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Gateway determination report – PP-2021-3079

Secondary dwellings in rural zones

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A: Planning Proposal
Attachment B: Council report and minutes – 23 February 2021
Attachment C: Local Planning Panel Report and advice – 17 March 2021
Attachment D: Letter requesting Gateway determination

1 Planning Proposal

1.1 Overview

Table 2 Planning proposal details

LGA	The Hills Shire
PPA	The Hills Shire Council
NAME	Introduce Standard Instrument LEP Clause 5.5 Controls relating to secondary dwellings in a rural zone to The Hills LEP 2019
NUMBER	PP-2021-3079
LEP TO BE AMENDED	The Hills Local Environmental Plan 2019
ADDRESS	All land zoned RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry and RU6 Transition
RECEIVED	15/04/2021
FILE NO.	IRF21/933
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The objectives of the planning proposal (**Attachment A**) are to:

- Reinstate maximum size criteria for secondary dwellings in the Shire's rural lands;
- Ensure that secondary dwellings within rural areas can be provided in a form that is compatible with the character of the rural locality.

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

1.3 Explanation of provisions

The planning proposal seeks to amend The Hills LEP 2019 by inserting Clause 5.5 (a)(i)-(ii) from the Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) as follows:

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

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,*
- (ii) 20% of the total floor area of the principal dwelling,*

Secondary dwellings are already permitted within The Hills rural land use zones. The Standard Instrument LEP permits Councils to specify the square metres and percentage floor area within (a)(i) and (ii) above. The nominated 110m² is in response to concerns raised from the community regarding the inequitable opportunity for rural landowners to construct a sizeable secondary dwelling, where previously a 60m² limit applied. The nominated 20% control remains unchanged in comparison to the previous application of Clause 5.4(9).

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description

The planning proposal applies to all rural zoned land under The Hills LEP 2019 (Figure 1) being:

- RU1 Primary Production;
- RU2 Rural Landscape;
- RU3 Forestry; and
- RU6 Transition.

