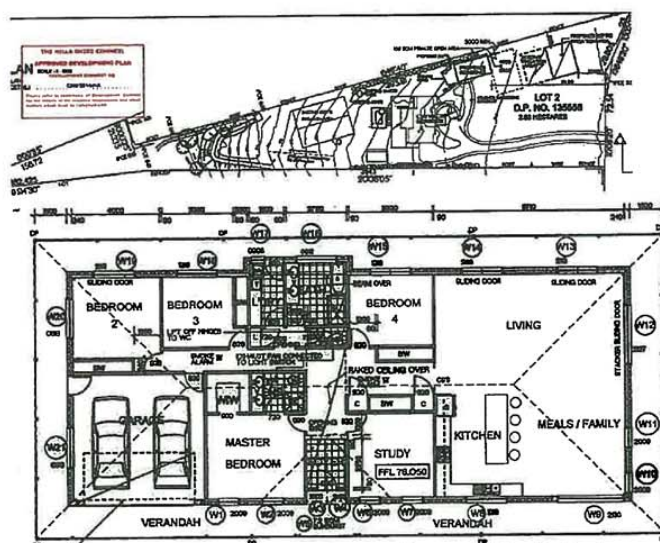


Fig.1 – Example of large secondary dwelling on rural land in Dural.

In order to better facilitate secondary dwellings in rural areas which provide for affordability and choice, whilst respecting the unique character of rural areas, it is suggested that the Standard Instrument LEP template be amended to introduce a maximum floor area for secondary dwellings in rural areas. A suggested floor area of 110m² would provide sufficient room for at least two generous bedrooms and comfortable living areas as per the examples in Attachment 1. The suggested maximum floor area would allow greater choice and flexibility for land owners seeking slightly larger secondary dwellings and would at the same time limit the impacts associated with applying a percentage based floor area to very large principal dwellings.

In order to introduce a maximum floor area for secondary dwellings in rural areas, an amendment to the wording of the Standard Instrument template is required. To assist in discussion, suggested wording of an amendment to Clause 5.4 is included below:

- 4 -

5.4 Controls relating to miscellaneous permissible uses [compulsory]

...

(9) Secondary dwellings in urban zones

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,*
- (b) [insert number] % of the total floor area of the principal dwelling.*

(10) Secondary dwellings in rural zones

If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).

Having regard to the matters raised above, I request a meeting to discuss the establishment of a maximum floor area for secondary dwellings in rural areas.

Should you have any enquiries, please contact Michael Edgar, General Manager on 9843 0105.

Yours sincerely



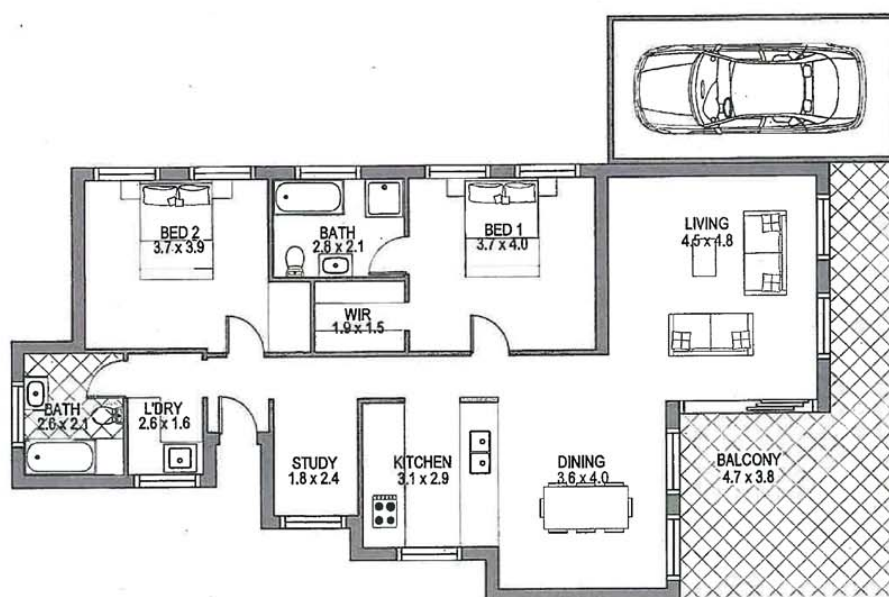
Dr Michelle Byrne
MAYOR

Attachment 1: Example floor plans based on 110m² gross floor area.

ATTACHMENT 1



110 SQM DWELLING



110 SQM DWELLING



110 SQM DV

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 30 April 2019

ITEM-1 CONFIRMATION OF MINUTES

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR RUSSO THAT the Minutes of the Ordinary Meeting of Council held on 9 April 2019 be confirmed.

THE MOTION WAS PUT AND CARRIED.

155 RESOLUTION

The Minutes of the Ordinary Meeting of Council held on 9 April 2019 be confirmed.

APOLOGIES

A MOTION WAS MOVED BY COUNCILLOR UNO AND SECONDED BY COUNCILLOR RUSSO THAT the apology from Councillor Hay OAM be accepted and leave of absence granted.

THE MOTION WAS PUT AND CARRIED.

156 RESOLUTION

The apology from Councillor Hay OAM be accepted and leave of absence granted.

COMMUNITY FORUM

There were no addresses to Council during Community Forum.

ITEM-2 FURTHER REPORT AND PLANNING PROPOSAL - SECONDARY DWELLINGS IN RURAL ZONES

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR COLLINS OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

157 RESOLUTION

A planning proposal to amend The Hills Local Environmental Plan 2012 to provide appropriate maximum size criteria for secondary dwellings in rural zones be forwarded to the Department of Planning and Environment for Gateway Determination. The planning proposal shall seek to amend LEP 2012 as per 'Option A' within this report and also include an alternative option ('Option B' within this report), should the Minister and Department be more supportive of this approach.

