



IRF 25/1709

Gateway determination report – PP-2025-1299

The Hills Shire Council – Activating High Density Residential Areas

August 25



Published by NSW Department of Planning, Housing and Infrastructure

dpie.nsw.gov.au

Title: Gateway determination report – PP-2025-1299

Subtitle: The Hills Shire Council – Activating High Density Residential Areas

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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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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A – Section 3.34 Planning Proposal – Activating High Density Residential Areas
Attachment B – Council Report, Attachments and Minutes 13 May 2025
Attachment C – Local Planning Panel Report and Minutes 18 June 2025
Attachment D – Plans - R4 High Density Residential Zoned Land under The Hills LEP

1 Planning Proposal

1.1 Overview

Table 2 Planning Proposal details

LGA	The Hills Shire Council
PPA	The Hills Shire Council
NAME	Activating High Density Residential Areas
NUMBER	PP-2025-1299
LEP TO BE AMENDED	The Hills Local Environmental Plan 2019
ADDRESS	Local Government Area (LGA) Wide
DESCRIPTION	Land Zoned R4 – High Density Residential under The Hills Local Environmental Plan 2019
RECEIVED	15/07/2025
FILE NO.	IRF25/1709
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 objective of the Planning Proposal is to expand the range of permissible commercial land uses that can be undertaken in the R4 High Density Residential zone in The Hills LEP 2019 as part of a shop top housing development.

The intended outcomes are to:

- Encourage a greater uptake of the shop top housing land use,
- Activate ground floor areas of residential flat buildings to improve walkability and vibrancy of neighbourhoods, and
- Provide greater flexibility as to the types of small scale commercial premises that can form part of a shop top housing development.

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 Amendments

No.	Amendment	Amendment Details
1	Insert an additional objective to the R4 High Density Residential zone.	<p>The additional objective seeks to support the development of active frontages within the R4 zone. The additional objective is as follows (subject to drafting by Parliamentary Counsel):</p> <p><i>“To encourage small scale non-residential ground level activation to enhance the walkability and vibrancy of neighbourhoods in a high density residential environment”.</i></p>
2	Expand non-residential land use permissibility within the R4 High Density Residential Zone	<p>The proposal seeks to introduce the following land uses as permissible with development consent in the zone:</p> <ul style="list-style-type: none"> • Shops (excluding neighbourhood supermarkets) • Restaurants or cafes • Business premises
3	Insert a new additional local provision that restricts individual premises size and location for certain land uses in a shop top housing development.	<p>A new additional local provision (7.34 <i>Non-residential uses in Zone R4</i>) would be added to Part 7 of The Hills LEP 2019. The new clause seeks to introduce provisions to control the scale of shops, restaurants or cafes and business premises in a shop top housing or mixed use development within the R4 zone. The new clause would:</p> <ul style="list-style-type: none"> • Limit the gross floor area of individual premises to 200m² for shops, restaurants or cafes and business premises. • Limit shops, restaurants or cafes and business premises to the ground floor of shop top housing and mixed-use developments. <p>The Planning Proposal identifies the 200m² floor space restriction as an appropriate balance between enabling commercial uses whilst adequately preserving the amenity of the R4 zone. The limit was identified via the review of development outcomes within the Norwest Precinct.</p>

The Planning Proposal contains an explanation of provisions that adequately explains how the objectives of the proposal would be achieved.

1.4 Site description and surrounding area

The Planning Proposal applies to all R4 High Density Residential zoned land within The Hills LEP 2019. The Planning Proposal identifies that the change applies to approximately 194 hectares of land across the Local Government Area including the following suburbs and site areas:

- Castle Hill (in the Castle Hill and Hills Showground Station Precincts)
- Norwest (in the Norwest Station Precinct)
- Rouse Hill

- Baulkham Hills (surrounding Baulkham Hills Town Centre)
- Bella Vista (in the Bella Vista Station Precinct)
- Kellyville (in the Kellyville Station Precinct and surrounding Wrights Road Kellyville Town Centre)
- Gables (surrounding the Gables Town Centre)
- West Pennant Hills (a small portion within 55 Coonara Avenue 'IBM' Site)

Maps identifying existing R4 zoned precincts are attached to the Planning Proposal (**Attachment A**).

1.5 Mapping

No map amendments are proposed. No maps are required to facilitate the changes sought under the Planning Proposal.

