



IRF 24/1722

Plan finalisation report – PP-2022-1202

10-16 Seven Hills Road, Baulkham Hills

August 2024



Published by NSW Department of Planning, Housing and Infrastructure

dpie.nsw.gov.au

Title: Plan finalisation report – PP-2022-1202

Subtitle: 10-16 Seven Hills Road, Baulkham Hills

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

The Hills Local Environmental Plan 2019 (Map Amendment No. 3).

The planning proposal seeks to amend the height of buildings and floor space ratio controls on 10-16 Seven Hills Road, Baulkham Hills (subject site) to permit a two-tiered residential flat building, approximately 4 and 8 storeys in height.

1.1.2 Site description

The planning proposal (**Attachment A**) applies to land at 10-16 Seven Hills Road, Baulkham Hills, Lots 1-2 DP 366137, Lot D DP 357085, and Lot F DP 363039. It has a total area of approximately 3,950m² with street frontage to Seven Hills Road. The site contains four detached residential dwellings as shown in Figure 1 and has a fall of approximately 6 metres from north to south.

In terms of surrounding context, immediately east of the site is a public pedestrian pathway linking Seven Hills Road and Yattenden Crescent. Further east is a 9-15 storey mixed use development, detached dwellings to the south, and a 4 storey residential building adjoining to the west.

To the north of Seven Hills Road is a 3-storey commercial building, Conie Avenue Reserve and the Bull & Bush hotel.




Figure 1 Subject site (source: Council report – 14 March 2023)

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 1 Current and proposed controls

Control	Current	Proposed
Zone	R4 High Density Residential	No change
Maximum height of the building	16m	Part 16m (retained) and part 25m 
Floor space ratio	No control	1.69:1
Number of dwellings	4 detached dwellings on site, planning controls permit 35-50 dwellings)	66 (an increase of 16 units)

1.1.4 State electorate and local member

The site falls within the Hawkesbury state electorate. Robyn Preston MP is the State Member.

The site falls within the Mitchell federal electorate. Alex Hawke MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination

The Gateway determination issued on 11 October 2023 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Planning Proposal Authority (PPA) for this planning proposal is the Sydney Central City Planning Panel (the Panel) as a result of the planning proposal being the subject of a rezoning review (**Attachment F**).

The Panel has satisfied the Gateway conditions however it's noted that Gateway condition 4 '*a site-specific DCP or identification of similar LEP mechanism must be in place prior to finalisation*' has not been satisfied. In the Panel's post exhibition consideration and determination of the planning proposal (**Attachment E**), the Panel noted a site-specific DCP was not in place and stated it is satisfied that the Minister's delegate will ensure that the DCP or a similar LEP mechanism is in

place prior to finalisation of the LEP amendment. In this instance, the Panel can recommend to the Minister's delegate the provisions included within a LEP amendment however the decision remains with the Minister's delegate.

The delivery and timing of a DCP is the responsibility of the Council. It appears The Hills Council's usual practice is to exhibit a planning proposal with any supporting documentation such as a draft voluntary planning agreement and/or draft development control plan.

However, as the planning proposal authority for this proposal was not Council, Council was unable to follow its usual practice. A concurrent exhibition of the planning proposal (by the Department) and draft VPA and draft DCP (by Council) did not occur. Irrespective of the timing issue, it is up to Council and the applicant to progress a draft VPA and draft DCP, if required.

The draft LEP does not include the requirement for a site specific DCP to be in place prior to consent being granted for development on the site. The Department considers this is appropriate for this planning proposal for the following reasons:

- The Hills DCP 2012 contain sections that apply to the site and can be considered by the consent authority at development application stage. These include Part B Section – Residential and Section 5 – Residential Flat Buildings.
It's noted in Council's submission received during exhibition (**Attachment D5**) references were made to non-compliances of the proposed concept with its existing DCP including the proposal's setbacks to basement parking areas and solar access requirements to common open space during winter. This would remove the need for these matters to be considered within a site-specific DCP.
- Apartment Design Guide controls would need to be considered by a consent authority.
- Clause 7.7 Design Excellence of The Hills LEP contains provisions the consent authority must have regard to for developments with a proposed height of 25m or more. Consent must not be granted unless the consent authority considers the development exhibits design excellence. The part of the building with a proposed height of 25m would need to address this clause.