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 30 April 2019

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr A N Haselden
Clr R A Preston
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr R Jethi
Clr J Jackson
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr R M Tracey
Clr S P Uno

VOTING AGAINST THE MOTION

None

MEETING ABSENT

Clr A J Hay OAM

ITEM-3 POST EXHIBITION - REVIEW OF DISABILITY CONTROLS (FP230)

A MOTION WAS MOVED BY COUNCILLOR TRACEY AND SECONDED BY COUNCILLOR HASELDEN THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

158 RESOLUTION

Draft amendments to The Hills Development Control Plan 2012 Part B Sections 3-7 as detailed within this report and provided as Attachments 1-5 be adopted.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr A N Haselden
Clr R A Preston
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr R Jethi
Clr J Jackson
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr R M Tracey
Clr S P Uno

This is Page 4 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 30 April 2019



Planning,
Industry &
Environment

PP_2019_THILL_003_00 (IRF19/4881)

Mr Michael Edgar
General Manager
The Hills Shire Council
PO Box 7064
NORWEST NSW 2153

Dear Mr Edgar

Planning proposal PP_2019_THILL_003_00 to amend The Hills Local Environmental Plan 2012

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend The Hills Local Environmental Plan 2012 clause 5.4(9) to include provisions for secondary dwellings in rural zones.

As delegate of the Minister for Planning and Public Spaces, I have now determined that the planning proposal should not proceed.

This decision is made on the basis that Clause 5.4(9) is a compulsory provision under the Standard Instrument – Principal Local Environmental Plan and that under the Standard Instrument cannot be legally amended. I note that Council only has discretion to set the maximum percentage within the clause. Further, the proposal does not sufficiently test secondary dwelling outcomes and different percentages.

I have also considered the proposal and conclude that the inconsistency of the proposal with Section 9.1 Direction 4.4 Planning for Bushfire Protection is not justified as Council has not demonstrated to the NSW Rural Fire Service that the proposal could comply with Planning for Bush Fire Protection 2006.

Should you have any enquiries about this matter, I have arranged for Ms Gina Metcalfe to assist you. Ms Metcalfe can be contacted on 9860 1542.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Catherine Van Laeren'.

13.02.2020

Catherine Van Laeren
Acting Executive Director
Central River City and Western Parkland City

Encl: Gateway determination



Gateway Determination

Planning proposal (Department Ref: PP_2019_THILL_003_00): to amend The Hills Local Environmental Plan 2012 clause 5.4(9) to include provisions for secondary dwellings in rural zones.

I, the Acting Executive Director, Central River City and Western Parkland City, at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to The Hills Local Environmental Plan (LEP) 2012 to amend clause 5.4(9) to include provisions for secondary dwellings in rural zones should not proceed for the following reasons:

1. The proposal contains unresolved inconsistencies with Section 9.1 Direction 4.4 Planning for Bushfire Protection;
2. The proposal cannot be legally made as clause 5.4(9) under the Standard Instrument – Principal Local Environmental Plan which is a 'compulsory' clause for local environmental plans; and
3. The proposal does not adequately demonstrate secondary dwelling outcomes and test scenarios of different percentages under clause 5.4(9)(b).

Dated 13th day of February 2020.

A handwritten signature in black ink, appearing to read 'Catherine Van Laeren'.

**Catherine Van Laeren
Acting Executive Director, Central
River City and Western Parkland City
Greater Sydney, Place and
Infrastructure
Department of Planning, Industry and
Environment**

**Delegate of the Minister for Planning
and Public Spaces**

ATTACHMENT 3



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request for Secondary Dwellings in Rural Zones, The Hills Shire Council

Gateway Determination Advice Report

Chris Wilson (Chair)
Soo-Tee Cheong

10 June 2020

1 INTRODUCTION

1. On 18 May 2020, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning, Industry and Environment (**Department**) to give advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to a planning proposal and Gateway Determination in respect of rural zones in The Hills LEP 2019 within The Hills Shire Council Local Government Area (**LGA**).
2. On 15 July 2019, The Hills Shire Council (**Council**) lodged the Planning Proposal (**Planning Proposal**) with the Department, seeking to include appropriate criteria for secondary dwellings in rural zones.
3. On 13 February 2020, as delegate of the Minister for Planning and Public Spaces (**Minister**), the Department issued a Gateway Determination that the Planning Proposal did not have strategic merit and should not proceed (the **Gateway Determination**).
4. On 25 March 2020, Council wrote to the Department requesting a review of the Gateway Determination.
5. The matter was referred by the Minister's delegate to the Commission for advice. The letter accompanying the referral requested that the Commission "review the planning proposal and prepare advice concerning the merits of the review request. The advice should include a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the Gateway determination issues on 13 February 2020 should be overturned and given a Gateway to proceed or not."
6. Mr Peter Duncan AM, Acting Chair of the Commission, nominated Chris Wilson (Chair) and Soo-Tee Cheong to constitute the Commission providing advice on the review of the Gateway determination.

1.1 The Planning Proposal

7. As stated in the Department's Gateway Determination Report (**Department's Gateway Report**) dated 26 November 2019, the Planning Proposal applies to all rural zoned land under the Hills LEP 2012 which is now the Hills LEP 2019 (**HLEP 2019**) as follows:
 - RU1 Primary Production;
 - RU2 Rural Landscape;
 - RU3 Forestry; and
 - RU6 Transition.
8. The Department's Gateway Report states that the objective of the Planning Proposal is to amend the HLEP 2019 clause 5.4(9) (controls relating to miscellaneous permissible uses – secondary dwellings) to ensure that secondary dwellings within rural areas can be provided in a form that is compatible with the character of the rural locality.

9. Clause 5.4(9) of the HLEP 2019 currently states:

*(9) **Secondary dwellings** If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater—*

- (a) 60 square metres,*
- (b) 20% of the total floor area of the principal dwelling.*

10. Council considers that Clause 5.4(9) is currently producing appropriate outcomes in urban areas yet inequitable and inappropriate outcomes in the Shire's rural area as:

- Rural landowners with smaller established homes (up to 300sqm) are effectively limited to a maximum secondary dwelling size of 60m²; and
- Rural landowners with larger dwellings benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling which can result in extremely large secondary dwellings equivalent in size to a typical new four bedroom home.

11. Council considers that these outcomes are undesirable given:

- It limits the ability for secondary dwellings to provide an affordable housing outcome;
- it increases the risk of adverse impacts associated with larger secondary dwellings such as visual impacts, vegetation loss, bushfire protection issues and loss of rural character; and
- Large secondary dwellings are more akin to a dual occupancy development noting that detached dual occupancies are not permissible in rural zones.

