



IRF24/123

# Gateway determination report – PP-2023-2850

---

Hills Shire Council – Agritourism Planning Proposal

January 24



Published by NSW Department of Planning, Housing and Infrastructure

[dphi.nsw.gov.au](https://dphi.nsw.gov.au)

Title: Gateway determination report – PP-2023-2850

Subtitle:

---

© State of New South Wales through Department of Planning, Housing and Infrastructure 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Housing and Infrastructure as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (January 24) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Housing and Infrastructure), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

# 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.

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview.....	1
1.2	Objectives of planning proposal .....	1
1.3	Explanation of provisions .....	1
1.4	Site description and surrounding area.....	2
1.5	Mapping.....	3
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>4</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>4</b>
3.1	District Plan .....	4
3.2	Local.....	5
3.3	Local planning panel (LPP) recommendation.....	5
3.4	Section 9.1 Ministerial Directions .....	5
3.5	State environmental planning policies (SEPPs) .....	7
<b>4</b>	<b>Site-specific assessment .....</b>	<b>8</b>
4.1	Environmental.....	8
4.2	Social and economic.....	8
4.3	Infrastructure .....	8
<b>5</b>	<b>Consultation.....</b>	<b>8</b>
5.1	Community .....	8
5.2	Agencies.....	9
<b>6</b>	<b>Timeframe .....</b>	<b>9</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>9</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>9</b>
<b>9</b>	<b>Recommendation.....</b>	<b>10</b>

**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Attachment A – Planning Proposal and Council request for Gateway Determination (18 December 2023)
Attachment Council Report and Minute – Council Report and Minute (27 July 2021)
Attachment LPP Report – Local Planning Panel Reports (13 December 2023)



# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

LGA	LGA name
PPA	The Hills Shire Council
NAME	Agritourism Hills Shire Council
NUMBER	PP-2023-2850
LEP TO BE AMENDED	The Hills LEP 2019
ADDRESS	Land to which the Hills LEP 2019 applies
DESCRIPTION	As above.
RECEIVED	18/12/2023
FILE NO.	IRF24/123
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 planning proposal (**Attachment A**) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- Extend the permissibility of farm gate premises in line with State and local objectives to support rural productive capacity and tourism activities.
- Provide suitable framework for the assessment of the new land use opportunities that balances flexibility for farmers to operate the new activities whilst mitigating any potential impacts on rural character and amenity.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend The Hills LEP 2019 per the changes below:

**Table 3 Proposed LEP amendments**

LEP provision	Proposed amendment
<b>Part 2 Land Use Table</b>	
Zone RU6 Transition	Permit farm gate premises with consent
<b>Part 5 Miscellaneous provisions</b>	
Clause 5.24	Introduce a new clause for farm stay accommodation (including a local objective, further detailed below)
Clause 5.25	Introduce new clause for farm gate premises

The planning proposal will:

- Permit farm gate premises with consent in the RU6 Transition zone,
- introduce clauses 5.24 (from the Standard Instrument LEP) for farm stay accommodation and a new local objective (as noted in the Council report) which states: “to ensure that development does not have a detrimental impact on the rural character of the locality”, and
- introduce clause 5.25 (from the Standard Instrument LEP) for farm gate premises.

