

ATTACHMENT 4 – RESPONSE TO GATEWAY DETERMINATION PLANNING PROPOSAL FOR SECONDARY DWELLINGS (12/2019/PLP)

1. INTRODUCTION

This document forms The Hills Shire Council's response to the Department of Planning, Industry and Environment's Gateway Determination for the planning proposal to amend maximum size criteria for secondary dwellings in The Hills Shire's rural areas. It establishes the strategic merit for the planning proposal and provides an evidence base that justifies the need for new planning controls to manage secondary dwelling outcomes in the Shire's rural zones.

The following key matters are addressed:

1. The identification of issues being experienced with secondary dwellings in rural areas under existing LEP provisions;
2. The objectives and intended outcomes sought by this planning proposal;
3. An assessment of the strategic merits of the proposal, including a review against State and local planning policies; and
4. A detailed review of the Gateway Determination and Department of Planning, Industry and Environment's Planning Assessment Report.

This response has been prepared in accordance with the Planning Circular '*Independent reviews of plan-making decisions*' (PS 18-012, 14 December 2018) and '*A guide to preparing local environmental plans*'.

2. BACKGROUND

2.1 The Issue

Secondary dwellings or 'granny flats' allow for greater mix and choice of housing within the Shire. They can provide an income stream for some households, a diversity and choice of living accommodation for residents and are an important affordable housing option for lower income households.

Under The Hills Local Environmental Plan 2019 (formerly LEP 2012), secondary dwellings are permissible in both residential and rural zones. The size of secondary dwellings is regulated by Clause 5.4(9) of LEP 2019, which is a 'compulsory' clause under the State-wide Standard Instrument LEP. Clause 5.4(9) is as follows:

Secondary dwellings *If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater –*

- (a) 60 square metres,*
- (b) 20% of the total floor area of the principal dwelling."*

This clause applies to both rural and urban zones. Under the Standard Instrument, Council has discretion to set the maximum percentage within the Clause. When LEP 2012 came into force (on 5 October 2012), The Hills Shire Council permitted secondary dwellings to have a total floor area of 20% of the total floor area of the principal dwelling, with a view to enabling suitable outcomes in both urban residential and rural areas (given this single clause applies to both areas).

Numerous secondary dwellings have been approved under this clause across the rural and urban areas of the Shire. There is evidence that appropriate outcomes are being achieved in

established urban areas, with the current clause providing suitable flexibility for landowners. The resulting size of secondary dwellings in established urban areas generally respects the established urban character, conforms to site constraints and ensures an appropriate relationship between the principal dwelling and the secondary dwelling.

However, in rural areas Clause 5.4(9) has proven to be much less effective at controlling the scale of secondary dwellings and the quality of development outcomes. In particular, there exists a dichotomy between:

- Rural land owners with smaller established homes (up to 300m²), who are effectively limited to a maximum secondary dwelling size of 60m²; and
- Rural land owners with larger dwellings, who benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling (resulting in extremely large secondary dwellings which look and function more like a dual occupancy dwelling).

Rural residents with more modest established homes have expressed an interest in the maximum permissible floor space of secondary dwellings being increased beyond the current 60m² limit. In comparison to urban areas, rural sites present fewer constraints in relation to the siting of a secondary dwelling. For example, larger land areas enable both the principal dwelling and the secondary dwelling to benefit from improved opportunities for private open space, with fewer amenity impacts such as overlooking or overshadowing both within the site and to adjoining sites.

In these circumstances, where the potential for negative impact is low, it is considered reasonable that a secondary dwelling might be supported with a floor area larger than 60m², regardless of the size of the principal dwelling. However, in order to preserve the subservient relationship between the principal dwelling and the secondary dwelling, and ensure secondary dwellings are contextually appropriate, there still remains a case to limit their overall floor size.

In some rural areas the size of principal dwellings can be significantly larger than those in urban areas, and there are numerous examples in the Shire of rural dwellings having floor areas in excess of 1,000m². In these cases, a secondary dwelling could be permissible under the current controls with a floor area exceeding 200m² – which is equivalent in size to a typical new four (4) bedroom home.

Allowing secondary dwellings of such a large size is undesirable for the following key reasons:

- It limits the ability of secondary dwellings to provide an affordable housing option within the Shire's rural areas;
- It increases the risk of adverse impacts, for example visual impacts, vegetation clearing for larger bush fire asset protection zones, and the loss of the established rural character.
- Large secondary dwellings are more akin to a dual occupancy development. Dual occupancies are already permissible with consent in rural zones, but must be attached to the principal dwelling. However, on sites containing a large principal dwelling, the existing LEP clause 5.4(9) provides a 'loophole' for landowners by essentially allowing a detached dual occupancy outcome on rural land.

