

ITEM-1	LOCAL PLANNING PANEL – PLANNING PROPOSAL – SECONDARY DWELLINGS IN RURAL AREAS (6/2021/PLP)
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire’s natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	17 MARCH 2021 LOCAL PLANNING PANEL
AUTHOR:	TOWN PLANNER GIDEON TAM
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING NICHOLAS CARLTON

Proponent	COUNCIL INITIATED
Site Area	RURAL ZONED LAND WITHIN THE HILLS COUNCIL LGA
Consultants	NIL
List of Relevant Strategic Planning Documents	GREATER SYDNEY REGION PLAN CENTRAL CITY DISTRICT PLAN STATE ENVIRONMENTAL PLANNING POLICIES SECTION 9.1 MINISTERIAL DIRECTIONS LOCAL STRATEGIC PLANNING STATEMENT AND SUPPORTING STRATEGIES
Recommendation	THAT THE PLANNING PROPOSAL PROCEED TO GATEWAY DETERMINATION

EXECUTIVE SUMMARY

This report provides a summary of a planning proposal that seeks to amend The Hills Local Environmental Plan (LEP) 2019 to include the optional Clause 5.5 of the Standard Instrument LEP which relates to the maximum size of secondary dwellings within rural zones.

In December 2020 the Department of Planning, Industry and Environment (DPIE) made amendments to the Standard Instrument – Principal Local Environmental Plan (2006) to permit Councils to set maximum size criteria for secondary dwellings within rural zones (distinct from urban zoned land). The amendment came into effect on 1 February 2021. In order to include this new optional Standard Instrument clause and specify distinct size

criteria for secondary dwellings in rural zones, Council is required to initiate a planning proposal to amend The Hills LEP 2019.

It is recommended that a planning proposal be submitted to DPIE for a Gateway Determination to include Clause 5.5 and specify that in rural zones, the gross floor area of secondary dwellings must not exceed 110m² or 20% of the total floor area of the associated principal dwelling, whichever is the greater.

BACKGROUND

Development standards for secondary dwellings have been regulated under Clause 5.4(9), which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Under Clause 5.4(9) of The Hills LEP 2019, 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).

Historically, Clause 5.4(9) has applied to both rural and urban zones. While appropriate outcomes were being achieved in established urban areas, the clause failed to appropriately regulate the outcomes that could be achieved in rural areas of the Shire.

On 30 April 2019, Council resolved to forward a planning proposal to DPIE that would amend Clause 5.4(9) such that it would allow the application of size controls for rural areas, distinct from size requirements for secondary dwellings in urban areas.

On 14 February 2020, Council received a Gateway Determination which advised that the planning proposal should not proceed to Gateway Determination. Council subsequently submitted a request for a review of this determination and on 10 June 2020, the Independent Planning Commission (IPC) was supportive of the strategic and site specific merits of Council's proposal. However, the IPC recommended that in order to enable the amendments sought by Council, DPIE would need to either:

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

Following consideration of the IPC's advice, DPIE determined not to alter the Gateway Determination for Council's planning proposal. However, Council was advised that the requested amendments would be permitted through a proposed new Housing Diversity SEPP, which would give Councils the discretion to set a maximum size for secondary dwellings in rural zones, distinct from the maximum size applicable to urban zones.

During the exhibition period for the Discussion Paper / Explanation of Intended Effect on the proposed new SEPP, Council made a submission recommending that the mechanism to enact the proposed amendment be created within the Standard Instrument LEP rather than through a SEPP. It was unclear how the amendment could occur through a SEPP given that Clause 5.4(9) is a mandatory clause within the Standard Instrument LEP.

On 16 December 2020 a Standard Instrument Amendment Order was published on the NSW Legislation Website which amends the existing Clause 5.4(9) so that it relates specifically to urban zones. It also introduced a new optional Clause 5.5 which specifically relates to the maximum size of secondary dwellings in rural zones. The Order came into effect on 1 February 2021. By opting to include the new Clause 5.5 within an LEP (by way of a planning proposal), relevant Councils now have the discretion to set maximum size criteria for secondary dwellings within rural zones (distinct from urban zoned land).

On 23 February 2021, Council considered a report on the proposed standard instrument amendments and opportunity to include the optional *Clause 5.5 Controls relating to secondary dwellings on land in rural zone* within LEP 2019 and resolved as follows:

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

A copy of the Council Report and Minute is provided as Attachment 1.

