

Planning Proposal:

Minimum subdivision lot size and attached dual occupancy development in the R2 Low Density Residential Zone

(April 2018)

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Introduction

This planning proposal explains the intent of, and justification to amend Randwick Local Environmental Plan 2012 (RLEP 2012) in relation to the minimum subdivision lot size standard for attached dual occupancy development, as it applies to land zoned R2 Low Density Residential.

It is the result of a changing policy environment which has necessitated a review of the minimum subdivision lot size standard in relation to attached dual occupancy development in Randwick City.

A review of the of the minimum subdivision provisions under the Randwick Local Environmental Plan 2012 (RLEP 2012) applicable to attached dual occupancy development in the R2 Low Density Residential zone was instigated in response to concerns raised by some members of the community that the lending restrictions placed by banks on attached dual occupancies under company title is placing financial hardship on the owners of these properties. In response the Council initiated a community consultation programme on this issue to obtain the views of the public on whether a change to the subdivision provisions should be made.

During this time, the Minister for Planning announced the commencement of the new Low Rise Medium Density Code. The key implication of the new Code for the Council's minimum subdivision lot size review is that from 6 July 2018, the new Code will permit the subdivision (both Torrens and Strata title) of new dual occupancies built under the Code on lots much smaller than what is currently permissible under RLEP 2012 and as complying development. However, the new Code will not apply to existing attached dual occupancies. As such, on the 17 April 2018 the Council at an extraordinary meeting resolved to amend the RLEP 2012 to help address the subdivision paradigm for those owners of existing attached dual occupancies also. A copy of this report and resolution is attached as Attachment A.

This planning has been prepared in line with the Department of Planning and Environment's Planning Proposal Guideline, August 2016.

Part 1 – Objectives or intended outcomes

The objectives of the planning proposal is to amend the minimum subdivision provisions applicable to attached dual occupancy development in the R2 Low Density Residential zone, to allow for certain attached dual occupancy development in this zone that was approved prior to 6 July 2018 to be subdivided in accordance with the relevant subdivision standards contained in Part 6 of the Exempt and Complying Development Codes – Amendment 2017 or 'the Low Rise Medium Density Code'.

Detail of the intended provision is described under Part 2 – explanation of provisions.

Part 2 – Explanation of provisions

The proposed outcome will be achieved by including a new local provision that will outline an exception for Torrens and Strata Subdivision of certain dual occupancy development under Part 4.1 Minimum Subdivision Lot Size Provisions of the RLEP 2012, that:

1. Confirms that the clause only applies to a dual occupancy on a lot within Zone R2 Low Density Residential for which development consent was granted prior to 6 July 2018;
2. In relation to the strata subdivision¹ of a dual occupancy to which this provision applies is permitted with development consent provided that:
 - the area of the lot to which the development consent for the dual occupancy relates is not less than 450 square metres; and
 - one dwelling will be situated on each lot resulting from the subdivision (other than any lot comprising common property); and
 - the subdivision does not contravene any condition of any development consent applying to the dual occupancy; and
 - each dwelling will have lawful frontage to a public road (other than a lane); and
 - no dwelling is located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot); and
 - each lot resulting from the subdivision will have a minimum width (measured at the building line) of 6m; and
 - in the case of a dual occupancy where no part of a dwelling is located above any part of another dwelling the strata area (being the area of the ground floor of all dwellings) is not less than 180 square metres.
3. In relation to the Torrens title subdivision of a dual occupancy to which this provision applies is permitted with development consent provided that:
 - the area of each lot resulting from the subdivision is at least 240 square metres; and
 - one dwelling will be situated on each lot resulting from the subdivision; and
 - the subdivision does not contravene any condition of any development consent applying to the dual occupancy; and
 - each dwelling will have lawful frontage to a public road (other than a lane); and
 - each lot resulting from the subdivision will have a minimum width (measured at the building line) of 6m.
4. Confirms that the terms “lane”, “building line”, “corner lot” and “parallel road lot” used in this provision have the same meaning as provided in clause 1.5 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The above provisions have been drafted based on legal advice received on 14 April 2018 (Attachment B). The legal advice has also recommended the inclusion of a sub-clause that Clause 4.6 of RLEP 2012 does not apply. However, there may be circumstances where a variation may be appropriately sought and therefore clause 4.6 should still apply.

¹ within the meaning of the Strata Scheme (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986

Part 3 – Justification

Section A – Need for the planning proposal

Q.1 Is the planning proposal a result of any strategic study or report?

Yes, the Council has undertaken a comprehensive review of the minimum subdivision lot size standard applicable to attached dual occupancy development in the R2 Low Density Residential zone. The findings of this review was considered by the Council at its Ordinary meeting held on 27 February 2018.