12. To achieve the stated outcomes of the Planning Proposal, Council has proposed two options for amending clause 5.4(9) of the HLEP 2019:

- Option A (**Option A**) is Council's preferred option which seeks the following changes to the clause:

(9) Secondary dwellings in urban zones

If development for the purposes of a secondary dwelling is permitted in an urban zone under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater—

- (a) 60 square metres,*
- (b) 20% of the total floor area of the principal dwelling.*

(10) Secondary dwellings in rural zones

If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres)

- Option B (**Option B**) is an alternative option which seeks the following changes to the clause:

(9) Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed

whichever of the following is the greater—

- (a) 60 square metres,
- (b) 20% of the total floor area of the principal dwelling,
- (c) Notwithstanding (a) and (b), the gross floor area of a secondary dwelling within a rural zone must not exceed 110 square metres, plus an optional garage up to 20 square metres.

1.2 History of the Planning Proposal and Gateway Determination

Table 1 - History of the Planning Proposal and Gateway Determination

Date	Details
24 July 2018	Council considered a Notice of Motion to write to the Minister for Planning and Public Spaces seeking a meeting to discuss amendments to the Standard Local Environmental Plan (in respect to the Planning Proposal)
30 April 2019	Council resolved to forward a Planning Proposal to the Department
19 June 2019	The Hills Shire Local Planning Panel considered the Planning Proposal and recommended that it should proceed to gateway determination
15 July 2019	Council lodged the Planning Proposal with the Department
26 November 2019	The Department signed off on its Gateway Determination Report
6 December 2019	The Hills LEP 2019 came into force, replacing The Hills LEP 2012. The update did not result in any implications for the Planning Proposal apart from the fact that the Planning Proposal now applies to the HLEP 2019.
6 February 2020	Council met with the Minister for Planning and Public Spaces to discuss provisions for secondary dwellings in rural zones under HLEP 2019.
13 February 2020	The Department issued its Gateway Determination, in which it determined that the Planning Proposal should not proceed
25 March 2020	Council lodged a gateway determination review application form
18 May 2020	The Commission received the request for gateway determination review and Gateway Review Justification Assessment from the Department

1.3 The Department's Decision

13. The Department's Gateway Report states:

"It is recommended that the delegate of the Minister determine that the planning proposal should not proceed.

Although the proposal has strategic merit as it gives effect to the Central City District Plan, the Hills Future Community Strategic Plan and draft Hills Future 2036 Local Strategic Planning Statement; the proposal does not demonstrate sufficient strategic merit to amend clause 5.4(9) as proposed. The proposed provisions for the percentage of the total floor area of the principal dwelling in rural zones and the maximum size of secondary dwellings under clause 5.4(9)(b) cannot be legally made."

14. The Department's Gateway Report recommended the Planning Proposal should not proceed for the following reasons:

1. *[The Planning Proposal] cannot be legally made as clause 5.4(9) under the Standard Instrument – Principal Local Environmental Plan which is a 'compulsory' clause for local environmental plans;*

2. is inconsistent with Section 9.1 Direction 4.4 Planning for Bushfire Protection; and
3. does not sufficiently test secondary dwelling outcomes and different percentages under clause 5.4(9)(b).

2 THE COMMISSION'S CONSIDERATION

2.1 The Commission's Meetings

15. As part of its review, the Commission met with various persons as set out in Table 2. All meeting notes were made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available on
Department	27 May 2020	3 June 2020
Council	28 May 2020	9 June 2020

2.2 Material considered by the Commission

16. In this review, the Commission has carefully considered the following material (material):
 - Council's Notice of Motion (**Notice of Motion**) from Council's meeting on 24 July 2018;
 - Council's mayoral letter to the Minister for Planning, dated 20 August 2018;
 - The Minister for Planning's letter to Council, dated 10 October 2018;
 - Council's mayoral letter to the Minister for Planning, dated 30 November 2018;
 - Council's report (**Council Report**) and minutes from Council's meeting on 30 April 2019;
 - The Hills Local Planning Panel Report (**Hills LPP Report**) dated 24 June 2019;
 - Council's Planning Proposal, dated 15 July 2019;
 - Summary of correspondence with Department following submission of Planning Proposal dated between 18 January 2019 – 19 September 2019;
 - the Department's Gateway Determination Report, dated 26 November 2019;
 - the Department's Gateway Determination, dated 13 February 2020;
 - the Department's letter to Council advising of the Gateway Determination, dated 18 February 2020;
 - Council's Gateway Review Application and notification, dated 25 March 2020;
 - Council's Response to Gateway Determination (**Gateway Determination Response**), dated 19 May 2020;
 - the Department's Gateway Review Justification Assessment (**Department's Justification Assessment**) accompanying the Department's referral, dated 18 May 2020; and
 - the Department's response to the Commission's questions dated 26 May 2020;
 - Additional information provided by the Department dated 29 May 2020;
 - Transcripts of the Commission's meetings with both the Department and Council made available on 3 June 2020 & 9 June 2020 respectively; and
 - Additional information provided by Council dated 4 June 2020;

2.3 Statutory Context

17. Clause 5.4(9) of the NSW *Standard Instrument – Principal Local Environmental Plan (Standard Instrument)* allows local councils to determine their own maximum total percentage of floor area of the principal dwelling for secondary dwellings (subclause (b)). The remainder of the clause is mandatory throughout the State. This is set out below:

Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater—

- (a) 60 square metres,
 - (b) [insert number]% of the total floor area of the principal dwelling.
18. Both options proposed by Council in the Planning Proposal involve amending a mandatory clause adopted under the Standard Instrument. As set out in paragraph 12, both Option A and Option B propose to amend the mandatory clause either through the alteration of clause 5.4(9) or through the addition of a new clause, 5.4(10).

Key Issues

2.4 Scenarios and Testing for Secondary Dwelling Outcomes

Council Comments

19. In response to one of the Department's reasons for refusal; that the Planning Proposal does not adequately demonstrate secondary dwelling outcomes and test scenarios of different percentages under clause 5.4.(9)(b), Council's Gateway Determination Response (appendix i) conducted four test scenarios. The results of these test scenarios are found below in Table 3.