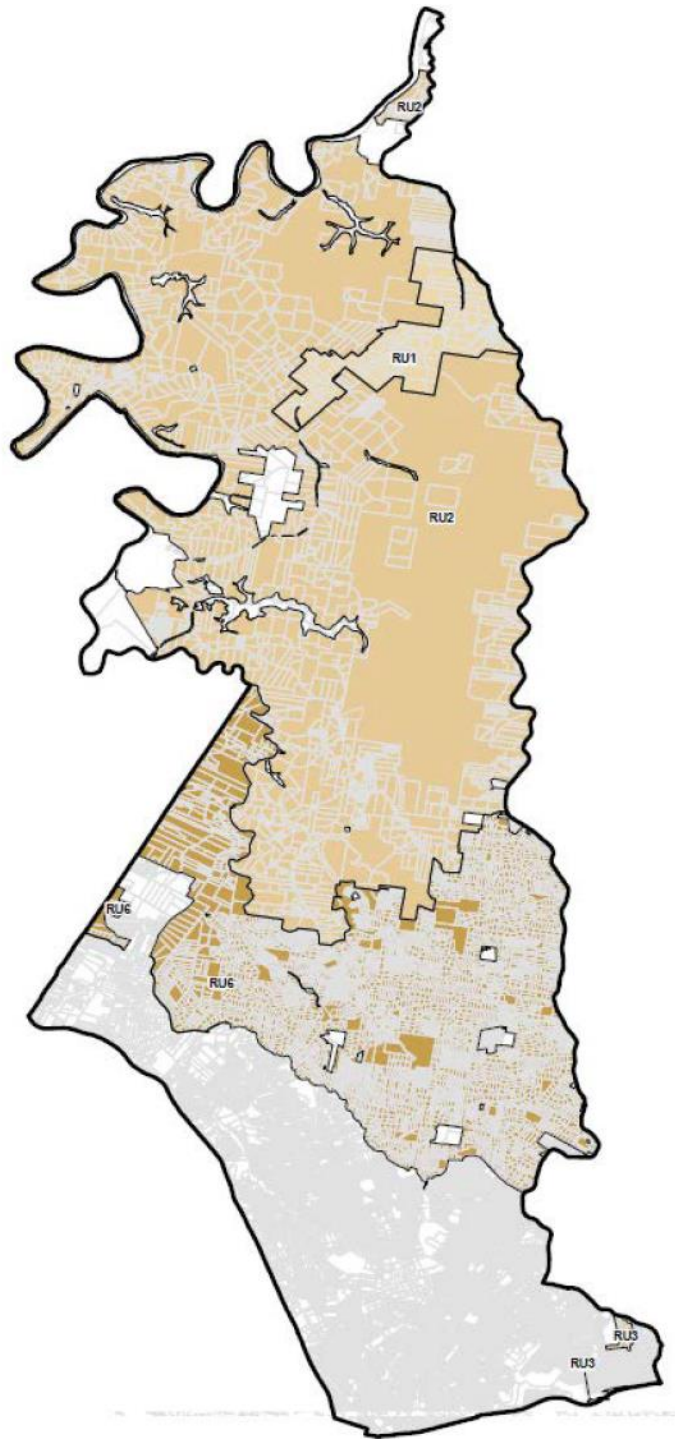


Figure 1: Rural zoned land in The Hills Shire (where this proposal applies)

1.5 Mapping

There are no mapping amendments required with this planning proposal.

2 Need for the planning proposal

2.1 Background

Development standards for secondary dwellings have previously been regulated under Clause 5.4(9), which is a 'compulsory' clause under the 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, Council voiced concerns that Clause 5.4(9) did not adequately control development outcomes in rural zones. This matter has been a long-standing issue identified by Council and the subject of a previous planning proposal (PP-2020-2144) which sought to introduce appropriate provisions under Clause 5.4(9). This was refused at Gateway as Clause 5.4(9) under the Standard Instrument LEP could not be amended.

The Independent Planning Commission provided advice on the refusal (**Attachment B**), supporting the Department's decision, and recommended the amendments sought by Council through changing the mandatory nature of Clause 5.4(9)(a) or affecting the amendments through changes to a relevant State Environmental Planning Policy. The latter has now occurred through State policy which is further discussed in Section 3.5 of this report.

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 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).

2.2 Proposal

The planning proposal has been initiated by Council to adopt the new optional Clause 5.5 (a)(i)-(ii) as described under Section 1.3 of this report for rural zones in The Hills. The planning proposal does not seek to adopt the optional subclause (b) which permits a maximum distance to be identified between the secondary dwelling and the principal dwelling.

The proposal states that the absence of the separation control has not facilitated any known inappropriate development outcomes and as such, and so the inclusion of this further control is considered unnecessary at this time. Council will closely monitor secondary dwelling outcomes and identify if there is a need for a separation control in the future.

The proposed provisions will reinstate size requirements for secondary dwellings within rural zones. Development will also be required to address the provisions of The Hills Development Control Plan 2012, Part B Section 1 – Rural.

3 Strategic assessment

3.1 District Plan

The Central City District Plan released by the Greater Sydney Commission on 18 March 2018 is the applicable District plan for The Hills Shire. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the planning priorities as outlined in the following table.

Table 3 District Plan assessment

District Plan Priorities	Justification
C5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport	The planning proposal is consistent with this priority as it supports the delivery of housing supply, choice and affordability within rural areas.
C18 - Better managing rural areas	The planning proposal is consistent with this priority as it seeks to introduce provisions to guide the development of secondary dwellings in rural zones which will not impact on the scenic and cultural landscapes of the Metropolitan Rural Area.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

3.2 Local

The proposal states that it is consistent with The Hills Local Strategic Planning Statement Hills Future 2036, as shown below:

Table 4 LSPS assessment

LSPS Planning Priority	Justification
8 Plan for a diversity of housing	The planning proposal will contribute to housing options being available to meet varying needs, lifestyles and financial capacities of future residents.
16 Manage and protect the rural/urban interface	The planning proposal will not adversely impact the rural urban interface as the amendments relate only to land on which secondary dwellings are already permitted with consent. The proposed provisions will not jeopardise the priority of managing and protecting the rural urban interface and in addition, development will be required to address the provisions of The Hills Development Control Plan 2012, Part B Section 1 – Rural.

The proposal states it is consistent with two local strategies (which have not been endorsed by the Department) for reasons summarised as follows.