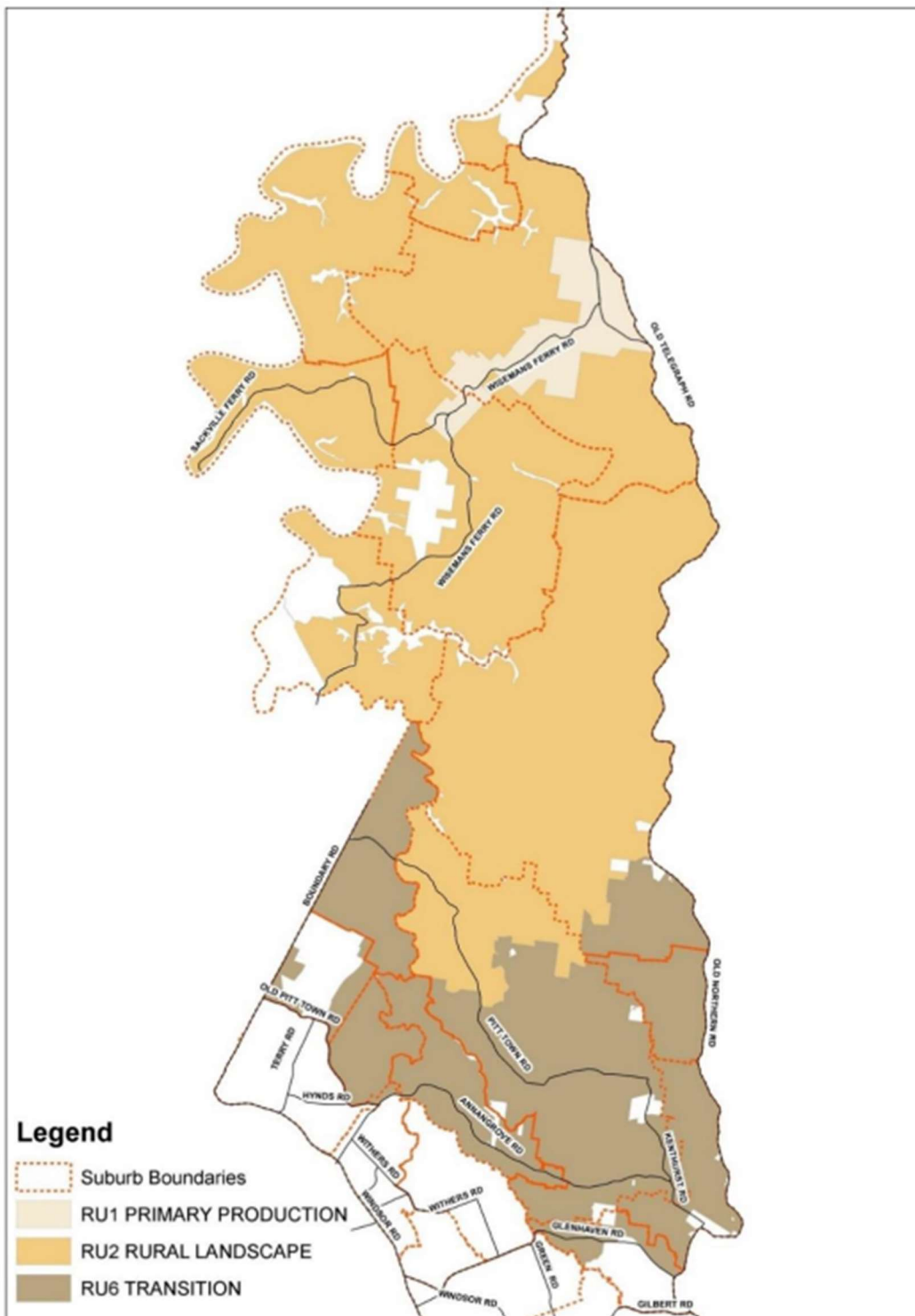
The planning proposal does not detail the wording of the two standard clauses including the new local objective. It is recommended that Council update the planning proposal to include these two new standard clauses and the new local objective.

Once updated the planning proposal will contain an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The planning proposal applies to land within the Hills LGA that:

- permits farm gate premises under RU6 Transition zone
- permits farm stay accommodation and farm gate premises under RU1 Primary Production, RU2 Rural Landscape and RU6 Transition.



**Figure 1 Map of the Shire's Rural Zone (source: Council Planning Proposal (Figure 1))**

## 1.5 Mapping

The planning proposal does not amend any LEP maps. The amendment involves changes to the written instrument only.