2 Need for the Planning Proposal

Q1. Is the Planning Proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The Planning Proposal seeks to give effect to local strategic planning policies contained within The Hills Local Strategic Planning Statement, as well as priorities of the Norwest and Castle Hill Precinct Plans. Alongside these local strategic planning priorities, The Hills Shire Council also identifies a general need for better connected and serviced high density areas in its LGA. This includes walkable, lively neighbourhoods with ready access to day-to-day conveniences and neighbourhood level services.

The Hills Shire Council identifies Planning Priority 9 of The Hills Local Strategic Planning Statement as the overarching local planning priority that supports the changes proposed under the Planning Proposal.

Planning Priority 9 of the LSPS has the objective to renew and create great places and contains a commitment to investigate measures to encourage land uses that will promote vibrancy in higher density residential zones. The Planning Proposal notes that the well-located nature of R4 zoned land lends itself to the additional vibrancy measures sought under the Planning Proposal.

The Department also notes that the Planning Proposal assists in giving effect to Planning Priority 10: *Provide social infrastructure and retail services to meet residents' needs*. It does so by providing shops and services in high-growth areas on a small scale, consistent with the aim of providing access to services while preserving centre hierarchy.

Alongside the LSPS, precinct plans for Castle Hill and Norwest directly identify a need to activate R4 zones. Relevant actions are outlined below:

Castle Hill Precinct Plan - Action A1 Activating High Density Residential Areas: Amend The Hills Local Environmental Plan to permit additional uses within appropriate high density residential areas and promote more vibrant and active streetscapes. Consequential amendments may also be required to the Development Control Plan and Public Domain Plan

Norwest Precinct Plan - Action C4 Activating High Density Residential Areas: Amend The Hills Local Environmental Plan to permit additional uses within the high density residential area (east of the Cattai Creek Corridor). Consequential amendments may also be required to the Development Control Plan and Public Domain Plan.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A Planning Proposal is the best pathway to achieve the desired outcomes.

As Council has identified that the proposed changes are applicable to all R4 zoned land in The Hills LEP 2019, other potential implementation methods, such as introduction of site specific Additional Permitted Uses have not been proposed.

Additionally, as the proposal is limited to supporting ground floor activation through shop top housing, rezoning land currently zoned R4 to a mixed-use or employment zone would not be appropriate to achieve the small-scale changes sought.

The objectives of the proposed local provision 7.34 *Non-residential uses in Zone R4* could be implemented via amendment to the relevant sections of the Hills Development Control Plan. However, as the Planning Proposal is seeking an expansion of commercial land use permissibility within a zone primarily concerned with delivering high density housing, it is important to ensure that the scale of commercial land uses within the zone is limited and does not degrade the zone's capacity to deliver housing. Scale controls within development control plans are subject to merit assessment and can be less effective at limiting undesired outcomes in comparison to statutory controls. Consequently, addition of the scale controls in the LEP rather than as DCP controls is supported.

3 Strategic assessment

3.1 Regional Plan

The Greater Sydney Region Plan – a metropolis of three cities (the Region Plan), released by the NSW Government in 2018, integrates land use, transport and infrastructure planning and sets a 40-year vision for Greater Sydney as a metropolis of three cities. The Region Plan contains objectives, strategies and actions which provide the strategic direction to manage growth and change across Greater Sydney over the next 20 years.

Under section 3.8 of the Environmental Planning and Assessment Act 1979 (EP&A Act) a Planning Proposal is to give effect to the relevant District Plan. By giving effect to the District Plan, the proposal is also consistent with the Regional Plan. Consistency with the District Plan is assessed in section 3.2 below.

3.2 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.

The Planning Proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the Planning Proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the Planning Proposal against relevant directions and actions.

Table 4 District Plan assessment

District Plan Priorities	Justification
Planning Priority C5 – Providing housing supply, choice and affordability with access to jobs, services and public transport	The Planning Proposal would facilitate neighbourhood level commercial opportunities to directly service high density populations. This would contribute to local employment and increase local access to services.
Planning Priority C6 – Creating and renewing great places and local centres and respecting the District's Heritage.	The Planning Proposal seeks to improve local amenity in R4 zoned precincts by providing better access to local level services. The proposed local provision to limit commercial floor space will help support the established centre hierarchy by ensuring that the majority of commercial development is concentrated within existing and planned commercial centres.
Planning Priority C10 – Growing investment, business opportunities and jobs in strategic centres	As noted above, the small scale of proposed commercial centres would assist in preserving centre hierarchy. The proposal would have minimal impact on the development of strategic centres due to the small scale and neighbourhood level focus of the changes. The proposed changes would also facilitate new local businesses by amending planning controls that currently prevent colocation of certain commercial premises within high density neighbourhoods.