Existing LEP provisions for secondary dwellings in rural areas which rely on a "sliding-scale" percentage, unreasonably limit the size of some secondary dwellings, while at the same time allowing the inappropriately large size of other secondary dwellings. To amend the maximum percentage within the clause would potentially resolve one part of the issue whilst concurrently worsening the other.

Council's planning proposal seeks to address these issues by imposing a consistent fixed maximum size for secondary dwellings across rural areas. At its Ordinary Meeting on 30 April

2019 Council resolved to initiate a planning proposal to amend Clause 5.4 of LEP 2012 (now LEP 2019) for secondary dwellings.

2.2 Discussions with Minister for Planning

Council considered a Notice of Motion on 24 July 2018 and resolved that:

“The Mayor and General Manager write to the Minister for Planning seeking a meeting to discuss amendments to the Standard Instrument LEP to:

- a. Enable the setting of a maximum size for secondary dwellings in rural zones of 110m² of habitable rooms plus an optional attached garage up to 20m² (total 130m²); and*
- b. The outcomes of discussions with the Minister be reported to Council including options to review Local Environmental Plan 2012 to enable rural residents the opportunity for a detached dwelling plus optional parking.”*

A Mayoral letter was sent to the former Minister for Planning Anthony Roberts in August 2018 (refer Council Report within Attachment 5), and a follow up letter was sent in November 2018 (refer Council Report within Attachment 5).

On 22 March 2019 the then Minister for Planning advised that the Department would consider an amendment to Clause 5.4(9)(b), only with respect to the specified maximum percentage (that is, the maximum area of the secondary dwelling relative to the principal dwelling). This suggested solution (to amend the maximum percentage within the clause) does not address the issues raised by Council. The letter from the Minister is provided in the Council Report provided as part of Attachment 5.

As outlined earlier, the issues for secondary dwellings in rural zones are two-fold, being the unreasonable limitation of the size of some secondary dwellings *and* the inappropriately large size of other secondary dwellings. Amending the maximum percentage within the clause would potentially resolve one part of the issue whilst concurrently worsening the other. For this reason, the only viable solution to the issues raised by Council is the imposition of a consistent fixed maximum size for secondary dwellings across rural areas.

A meeting was held between Council and the Minister for Planning and Public Spaces on 6 February 2020 to discuss LEP provisions for secondary dwellings in rural zones. The Department of Planning, Industry and Environment provided a letter to Council following this meeting, which is further discussed in Section 2.5 below and is provided as Attachment 3.

2.3 Planning Proposal

The subject planning proposal seeks to ensure that secondary dwellings within rural areas can be provided in a form that is compatible with the character of the rural locality. This will be achieved by amending Clause 5.4 of The Hills Local Environmental Plan 2019 to specify that in rural zones, the gross floor area of secondary dwellings must not exceed 110m² for habitable rooms plus an optional garage of 20m² (total permitted 130m²).

To achieve these development outcomes, the proposal as submitted to the Department on 8 July 2019 provided the following two (2) options for the amendment to Clause 5.4(9) of The Hills LEP:

Option A

(9) Secondary dwellings in urban zones

If development for the purposes of a secondary dwelling is permitted in an urban zone under this Plan, the total floor area of the dwelling (excluding any area for parking) must not exceed whichever of the following is greater:

- a) 60 square metres,*

b) 20% of the total floor area of the principal dwelling.

(10) Secondary dwellings in rural zones

If development for the purposes of a secondary dwelling is permitted in a rural zone under this Plan, the total floor area of the dwelling must not exceed 110 square metres for habitable rooms plus an optional garage up to 20 square metres (total permitted 130 square metres).

Option B

(9) Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area for parking) must not exceed whichever of the following is greater:

a) 60 square metres,

b) 20% of the total floor area of the principal dwelling,

c) Notwithstanding (a) and (b), the gross floor area of a secondary dwelling within a rural zone must not exceed 110 square metres, plus an optional garage up to 20 square metres.

2.4 Subsequent Discussions with Department of Planning, Industry and Environment

Council has had discussions with the Department of Planning, Industry and Environment in relation to secondary dwellings since April 2019. A comparison of the options put forward by the Department and Council's response is provided in Attachment 7.

Considerable effort has been made by Council to draft potential clauses that would achieve the desired outcomes. However, it is apparent that the Department is unwilling to consider any clauses which will require amendment to the State-wide Standard Instrument or the Standard Instrument clause relating to secondary dwellings, beyond a change to the maximum percentage specified.

2.5 Gateway Determination

On 13 February 2020 the Department of Planning, Industry and Environment issued a Gateway Determination advising that the planning proposal should not proceed on the basis that:

1. The proposal contains unresolved inconsistencies with Section 9.1 Direction 4.4 Planning for Bushfire Protection;
2. The proposal cannot be legally made as clause 5.4(9) under the Standard Instrument – Principal Local Environmental Plan which is a 'compulsory' clause for local environmental plans; and
3. The proposal does not adequately demonstrate secondary dwelling outcomes and test scenarios of different percentages under clause 5.4(9)(b).

