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Assessment of additional information – PP-2022-4024

Bayside LEP 2021 - Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings Planning Proposal

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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 and present.

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1 Planning proposal

1.1 Overview

Table 1 Planning proposal details

LGA	Bayside
PPA	Bayside Council
NAME	Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings Planning Proposal
NUMBER	PP-2022-4024
LEP TO BE AMENDED	Bayside Local Environmental Plan (Bayside LEP) 2021
ADDRESS	Land zoned R2 Low Density Residential within Bayside Local Government Area (LGA)
DESCRIPTION	R2 zoned land within Bayside LGA
FILE NO.	EF22/16097
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 encourage housing diversity in the R2 Low Density Residential Zone without adversely impacting residential amenity and the character of these areas.

The intention of introducing the proposed provisions is to better guide the consideration of proposals for dual occupancy and semi-detached dwelling developments already permitted under the Bayside LEP 2021.

The planning proposal would also result in establishing minimum lot sizes, which would apply when development and subdivision is proposed via complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP).

1.3 Explanation of provisions

The planning proposal seeks to introduce new minimum lot size and lot width controls for dual occupancies and semi-detached dwellings in the R2 Low Density Residential Zone and minimum lot sizes for the subdivision of these uses.

Certain R2 Low Density Residential zoned land in the suburbs of Botany, Mascot, Rosebery and Eastlakes, formerly in the Botany Bay LGA locality will be identified on a new special provisions map is identified as 'Area A' (**Figure 2**). Smaller minimum lot sizes will only apply to Area A for dual occupancies and semi-detached dwellings.

The planning proposal seeks to introduce the following provisions:

- Dual Occupancy Development proposed in 'Area A':
 - Minimum lot size 550m²
 - Minimum lot width 15m for a lot that adjoins a single road frontage or 12m metres for lots that adjoin more than one road or laneway.
- Semi-detached development proposed in R2 zone 'Area A':
 - Minimum lot size 275m²
 - Minimum lot width 7.5m for a lot that adjoins a single road frontage or 6m for lots that adjoin more than one road or laneway.
- Dual Occupancy Development proposed in all other R2 zoned land:
 - Minimum lot size 650m²
 - Minimum lot width 15m for a lot that adjoins a single road frontage or 12m for lots that adjoin more than one road or laneway.
- Semi-detached development proposed in all other R2 zoned land:
 - Minimum lot size 325m²
 - Minimum lot width 7.5m for a lot that adjoins a single road frontage or 6m for lots that adjoin more than one road or laneway.

Exceptions to minimum subdivision lot size

Subdivision of an existing dual occupancy, or on which dual occupancy or semi-detached dwellings are proposed will be subject to the following controls:

- Minimum lot size of each lot resulting from subdivision:
 - 'Area A' – 275m²
 - All other R2 land – 325m²
- Minimum lot width 7.5m for a lot that adjoins a single road frontage or 6m for lots that adjoin more than one road or laneway
- Only one dwelling per allotment.

1.4 Site description and surrounding area

The planning proposal applies to R2 Low Density Residential land in the Bayside LGA as shown in **Figure 1** and **Figure 2**.