In addition, it's noted section 4.23 of the *Environmental Planning and Assessment Act* permits concept development applications as alternatives to DCPs required by environmental planning instruments.

In accordance with the Gateway determination, the proposal is due to be finalised on or before 7 August 2024.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by on the NSW Planning Portal from 13 November 2023 to 11 December 2023.

A total of 17 submissions were received from individuals, The Hills Shire Council and government agencies during and shortly after the exhibition period including:

- 11 community submissions, with 9 unique and 2 duplicates submissions
- 5 Agency submissions
- 1 Council Submission

A public meeting was held by Public Teleconference by the Sydney Central City Planning Panel on 21 March 2024.

3.1 Community submissions

All community submissions objected to the proposal (9 submissions). The key themes and the Department's responses are summarised below:

- Traffic and transport infrastructure

The proposal will further contribute to existing traffic congestion issues in the local area.

Department response

The planning proposal is not considered to have significant adverse traffic and transport impacts. A revised Traffic and Parking Assessment (**Attachment D3**) dated 30 January 2024 was submitted post exhibition to address Transport for NSW's concerns (see section 3.2.2 of this report).

The report concludes that the additional 16 units enabled by this planning proposal would generate a net increase of 16 vehicles per peak hour (AM and PM) compared to the existing planning controls. The additional vehicle generation is considered to be a low level of traffic generation and not anticipated to impose material difference on the road network performance.

The report further breaks down the traffic modelling results for the Windsor Road – Seven Hills Road – Old Northern Road intersection. The intersection is anticipated to operate over capacity in Year 2032 due to the increase in background traffic of the surrounding area. The additional traffic generated by the proposed development is not considered to impose any adverse impact on the road network.

The traffic implications on the Seven Hills Road – Arthur Street intersection and the Arthur Street – Yattenden Crescent intersection are considered to be minimal and continue to operate at a satisfactory level of service.

- Built form (character, height, density, apartment configuration, privacy)

The increased height of building would significantly impact and contrast the character and visual landscape of the area, and adverse privacy and visual amenity impacts on adjacent properties and new residents of the site.

Department response

The site is located in close proximity to the Baulkham Hills Town Centre, with an existing nearby high density residential flat building of 9-15 storeys to the east, and a 4 storey residential flat building to the west. The proposed height is consistent with these developments and further seeks to reduce built form impacts with a transitional lower height control on the west and south sides of the site.

The planning proposal is not considered to have significant adverse built form impacts.

- Solar access and overshadowing

The proposal would provide inadequate solar access to apartments on the site and adjacent properties would be impacted by overshadowing.

Department response

The planning proposal is not considered to have significant adverse solar access and overshadowing impacts. Comments are provided regarding solar access and overshadowing under Section 3.2.1 The Hills Shire Council, the Department's response to Council's submission.

3.2 Advice from agencies

In accordance with the Gateway determination, the following agencies were consulted:

- The Hills Shire Council

- Transport for NSW
- Sydney Water
- Other utility providers including Endeavour Energy, Ausgrid, Jemena

Sydney Water and other utility providers responded with comments relevant to the development application stage.