A further letter was received on 18 February 2020 advising that the Department of Planning, Industry and Environment are preparing a review of State Environmental Planning Policies relating to housing diversity and secondary dwelling provisions, and that this review has the potential to provide an opportunity for councils to introduce local provisions based on evidence of local needs. Whilst such advice is welcomed and encouraging, more certainty as to the timing of the review and detail on the flagged amendments to relevant State Policies would be appreciated to assist Council's active involvement in achieving a realistic and workable solution to the issue.

3. ASSESSMENT OF STRATEGIC MERIT

3.1 Greater Sydney Region Plan and Central City District Plan

The Greater Sydney Region Plan and Central City District Plan were released in 2018 by the Greater Sydney Commission to guide future growth and ensure cities are liveable, productive and sustainable.

The relevant objectives of the Greater Sydney Region Plan are Objectives 10 and 11.

The Plan seeks to deliver an ongoing housing supply (Objective 10) and a range of housing types in suitable locations that will create more liveable neighbourhoods and support Greater Sydney's growing population (Objective 11).

The planning proposal is consistent with these objectives as it seeks to ensure that a diversity of dwelling options are available to residents of rural areas in the Shire. It also seeks to ensure that built form outcomes enabled by the clause are contextually appropriate. In particular, the proposal addresses two key issues which arise from the current application of the clause by:

1. Enabling the delivery of appropriately sized secondary dwellings and avoiding the unreasonable limitation of the size of secondary dwellings where the principal dwelling on a site is of a modest size and scale; and
2. Where a principal dwelling is of a larger scale and size, it will prevent the delivery of inappropriately large secondary dwellings which are essentially equivalent to a standard house and fail to contribute to housing diversity or appropriate character outcomes.

The relevant Priority of the Central City District Plan is Planning Priority C5.

The Plan states that new housing must be located in the right places to meet the need for different housing types, tenure, price points, preferred locations and design (Planning Priority C5). The Plan states that a diverse mix of housing options can provide greater opportunities to cater for a range of changing needs.

Furthermore, the Plan seeks to achieve a 0-5 year housing supply target of 8,550 additional dwellings for The Hills Council based on the District's dwelling needs and existing opportunities to deliver supply. The delivery of these dwellings to reach this housing target is reliant on traditional detached and attached houses, as well as apartments and secondary dwellings.

The planning proposal is consistent with the District Plan as it will:

- Ensure that secondary dwellings can be feasibly delivered in rural areas, by addressing current limitations which can arise where the principal dwelling on a site is of a modest size and scale; and
- Where existing principal dwellings are of a significant size and scale, ensure that secondary dwellings are appropriately sized to contribute to a diversity of housing options and meet the intended role of secondary dwellings within the housing typology.

The proposal also gives effect to Planning Priority C18 of the District Plan. The proposed amendments will ensure the bulk and size of secondary dwellings remain compatible with the local character of rural lands. Unanticipated outcomes associated with applying a percentage-based floor area to very large principal dwellings are also avoided. Should the proposal not progress, future development of secondary dwellings in rural lands would enable the unanticipated addition of residents, with the possible facilitation of a typical 4 bedroom dwelling for larger principal dwellings. Such an unplanned increase in population in the Shire's rural zones would also place pressure on local services and infrastructure.

It is important to note that the Department of Planning, Industry and Environment's Assessment Report recognises that this planning proposal could give effect to the District Plan.

3.2 The Hills Future Community Strategic Plan

The Hills Future Community Strategic Direction articulates The Hills Shire community's and Council's shared vision, values, aspirations and priorities with reference to other local government plans, information and resourcing capabilities. It is a direction that creates a picture of where the Hills would like to be in the future. The direction is based on community aspirations gathered throughout months of community engagement and consultation with members of the community.

The planning proposal will assist in realising The Hills Future outcome of well-planned and liveable neighbourhoods that meet growth targets and maintain amenity. The proposal contributes to the liveability of rural lands by ensuring that secondary dwellings are of an appropriate size and scale to contribute to the diversity of housing stock, without adversely impacting on the character of rural areas.

3.3 Hills Future 2036 Local Strategic Planning Statement and Supporting Strategies

All Councils were required to prepare a Local Strategic Planning Statement (LSPS) in accordance with Clause 3.9 of the *Environmental Planning and Assessment Act 1979*. A letter of support was received from the Greater Sydney Commission Assurance Panel on 4 March 2020 and the LSPS was formally made on 6 March 2020.