The review provided a historical overview to dual occupancy development in Randwick, a background to the relevant standards in the LEP, an overview of the strategic planning policy context, a discussion of the current situation in relation to the tightening of bank lending criteria and company title schemes, and it presented the findings of an audit of all dual occupancy development including those under company title in Randwick City.

The review also identified potential implications should the minimum subdivision lot size standard be reduced. Some of the implications identified include: streetscape impacts (more driveways, garages and impervious surfaces); increase in house prices for those dual occupancies under company title and an increase in density.

The key findings were:

- There are approximately 688 attached dual occupancies within the R2 Low Density Residential zone;
- Of the 688 attached dual occupancies, 137 are under company title schemes which equates to 20% of the total number of attached dual occupancies in the R2 Low Density Residential zone;
- It is more difficult to obtain financing for company title schemes and those attached dual occupancies under company title take longer to sell;
- The Council's provisions on minimum subdivision lot sizes for attached dual occupancy development, introduced in 2010, was a strategy at that time to curb speculative development of attached dual occupancies; and to provide for a more affordable housing type suitable for extended family and/or rental accommodation;

A copy of the report is attached in Attachment C.

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

An amendment to RLEP 2012 is the best means of achieving the objectives. The Low Rise Medium Density Code will only apply to new development built under the Code it will not apply to existing dual occupancies. The planning proposal will enable the subdivision of attached dual occupancy development with an approved development consent prior to the 6 July 2018, in accordance with similar subdivision provisions as contained in Part 6 of the Low Rise Medium Density Code.

However, the Council will still consider a review of the minimum subdivision lot size in light of the new Code as part of the Local Housing Strategy.

Section B – Relationship to strategic planning framework

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is consistent with the directions and priorities in Greater Sydney Region Plan and Eastern City District Plan. A table which assesses the consistency of the planning proposal against the directions and actions in the Greater Sydney Region Plan and district plan is in Attachment D.

Does the proposal have strategic merit? Is it:

- *Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or*
- *Consistent with a relevant local council strategy that has been endorsed by the Department; or*
- *Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.*

The planning proposal complements the directions and actions in the Greater Sydney Region Plan and Eastern City District Plan in relation to Local Infill Development and the 'Missing Middle'. The proposal will contribute towards housing diversity by enabling the subdivision of smaller lots. In addition, the planning proposal responds to a changing environment in the planning policy area and in financial lending.

The recent introduction of the new Low Rise Medium Density Code (to commence on 6 July 2018) has created implications for the Council's initiated review of its minimum subdivision lot size. The new Code will allow for the subdivision of dual occupancies but only to those built under the Code. The new Code subdivision provisions will not apply to existing dual occupancies. This has created an inequitable situation by which those owners of existing dual occupancies cannot subdivide unless they have a total lot size of 800 sqm or more however, a lot next door may (after 6 July 2018) build and subdivide (both Torrens and Strata title) a new dual occupancy on 450sqm and more.

As such to address this paradigm, the Council has endorsed to amend its LEP to allow for the subdivision of existing dual occupancies in accordance with the same subdivision provisions in the Code that would apply to existing attached dual occupancies with a development consent issued prior to 6 July 2018.

b) Does the proposal have site-specific merit, having regard to the following:

- *the natural environment (including known significant environmental values, resources or hazards) and*
- *the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and*
- *the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.*

The planning proposal is consistent with the existing uses and likely future uses of land as a result of the new Low Rise Medium Density Code which will allow for the subdivision of new dual occupancies on lot sizes of 450sqm or more.

Given that the proposal seeks to apply to existing dual occupancies, the provision of services and infrastructure has already been accounted for as part of the applicable development contribution fees that would have been paid as part of the approved development application. The provision and

funding of infrastructure and services in this area is outlined in Randwick City's 2015 S94A Development Contributions Plan.

Q4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Yes, the planning proposal is consistent with the Council's local strategic plan as it relates to development approved under the existing local strategic framework.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes, the planning proposal is consistent with applicable State Environmental Planning Policies, as outlined in Attachment E.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Yes, the planning proposal is consistent with applicable Ministerial Directions, as outlined in Attachment F.

Section C – Environmental, social and economic impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal will not adversely impact any critical habitats or threatened species, populations or ecological communities as the proposed amendment to RLEP 2012 applies to existing attached dual occupancy development and approved development consents only.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The planning proposal will not impose any other environmental effects as the proposed amendment to RLEP 2012 applies to existing attached dual occupancy development and approved development consents only.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal will assist those who with an approved and/or built attached dual occupancy including those (137) members of the community who own an attached dual occupancy under company title and who are experiencing financial hardship due to banks restricting their lending criteria for company title schemes.