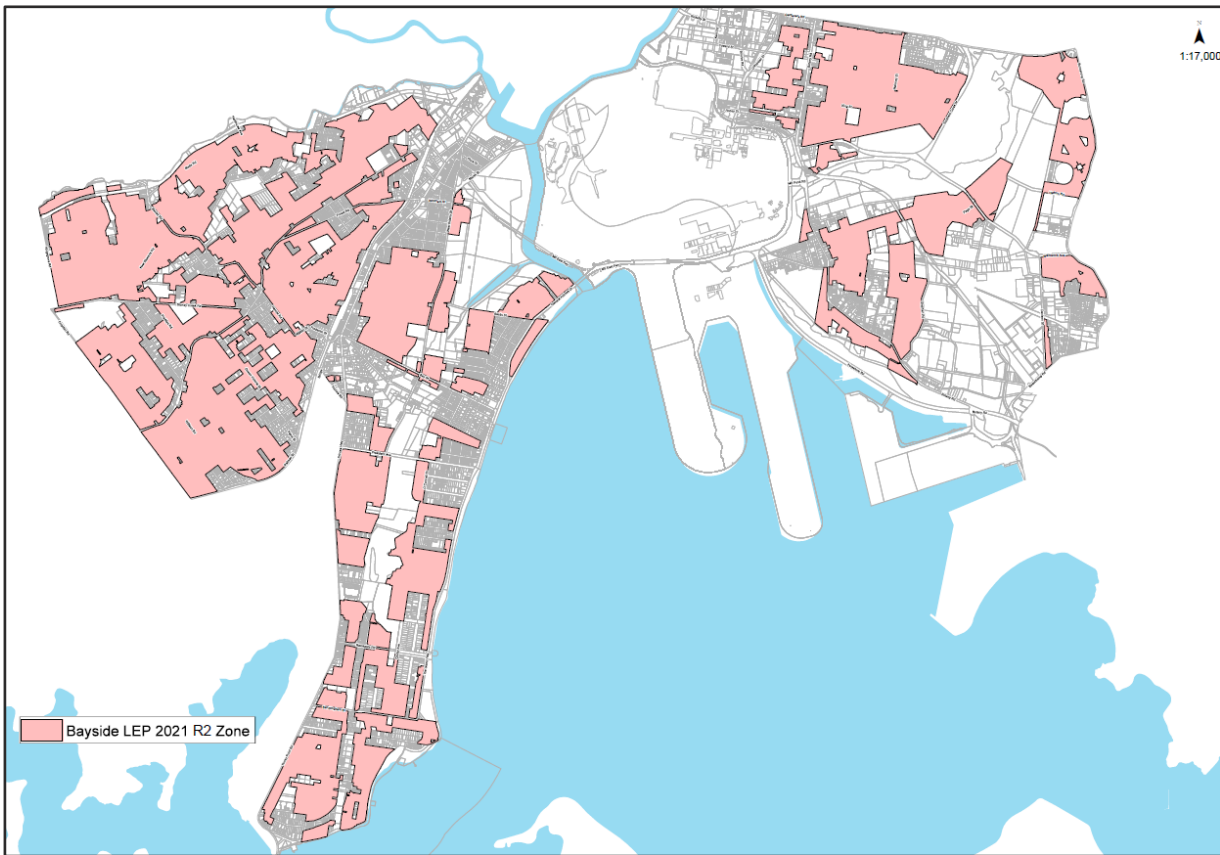


Figure 1: All R2 Low Density Zoned Land in the Bayside LGA. (Source: Planning Proposal 2023)