REPORT

The purpose of this report is to present a planning proposal relating to the maximum size of secondary dwellings in rural areas to the Local Planning Panel for advice, in accordance with Section 2.19 of the Environmental Planning and Assessment Act 1979.

1. DESCRIPTION OF THE PLANNING PROPOSAL

The planning proposal seeks to amend LEP 2019 to include the optional Clause 5.5 of the Standard Instrument LEP. The application of Clause 5.5 requires that Council nominate *both* a maximum floor space *and* a maximum percentage of the principal dwelling area, with the entitlement for the area of a secondary dwelling to be calculated as the *greater* of the two figures.

The proposed clause is 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.

It is noted that the above clause reflects that within the Standard Instrument LEP, with Councils having the discretion to choose the area and percentage figures within subclauses (a) (i) and (ii) respectively.

The proposed amendment would only apply to rural zoned land where secondary dwellings are already permitted with consent. Under LEP 2019, the applicable zones are RU1 Primary Production, RU2 Rural Landscape and RU6 Transition.

2. MATTERS FOR CONSIDERATION

The planning proposal requires consideration of the following matters:

- a) Strategic Context; and
- b) Suitability of Nominated Development Standards.

a) Strategic Context

- Greater Sydney Region Plan and Central City District Plan

The Greater Sydney Region Plan and Central City District Plan emphasises the importance of ensuring that the provision of diverse dwelling options are available to rural residents of the Shire and that built form outcomes are contextually appropriate. Relevant objectives and planning priorities of the Regional Plan and District Plan are as follows:

- Objective 10 – Greater housing supply;
- Objective 11 – Housing is more diverse and affordable;
- Objective 29 – Scenic and cultural landscapes are protected;
- Planning Priority C5 – Providing housing supply, choice and affordability with access to jobs services and public transport; and
- Planning Priority C18 – Better managing rural areas.

The planning proposal will only apply to rural zones where secondary dwellings are already permissible with consent, and will not limit the delivery of housing supply within the Shire. Nominated maximum size criteria controls will enable a more feasible and attractive opportunity for rural landowners to construct a reasonably sized secondary dwelling where some were previously limited by the size of their existing dwelling. It is considered unreasonable for landowners to have to undertake unnecessary alterations to expand their existing dwelling simply for the purpose of facilitating a more sizeable secondary dwelling, particularly on large rural lots that are already capable of accommodating secondary dwellings without having an adverse impact on the rural character.

The planning proposal will ensure the diversification of housing typologies on rural zoned land and facilitate the delivery of more affordable housing options in rural areas that are generally characterised by larger principal dwellings.

Giving consideration to the Metropolitan Rural Area, rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger lot sizes mean that both the principal and secondary dwelling can comfortably be accommodated within site coverage requirements, whilst providing sufficient private open space and negligible amenity impacts such as overlooking or overshadowing within the site and to adjoining properties.

It is considered that these design outcomes can be achieved within the nominated development standards of the planning proposal and will not impact on the scenic and cultural landscapes of the MRA. Further, the proposed amendments will not impact on the rural population of the Shire or place substantial pressure on local services and infrastructure, given that secondary dwellings are already permitted and the proposal simply seeks to specify the size criteria for this form of development where it does occur within rural areas.

- Ministerial Direction 1.2 Rural Zones

The objectives of this direction are to protect the agricultural production value of rural land. The direction states that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone, and not contain provisions that will increase the permissible density on land within a rural zone.

The proposal only applies to rural areas where secondary dwellings are already permitted with consent and the planning proposal does not seek to amend the permissibility of this land use, nor does it seek to rezone rural land. The nominated 20% control remains unchanged in comparison to the previous application of Clause 4.5(9) to the rural area and the proposal would therefore not result in an unreasonable increase in the permissible density in rural zones.

- Ministerial Direction 1.5 Rural Lands

The objectives of this direction are to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It also seeks to assist in the management, development and protection of rural lands to promote the social, economic and environmental welfare of the State and minimise potential land use conflicts with residential development.

The planning proposal is consistent with this direction as it seeks to regulate size requirements for development on rural land where residential uses are already permitted. The proposal is considered to have minimal impact on the agricultural viability of rural land. The nominated size requirements can be achieved alongside consistency with Part B Section 1 – Rural of The Hills Development Control Plan 2012 and would not create the potential for any adverse land use conflicts with agricultural uses.