## 2 Need for the planning proposal

This planning proposal is not the result of any strategic study or report. Council notes that it has been prepared in response to the State government's agritourism reforms.

The planning proposal also responds to Action 5.2 of Council's LSPS which requires Council to review planning controls and permissible uses in rural zones to facilitate land uses that will support rural industries and encourage tourism in appropriate locations.

Council's approach in amending the LEP is considered to be the best means of achieving the intended outcomes.

## 3 Strategic assessment

### 3.1 District Plan

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

In particular the planning proposal is consistent with *Planning Priority C12: Supporting growth of targeted industry sectors* and *Planning Priority C18 – Better managing rural areas*.

This is discussed below:

**Table 4 District Plan assessment**

District Plan Priorities	Justification
<i>Planning Priority C12: Supporting growth of targeted industry sectors</i>	<p>The Plans reinforce the need to protect and support agricultural production and mineral resources and articulates that there are agricultural clusters at Maroota, Middle Dural, Galston and Arcadia within the Central City District</p> <p>The Plan also has an action to consider opportunities to enhance the tourist and visitor economy in the District.</p> <p>The planning proposal is consistent with the District plan and aims to facilitate land uses that support rural industries and encourage tourism in the right location.</p>
<i>Planning Priority C18 – Better managing rural areas</i>	<p>The District's rural areas include bushland, areas of productive agriculture and rural residential communities at Middle Dural, Kenthurst and Annangrove in the Hills Shire.</p>



Maintaining and enhancing the distinctive character of each rural and bushland town and village is a high priority.

The planning proposal is consistent with the District Plan and its aim to protect and enhance rural areas environmental, social and economic values.

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below.

**Table 5 Local strategic planning assessment**

Local Strategies	Justification
The Hills Local Strategic Planning Statement (LSPS) and the Hills Shire Rural Strategy	<p>The LSPS was endorsed by the Greater Cities Commission on 4 March 2020 and outlines the Shire's 20-year vision for land use planning, population, housing, economic growth and environmental management.</p> <p>The planning proposal is consistent with the themes and planning priorities of the LSPS in particular it will give effect to the following relevant planning priorities of the LSPS:</p> <ul style="list-style-type: none"> <li>• Retain and manage the Shire's rural productive capacity</li> <li>• Encourage support activities and tourism in rural areas</li> <li>• Manage and protect the rural/urban interface</li> </ul> <p>It also responds to Action 5.2 of the LSPS which requires Council to review planning controls and permissible uses in rural zones to facilitate land uses that will support and serve rural industries and encourage tourism in appropriate locations.</p>
The Hills Future Community Strategic Plan (CSP)	<p>The planning proposal is consistent with this Plan as it aligns with Council's strategies related to rural productivity, supporting existing businesses and the visitor economy. The planning proposal will ensure future agritourism opportunities are facilitated and appropriately managed.</p>
Council's Economic Growth Plan	<p>The planning proposal is consistent with this Plan as it facilitates tourism that supports rural industries, and makes the Hills Shire an attractive destination for businesses, visitors and investment. It will add agritourism opportunities such as: farm gate sales, nature-based accommodation, farm stays and destination wineries.</p>

## 3.3 Local planning panel (LPP) recommendation

On 13 December 2023, the planning proposal was considered by the Hills Shire Local Planning Panel (LPP) (**Attachment LPP Report**) in accordance with requirements of Section 2.19 of the *Environmental Planning and Assessment Act 1979*. The LPP considered a report on the planning proposal and recommended to Council that it be submitted to the Department for a Gateway determination.