The Shire's Local Strategic Planning Statement and supporting strategies reflect the community's aspirations and outlines how Council will deliver a quality lifestyle for residents in the future. It seeks to ensure that a genuine choice of housing options is available to meet the varying needs, lifestyles and financial capacities of future residents. The 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 current limit of 60m². Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land area also means that both the principal dwelling and the secondary dwelling benefit from improved opportunities for private open space and fewer amenity impacts such as overlooking or overshadowing both within the site and to adjoining sites.

More broadly, the proposal also seeks to preserve the scenic landscape and dominant rural character, to reduce the fragmentation of rural land and minimise land use conflict, and reduce the encroachment of residential land uses onto what could otherwise be productive rural land. The Strategy also recognises that rural areas contribute to the Shire's diverse mix of housing.

The existing controls currently enable the development of secondary dwellings that are similar in scale to detached dual occupancies (in some cases the size of a typical 4 bedroom home), which is not permissible or intended. The proposed amendments would give effect to Council's Rural Strategy by ensuring that secondary dwellings contribute to the diversity of housing typology and affordability, while ensuring that existing rural character is maintained.

The Department's Assessment Report states that the planning proposal is consistent with Council's LSPS and supporting Rural Strategy.

3.4 Section 9.1 Ministerial Directions

- *Direction 1.2 Rural Zones*

This Direction seeks 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 of land within a rural zone.

The percentage clause within the Standard Instrument LEP, as it applies to rural secondary dwellings within the Shire, creates an imbalance and inferior outcome with respect to the delivery of secondary dwellings in rural zones. As it currently stands, the application of LEP Clause 5.4(9) limits the development potential for smaller sized dwellings, while landowners of larger principle dwellings currently benefit from it. The subject planning proposal will not increase the total number of dwellings permitted on rural lots and would simply ensure that any secondary dwellings are of an appropriate size and scale that better aligns with rural lot sizes and the locality.

The Department's Assessment Report states that the planning proposal is consistent with Direction 1.2 Rural Zones.

- *Direction 4.4 Planning for Bushfire Protection*

Much of the rural land within the Shire is identified as bushfire prone, containing all categories of risk. Any planning proposal for land which is identified as being bushfire prone on a Bushfire Prone Land Map must be consistent with Ministerial Direction 4.4 Planning for Bushfire Protection. The Direction requires that planning proposals:

- (a) Have regard to Planning for Bushfire Protection Guideline 2006;
- (b) Introduce controls that avoid placing inappropriate developments in hazardous areas; and
- (c) Ensure that bushfire hazard reduction is not prohibited within the APZ.

It is noted that the Department's Assessment Report and Gateway Determination states that the planning proposal is inconsistent with this Direction. However, 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, and it does not seek to change the existing permissibility of secondary dwellings in rural zones. A response to the Gateway Determination is provided in Section 4.

3.5 State Environmental Planning Policies

The planning proposal would not undermine any State Environmental Planning Policies (SEPPs), as confirmed in the Gateway Determination Report issued by the Department on 15 July 2019. Further discussion on its consistency with the relevant SEPPs is provided below.

- *SEPP 1 – Development Standards*

The planning proposal would not contain provisions that would contradict or hinder the application of this SEPP.

- *SEPP (Affordable Rental Housing) 2009*

The Objectives of SEPP (Affordable Rental Housing) 2009 are to facilitate the effective delivery of new affordable rental housing through incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards. It is noted however that the provisions contained within the SEPP with respect to secondary dwellings apply solely to residential zoned land. The planning proposal does not contain provisions that would contradict or hinder the application of the SEPP.

4. RESPONSE TO GATEWAY DETERMINATION

The Gateway Determination issued on 13 February 2020 advised that the proposal should not proceed for the following three key reasons:

1. *The proposal contains unresolved inconsistencies with Section 9.1 Direction 4.4 Planning for Bushfire Protection;*
2. *The proposal cannot be legally made as clause 5.4(9) under the Standard Instrument – Principal Local Environmental Plan which is a ‘compulsory’ clause for local environmental plans; and*
3. *The proposal does not adequately demonstrate secondary dwelling outcomes and test scenarios of different percentages under clause 5.4(9)(b).*

The following sections address each of the above reasons and justify why an alteration to the Gateway Determination is necessary to enable the proposal to proceed.

- **Reason 1: The proposal contains unresolved inconsistencies with Section 9.1 Direction 4.4 Planning for Bushfire Protection**

Response:

Ministerial Direction 4.4 ‘Planning for Bushfire Protection’ applies to planning proposals that affect, or are in proximity to land mapped as bushfire prone land. The Direction requires that relevant planning proposals be referred to NSW Rural Fire Service and that planning proposals must:

- a) *Have regard to Planning for Bushfire Protection 2006;*
- b) *Introduce controls that avoid placing inappropriate developments in hazardous areas; and*
- c) *Ensure that bushfire hazard reduction is not prohibited within the APZ.*

The Gateway documentation suggests that Council has not demonstrated to the NSW Rural Fire Service that the proposal could comply with Planning for Bushfire Protection 2006 and as such, the proposal contains unresolved inconsistencies with this Ministerial Direction. This is considered insufficient grounds upon which to refuse the planning proposal as a Gateway Determination could have simply included a condition that the planning proposal be updated to identify how the proposal complies with Planning for Bushfire Protection 2006 (now ‘Planning for Bushfire Protection 2019’) and/or updated to justify any inconsistency with the Ministerial Direction. Similar conditions have been placed on Gateway Determinations for other proposals.