- The Hills Future 2036 Local Strategic Planning Statement

Council's Local Strategic Planning Statement (LSPS) outlines the Shire's 20-year vision for land use planning, population, housing, economic growth and environmental management. The planning proposal will give effect to the following relevant planning priorities of LSPS:

- Planning Priority 8 – Plan for a diversity of housing; and
- Planning Priority 16 – Manage and protect the rural/urban interface.

The LSPS seeks to ensure that a range of housing options are available to meet the varying needs, lifestyles and financial capacities of existing and future residents. Specifically, Council's supporting Rural 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 (as was previously applicable to both urban and rural zones).

Giving effect to Council's Rural Strategy, the nominated size criteria will ensure that secondary dwellings can be greater than 60m² within the rural area and continue to contribute to the diversity of housing typology and affordability, while ensuring that existing rural character is maintained. It will also more broadly facilitate further opportunity to diversify the Shire's housing mix and ensure secondary dwellings serve an affordable housing option for lower income households.

The nomination of size criteria will not negatively impact the rural urban interface as the amendments relate only to land on which secondary dwellings are already permitted with consent. On balance, the planning proposal will provide for a diversity of housing without jeopardising the priority of managing and protecting the rural urban interface.

b) Suitability of Nominated Development Standards

In recent years, rural residents with smaller scale homes have expressed an interest to increase the maximum permissible floor space of secondary dwellings beyond 60m², so as to enable the construction of a reasonably sized secondary dwelling without requiring alterations to be undertaken to existing small-scale principal dwellings.

The nominated 110m² floor area limit would provide more equitable opportunities for rural landowners to construct a sizeable secondary dwelling, where previously limited by the 60m² limit. It is considered that impacts to the rural character would be negligible, given that larger rural lot sizes allow multiple siting opportunities that could comfortably accommodate the principal dwelling and secondary dwelling as well as sufficient site coverage, private open space and acceptable amenity outcomes.

Figure 1 below provides example floor plans to demonstrate the scale of secondary dwellings that could be delivered under the nominated 110m² floor area control.

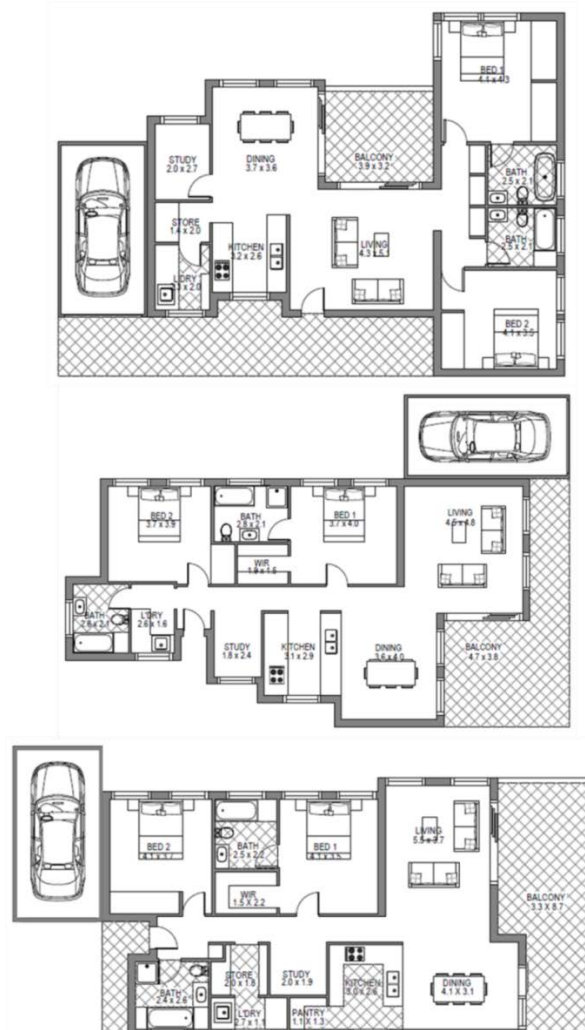


Figure 1
Example floor plans of 110m² dwellings

As shown in Figure 1, a maximum dwelling size of 110m² (or 130m² including garage) would provide sufficient room for a two bedroom / two bathroom dwelling, with comfortable living areas. The control would enable the opportunity to achieve this outcome irrespective of the size of the principal dwelling on the land. It is considered that a 110m² secondary dwelling will also maintain the subservient relationship between a principal and secondary dwelling and ensure that secondary dwellings remain contextually appropriate in the rural area. The 110m² floor area control will be utilised as the predominant control for secondary dwellings in the rural area as in the majority of cases, this will allow for achievement of the largest possible secondary dwelling.