## 3.4 Section 9.1 Ministerial Directions

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

**Table 6 - 9.1 Ministerial Direction assessment**

Directions	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation	<p>The planning proposal is consistent with this direction as the two standard clauses being inserted requires development consent to only be granted after the consent authority has considered whether the development will have an adverse impact on heritage values.</p> <p>The Department notes that the planning proposal does not address this direction, it is recommended the planning proposal is updated prior to exhibition to include commentary to address this direction.</p>
4.1 Flooding	<p>The planning proposal notes it is consistent with this direction. It details that the planning proposal strikes an appropriate balance to encourage agritourism, while also mitigating potential environmental constraints and land use conflicts.</p> <p>This Department's notes the proposal introduces new land uses into the RU6 Transition zone which may be on land that is flood affected, which means it may be inconsistent with this direction. It is recommended that Council consult with NSW State Emergency Service (SES) following the issue of a Gateway determination.</p> <p>Until consultation has occurred with NSW SES, the direction remains unresolved.</p>
4.2 Coastal Management	<p>The planning proposal details that it is consistent with this direction. The direction applies, as the Hills LGA has pockets of 'Coastal Wetlands and Littoral Rainforest' in their rural areas.</p> <p>The Department's assessment is the proposal is inconsistent with this direction as it may increase development through permitting farm gate premises in the RU6 Transition zone within a coastal wetland or littoral rainforest area.</p> <p>It is noted that the proposed new provisions relating to farm gate premises and farm stay accommodation require the consent authority to consider whether the proposed development will have an adverse impact on native or significant flora or fauna on or near the land.</p> <p>The inconsistency of the proposal is considered to be of minor significance as the requirements of SEPP (Resilience and Hazards) will ensure appropriate consideration of any 'Coastal Wetlands and Littoral Rainforest' at the DA stage.</p>

Directions	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire Protection	<p>The planning proposal details that it is consistent with this direction.</p> <p>The planning proposal applies to farm gate premises in RU6 transition zone, it likely some land will fall in land mapped as bushfire prone. The Department notes the proposal is inconsistent with this direction.</p> <p>This direction requires Council to consult with the NSW Rural Fire Services (RFS) following the issue of a Gateway determination.</p> <p>Until consultation has occurred with the NSW RFS, the direction remains unresolved.</p>
4.5 Acid Sulfate Soils	<p>This direction applies as it has been identified in the Acid Sulfate Soils Planning Maps. The planning proposal details that it is consistent with this direction, including that it strikes an appropriate balance to encourage agritourism, while also mitigating potential environmental constraints and land use conflicts.</p> <p>The Department's notes it is inconsistent with the direction as there is potential for intensification of land uses on acid sulfate soils and there is no acid sulfate soils study that has been prepared.</p> <p>The inconsistency of the proposal is considered to be of minor significance as the LEP contains provisions that will ensure appropriate consideration of acid sulfate soils at the DA stage.</p>
9.1 Rural Zones	<p>This direction has been identified as it seeks to protect the agricultural production value of rural land and requires that any planning proposal not contain provisions that will increase the permissible density of land within a rural zone.</p> <p>This planning proposal has detailed it seeks to support rural industries and assist farmers to diversify their income whilst maintaining primary production as the principal use. This is reflected through the new local objective added under clause 5.24, farm stay accommodation which looks to ensure that development does not have a detrimental impact on the rural character of the locality.</p> <p>The Department agrees the planning proposal is consistent with this Direction.</p>

### 3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below:

**Table 7 - SEPP assessment**

SEPP	Reasons for Consistency or Inconsistency
SEPP (Exempt and Complying Development Codes) 2008	The planning proposal is considered to be consistent with the objectives of the Codes SEPP as it seeks to encourage the uptake of agritourism activities in appropriate locations within the Shire, where an exempt or complying development pathway may not be available.
SEPP (Primary Production) 2021	While the SEPP sets consideration for development applications, this planning proposal is in keeping with its main aims and objectives.

It is recommended that the planning proposal is updated to include additional commentary on SEPP (Resilience and Hazards), as there may be an increase in development through permitting farm gate premises in the RU6 Transition zone within coastal wetlands or littoral rainforest areas.