3.2.1 The Hills Shire Council

Council's submission raised multiple concerns with the proposal including:

- Strategic merit – the proposal is inconsistent with Council's LSPS planning priority discouraging development in Baulkham Hills Town Centre until regional transport and traffic issues are resolved.
- The submitted development concept has not demonstrated consistency with the Apartment Design Guide, especially in relation to solar access. The Panel determined on the 6 July 2023 that an appropriate FSR of no more than 1.69:1 was to be determined from modelling demonstrating the ability for a future DA to achieve consistency with the ADG.
- The proposal will still result in significant visual and overshadowing impacts to sites to the south, which may potentially prevent these adjacent sites from developing to their capacity under existing controls.
- The proposal does not present a built form and bulk that achieves acceptable residential outcomes or compliance with baseline urban design controls and criteria. The U shaped block configuration results in common open space within the centre of the 'u' facing south. This creates privacy issues with corner apartments and solar access issues for the common open space.
- The development concept indicates it can be capable of achieving Council's preferred apartment size and mix, the proposal does not include any LEP mechanism that would provide certainty of this outcome.
- The Housing SEPP creates the potential for additional FSR for affordable rental housing which would further exacerbate built form issues. The Panel is requested to consider the FSR bonuses that may be applicable to the site when considering built form.
- Basement car parking areas extend beyond the built form setback above, with a proposed 0 metre setback to the western boundary of the site, where the proposed vehicle entry point is located along the boundary. This is not compliant with The Hills DCP 2012.
- The development concept is unable to demonstrate conventional access for waste vehicles to enter and exit the site. Turntables are not generally supported in residential developments. Alternative solutions should not need to be relied upon when seeking additional development uplift on a site.
- The Hills DCP 2012 requires 50% of common open space to receive at least 4 hours of solar access during winter. The shadow diagrams illustrate that the ground floor common open space does not receive any solar access between 9am and 3pm in winter. This has implications for landscaping and amenity of the space. Reliance on roof top provision of common open space is not compliant with The Hills DCP.
- Several overshadowing issues are largely driven by the excessive floor space ratio and height controls.
- Council is currently undertaking negotiations with the proponent in order to ensure an appropriate contributions mechanism can be in place to support any increased development yields should the planning proposal proceed. If the planning proposal is to progress to finalisation in any form, this should not occur absent of the necessary infrastructure contribution mechanisms being in place.

Department comment

In respect of the concerns raised by Council, the Department provides the following response:

- The strategic merit of the planning proposal was addressed during Gateway assessment, with Section 4 Department's Assessment of this report reviewing whether the proposal remains consistent with that assessment.
- The purpose of the concept plans submitted to support the planning proposal demonstrate what could be achieved within the built form controls. The concept design is indicative only and not locked in. As per the Department's Agile Planning team's post exhibition report, the team undertook an assessment of the concept plan against the ADG and were satisfied that the proposal can be designed to be consistent with the ADG. Issues raised regarding built form and solar access can be addressed at DA stage through changes to unit configuration and orientation.

The Department's Local Planning and Council Support team agree with this conclusion.

- In response to submissions, the proponent provided additional shadow diagrams to address overshadowing concerns on adjoining properties (**Attachment D2**). The shadow diagrams compare the overshadowing as a result of the existing planning control envelope on adjoining properties with the proposed scheme. The shadow diagrams demonstrate there is slightly more overshadowing on adjoining properties from the proposed scheme compared with the existing scheme from 1pm-3pm on June 21. The Department is satisfied overshadowing concerns have been addressed for the planning proposal stage.
- It is noted that Council's preferred apartment size and mix are contained within a limited number of clauses in The Hills LEP 2019, typically for land surrounding Metro sites. This site is not within proximity to a metro site, inserting Council's preferred apartment size and mix into an LEP amendment for this site is not supported.
- The Department has to consider the amendments proposed to the LEP as per the planning proposal. It is not appropriate to consider a potential scenario based on bonuses for affordable rental housing available under the Housing SEPP. If this scenario eventuates, it would be a matter for the development application stage.
- Council is encouraged to work with the applicant to finalise any draft voluntary planning agreement as soon as possible.

3.2.2 Transport for NSW

Transport for NSW (TfNSW) provided two submissions dated 8 January 2024 and 16 February 2024. Submissions are attached at **Attachment D6**.