No change is proposed to the maximum percentage of the principal dwelling area (being 20%) compared to its previous application in the rural area under Clause 5.4(9) of the LEP. This will ensure that properties which do contain a larger principal dwelling will still have the same flexibility as provided under the previous Clause 5.4(9) to achieve larger secondary dwellings where contextually appropriate on a site.

In addition to the maximum size of a secondary dwelling, Clause 5.5 of the Standard Instrument LEP also includes an additional option to regulate the distance between a principal dwelling and the secondary dwelling. Currently, The Hills LEP does not specify a standard for building separation between the principal dwelling and secondary dwelling, nor does The Hills Development Control Plan 2012. The absence of this limitation has not facilitated any known inappropriate development outcomes and as such, the implementation of this additional control is not warranted or desired at this time. Should the planning proposal be finalised, secondary dwelling outcomes in rural areas will be closely monitored and a future review undertaken to determine the need to adopt the optional clause to regulate the distance between the principal and secondary dwelling.

In addition to the LEP standards, built form outcomes are regulated by The Hills Development Control Plan 2012. *Part B Section 1 – Rural* requires any development application for a secondary dwelling in a rural area to demonstrate that new development would integrate with the surrounding rural character and maintain the aesthetic quality and amenity of the rural area for both occupants and surrounding residents.

The rural site coverage and setback controls would also apply and ensure that secondary dwellings appropriately integrate with existing principal dwellings and that the overall development is contextually appropriate. In particular, the resulting scale, siting and visual appearance of the developments are required to maintain the rural landscape and preserve the scenic and environmental qualities of the rural area. Ultimately, the proposed LEP development standards and existing DCP controls form a suite of applicable controls that would be applied during the development assessment process to effectively regulate built form outcomes in a rural context whilst allowing improved opportunities to construct a reasonably sized secondary dwelling.

RECOMMENDATION

Council forward a planning proposal to the Department of Planning, Industry and Environment to amend The Hills Local Environmental Plan 2019 to include the optional Clause 5.5 of the Standard Instrument LEP and specify maximum size criteria for secondary dwellings in rural zones in accordance with Section 1 of this Report.

ATTACHMENTS

1. Council Report and Minute (23 February 2021)(separate cover)

LOCAL PLANNING PANEL – THE HILLS SHIRE COUNCIL

**DETERMINATION OF THE LOCAL PLANNING PANEL ON 18 MARCH 2021
– DETERMINATION MADE ELECTRONICALLY**

PRESENT:

Julie Walsh	Chair
Alf Lester	Expert
Scott Barwick	Expert
Rohan Toner	Community Representative

DECLARATIONS OF INTEREST:

Nil Disclosed

COUNCIL STAFF:

The Panel were briefed by the following Council Staff on 17 March 2021:

David Reynolds	-	Group Manager – Shire Strategy, Transformations & Solutions
Nicholas Carlton	-	Manager – Forward Planning
Megan Munari	-	Principal Coordinator, Forward Planning
Gideon Tam	-	Town Planner

**ITEM 1: LOCAL PLANNING PANEL – PLANNING PROPOSAL –
SECONDARY DWELLINGS IN RURAL AREAS (6/2021/PLP)**

COUNCIL OFFICER’S RECOMMENDATION:

That the planning proposal proceed to Gateway Determination.

PANEL’S ADVICE:

Council forward a planning proposal to the Department of Planning, Industry and Environment to amend The Hills Local Environmental Plan 2019 to include the optional Clause 5.5 of the Standard Instrument LEP and specify that in rural zones, the total floor area of secondary dwellings must not exceed 110m² or 20% of the total floor area of the principal dwelling, whichever is the greater, in accordance with section 1 of the Council officer’s report considered at the briefing of the Local Planning Panel on 17 March 2021.

VOTING:

Unanimous