3.3 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
Local Strategic Planning Statement (LSPS)	<p>Planning Priorities outlined in the LSPS include objectives to support development of strategic centres across the shire, provide for employment opportunities, deliver well located housing and meet social and retail needs of residents.</p> <p>The Planning Proposal identifies that the proposed changes give effect to <i>Planning Priority 9 Renew and create great places</i>. It identifies that the LSPS articulates the importance of renewing and creating great places, particularly in areas that are envisaged to undergo change and development in the future. The Planning Proposal further identifies that there is a forecast shift to apartment living in the Shire, and that the Planning Proposal seeks to adapt the current planning framework to align with the ongoing trend towards higher density living.</p> <p>As noted in section 2 of this report, the Planning Proposal also assists in giving effect to Planning Priority 10: <i>Provide social infrastructure and retail services to meet residents' needs</i>. It does so by providing shops and services in high-growth areas on a small scale, consistent with the aim of providing access to services while preserving centre hierarchy.</p>

Local Strategies	Justification
Productivity and Centres Strategy 2019	<p>The Productivity and Centres Strategy outlines a hierarchy of commercial centres, providing a framework for delivery of commercial floor space that is appropriately scaled to its location. The strategy expands on relevant planning priorities of the LSPS. With respect to Planning Priority 9, the strategy identifies challenges facing the redevelopment of some centres and outlines that Council will promote the economic benefits of centre redevelopment.</p> <p>The Planning Proposal seeks to allow out of centre commercial development. However, due to the restrictions on scale included in the proposal, any out of centre commercial development would have negligible impact on centres hierarchy and would be unlikely to introduce detrimental competition with established centres.</p>
Housing Strategy 2019	<p>The strategy identifies that high density neighbourhoods would benefit from small scale shops, supermarkets or cafes. The strategy identifies that these land uses can positively contribute to high density spaces where amenity impacts can be controlled.</p> <p>The Planning Proposal is consistent with the strategy by enabling a greater range of commercial uses to support the day to day requirements of high density areas. Additionally, it is unlikely that permitting additional commercial land uses in the R4 zone would displace any housing, as commercial only development would be incompatible with the objectives of the zone and would likely be economically unfeasible in comparison to a shop top housing or mixed-use development.</p>

3.4 Local planning panel (LPP) recommendation

The Planning Proposal was referred to the LPP on 18 June 2025. The Panel advised that prior to submission for gateway assessment, further advice be sought on the shop top housing definition. Specifically, the Panel advised:

The Panel was of the view that reference to “commercial premises” within the definition of Shop Top Housing has the impact of permitting all uses that fall within the definition of “commercial premises” (including shops, restaurants or cafes, and business premises), even where those uses are specifically prohibited within the applicable land use zone. Advice should be sought by Council on this matter. If the advice confirms this position, there would be no need for Council’s Planning Proposal to progress

The Panel then outlined that following the receipt of advice that the Planning Proposal should proceed, the following should be considered:

- a) Provision of clarity with respect to the interpretation and description of “ground floor” to ensure that the additional permitted uses do not occur on multiple levels;*
- b) Inclusion of a new zone objective for the R4 High Density Residential zone to protect the residential amenity of the zone;*
- c) Ensure that the inclusion of the additional uses within ground floors (with higher floor to ceiling heights) do not result in widespread breaches of the Height of Buildings standard within The Hills LEP 2019.*

Council response

In response to LPP concerns regarding the shop top housing land use, Council provided the following response:

Whilst “commercial premises” are mentioned in the (shop top housing) definition, this does not make such uses permissible in the zone. The group term “commercial premises” is prohibited in the R4 High Density Residential zone under The Hills LEP 2019 with “neighbourhood shops” the only sub term of “commercial premises” currently permitted in the zone. Therefore, any development proposal for “shop top housing” above “commercial premises” is only permitted above “neighbourhood shops” (being the only commercial premises currently permitted in the zone).

The foregoing interpretation is clearly articulated in the Department’s own Practice Note PN07-001 on the preparation and implementation of Standard Instrument for LEPs and is how the legislation has been interpreted and applied since it was introduced.