## 4 Site-specific assessment

### 4.1 Environmental

Council has detailed the land constraints within the RU6 Transition zone including the growth of agritourism, in particular steep topography, vegetation cover as well as areas at risk of acid sulfate soils, flooding, bushfire, coastal wetland and littoral rainforest. This would be addressed on a site-by-site basis at the development application stage and controlled through existing provisions of the LEP 2019, including proposed clauses 5.24 and 5.25 and associated DCP amendments.

The Department agrees that most of the challenges Council has mentioned can be dealt with at the DA stage, in addition to this the Gateway Determination will request that Council consult the SES and the NSW RFS to ensure adequate consideration of bushfire and flooding.

### 4.2 Social and economic

Council has stated that the proposal is expected to result in a positive economic impact with more opportunities for investment in productive, diversified innovative and sustainable rural economic activities, especially with permitting farm gate premises in the RU6 Transition zone. It will allow landowners to showcase agricultural produce of the land, set up a building or place to sell products such as a small restaurant or café, running tastings and workshops. The proposal is not expected to generate significant adverse social impacts.

The Department notes the importance of ensuring development does not have a negative impact on the primary production of the land. Council's new local objective under clause 5.24 farm stay accommodation seeks to ensure this.

### 4.3 Infrastructure

Council states no new or additional local or State infrastructure has been identified as being needed as a result of the proposal. It details any future development application would need to consider infrastructure servicing requirements relative to the proposed land use and anticipate that consultation will be undertaken with service providers to ensure that essential services has been adequately accounted for.

Department is satisfied with Council's consideration of infrastructure for this planning proposal.

## 5 Consultation

### 5.1 Community

The planning proposal is categorised as basic under the LEP Making Guidelines (August 2023). Accordingly, a community consultation period of 10 working days is recommended and this forms part of the conditions to the Gateway determination.

## 5.2 Agencies

Council has nominated the public agencies to be consulted about the planning proposal. The Department agrees with the agencies nominated and they should be given 30 days to comment:

- NSW Department of Primary Industries
- NSW Rural Fire Service
- State Emergency Service
- Sydney Water
- Hornsby Shire Council
- Hawkesbury City Council

## 6 Timeframe

Council proposes a minimum time frame of 6 months to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a basic.

The Department recommends an LEP completion date of 15 July 2024 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

The Department supports Council being 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:

- the proposal is consistent with the State government's agritourism reforms;
- the proposal will enable additional opportunities for rural tourism development and new opportunities for 'agritourism' with benefits to the local economy;
- the proposal is generally consistent with the Central City District Plan and The Hills Local Strategic Planning Statement; and
- the proposal and supporting documentation sufficiently demonstrate it is unlikely to result in any adverse environmental, social, economic or infrastructure impacts, and the development will result in positive impacts for the rural land in Hills Shire LGA.

As discussed in the previous sections 4 and 5, the proposal should be updated before consultation to:

- address SEPP (Resilience and Hazards)
- address section 9.1 Directions 3.2 Heritage conservation.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.2 Coastal Management and 4.5 Acid Sulfate Soils are minor or justified and
- Note that the consistency with section 9.1 Directions 4.1 Flooding and 4.3 Planning for Bushfire Protection are unresolved and will require further justification.

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

1. The planning proposal is to be updated prior to community consultation to:
  - include the two new standard clauses and the new local objective, and
  - address section 9.1 Direction 3.2 Heritage conservation and SEPP (Resilience and Hazards).
2. Consultation is also required with the following public authorities:
  - NSW Department of Primary Industries
  - NSW Rural Fire Service
  - State Emergency Service
  - Sydney Water
  - Hornsby Shire Council
  - Hawkesbury City Council
3. The planning proposal should be made available for community consultation for a minimum of 10 working days.
4. Given the nature of the proposal. Council should be authorised to be the local plan-making authority.



30 January 2024

---

Eleanor Robertson  
A/Director, Central (GPOP)

Assessment officer

Tharani Yoganathan  
Manager, Place and Infrastructure