The Council conducted a community forum on 27 March 2018 as part of an eight week community consultation on this issue. The forum provided the opportunity for the community to voice their concerns, suggestions and/or opinions to a panel chaired by the Mayor, Deputy Mayor, invited state MP (Mr Michael Daley MP) and council staff. The forum was independently facilitated by Sue Holliday and more than 280 people attended the event including 47 people who spoke.

Since the Council considered a notice of motion on this issue (in November 2017), there has been overwhelming interest from the community on this issue. The number of submissions received to date (as part of the consultation process) in support of a proposed change to the subdivision provisions including the number of people who attended the forum, demonstrate that the planning proposal will provide a positive social and economic impact, particularly for those members of the community who own an attached dual occupancy under company title.

A report on the outcomes of the forum is currently being drafted and will be forwarded to the Department once finalised as supporting material to the assessment of this planning proposal.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

The planning proposal applies to existing attached dual occupancy development approved before 6 July 2018. The provision of existing infrastructure has already been considered and accounted for as part of the original development approval for the attached dual occupancy development. The planning proposal will not place new demands on infrastructure as the dwellings have already been built. It aims to enable the subdivision of the attached dual occupancy which currently exists under company title.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

The preliminary views of the Department of Planning and Environment Regional East team was sought in relation to whether the Department would support a single amending LEP on this issue or whether the review of subdivision lot size be better to be considered as part of Councils work towards a Local Housing Strategy. Advice received from the Department (5 April 2018) noted that *'It is up to Council to decide whether to proceed with the min lot size review project prior to the local housing strategy – if Council see an immediate need to proceed then it should.'* This advice is outlined in Attachment G.

In addition, the Mayor of Randwick City and Mr Michael Daley MP met with the Minister for Planning on the 11 April 2018 to discuss this issue. At this meeting the Minister for Planning outlined his support to fast-track an amendment to Randwick LEP to address the subdivision of existing attached dual occupancies.

Part 4 – Mapping

The effect of the planning proposal is intended to be described within a local provision of the LEP. As such, no mapping changes are proposed.

Part 5 – Community consultation

Prior to preparing the planning proposal, the Council undertook its own consultation on this issue. At Council's Ordinary meeting of the 27 February 2018, the Council resolved to commence an eight week consultation programme to obtain the views of the community on whether the council should amend the LEP provisions on subdivision in relation to attached dual occupancy development in the R2 Low Density Residential zone.

Consultation commenced on 9 March 2018 and has included:

- A dedicated YourSay webpage: <https://www.yoursayrandwick.com.au/LotSizeReview>
- An Online survey
- A fact sheet and direct mail out to all residents in the Southern and Central wards (>13,000 households)
- Advertisement in the local newspaper, Southern Courier, notifying of the consultation and how to have your say;
- A community forum which was held on 27 March 2018

Copies of the consultation material is attached in Attachment H.

While the Council resolved at an extraordinary meeting on 17 April 2018 (during this consultation process) to amend its LEP to allow for the subdivision of existing attached dual occupancies, it is

intended that the consultation will continue until the 4 May 2018. A report will be considered by the Council after the consultation concludes noting the outcomes including the community forum.

These outcomes are to also be considered as part of any future consultation requirements associated with this planning proposal.

Given the extent of consultation undertaken to date, it is intended that the planning proposal be on exhibition for a minimum period of 4 weeks, and that the following range of consultation activities be undertaken:

- Online content on the Council website
- Dedicated 'Yoursay' website allowing for online consultation
- Local newspaper (including media release)
- Social media posts on Council's Facebook
- Information provided to local precincts

Part 6 – Project timeline

The following draft timeline is suggested for the Planning Proposal:

May 2018	Submission to the Department seeking gateway determination
May 2018	Gateway determination issued
June – July 2018	Public exhibition
Late July – August 2018	Report to Council post exhibition
August – September 2018	Direct DPE to finalise LEP amendment/ Legal drafting
September – October 2018	LEP amendment finalised

ATTACHMENTS

Attachment A	Report & resolution– minimum subdivision lot size and attached dual occupancy – Council extraordinary meeting 17 April 2018
Attachment B	Legal advice on the indicative wording of the proposed new clause
Attachment C	Report & resolution– minimum subdivision lot size review - Ordinary Council meeting of 27 February 2018
Attachment D	Consistency with strategic planning directions and priorities (Greater Sydney Region Plan and Eastern City District Plan)
Attachment E	Consistency with SEPPs
Attachment F	Consistency with S117 Directions
Attachment G	Department of Planning and Environment – email correspondence 5 April 2018
Attachment H	Minimum lot size review consultation material: Factsheet, direct mail out