Based on the above, Council does not appear to have obtained any further advice on the shop top land use prior to submission of the Planning Proposal for gateway assessment.

In addressing the further advice of the Panel, Council addresses each recommendation as follows:

- *a) Provision of clarity with respect to the interpretation and description of “ground floor” to ensure that the additional permitted uses do not occur on multiple levels:*
 - The proposed new local provision restricts commercial uses to the ground floor of a shop top housing development in the R4 zone. The proposed objective within the local provision makes clear the intent of the proposed control is for non-residential uses to provide for street activation. As such the intent is considered to be sufficiently clear without the need for a definition of “ground floor”, noting also that the proposed supporting DCP amendments provide further commentary and guidance around active street frontages.
- *b) Inclusion of a new zone objective for the R4 High Density Residential zone to protect the residential amenity of the zone:*
 - Current zone objectives already prioritise the housing needs of the community – specifically, “To provide for the housing needs of the community within a high density residential environment”. Additionally, the proposed local provision provides restrictions for non-residential uses in high density developments to mitigate potential amenity impacts for residents. The existing and proposed zone objectives are also reinforced via the Hills Development Control Plan.
- *c) Ensure that the inclusion of the additional uses within ground floors (with higher floor to ceiling heights) do not result in widespread breaches of the Height of Buildings standard within The Hills LEP 2019:*
 - Whilst it is acknowledged that commercial floors will have higher floor to ceiling heights than residential floors, any future development application for shop top housing or mixed use development in the R4 High Density Residential zone in The Hills will be subject to the relevant Height of Building standards contained in The Hills LEP 2019. The planning proposal is not intended to result in any changes to these standards and compliance would be a matter for assessment at development application stage.

Department Assessment

Practice Note PN07-001 dated 26 March 2007 provides an overview of frequently asked questions regarding the implementation of the Standard Instrument for LEPs. The Practice Note outlines that Shop top housing will only be permitted above whatever type of retail development is permitted in a zone (or over an existing retail use).

Following the release of Practice Note PN07-001, the shop top housing definition was expanded to include commercial premises. Despite the expanded definition, all land uses that form a shop top housing development must be independently permissible within the relevant zone. As The Hills LEP lists commercial premises as a prohibited land use, all land uses that fall under the commercial premises definition are prohibited unless separately listed as permissible.

Consequently, progression of this Planning Proposal is required to expand commercial permissibility as part of a shop top housing development.

With respect to Council's responses to LPP recommendations a), b) and c), it is considered that the intent of these recommendations has been captured by the Planning Proposal.

3.5 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	Consistency	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	Refer to 3.1 of this report
1.4 Site Specific Provisions	Consistent	<p>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p> <p>The Planning Proposal seeks to introduce new commercial land uses across all R4 zoned land in the LGA. This implementation method is consistent with the objective of the direction as it is broad based does not introduce permissibility on a site by site basis.</p>
1.16 North West Rail Link Corridor Strategy	Consistent	<p>The objectives of this direction are to promote transit orientated development, manage growth around metro stations and ensure that development is consistent with the relevant precinct structure plans.</p> <p>The proposal would be consistent with the relevant structure plans for station precincts and does not seek to alter any growth projections or dwelling targets for any precinct.</p>
4.3 Planning for Bushfire Protection	Inconsistent – unjustified	<p>The objective of this direction is 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 encouraging sound management of bush fire prone areas.</p> <p>The Planning Proposal is seeking to expand land uses permissible on existing R4 zoned land. The proposal is not expected to facilitate the placement of inappropriate development in hazardous areas or diminish the ability of a future development site to address the relevant requirements of <i>Planning for Bushfire Protection 2019</i>.</p> <p>A Gateway condition is recommended that requires the proponent to consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination. Once consultation has occurred, the proposal will be consistent with this Direction.</p>

Directions	Consistency	Reasons for Consistency or Inconsistency
5.1 Integrating Land Use and Transport	Consistent	<p>This planning direction aims to create urban environments that enhance access to housing, jobs, and services through walking, cycling, and public transport, while reducing car dependency, travel demand, and trip distances; it also supports efficient public transport operations and facilitates the smooth movement of freight.</p> <p>The Planning Proposal seeks to co-locate businesses and services to service high density neighbourhoods which is consistent with the objectives of the direction.</p>
6.1 Residential Zones	Consistent	<p>The objectives of the direction are to encourage a variety of housing types, ensure that housing has appropriate access to infrastructure and services and to minimise the impact of residential development on the environment.</p> <p>The Planning Proposal is consistent with the objectives of the direction as it seeks to broaden building choices available in the housing market, whilst ensuring that high density areas have access to appropriate small scale and local services.</p> <p>The proposed local provision to limit the scale of commercial units and restrict them to the ground floor would assist in delivering services to high density neighbourhoods with negligible impact to the capacity for these areas to deliver housing.</p>