Notwithstanding this, the introduction of additional controls as required under the Ministerial Direction is not considered necessary as secondary dwellings are already a permissible use on the subject rural lands under The Hills Local Environmental Plan 2019. Accordingly, the proposal is not an assessment of whether or not the permissibility of secondary dwellings in rural areas is appropriate. The proposal simply seeks to apply a fixed floor area criteria for secondary dwellings from of 130m². Whilst it is recognised that this will increase the possible size of secondary dwellings on some properties, it will also reduce the achievable floor area for many secondary dwellings by removing the option for these dwellings to be up to 20% of the total floor area of the principal dwelling.

Should the planning proposal proceed, any future application for a secondary dwelling on bushfire prone land would be assessed against applicable legislation including the Environmental Planning and Assessment Act 1979, Rural Fires Act 1997 and other planning policies such as Council’s LEP and DCP. These policies include objectives and controls that require the delivery of appropriate developments that have regard to potential hazards and ensure the health and safety of residents. Relevant sections of The Hills Development Control Plan 2012 contain controls that require developments to have regard to potential bushfire risks and to demonstrate compliance with Planning for Bushfire Protection 2006. Given the foregoing, it is considered that there is already sufficient protection afforded to potential future residents through the existing planning controls and no additional controls are warranted. Further, it is reiterated that the planning proposal does not weaken or undermine the existing framework for bushfire protection which already applies to secondary dwellings in rural areas.

Planning for Bushfire Protection 2019 requires the preparation of a strategic bushfire study for planning proposals seeking planning instrument changes that affect bushfire prone land. Whilst the current proposal is not facilitating any additional uses beyond what is already permissible on the subject land (RU1, RU2 and RU6 zones), a brief comment against the relevant assessment considerations for the strategic bushfire study is provided below:

Issue	Consideration	Council Comment
Bushfire landscape assessment	Requires consideration of the subject land in terms of the likelihood of a bushfire and its potential severity / intensity and impact on life and property.	The proposal will not permit any additional uses beyond what is already permitted on the subject land (some of which is identified as bushfire prone).
Land use assessment	Requires consideration of the suitability / location of future land uses.	The proposal will potentially reduce the development footprint of secondary dwellings meaning developments can more easily be sited in less hazardous locations and provide greater separation to potential hazards. For all future proposals, compliance with Planning for Bushfire Protection will be required (where applicable) including requirements for bushfire protection measures (APZs, construction materials etc.) to reduce impact on life and property.
Access and egress	Requires consideration of existing and proposed road networks.	The proposal is not expected to place any additional pressure on existing or proposed road networks, beyond what is already permitted.
Emergency services	Requires consideration of the impact of development on emergency services.	The proposal will reduce permissible density and scale of development for many rural properties which will in turn reduce demand on emergency services.
Infrastructure	Requires consideration of issues associated with infrastructure and facilities.	The proposal will not place additional pressure on infrastructure and facilities, beyond what is possible under the existing framework, as it has the potential to reduce the density and scale of development for secondary dwellings.
Adjoining land	Requires consideration of the impact of development on adjoining land and the ability of adjoining owners to undertake bushfire management.	The proposal may reduce the building footprint, which will in turn likely reduce potential bushfire impacts for nearby developments. The proposal is also not expected to result in any inhibition on owners undertaking bushfire management on adjoining land.

Table 1
Brief Assessment against Strategic Bushfire Study Considerations

- **Reason 2: The proposal cannot be legally made as clause 5.4(9) under the Standard Instrument – Principal Local Environmental Plan which is a ‘compulsory’ clause for local environmental plans**

Response:

Seemingly, the key reason that the proposal is not able to proceed is because it will require amendments to a ‘compulsory’ Standard Instrument clause.

Following submission of the proposal for Gateway, discussions with the Department indicated an option to replace Clause 5.4(9) with two clauses setting out criteria for rural and urban areas separately (refer Attachment 7 for the proposed options). This would suggest that there is scope and potential support for amending the ‘compulsory’ Standard Instrument clause, subject to any necessary processes by the Department and approval by the Minister for Planning and Public Spaces. Whilst the procedural requirements of amending the Standard Instrument are acknowledged, it is inconceivable why amendments to Clause 5.9 would be so easily dismissed by the Department when the proposal is within the Minister’s power and simply represents a practical and reasonable response to a local issue which would impact all council areas in NSW with rural land. There is strong strategic merit for the proposal.