Table 3 – Council's Test Scenario Results

Scenario	Principal Dwelling Size	Max. Secondary Dwelling Size – Compliant with CI 5.4(9)(b)	Bedroom No.	Outcome
1	1,200m ²	240m ²	4	Undesirable
2	1,043m ²	208m ²	3	Undesirable
3	486m ²	96.59m ²	2	Desirable
4	350m ²	69.5m ²	2	Desirable

Source: Council's Gateway Determination Response

20. Council's Gateway Determination Response states the results of these test scenarios highlights that the current 20% limit enables secondary dwellings that are beyond an anticipated scale and density (as shown in scenarios 1 & 2). Conversely, Council's Gateway Determination Response states that scenarios 3 and 4 achieved desirable outcomes with both secondary dwellings being under the proposed 110m² limit.
21. Council's Gateway Determination Response states:
- "Overall, changing the percentage under clause 5.4(9)(b) will not resolve the issue outlined in the planning proposal. The demonstrated test scenarios appropriately respond to reason #3 of the Gateway Determination and justify the need for the planning proposal to proceed."*
22. Council states in its Gateway Determination Response:
- "Should the proposal not progress, future development of secondary dwellings in rural lands would enable the unanticipated addition of residents, with the possible facilitation of a typical 4-bedroom dwelling for larger principal dwellings. Such an unplanned increase in population in the Shire's rural zones would also place pressure on local services and infrastructure."*
23. In response to the Commission's question regarding the extent of the problem, the Council conducted a high-level review of the existing 3,810 dwelling footprints within the rural areas of Council's local government area. Based on this review which included adjustment to account for two storey dwellings, the Council concluded that:
- 1,423 (37%) of the dwelling footprints in the rural area are in excess of 550m² in size and as such, there would be scope for large secondary dwellings (in excess of 110m² Gross Floor Area) on each of these properties under the current controls; and
 - 2,387 (63%) of the dwelling footprints in the rural area are less than 550m² in size and as such, secondary dwellings on these properties would be limited to a size of less than 110m² under the current controls.

Department's Assessment

24. In its assessment of the Planning Proposal, the Department found that the Planning Proposal had strategic merit as it would give effect to the Central City District Plan, the Hills Future Community Strategic Plan and draft Hills Future 2036 Local Strategic Planning, particularly as they relate to housing supply, choice and affordability, liveability objectives and maintaining the character of rural areas in Council's local government area.
25. However, the Department concluded that:
- "Although the proposal has strategic merit as it gives effect to the Central City District Plan, the Hills Future Community Strategic Plan and draft Hills Future 2036 Local Strategic Planning Statement; the proposal does not demonstrate sufficient strategic merit to amend clause 5.4(9) as proposed. The proposed provisions for the percentage of the total floor area of the principal dwelling in rural zones and the maximum size of secondary dwellings under clause 5.4(9)(b) cannot be legally made"*
26. In particular the Department found that
- "the proposal does not sufficiently test secondary dwelling outcomes and different percentages under clause 5.4(9)(b)."*

Commission's Findings

27. Although the ability to make the Planning Proposal is discussed in detail in paragraphs 45-48, the Commission considers that the Planning Proposal has both strategic and site specific merit. It is consistent with key strategic documents and there are no site specific environmental or social issues that would warrant the Planning Proposal not progressing past Gateway. The Planning Proposal is well considered and is a proactive planning response to both a housing affordability issue and Council's objective of maintaining the character of the local government area's rural lands. The Commission is also satisfied that sufficient evidence has been provided in support of the Planning Proposal noting that Council has adequately characterised the nature and scale of the housing issues that the Planning Proposal seeks to address.
28. The Commission notes the Department's view that "the proposal does not sufficiently test secondary dwelling outcomes and different percentages under clause 5.4(9)(b)". However, the Commission is satisfied that the Council has justified the need for the proposed changes through its scenario testing and additional information provided and outlined in paragraph 24. The Commission is also of the view that to some degree Council's initial lack of scenario testing was dictated by Council's desire to address the two issues at once by providing a gross floor area for secondary dwellings in rural zones (i.e. must not exceed 110m², plus an optional garage up to 20m²).

2.5 Section 9.1 Direction - 4.4 Planning for Bushfire Protection*Council Comments*

29. In Attachment B of its Planning Proposal, Council lists *Section 9.1 Ministerial Direction - 4.4 Planning for Bushfire Protection (Direction 4.4)* as being both applicable and relevant to the Planning Proposal. Council finds that the Planning Proposal is consistent with Direction 4.4.
30. Council states in its Planning Proposal that:
- "The planning proposal would not impact on the application of the Bushfire Protection Guideline 2006 or the consideration of bushfire protection as part of any Development Application for a secondary dwelling."*
31. In response to one of the Department's reasons for refusal; that the Planning Proposal contained unresolved inconsistencies with Direction 4.4, Council states in its Gateway Determination Response dated 19 May 2020:
- "This is considered insufficient grounds upon which to refuse the planning proposal as a Gateway Determination could have simply included a condition that the planning proposal be updated to identify how the proposal complies with Planning for Bushfire Protection 2006... and/or updated to justify any inconsistency with the Ministerial Direction. Similar conditions have been placed on Gateway Determinations for other proposals."*
32. Council states in its Gateway Determination response that as secondary dwellings are already a permissible use on rural lands in the LGA, additional controls as required under Direction 4.4 are not considered necessary.

Department's Assessment

33. The Department's Gateway Report states that:

"Much of the rural land within The Hills is identified as bushfire prone, containing all categories of risk. The planning proposal would not impact on the application of the Bushfire Protection Guideline 2006 or the consideration of bushfire protection as part of any Development Application for a secondary dwelling. However, the proposal is inconsistent with this Direction as it does not introduce controls that avoid placing inappropriate developments in hazardous areas."

34. The Department concluded that the Planning Proposal is inconsistent with Direction 4.4 as

"it does not introduce controls that avoid placing inappropriate developments in hazardous areas."

35. This assessment was upheld by the Department's Justification Assessment.

Commission's Findings

36. The Commission notes that *Planning for Bushfire Protection 2019* came into effect on 1 March 2020. The Commission has not considered the Planning Proposal against the new guidelines. Notwithstanding, the Commission does not agree with the Department's view that the Planning Proposal is inconsistent with Direction 4.4 and agrees with Council that this is an insufficient ground upon which to refuse the Planning Proposal. The Planning Proposal does not involve a rezoning, change in use, or necessarily an increase in intensity of use (secondary dwellings). The Planning Proposal merely seeks greater control over the size of secondary dwellings in rural zones.