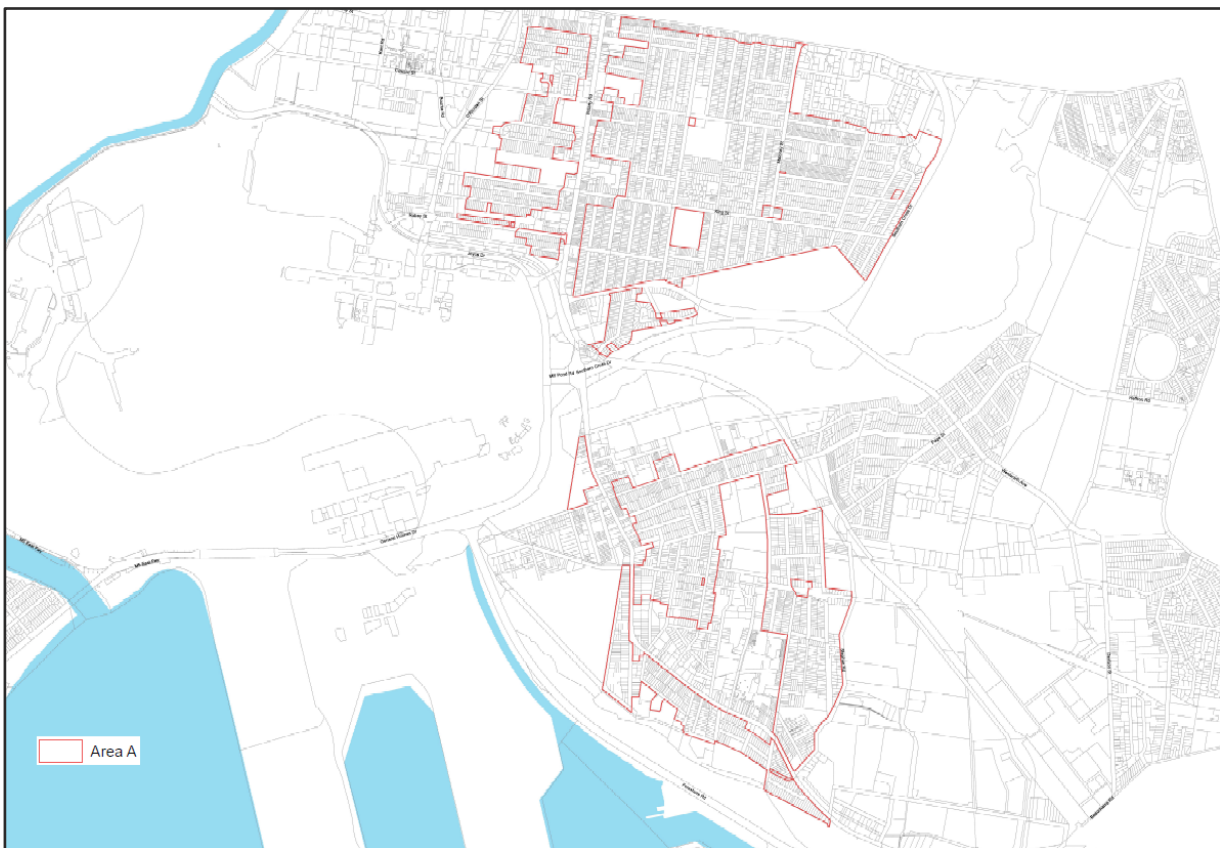


Figure 2: R2 Low Density Zoned Land to be identified as 'Area A'. (Source: Planning Proposal 2023)

1.5 Background

A brief timeline of the proposal is provided below:

Date	Event
28 September 2022	Council resolved to support the planning proposal
16 November 2022	Planning proposal submitted by Council for Gateway
2 March 2023	Gateway determination issued
22 May 2023	Planning proposal submitted for approval to exhibit

2 Gateway determination

The Gateway determination issued on 2 March 2023 (**Attachment C**) determined that the proposal should proceed subject to conditions.

Condition 1 required that the planning proposal was updated prior to exhibition to:

- a. *Include the Bayside LEP 2021 definitions for the following land uses:*
 - i. *Dual occupancy;*
 - ii. *Dual occupancy (attached);*
 - iii. *Dual occupancy (detached); and;*
 - iv. *Semi-detached dwellings.*
- b. *Clarify the land use term ‘dual occupancy’ in the proposed provisions subsequently would apply to both attached and detached dual occupancy developments.*
- c. *Provide further urban design analysis and justification for the ‘Area A’ lot size controls being less than the balance of the R2 zoned land in the Bayside Local Government Area.*
- d. *More simply explain the comparison of the current controls against those being amended by this proposal, linked to which locations, to clearly demonstrate the changes and where the new controls apply.*
- e. *Include how the new and retained controls in the recent draft DCP relevant for dual occupancies and semi-detached dwellings interact with the proposed controls sought by the subject planning proposal.*
- f. *Provide a straight comparison of what R2 lots in the LGA comply with the current controls and which lots will comply with those proposed by the planning proposal, removing any prediction/s of market take up.*
- g. *Demonstrate how fewer dual occupancy and semi detached dwellings would be developed under the proposed provisions, despite the reduced lot sizes sought by this proposal.*

3 Revised planning proposal submitted by Council

On 22 May 2023, Council submitted a revised planning proposal to address Condition 1 of the Gateway determination. It includes a comparison of the lots with development potential under existing and proposed controls (see extract **Table 1** below):

Location	Application type	Current		Proposed	
		Control (Lot size; lot width)	Net lot supply (DP lots)	Control (Lot size; lot width)	Net lot supply (DP lots)
R2 zoned land in 'Area A' (Mascot, Rosebery, Eastlakes, Botany)	DA	400sqm; 12m	2,629	550sqm; 15m	185
	CDC	400sqm; 15m	432		41
R2 zoned land in the remainder of LGA	DA	400sqm; 12m 700sqm; 15m	1,937	650sqm; 15m	1,632
	CDC	400sqm; 15m	1,728		1,410

Table 1: Extract of comparison between net available lots under current and proposed controls (Source: Planning proposal, May 2023)

The Codes SEPP requires the area of the parent lot to be greater than 400m² or the minimum lot area identified for dual occupancies in the EPI that applies to the land, whichever is the greater. As the planning proposal will set the minimum lot sizes for dual occupancies which are greater than that under the SEPP the planning proposal will have implications for both DAs and CDCs. Accordingly, Council's analysis has considered impacts on both DA and CDC pathways.