The Standard Instrument was introduced with the ability for councils to include local provisions to address local circumstances, where justified. It is not clear how imposition of a maximum floor area of 60m² across both urban and rural areas adequately responds to the differing characters in these areas or why Council is unable to tailor these controls to respond to local circumstances which can vary with different land use patterns, lot sizes / densities and community needs.

The proposal will increase transparency (a key objective of recent and foreshadowed future planning reforms) by removing the potential to allow proposals to construct new ‘principal’ dwellings on rural land and retain the existing dwelling as a ‘secondary’ dwelling (which are often larger 3-4 bedroom homes with substantial living spaces).

- **Reason 3: The proposal does not adequately demonstrate secondary dwelling outcomes and test scenarios of different percentages under clause 5.4(9)(b).**

Response:

The planning proposal submitted for Gateway Determination included significant discussion on the adverse outcomes resulting from the current drafting of Clause 5.4(9)(b). It outlined the two-fold issue of the existing clause being:

- Rural land owners with smaller established homes (up to 300m²), are effectively limited to a maximum secondary dwelling size of 60m²; and
- Rural land owners with larger dwellings benefit from the ability to achieve secondary dwellings with a size of up to 20% of the principal dwelling (resulting in extremely large secondary dwellings which look and function more like a dual occupancy dwelling).

Notwithstanding the above, further analysis has been undertaken to demonstrate the range of secondary dwelling outcomes being achieved under the current provisions and their capacity to achieve a small scale, affordable housing option for the Shire’s rural areas. Analysis of four (4) recent development applications for detached secondary dwellings complying with the existing LEP controls is provided in ‘Appendix i’ to this response. A summary of the outcome of this detailed analysis is provided in the following table:

Scenario	Principal Dwelling Size	Max. Secondary Dwelling Size - Compliant with CI 5.4(9)(b)	Bedroom No.	Outcome
1	1,200m ²	240 m ²	4	Undesirable
2	1,043m ²	208 m ²	3	Undesirable
3	486m ²	96.59 m ²	2	Desirable
4	350m ²	69.5 m ²	2	Desirable

Table 2

Secondary dwelling test scenarios of different percentages under clause 5.4(9)(b).

Table 2 identifies that under Scenarios 1 and 2, the existing 20% limit would enable secondary dwellings that contain 3 to 4 bedrooms, theatre rooms and studies, and are generally beyond the scale and density anticipated for such dwellings. The delivery of larger secondary dwellings that are similar to the typical outcomes of a detached dwelling or dual occupancy would also fail to contribute towards greater diversity of housing type and affordability.

Under the same test, Scenario 3 and 4 with two (2) bedrooms exhibit desirable secondary dwelling outcomes, are of an appropriate bulk and size and facilitate greater diversity and affordability of housing. Under these scenarios, both secondary dwellings are within the limit of a 110m² total floor space area and are compatible with the character of rural lands and their corresponding site.

Overall, changing the percentage under clause 5.4(9)(b) will not resolve the issue outlined in the planning proposal. The demonstrated test scenarios appropriately respond to reason #3 of the Gateway Determination and justify the need for the planning proposal to proceed.

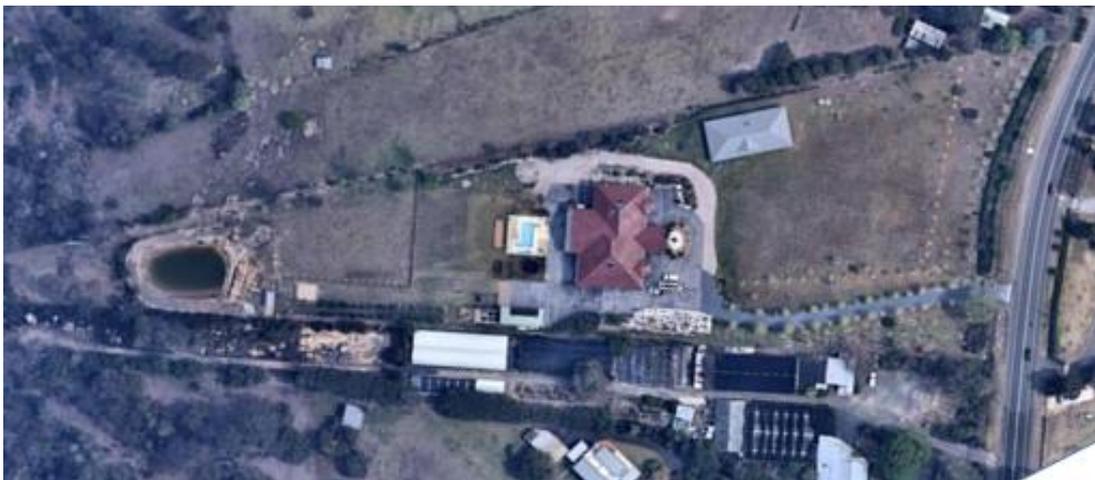
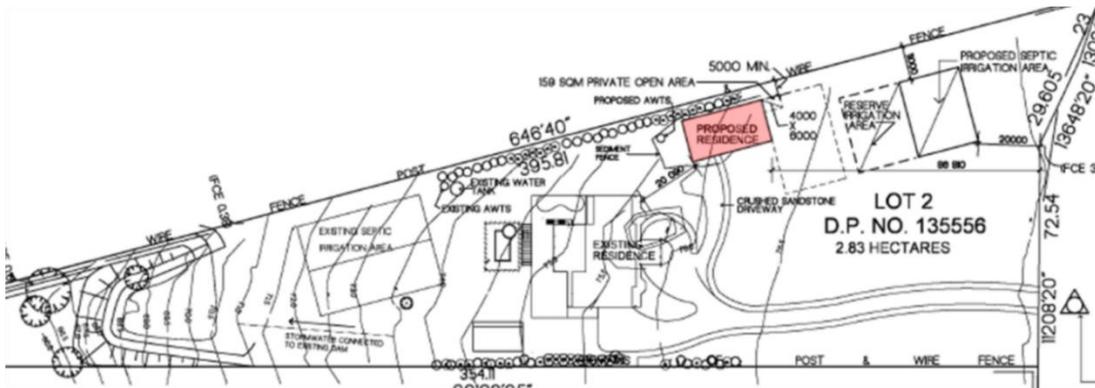
Appendix i: Detailed Test Scenarios