37. Consequently, the Commission questions the need for additional bushfire protection controls and the Department's view that, in the absence of additional controls, the Planning Proposal is inconsistent with Direction 4.4. The Commission agrees with Council that bush fire protection issues could easily be addressed at the development application stage, and to this effect, a condition of Gateway requiring consultation with the Rural Fire Service prior to exhibition would have been sufficient. The Commission does note however, that the Department considers items 1 and 3 of the Gateway Determination to be the determinative aspects of its decision.

2.6 Amendment of the Standard Instrument

Council Comments

38. Council's Planning Proposal states that:

"Consideration was given to the potential to amend the percentage figure within clause 5.4(9)(b), however as the issue is two-fold, amending the maximum percentage within the clause would only resolve one part of the issue whilst concurrently worsening the other. For this reason, the only viable solution to the issues identified by Council is the imposition of a consistent fixed maximum size for all secondary dwellings across rural areas."

39. Council's Gateway Determination Response acknowledges the procedural requirements of amending the Standard Instrument (as set out in paragraph 42), however it goes on to state:

"...it is inconceivable why amendments to Clause 5.9 would be so easily dismissed by the Department when the proposal is within the Minister's power and simply represents a practical and reasonable response to a local issue which would impact all council areas in NSW with rural land."

40. Council's Gateway Determination Response states:

"The Standard Instrument was introduced with the ability for councils to include local provisions to address local circumstances, where justified. It is not clear how imposition of a maximum floor area of 60m² across both urban and rural areas adequately responds to the differing characters in these areas or why Council is unable to tailor these controls to respond to local circumstances which can vary with different land use patterns, lot sizes / densities and community needs."

Department's Assessment

41. The Department's Gateway Report states that:

"Council's proposed amendments to clause 5.4(9) cannot legally be made as it affects a non-variable part of the compulsory clause of the Standard Instrument – Principal Local Environmental Plan."

42. The Department's Gateway Report notes that:

"...the only way in which Council's proposal could be considered is if there was an amendment to the Standard Instrument (Local Environmental Plans) Order 2006 or the Environmental Planning and Assessment Act 1979; or for a State Environmental Planning Policy to override the effect of clause 5.4(9)."

43. The Department's Gateway Report states that the Planning Proposal has some strategic merit but not enough to warrant an amendment of the Standard Instrument:

"...gives effect to the Central City District Plan, the Hills Future Community Strategic Plan and draft Hills Local Strategic Planning Statement; the proposal does not demonstrate sufficient strategic merit to amend clause 5.4(9) as proposed."

44. The Department's Justification Assessment upholds its assessment, adding that:

"While the proposal may address a relatively small number of applications within The Hills Shire, amendment of the mandatory clause has the potential to affect the provision of secondary dwellings across the state."

Commission's Findings

45. Regardless of the Commission's views on the merits of the Planning Proposal, the ability to make the amendments is fundamental to it progressing in its current form. The Commission notes that the Department is of the view that the Planning Proposal cannot be legally made on the basis that clause 5.4(9) of the Standard Instrument is a 'mandatory' clause for local environmental plans.
46. The Commission agrees with the Department's view that clause 5.4(9) of the Hills LEP cannot (in part) be amended by an EPI (that is, by a planning proposal under Division 3.4 of the EP&A Act). The Commission accepts that the 60m² provision in subclause (a) cannot be amended by the Planning Proposal while the 20% provision at subclause (b) can be amended by the Planning Proposal as it is not stipulated in the mandatory provision of the Standard Instrument.

47. The reasoning supporting this view is that section 3.20(6) of the EP&A Act provides that where a standard instrument has been adopted, only the non-mandatory provisions adopted in an EPI may be amended from time to time by another EPI. This means that the procedure under Division 3.4 of the EP&A Act is not available to amend any mandatory provision of a standard instrument adopted in an EPI such as the HLEP 2019. Notably, Clause 5.4 in the Standard Instrument is marked as mandatory but leaves open the percentage of total floor area to be applied.
48. The Commission recommends that given the strategic merit of the Planning Proposal has been demonstrated and the Department is currently considering providing local government the ability to have greater say on the size of secondary dwellings in rural zones, that the Department should consider affecting the changes by:
- a) Amending the Standard Instrument to change Clause 5.4(9) from mandatory to non-mandatory. While the Commission accepts that this would enable all LGA's to seek amendments to Clause 5.4(9), any such amendments would still need to demonstrate strategic merit through a Planning Proposal; or
 - b) Amending a relevant State Environmental Planning Policy (SEPP) to provide local government the ability to have greater say on the size of secondary dwellings in rural zones possibly subject to identified performance criteria.

3 CONCLUSION: THE COMMISSION'S ADVICE

49. The Commission has undertaken a review of the Gateway Determination as requested by the Department. Based on its consideration of the Material, the Commission finds that the Planning Proposal:
- Has demonstrated strategic and site-specific merit. It is consistent with key strategic policies on housing and is unlikely to result in negative social or environmental impacts. It is evidence based and is a well-considered and proactive planning response to both a housing affordability issue and the potential impacts associated with oversized secondary dwellings in the rural areas of the local government area;
 - Is not inconsistent with Direction 4.4 relating to Bushfire Protection. The Planning Proposal does not involve a rezoning, change in use, or necessarily an increase in intensity of use (secondary dwellings). The need for additional controls and the said inconsistency is questionable; and
 - Cannot be legally made in full as Clause 5.4(9)(a) of the Hills LEP is a mandatory clause established in the Standard Instrument.
50. The Commission recommends that the Department seek to affect the amendments sought by the Hills Shire Council either by changing the mandatory nature of Clause 5.4(9)(a) in the Standard Instrument or by affecting the amendments through changes to a relevant State Environmental Planning Policy.



Chris Wilson (Chair)
Member of the Commission



Soo-Tee Cheong
Member of the Commission



Planning,
Industry &
Environment

IRF20/2719

Mr Michael Edgar
General Manager
The Hills Shire Council
PO Box 7064
NORWEST NSW 2153

Attention: Nicholas Carlton

Dear Mr Edgar

Request for a Gateway Determination Review (GR_2020_THILL_001_00) - Independent Planning Commission Advice

I refer to Council's request for a Gateway determination review for the Secondary Dwellings in Rural Areas planning proposal. Thank you for taking my call in relation to this matter, as discussed the Independent Planning Commission (the Commission) has reviewed the Departments decisions and provided its advice.