The planning proposal states the current net available lots is not a true reflection of sites able to be developed particularly as many of the lots between 400m² and 550m² have a frontage width less than 15m and would therefore face issues complying with the built form controls.

- The updated planning proposal also includes development forecasts to account for market take up and site constraints, which estimate a reduction of 51 approvals over 5 years (see pages 26 and 27 of the planning proposal). This is a 30% reduction compared to the forecast of approvals under existing controls. Council's justification for this reduction is that the proposed provisions will improve planning outcomes and provide clarity on the approval process.

4 Department's assessment of additional information

The Department has undertaken a detailed assessment of the revised planning proposal submitted by Council.

4.1 Impact on housing capacity and diversity

The information in the revised planning proposal (extract found in **Table 1** above) shows that the proposal will reduce the development potential of a significant number of lots and forecast DAs, although there is limited detail on the assumptions used in this analysis. It's also noted that prior to Bayside LEP 2021 coming into effect, dual occupancies were prohibited in all residential zones under the former Botany Bay LEP 2013, which limits the accuracy of representing demand and anticipated take up.

The Department has also undertaken a capacity assessment and has concerns that the impact on housing capacity may be greater than the net reduction identified in the planning proposal.

All levels of Government have a shared responsibility to address the current housing crisis and meet the goals of the National Housing Accord (2023). The Department is concerned the provisions will reduce opportunities to deliver housing diversity.

The planning proposal has demonstrated that it will adversely impact housing supply and diversity. This is not supported, particularly in the context of the housing crisis and the NSW Government commitments under the National Housing Accord.

As part of Council's ongoing work to harmonise planning controls across the LGA and create housing capacity in the R2 Low Density Residential zone, Council should consider undertaking further analysis on how the LEP maintains desired residential amenity and character and encourages the uptake of diverse housing types without adversely impacting on housing capacity.

4.2 Ministerial Direction 6.1 Residential zones

Direction 6.1 aims to encourage a variety of housing types, make efficient use of infrastructure and service and minimise the impact of residential development on the environment and resource lands. Under this Direction, a planning proposal must *'not contain provisions which will reduce the permissible residential density of land.'*

The planning proposal seeks to improve design outcomes of housing typologies that are currently permitted with consent in the R2 zone and states that it will continue to contribute towards Bayside LGA's overall housing supply and diversity.

In the Gateway assessment report, the Department identified that the proposal would impact the existing R2 Low Density Residential zone which is generally located in proximity to existing services, jobs and public transport. A Gateway condition required further testing to demonstrate that the effect of the changes wouldn't result in less capacity and capability for these forms of dwellings. Consistency with the Direction was unresolved until this information was submitted.

Whilst the planning proposal seeks to reduce the minimum lot size in the former Rockdale LGA, the planning proposal would increase the required lot size for the remainder of the LGA. This, paired with the introduction of a minimum lot frontage provision would result in reduction in residential density.

Council's desire to harmonise lot size provisions across the Bayside LGA and to guide better built form outcomes is acknowledged. However, the updated planning proposal has not demonstrated that the proposed provisions would not support increased supply of dual occupancies and semi-detached dwellings. The data in the revised planning proposal indicates that a reduction in housing capacity and in forecast DAs.

The planning proposal is considered to be inconsistent with this Direction.

4.3 Relationship with Codes SEPP

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) currently allows for dual occupancies where the parent lot is 400m², or the minimum lot area specified for dual occupancies in the environmental planning instrument (EPI) that applies to the land concerned (where it is greater than 400m²).