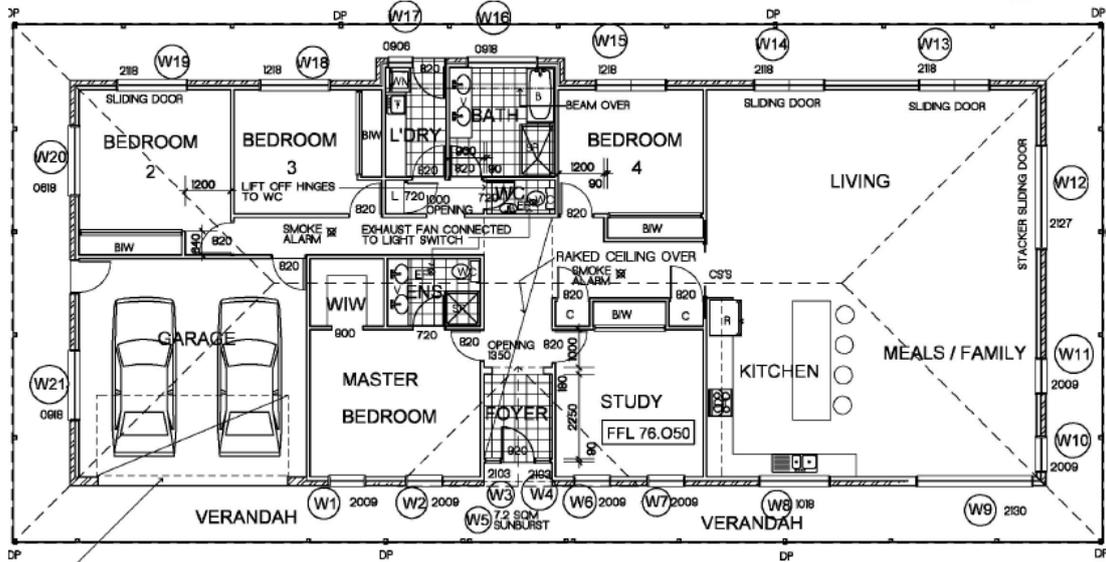
Test Scenario 1

Principal Dwelling Size	Secondary Dwelling Size	Bedroom No.	Outcome
1,200 m ²	240 m ²	4	Undesirable

DA 2000/2014/HA

This example facilitates a secondary dwelling of 240m², being 20% of the floor area of the principal dwelling as permitted under LEP 2019. The proposed secondary dwelling appears and functions similar to a four (4) bedroom family home including significant living areas and a study. This is considered to be inappropriate and would result in far greater impacts than what would otherwise be anticipated with respect to a secondary dwelling.