The Commission's advice report is available at:
<https://www.ipcn.nsw.gov.au/projects/2020/05/gateway-determination-review-request-for-the-hills-shire-council-secondary-dwellings-in-rural-zones> The Department has considered the advice of the about the Gateway determination review. The Department accepts the Commission's findings that the amendments sought by The Hills Shire Council could be given effect to through two pathways, either an amendment to the standard instrument, or changes to a relevant State Environmental Planning Policy.

A draft discussion paper outlining an Explanation of Intended Effect (EIE) for a new Housing Diversity SEPP is undergoing a final review prior to submitting it for the Minister's approval. The discussion paper will set out a proposal to include provisions in the proposed new Housing Diversity SEPP so that councils will have the discretion to set a maximum size for secondary dwellings in rural zones.

The anticipated timeframe for exhibition of the discussion paper is mid-2020. Given imminent release of this discussion paper it is considered the amendment to the SEPP is the most expeditious method for the introduction of further controls for secondary rural dwellings. As such, the Gateway determination dated 13 February 2020 will not be altered by the Minister's delegate. The Department will write to Council when the discussion paper is released to invite a submission.

Should you have any enquiries about this matter please contact me or Ms Gina Metcalfe, Acting Director Central (Western). Ms Metcalfe can be contacted on 9860 1542.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gatherine Van Laeren'.

18/06/20

Gatherine Van Laeren
Executive Director
Central River City and Western Parkland City

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 25 August 2020**ATTACHMENT 5**

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr R Jethi
Clr R A Preston MP
Clr Dr P J Gangemi
Clr A N Haselden
Clr J Jackson
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr A J Hay OAM
Clr S P Uno

VOTING AGAINST THE MOTION

None

ABSENT

Clr B L Collins OAM
Clr R M Tracey

9.28pm Councillor Preston MP having previously declared a non-pecuniary, less significant conflict of interest left the meeting for Item 4 and returned at 9.48pm during Call of the Agenda.
9.38pm Councillor Jethi left the meeting and returned at 9.42pm during Item 4

ITEM-4**PROPOSED HOUSING DIVERSITY STATE ENVIRONMENTAL PLANNING POLICY (FP58)**

A MOTION WAS MOVED BY COUNCILLOR DR GANGEMI AND SECONDED BY COUNCILLOR UNO THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

473 RESOLUTION

1. The report be received.
2. Council make a submission to the Department of Planning, Industry and Environment in response to the exhibition of the Explanation of Intended Effect for the proposed Housing Diversity SEPP, provided as Attachment 2.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr R Jethi
Clr Dr P J Gangemi
Clr A N Haselden
Clr J Jackson
Clr M G Thomas

This is Page 7 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 25 August 2020

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 25 August 2020

Clr E M Russo
Clr F P De Masi
Clr A J Hay OAM
Clr S P Uno

VOTING AGAINST THE MOTION

None

ABSENT

Clr B L Collins OAM
Clr R M Tracey

ABSENT FROM THE ROOM

Clr R A Preston MP

CALL OF THE AGENDA

A MOTION WAS MOVED BY COUNCILLOR DE MASI AND SECONDED BY COUNCILLOR RUSSO THAT items 6, 8, 9 and 13 be moved by exception and the recommendations contained therein be adopted.

THE MOTION WAS PUT AND CARRIED.

474 RESOLUTION

Items 6, 8, 9 and 13 be moved by exception and the recommendations contained therein be adopted.

ITEM-6**CADDIES BOULEVARD, ROUSE HILL - EXTENSION OF TIME FOR TEMPORARY 'WORKS ZONE'****475 RESOLUTION**

1. Council approve an eight month extension to the existing 25 metre long 'Works Zone 7am – 5pm Monday – Saturday, No Stopping at Other Times' restrictions at 104 - 106 Caddies Boulevard, Rouse Hill as detailed in Figure 1 in the report.
2. Council's approval be subject to the applicant obtaining a Road Occupancy Licence for the Works Zone from the NSW Transport Management Centre.
3. The General Manager be given delegated authority to approve any future request for an extension to the 'Works Zone' at 104-106 Caddies Boulevard up to a maximum of two months beyond the four month extension of time.

ITEM-8**BUDGET REVIEW AS AT 31 JULY 2020****476 RESOLUTION**

The proposed budget variations in Attachment 1, Pages 5 to 11 and the variations detailed in page 12-30 be adopted.

This is Page 8 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 25 August 2020

ORDINARY MEETING OF COUNCIL

25 AUGUST, 2020

ITEM-4	PROPOSED HOUSING DIVERSITY STATE ENVIRONMENTAL PLANNING POLICY (FP58)
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	25 AUGUST 2020 COUNCIL MEETING
GROUP:	SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS
AUTHOR:	SENIOR TOWN PLANNER KAYLA ATKINS
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING NICHOLAS CARLTON

EXECUTIVE SUMMARY

The Department of Planning, Industry and Environment (DPIE) is currently exhibiting an Explanation of Intended Effect (EIE) for a proposed new State Environmental Planning Policy relating to Housing Diversity (Housing Diversity SEPP). The EIE was released for public comment on 29 July 2020, with a submission deadline of 9 September 2020. A copy of the EIE which is currently on exhibition is provided as Attachment 1.

This report provides an overview of the proposed new Housing Diversity SEPP, outlines key matters for Council's consideration and recommends that Council make a submission to DPIE (draft submission provided as Attachment 2). DPIE will consider the submissions received when drafting the new SEPP.

The proposed new SEPP would update and consolidate three existing State Environmental Planning Policies (SEPPs):

- SEPP (Affordable Rental Housing) 2009;
- SEPP (Housing for Seniors or People with a Disability) 2004; and
- SEPP No 70 – Affordable Rental Housing (Revised Schemes).

The EIE responds positively to key policy issues that Council has advocated for, specifically:

- Removal of 'boarding houses' as a mandated permissible use in the R2 Low Density Residential Zone; and
- Granting of discretion to Councils to set a maximum size for secondary dwellings in rural zones that is not regulated by the size of the principal dwelling.

ORDINARY MEETING OF COUNCIL**25 AUGUST, 2020**

The EIE also refers to a recent amendment to the Seniors SEPP that came into force on 29 July 2020, which prevents any new Site Compatibility Certificates from being lodged for seniors housing developments on land within the Metropolitan Rural Area. While it is referenced for context within the Housing Diversity SEPP, the matter is not the subject of the Housing Diversity SEPP as this change to the Seniors SEPP was already made on 29 July 2020. The Seniors SEPP continues to apply to the urban areas within The Hills.