Should the planning proposal proceed, the proposed lot size requirement of 550m² on lots identified within 'Area A' and 650m² on all other R2 Low Density Residential land would be applied. Whilst this does not interfere with the intended operation of the SEPP, as shown in Table 1, the planning proposal would reduce the number of lots in the Bayside LGA with potential for complying development for dual occupancies.

5 Consistency with the strategic planning framework

Council has undertaken substantial work to implement strategic plans and deliver housing targets across the Bayside LGA.

However, all levels of Government now have a shared responsibility to address the housing crisis and meet the goals of the National Housing Accord (2023). The LEP Making Guideline (August 2023) sets out that a change in circumstances that has not been recognised by the existing planning framework is a relevant consideration in the strategic assessment of a planning proposal. Whilst strategic merit was assessed at Gateway stage, there has been a change in Government priorities since then and further analysis undertaken by Council which warrant further consideration.

Current Government Priorities

NSW is part of the National Housing Accord and has a target of delivering at least 377,000 new homes by July 2029.

Increasing housing solutions for all people is a key priority for the NSW Government. The NSW Government is focused on driving more supply through collaboration with all levels of Government, communities, and the private sector.

The Minister for Planning and Public Spaces has emphasised this in a letter to Mayors and Panel Chairs in the Six Cities in August 2023 stating “While governments at all levels have undertaken substantial work to implement strategic plans and deliver housing targets, it’s clear to me that past strategic plans didn’t anticipate or account for the scale of the housing crisis we now face. The immediate need is for us to make sure the planning system presents no impediment to dwelling approvals and construction in appropriate locations.”

The Strategic Merit Test (referenced in the LEP Making Guideline), further outlines that alignment with government policies is a relevant consideration for strategic merit.

Whilst the intent of the planning proposal was supported in principle at Gateway, conditions were imposed to require further analysis and testing be undertaken to demonstrate that the proposal would not result in a reduction in housing supply. As discussed above, the Department is not satisfied that the planning proposal achieved this as the results show a reduction in dual occupancy dwelling take up and capacity.

Diverse and well-located housing reforms

The NSW Government is proposing changes to the planning system including, a suite of proposals to encourage more low and mid-rise housing options for NSW households that are in the right places and designed well.

Relevant to this planning proposal, the Department is proposing to permit dual occupancies in all R2 Low Density Residential zones in NSW and introduce non-refusal standards including a minimum site area and minimum lot width.

Whilst these reforms are not due to be finalised until mid-2024, they reflect the NSW Government’s position on appropriate standards for low-rise development and diversity of housing types in the R2 zone. As detailed in section 3 above, the planning proposal does not support increasing housing capacity in the R2 zone. This is not consistent with the NSW Government priorities or the intent of the exhibited reforms.

The following table compares the proposed NSW-wide minimum lot size and width for dual occupancies and the Council’s proposed provisions.

	Proposed minimum lot size	Proposed minimum lot width
Low and Mid-Rise Housing Reform non-refusal standards	450m ²	12m
Planning Proposal 'Area A'	550m ²	15m for a lot that adjoins a single road frontage or 12m metres for lots that adjoin more than one road or laneway.
Planning Proposal all other R2 zoned land	650m ²	

The proposed minimum lot size in the EIE is intended to apply unless the provision in a LEP is lower. The planning proposal seeks to introduce larger minimum lot size and width provisions than that proposed under the EIE. Accordingly, should the reforms come into effect, the proposed non refusal standards would prevail.

The planning proposal is not consistent with the current Government priorities for increasing housing supply and diversity.

6 Summary of Department assessment

Based on its detailed assessment of the proposal as submitted for approval to exhibit, the Department recommends that the planning proposal not be progressed for the following reasons:

- a) The planning proposal has demonstrated that it will adversely impact on housing supply and diversity.
- b) The planning proposal is inconsistent with Ministerial Direction 6.1 Residential zones.

Furthermore, the proposed controls are inconsistent with NSW Government policy which is seeking to rapidly increase housing supply. This is not supported, particularly in the context of the housing crisis and the NSW Government commitments under the National Housing Accord.

Council is encouraged to review its residential zones, particular land near centres and stations, to identify opportunities to increase housing supply and diversity.

7 Recommendation

It is recommended that the Minister's delegate determine under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 2 March 2023 for the proposed amendment to the Bayside LEP 2021 to not proceed.



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