Rural Strategy

- This Strategy recognises that for residents with more modest established homes in rural areas, there is a desire to see an increase in the permissible floor space of secondary dwellings from the previous limit of 60m².
- Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas mean that both the principal and the secondary dwelling benefit from private open space and fewer negative impacts such as overlooking or overshadowing within the site and to adjoining sites.

Housing Strategy

- Secondary dwellings will continue to influence small-scale housing supply and diversity in rural areas.

3.3 Local planning panel (LPP) recommendation

The Planning Proposal was considered by the Local Planning Panel at its meeting on 17 March 2021. The Panel's advice supported forwarding the planning proposal as supported by Council on the 23 February 2021 (**Attachment C**).

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.2 Rural Zones	Consistent	<p>This Direction seeks to protect the agricultural production value of rural land and applies to this proposal as it will affect land within the existing rural zones.</p> <p>The proposal is consistent with this Direction as secondary dwellings are already permitted with consent within rural zones and it will not increase the total number of dwellings already permitted. It aims to ensure that any secondary dwellings are of an appropriate size and scale that aligns with rural lot sizes and the locality.</p>
1.5 Rural Lands	Consistent	<p>The objectives of this Direction are to protect the agricultural production value of rural land and facilitate appropriate development and management.</p> <p>The proposal's reasons for consistency with this Direction are the same as provided under Direction 1.2 Rural Zones above.</p>
4.4 Planning for Bushfire Protection	Consistent	<p>The objectives of this Direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and to encourage sound management of bush fire prone areas. Any planning proposal for land which is identified as being bushfire prone on a Bushfire Prone Land Map must be consistent this Direction.</p> <p>Much of the rural land within The Hills is identified as bushfire prone, containing all categories of risk.</p>

The Commission provided advice to the Department in respect of the previous planning proposal's consistency with this Direction. The Department's response to the current proposal is consistent with the Commission's advice.

As the proposal seeks greater control over the size of secondary dwellings in rural zones and does not involve a rezoning, change in use, or necessarily an increase in intensity of use (secondary dwellings), bushfire protection issues, including having regard to the *Planning for Bushfire Protection 2019*, can be addressed at the development application stage.

As this Direction is a relevant consideration for this planning proposal, the Gateway determination has been conditioned to require consultation with the NSW Rural Fire Service. In consultation with the NSW Rural Fire Service, it has been decided that this consultation can take place during the public exhibition period.

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs, including:

- SEPP (Affordable Rental Housing) 2009 (ARHSEPP); and
- Draft Housing Diversity SEPP.

The new Housing Diversity SEPP package including the Explanation of Intended Effect (EIE) were exhibited between July and September 2020. The EIE included a commentary on Secondary Dwellings within rural zones and proposed some changes.

The EIE refers to concerns that the controls guiding the size of the secondary dwelling, under Clause 5.4(9) under the Standard Instrument LEP, don't work well in rural zones. Councils would like to be able to set a maximum size (say 120 sqm) that is not linked to the size of the principal dwelling and would be more appropriate for the rural character of these areas. As such, it is proposed to amend the ARHSEPP so that councils have the discretion to set a maximum size for secondary dwellings in rural zones.

In December 2020, the first set of changes were made to the Government's housing-related policies as outlined in the exhibited EIE for a proposed new Housing SEPP. These changes included amendments to the Standard Instrument (Local Environmental Plans) Order 2006 (Standard LEP) to update the wording of compulsory provision clause 5.4(9) for secondary dwellings. The compulsory provision now only applies to secondary dwellings on land other than in a rural zone. The amendments also introduced a new provision, optional Clause 5.5 of the Standard Instrument LEP Order, to provide councils the discretion to set a maximum size for secondary dwellings in a rural zone and the maximum distance a secondary dwelling in a rural zone can be located from the principal dwelling.

The effect of the amendment meant that Councils are now able to nominate its preferred size of secondary dwellings on rural land via the preparation of a planning proposal which would adopt the new optional Clause 5.5 of the Standard LEP. To remove the requirement for councils to prepare separate planning proposals, the Department's Housing Policy team is proposing to update the provisions when the new Housing SEPP is finalised in 2021.