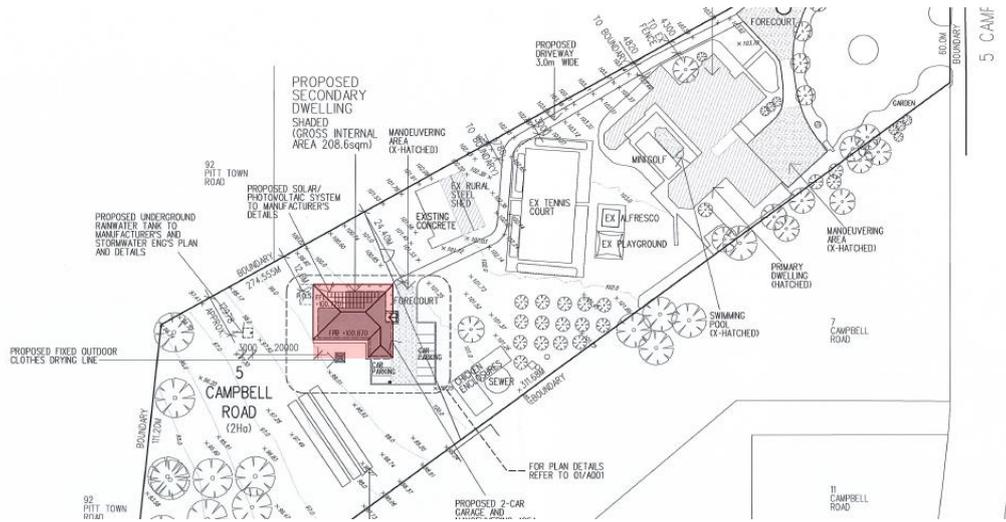


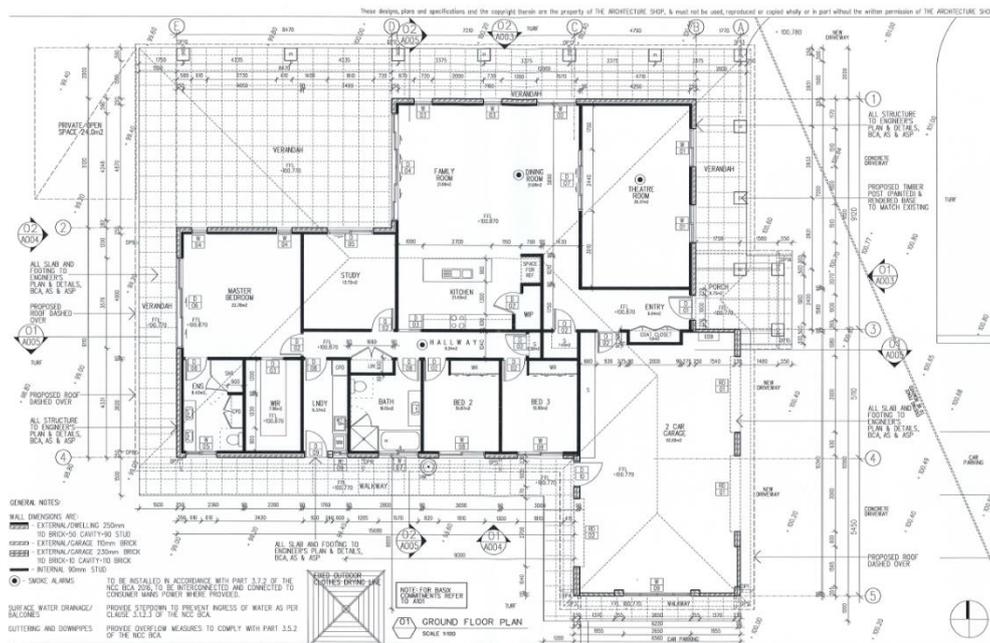
Test Scenario 2

Principal	Secondary	Bedroom No.	Outcome
1,043 m ²	208 m ²	3	Undesirable

DA 1483/2019/PD

This example facilitates a secondary dwelling of 208m², being 20% of the floor area of the principal dwelling as permitted under LEP 2019. The proposed secondary dwelling comprises three bedrooms, a study and a theatre room which is well beyond the scale of facilities envisaged for a secondary dwelling.





Test Scenario 3

Principal	Secondary	Bedroom No.	Outcome
486 m ²	97 m ²	2	Desirable

DA 914/2019/HA

This example facilitates a secondary dwelling of 97m², being 20% of the floor area of the principal dwelling as permitted under LEP 2019. The proposed secondary dwelling is slightly more modest including two (2) bedrooms and separate living / dining area. This results in a more acceptable outcome which provides sufficient amenity and better aligns with the subservient role expected of secondary dwellings. It is noted that the achievable floor area of this example is within the outcomes that would be permitted under Council’s proposal.

Test Scenario 4

Principal	Secondary	Bedroom No.	Outcome
350 m ²	70 m ²	2	Desirable

DA 1184/2019/HA

This example facilitates a secondary dwelling of 70m², being 20% of the floor area of the principal dwelling as permitted under LEP 2019. The proposed secondary dwelling comprises two (2) bedrooms with a combined living / dining area. This results in a more acceptable outcome which provides sufficient amenity and better aligns with the subservient role expected of secondary dwellings. It is noted that the achievable floor area of this example is within the outcomes that would be permitted under Council’s proposal.