3.6 State environmental planning policies (SEPPs)

The Planning Proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 7 Assessment of Planning Proposal against relevant SEPPs

SEPPs	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Precincts – Central River City) 2021	The SEPP applies to land within the North Kellyville and Box Hill Precincts. The proposed changes are restricted to the THLEP 2019 and would have no impact on the relevant SEPP planning controls for these precincts.
State Environmental Planning Policy (Housing) 2021	The Planning Proposal would be generally consistent with the principles of the SEPP and would not impact the delivery of diverse, social or affordable housing.

4 Site-specific assessment

4.1 Environmental

The Planning Proposal would alter permissible land uses within existing R4 zoned areas. It does not seek an expansion to the extent of the R4 zone and does not seek any changes to building

heights or floor space ratios. The built form within R4 zoned precincts would remain broadly similar to what is currently permitted, albeit with additional small scale commercial premises.

It is therefore expected that the proposed changes would have negligible environmental impact.

4.2 Social and economic

The Planning Proposal would have a positive social and economic benefit by providing better opportunities for commercial premises and services to cater to local high-density neighbourhoods. Residents of higher density areas would, in turn, have better access to commercial premises, offering social opportunities, access to services and convenience.

Due to the small scale of the proposed changes, it is not expected that the change would contribute to significant levels of employment within the LGA or alter the existing hierarchy of commercial centres.

4.3 Infrastructure

No changes to permissible building height or floor space ratio are proposed to support the changes sought under the Planning Proposal. It is expected that the infrastructure requirements of a shop top housing development would therefore be broadly similar to that of a similar sized residential flat building in the existing R4 zoned precincts.

Infrastructure required to support the proposed commercial uses, such as loading areas, car parking or electricity / gas connections could be determined on a site by site basis at development application stage.

5 Consultation

5.1 Community

Council proposes a 28 day community consultation period in accordance with The Hills Community Participation Plan.

The proposed exhibition period is considered appropriate, and forms a condition of the Gateway determination.

5.2 Agencies

The Planning Proposal does not identify any agencies for consultation. However, as the Planning Proposal would apply to bushfire prone land, consultation with the NSW Rural Fire Service is required as per the requirements of Local Planning Direction 4.3. It is recommended that consultation be undertaken with the NSW Rural Fire Service and the agency be given 30 working days to comment.

6 Timeframe

Council proposes a 6 month time frame 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 standard proposal.

The Department recommends an LEP completion date of 18 June 2026 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.

It is recommended that if the gateway is supported, it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal does not have any significant adverse environmental impacts, the Department recommends that Council be authorised as the local plan-making authority for the proposal.

8 Assessment summary

The Planning Proposal is supported to proceed with conditions for the following reasons:

- It is consistent with the objective and priorities of the Central City District Plan.
- It is consistent with The Hills Shire Council's Local Strategic Planning Statement as well as local precinct plans for R4 zoned areas.
- It is not considered to have significant adverse environmental or social impacts and would have negligible impact on housing delivery or supporting infrastructure.
- An amendment to The Hills LEP 2019 is the best means of achieving the objectives of the Planning Proposal.

Based on the assessment outlined in this report, the proposal must be updated before consultation to outline the result of consultation with the Commissioner of the NSW Rural Fire Service, as required by Ministerial Direction 4.3 Planning for Bushfire Protection.

9 Recommendation

It is recommended that the delegate of the Secretary:

- Note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved, pending consultation with NSW RFS.

It is recommended the delegate of the Minister determine that the Planning Proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. Prior to community consultation, consultation is required with the following public authorities:
 - NSW Rural Fire Service
2. The Planning Proposal is to be revised to address condition 1.
3. The Planning Proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the Planning Proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 18 June 2026 be included on the Gateway.

The timeframe for the LEP to be completed is on or before 18 June 2026.

 05.08.2025

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8 August 2025

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