Other areas of change proposed in the EIE include the introduction of new land use definitions for *build-to-rent housing*, *student housing* and *co-living developments*, as well as amendments to existing State Policies. Beyond the amendments to boarding house permissibility and secondary dwelling sizes, the proposed amendments to the Affordable Rental Housing SEPP would also introduce affordability requirements for boarding houses and a complying development approval pathway for the conversion of existing dwellings to group homes.

The Department is proposing to amend the Seniors Housing SEPP by extending the validity of Site Compatibility Certificates to five years and ensuring that local development standards within Local Environmental Plans would now prevail to the extent of any inconsistency.

A draft submission has been prepared and is provided as Attachment 2. The submission provides in-principle support for the consolidation of three existing SEPPs into one Housing Diversity SEPP and the key changes relating to boarding houses, secondary dwellings in rural areas and seniors housing developments.

These particular elements of the proposed Housing Diversity SEPP would facilitate outcomes that align with Council's policies and long-standing advocacy for changes to State Government policy. Accordingly, the proposed amendments, while in the form of a State policy, are reflective of a shift towards place-based planning in which local policy and development standards are at the forefront of the permissibility and assessment of certain types of developments.

REPORT

This report provides an overview of the proposed new Housing Diversity SEPP, outlines key matters for Council's consideration and recommends that Council make a submission to DPIE (Attachment 2). The key components of the proposed Housing Diversity SEPP are discussed further below.

1. BOARDING HOUSES

The Department is proposing to amend the definition of boarding houses within the existing Affordable Rental Housing SEPP (ARHSEPP) to require the building to be managed by a registered not-for-profit community housing provider. The Department is seeking feedback on whether boarding house rooms should be rented at affordable rates for a minimum of 10 years, after which they could revert back to market rates.

While the proposed changes to the definition requiring boarding houses to be affordable are supported, boarding house rooms should be rented out at affordable rates in perpetuity. The Department's Housing Strategy states that there will be a shortage of affordable rental housing for low-income households due to redevelopment, gentrification and renovation. Therefore, handing over these dwellings to the private market after 10 years would not fulfil the intent of the ARHSEPP in the longer term.

Currently, the Standard Instrument LEP mandates 'boarding houses' as a land use that is permitted with consent within the R2 Low Density Residential zone. The EIE proposes to remove this requirement, providing Councils discretion to determine whether or not boarding houses are permitted in R2 Low Density Residential zones under their LEPs.

Previously, Council has advocated for this outcome due to concerns regarding lack of on-street parking, increased traffic, scale and impact on neighbouring properties as well as increased pressure on local infrastructure. Boarding houses produce a medium density product and should therefore be restricted to the R3 Medium Density Residential and R4 High Density Residential zones. Council has also previously sought increased on-site parking rates for boarding house development however the proposed SEPP would retain the existing minimum rate of 0.5 spaces per boarding house room (with a further reduced rate of 0.2 spaces per room for boarding houses by a social housing provider).

Ultimately, the proposed removal of boarding houses as a mandated use in the R2 Low Density Residential zone is a positive amendment in recognition of Council's longstanding concerns. The amendment will facilitate the delivery of boarding houses in appropriate locations that are well serviced and better suited to the built form outcomes typically produced by boarding house developments.

The proposed change relating to boarding house permissibility is supported however further consideration should still be given to increased parking rates for boarding houses, to reduce the potential extent of on-street parking.

2. SECONDARY DWELLINGS IN RURAL AREAS

Currently, the Standard Instrument LEP specifies that the maximum size of a secondary dwelling is limited to 60m² or a percentage of floor area of the principal dwelling as nominated by Council, whichever is the greater. The Hills LEP 2019 specifies a rate 20% of the floor area of the principal dwelling.

While there is evidence of appropriate outcomes being achieved under this clause in established urban areas, it has proven less effective in controlling the scale of secondary dwellings and the quality of development outcomes in rural areas. Although Council has the discretion to set a maximum percentage, reliance on a "sliding scale" percentage unnecessarily restricts the size of some secondary dwellings (in instances where the size of the primary dwelling is modest), and conversely facilitates inappropriately large scale secondary dwellings.

Given this issue and the impacts on the rural area, Council had submitted a planning proposal to the Department which sought to apply a maximum square metre size for secondary dwellings in rural zones. The removal of the sliding scale percentage would simultaneously resolve the issue of unnecessarily small secondary dwellings on large rural lots and inappropriately large secondary dwellings that resemble a standard family dwelling size.

While a Gateway Determination was not issued for this planning proposal, the Independent Planning Commission's advice to the Department stated that the proposal had demonstrated strategic and site specific merit. The Department has now sought to give effect to these proposed amendments through the new Housing Diversity SEPP.

The EIE acknowledges that the current provisions within the Standard Instrument LEP are not appropriate in rural zones and states that the Housing Diversity SEPP will allow Councils to set a maximum square metre size for secondary dwellings that is not linked to the size of

the principal dwelling. By dissociating the size of the secondary dwelling from the principal dwelling, the proposed amendments reflect the intent of Council's planning proposal to have greater discretion in setting a maximum size for secondary dwellings which reflects superior character and housing diversity outcomes for the rural area. This will ensure that the character of the Shire's rural area is maintained and protected through desirable planning outcomes.

The Department has not provided detail on whether this amendment will be reflected within the new SEPP or within the Standard Instrument LEP. The preferred option would be through an amendment to the Standard Instrument to allow Council's to set alternative maximum size criteria for secondary dwellings in rural and urban areas.

3. SENIORS HOUSING

The EIE for the Housing Diversity SEPP refers to a recent amendment to the Seniors SEPP that came into force on 29 July 2020 to exempt the Metropolitan Rural Area from the application of the SEPP and as a result, prevent Site Compatibility Certificates from being lodged for seniors housing developments on land within the Metropolitan Rural Area. While this change is referenced within the EIE for context, the matter is not the subject of the Housing Diversity SEPP. The provisions of the Seniors SEPP continue to apply in the urban area of The Hills.

The EIE proposes several amendments to the Seniors SEPP for development as it relates to urban land. Most notably, these changes include:

- Increasing the validity period for Site Compatibility Certificates from 2 to 5 years (only in instances where a development application has been lodged within a year of the Certificate being issued); and
- Clarification that development standards within an LEP prevail to the extent of any inconsistency with the SEPP.

