

**From:** [Gina Metcalfe](#)  
**To:** [Callum Firth](#)  
**Cc:** [Angela Hynes](#); [Stephen Barry](#)  
**Subject:** RE: Hills Shire Council Gateway Review - Questions on Notice  
**Date:** Tuesday, 26 May 2020 5:08:15 PM  
**Attachments:** [image001.png](#)

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Hi Callum

Thanks for your email and other advice to Angela in the meantime. The Department's response is outlined below.

**1. Could you please explain the inconsistency with Section 9.1 Direction 4.4 Planning for Bushfire Protection?**

Response: Under Section 9.1 Direction 4.4 Planning for Bushfire Protection - The planning proposal would not impact on the application of the Bushfire Protection Guideline 2006 or the consideration of bushfire protection as part of any Development Application for a secondary dwelling. However, Council has not demonstrated to the NSW Rural Fire Service that the proposal could comply with Planning for Bushfire Protection 2006.

If the proposal was to proceed, Council would need to resolve this inconsistency post Gateway. This could include controls to avoid placing inappropriate development in hazardous areas. On this basis the Department concluded that the proposal contains unresolved inconsistencies with this Ministerial Direction. As the Gateway determination does not support the proposal to proceed, a condition requiring Council to update the planning proposal accordingly/to demonstrate consistency with this Direction could not be included within the determination.

**2. Can you please explain why the Planning Proposal cannot be legally made?**

Response: The only way the proposed amendment to The Hills LEP can be made is:  
a. if there is an amendment by the Minister to the Standard Instrument Order or the *Environmental Planning and Assessment Act 1979*; or  
b. if a State Environmental Planning Policy is made to override the effect of that provision.

The Department is sympathetic to the circumstances within the Hills Shire local government area. However, the solution needs to match the scale of the problem. Amendment to clause 5.4(9)(b) of the Standard Instrument would have a wider impact and require consultation with councils across NSW. This is because an amendment could have inadvertent effects on existing LEPs which contain that provision. The Standard Instrument is amended periodically to include new definitions or clarify existing provisions. However, these changes have usually only occurred to rectify a State-wide issue or to introduce new policy with State-wide application.

**3. Is the Department aware of similar issues raised in other LGAs in the State and whether any other Councils have sought to vary the 60m2 rule?**

Response: No.

**4. Is it possible to revisit the drafting instructions for the standard instrument regarding the 60m2 rule to understand the rationale behind the number and its mandatory**

**status across the State?**

Response: The controls have been in the Standard Instrument since January 2008 and have not changed. This would require extensive searching through records greater than 12 years old and it is unlikely PCO would have copies of drafting instructions from that time.

**5. Notwithstanding the Department’s position on whether the amendment can be legally made, what would be the effect of amending the Standard Instrument as requested by Council for other LGAs in NSW?**

Response: Consultation with all councils and review of every LEP with the current clause 5.4(9) of the Standard Instrument would need to be undertaken to ascertain the effects of amending that model provision. This is because the Department is not aware of any other councils indicating an issue with existing clause 5.4(9) of the Standard Instrument.

**6. What is the status of the Department’s review of SEPPs relating to housing diversity?**

Response: A draft Explanation of Intended Effect (EIE) for a new Housing Diversity SEPP is undergoing a final review prior to submitting it for Minister’s approval. The draft EIE sets out a proposal to include provisions in the proposed new Housing Diversity SEPP so that councils will have the discretion to set a maximum size for secondary dwellings in rural zones. The anticipated timeframe for exhibition of the draft EIE is mid 2020.

The Department considers that exhibition of the EIE and amendment to the SEPP is considered the most expedient, appropriate and efficient manner to address the issue. This is consistent with the advice provided to the Council.

Please contact me if you need any more information about the advice above.

Regards

Gina

**Gina Metcalfe**  
**Acting Director, Central (Western)**

Penrith, Blacktown, Hawkesbury, The Hills  
Place, Design and Public Spaces | Department of Planning, Industry and Environment



Level 4, 10 Valentine Avenue Parramatta

[www.dpie.nsw.gov.au](http://www.dpie.nsw.gov.au)



*The Department of Planning, Industry and Environment acknowledges that it stands on Aboriginal land. We acknowledge the traditional custodians of the land and we show our respect for elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.*

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**From:** Callum Firth [REDACTED]  
**Sent:** Friday, 22 May 2020 4:06 PM  
**To:** Gina Metcalfe [REDACTED]  
**Cc:** Angela Hynes [REDACTED] Stephen Barry  
[REDACTED]  
**Subject:** Hills Shire Council Gateway Review - Questions on Notice

Hi Gina,

Please find attached a letter containing questions from the Commission Panel ahead of the meeting scheduled for 2:00 PM Wednesday 27 May.

Please let myself or Steve know if you have any questions leading up to the meeting.

Kind regards,

**Callum Firth | Student Planner**  
Independent Planning Commission NSW  
Level 3, 201 Elizabeth Street Sydney NSW 2000



**New South Wales Government**  
Independent Planning Commission

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