The Department's Housing Policy team are currently consulting directly with councils to seek a Council resolution on its preferred size for secondary dwellings on rural land based on Clause 5.5 of the Standard LEP. If councils do not submit a response, councils will be able to submit a planning proposal to adopt Clause 5.5. At the time of writing this Gateway determination report, the

Housing SEPP had not been finalised. If the new Housing SEPP is finalised prior to Council finalising the LEP amendment, Council may request the withdrawal of this planning proposal.

4 Site-specific assessment

4.1 Environmental

The planning proposal is unlikely to adversely impact on any critical habitat, threatened species, population or ecological communities or their habitats. While a majority of rural zoned land within the Shire is mapped as bushfire, biodiversity, and flood prone, the proposal seeks to amend the criteria used to determine the maximum size of secondary dwellings in rural areas (which are already permissible), not secondary dwellings permissibility. Site planning requirements for secondary dwellings at the development application stage will remain unchanged.

4.2 Social

The planning proposal seeks to encourage the provision of secondary dwellings, at an appropriate scale of ensure adequate amenity for future residents and minimal impact on the character of the rural area.

4.3 Economic and Infrastructure

Secondary dwellings 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. The proposal seeks to facilitate the provision of this form of housing, at an appropriate scale, whilst ensuring adequate amenity for future residents and minimal impact on the character of the rural area.

There are no foreseeable economic or infrastructure impacts which could arise because of this proposal. Secondary dwellings are already permissible within The Hills land use zones.

5 Consultation

5.1 Community

The planning proposal recommends that public exhibition is not required due to the proposal seeking to re-apply secondary dwelling provisions to The Hills LEP that are largely similar to those previously in force. The planning proposal also relies on advice received from the Department's Housing Policy Team who are progressing with an alternative pathway to amend Clause 5.5 in The Hills LEP consistent with Council's resolution of 23 February 2021 by mid 2021.

The Department considers that the planning proposal should be placed on public exhibition. However, a 14 day community consultation period is considered appropriate for the following reasons:

- Council's Rural Lands Strategy recognises residents in rural areas have a desire to see an increase in the permissible floor space of secondary dwellings from the previous limit of 60m². This strategy was the subject of public exhibition in mid-late 2019.
- Secondary dwellings are already permissible within rural land use zones in The Hills Shire. The proposal seeks to re-introduce secondary dwelling provisions within rural areas with the only change an increase from the maximum floor space criteria from 60m² to 110m².

The exhibition period proposed is considered appropriate and is conditioned as part of the Gateway determination (**Attachment Gateway**). The planning proposal should be updated to reflect the public exhibition period prior to exhibition.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. It is recommended that the NSW Rural Fire Service be consulted on the planning proposal during the public exhibition period and given 21 days to comment.

6 Timeframe

Council proposes a 4 month time frame to complete the LEP as it does not include public exhibition. Due to the Department recommending a 14 day exhibition period, the Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination. The timeframe within the planning proposal should also be updated to reflect the 14 day public exhibition period.

7 Local plan-making authority

As the planning proposal is consistent with the Standard Instrument LEP and the numerical provisions Council have the ability to specify, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It has demonstrated strategic and site-specific merit;
- It gives effect to the Central City District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*;
- It is consistent with Standard Instrument LEP clause 5.5;
- It is consistent with relevant Section 9.1 Directions, SEPPs and draft SEPPs;
- It is consistent with The Hills Local Strategic Planning Statement Hills Future 2036; and
- It will not result in any adverse environment, social, economic or infrastructure impacts.

9 Recommendation

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

1. The planning proposal is to be updated to:
 - Include a discussion of the proposal's consistency with Section 9.1 Direction, 4.4 Planning for Bushfire Protection; and
 - Include a public exhibition period of 14 days and amend the project timeframe accordingly.
2. During community consultation, consultation is required with the following public authorities:
 - NSW Rural Fire Service.
3. Consultation with other public authorities is not required.

4. The planning proposal should be made available for community consultation for a minimum of 14 days.
5. The planning proposal must be exhibited 3 months from the date of the Gateway determination.
6. The planning proposal must be reported to council for a final recommendation 8 months from the date of the Gateway determination.
7. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
8. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



19.04.2021

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