The extension of the validity period for Site Compatibility Certificates is inconsequential given that it will only be allowed where a development application has been lodged within a year of the issue date. This reduces the number of instances where a new application would need to be lodged for a Site Compatibility Certificate for proposed developments that are already undergoing the Development Application process with an expiring Certificate.

Ensuring that local development standards take precedence over provisions within the Seniors SEPP is a positive move towards place-based planning where local controls are prioritised. It also allows the opportunity for Council to amend the LEP in future should it be determined that more detailed regulation of built form outcomes is necessary.

4. GROUP HOMES

The Department proposes to introduce a "quicker and easier process" to allow an existing dwelling to be used as a group home. Insufficient details have been provided with regard to this process and it is unclear as to whether it refers to amendments to the existing complying development pathway. Further clarification will be sought on the matter, however concern is raised that the complying development pathway does not enable sufficient consideration of the potential amenity impacts, including parking, demand on local infrastructure and potential anti-social behaviour associated with transient populations.

5. PROPOSED NEW LAND USE TERMS

The EIE proposes to introduce three new definitions to the Standard Instrument LEP, to promote diversity within the rental market as follows:

- **Build-to-rent housing** is purpose-built rental housing that is held in single ownership and professionally managed and contains at least 50 self-contained dwellings that are offered for long-term private rent;
- **Student housing** provides accommodation and communal facilities principally for students enrolled to study at an education establishment during teaching periods and may include self-contained dwellings; and
- **Co-living developments** are 'new generation' boarding houses that are typically self-contained with private bathroom and kitchenette facilities and are not restricted to low-income tenants.

The following table provides an overview of the new housing types and the proposed development standards:

	Build-to-rent housing	Student housing	Co-living developments
Tenant	No restriction for market rent dwellings	Students	No restriction
Tenancy	3 years or more	No minimum	Minimum 3 months
Permissibility (mandated)	R4 High Density Residential B4 Mixed Use (R3 Medium Density Residential in North Kellyville Precinct only)	Not yet determined	Wherever residential flat buildings are permitted (R1, R4, B2, B4 as well as R3 in North Kellyville Precinct)
Room/ Unit size	New design guidance to be developed by DPIE	10m ²	30-35m ²
Min. Parking Rate	0.5 spaces per dwelling	No min. requirement	0.5 spaces per room
Other Standards (Height, FSR)	In accordance with relevant LEP		

Figure 1
Proposed Key Development Standards

Whilst promoting diversity in the rental market is generally supported, Attachment 2 provides further discussion on the proposed new land uses and recommended changes. Some of the key concerns to be raised include:

- Proposed new design guidance for build-to-rent housing should require compliance with Council's housing mix and size criteria, having regard to the demographics of the community;
- Lack of parking for the proposed new uses (ranging from 0 spaces per room to 0.5 space per dwelling) and potential implications for on-street parking, streetscape and public domain;
- Appropriateness of proposed standards for student housing and co-living developments and the ability to promote high amenity and liveability. Concern is also raised with respect to the potential density of such developments and infrastructure levels of service, given these developments could accommodate a population density well in excess of standard residential flat buildings which would have been anticipated in high density areas;

ORDINARY MEETING OF COUNCIL**25 AUGUST, 2020**

- Further consideration is required with respect to locational requirements for student housing to be permitted (potentially based on a walkable catchment from tertiary institutions); and
- Permissibility of co-living developments in the B2 and B4 zones has potential to detract from the retail/ commercial function of our centres.

IMPACTS**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates. The removal of boarding houses from the R2 Low Density Residential zone, as well as the removal of seniors housing from rural land will reduce the pressure on local infrastructure in areas that are not well placed to accommodate intensification of development.

Strategic Plan - Hills Future

The amendments respond to a range of issues raised by Council including amenity impacts, local character and compatibility of certain development. The recommendations contained in Attachment 2 of this Report seek to facilitate Council's longer term goals of supporting growth and promoting housing affordability whilst maintaining the character of the Shire. The formulation of a submission to the new Housing Diversity SEPP will ensure that our community is effectively represented, governed and managed at all levels of government, and that there is input into legislation that affects local issues.

RECOMMENDATION

1. The report be received.
2. Council make a submission to the Department of Planning, Industry and Environment in response to the exhibition of the Explanation of Intended Effect for the proposed Housing Diversity SEPP, provided as Attachment 2.

ATTACHMENTS

1. Explanation of Intended Effect – Housing Diversity SEPP (35 pages)
2. Draft Submission to DPIE (8 pages).

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 23 February 2021

ITEM-1 CONFIRMATION OF MINUTES

A MOTION WAS MOVED BY COUNCILLOR COLLINS OAM AND SECONDED BY COUNCILLOR UNO THAT the Minutes of the Ordinary Meeting of Council held on 9 February 2021 be confirmed.

THE MOTION WAS PUT AND CARRIED.

41 RESOLUTION

The Minutes of the Ordinary Meeting of Council held on 9 February 2021 be confirmed.

APOLOGIES

A MOTION WAS MOVED BY COUNCILLOR HAY OAM AND SECONDED BY COUNCILLOR RUSSO THAT the apology from Councillor Tracey be accepted and leave of absence granted.

THE MOTION WAS PUT AND CARRIED.

42 RESOLUTION

The apology from Councillor Tracey be accepted and leave of absence granted.

COMMUNITY FORUM

There were no addresses to Council during Community Forum.

7.17pm Councillor De Masi arrived at the meeting during Item 2.
7.37pm Councillor Thomas left the meeting and returned at 7.41pm during Item 2.

**ITEM-2 LOCAL ENVIRONMENTAL PLANS AMENDMENT
(SECONDARY DWELLINGS) ORDER 2020**

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR DR GANGEMI THAT

1. Council prepare a planning proposal to amend The Hills Local Environmental Plan to include the new Clause 5.5 and specify maximum size criteria for secondary dwellings in rural zones to give effect to a maximum of 110m² or 20% of the total floor area of the principal dwelling, whichever is the greater.
2. The planning proposal be reported to the Local Planning Panel for advice, in accordance with Section 2.19 of the Environmental Planning and Assessment Act 1979.
3. Following receipt of the Local Planning Panel's advice and subject to this advice not requiring any revisions to the planning proposal as detailed within this report, the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.