TfNSW's January submission provided comment on the planning proposal package and in summary stated the following:

- Requested to view:
 - The draft site specific DCP in relation to parking rates prior to the planning proposal being finalised by the Department of Planning, Housing and Infrastructure.
 - An updated Traffic and Parking assessment reflecting the correct number of apartments and parking rates and other amendments.
 - The draft local voluntary planning agreement (VPA) as the site is within close proximity to the major intersection of Windsor Road and Old Northern Road (State Roads). TfNSW should have the opportunity to review the draft VPA especially if the monetary contribution is being put towards the upgrades of transport infrastructure.
- Advice on works that could potentially be included within the draft VPA including:

- Physical embellishment: landscaping of public domain and associated land dedication for the widening of the pedestrian access pathway that runs along the eastern side of the site
- Monetary contribution: towards public domain upgrades or transport upgrades within Baulkham Hills.
- Design advice/requirements for loading docks and driveways

TfNSW's February submission, in response to an updated Traffic and Parking assessment, in summary states the following:

- No further comments on the updated Traffic and Parking assessment report.
- Reiterates comments relating to vehicle access and egress arrangements to be considered at the Development Application stage.

Department comment

Transport's comments regarding access and loading docks can be addressed at Development Application stage. The Department informed Transport representatives during the finalisation of the planning proposal that a site specific DCP has not been progressed by Council, there will not be a requirement for a DCP provision in the LEP and the draft VPA has not progressed to exhibition.

Transport has advised it will rely upon Council's existing DCPs and if a VPA is drafted and placed on exhibition, it is required Council notify Transport if the VPA relates to upgrades of transport infrastructure that may impact the State Road network.

3.3 Post-exhibition changes

3.3.1 Planning Proposal Authority (Sydney Central City Planning Panel)

The Panel determined on 26 March 2024, after considering a post-exhibition report prepared by the Department's Agile Planning Team (**Attachment D1**), to recommend to the Minister for Planning and Public Spaces that the proposed LEP amendment instrument be made (**Attachment E**). The Panel did not recommend any post-exhibition changes.

It's noted in the Panel's decision that the Department's post-exhibition report had not addressed the Panel's earlier rezoning review condition (**Attachment F**) regarding the preparation and exhibition of a site specific DCP. Gateway determination condition no 4 required the site specific DCP or identification of a similar LEP mechanism must be in place prior to finalisation, this has been addressed under Section 2 of this report.

The Panel considered written submissions and heard from all those wishing to address the Panel. The Panel noted the issues of concern including building character, height and form, solar access and overshadowing, traffic, view loss/sharing impacts, privacy issues and construction impacts. The Panel considers that the concerns raised by the community have been adequately addressed in the Department's Agile Planning Team's post-exhibition report and the record of decision.

3.3.2 Department's Local Planning & Council Support team

No post-exhibition changes are recommended to the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment C**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions
- Remains consistent with all relevant SEPPs

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage.

Table 2 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 3 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 4 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	2 maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Planning Proposal Authority	The Planning Proposal Authority was consulted (Attachment G) on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> . No response was received.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

As this is a map only amendment, a Parliamentary Counsel Certificate is not required to support this LEP amendment

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with the Central City District Plan.
- It is consistent with the Gateway Determination except for condition no.4 '*a site-specific DCP or identification of similar LEP mechanism must be in place prior to finalisation*'. This has been addressed under Section 2 of this report.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



05.08.2024

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Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination
C	Gateway Assessment Report
D1	Post Exhibition Report (Department's Agile Planning team)
D2	Additional Shadow Modelling
D3	Revised Traffic & Parking Assessment
D4	Community submissions
D5	The Hills Shire Council submission
D6	Agency submissions
E	Sydney Central Planning Panel Decision 26 March 2024 (Post Exhibition Decision)
F	Sydney Central Planning Panel Decision 6 July 2023 (rezoning review)
G	Section 3.36(1) consultation with PPA