

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Sutherland Shire
<b>RPA</b>	Sutherland Shire Council
<b>NAME</b>	Planning Proposal to amend Sutherland Shire Local Environmental Plan 2015 to introduce a minimum lot size for dual occupancy and multi dwelling development in R2 Low Density Residential and E4 Environmental Living zones
<b>NUMBER</b>	PP_2017_SUTHE_002_00
<b>LEP TO BE AMENDED</b>	Sutherland Shire LEP 2015
<b>ADDRESS</b>	LGA wide
<b>DESCRIPTION</b>	LGA wide
<b>RECEIVED</b>	2 November 2017
<b>FILE NO.</b>	OBJ17/13723
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## INTRODUCTION

### Description of Planning Proposal

The planning proposal seeks to amend Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) by introducing minimum lot size requirements for the construction of dual occupancies on land identified as "Area A" within the E4 Environmental Living zone and land zoned R2 Low Density Residential. The proposal also seeks to introduce minimum lot size requirements for the construction of multi dwelling housing on land zoned R2 Low Density Residential. The specific standards proposed to be included are:

- a minimum lot size of 600m<sup>2</sup> for the construction of a dual occupancy in the R2 Low Density zone;
- a minimum lot size of 700m<sup>2</sup> for the construction of a dual occupancy on land identified as "Area A" on the Additional Permitted Uses (APU) Map, which is also zoned E4 Environmental Living zone; and
- a minimum lot size of 1,200m<sup>2</sup> for the construction of multi-dwelling housing in the R2 Low Density Residential zone.

### Site Description

The proposal applies to all land within the Sutherland Local Government Area (LGA) that's zoned R2 Low Density Residential and the lots identified as "Area A" on the APU Map, which are also zoned E4 Environmental Living.

## **Surrounding Area**

The R2 Low Density Residential zone is Sutherland Shire Council's most widely applied zone. The R2 zone encompasses 18,303.3 hectares of developable land, which equates to a total of 24,417 lots.

Within the Sutherland Shire Local Government Area (LGA) the E4 Environmental Living zone was applied to lots where low density uses which complemented the environmental sensitive land could be achieved. "Area A" was used to delineate areas where dual occupancy would be appropriate, as much of the land within the E4 zone is bushfire affected and not suitable for increased residential densities. There are 4,761 lots that are identified as "Area A" within the Additional Permitted Uses map.

## **Summary of Recommendation**

The proposal is supported as it does not remove the ability to construct these types of development, nor does it alter the permissibility of any form development within the R2 and E4 zone. Whilst the proposal has some implications for the supply of housing within the LGA, on balance it won't impede Council's ability to provide housing supply and diversity. The proposal will facilitate improved built form outcomes and will lessen the impact of these types of developments on adjacent lots.

## **PROPOSAL**

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### **Objectives or Intended Outcomes**

The purpose of this planning proposal is to amend Sutherland Shire Local Environmental Plan 2015 to introduce:

- a minimum lot size of 600sq.m. in zone R2 Low Density Residential for dual occupancy developments, and
- a minimum lot size of 1200sq.m. in zone R2 Low Density Residential for multi dwelling housing developments, and
- a minimum lot size of 700sq.m. in zone E4 Environmental Living for dual occupancy development.

Council states that the objective of introducing a minimum lot size for dual occupancy and multi dwelling housing is to:

- achieve the objectives of the zone;
- improve built form outcomes by providing greater flexibility in design options; and
- lessen the impacts on neighbours.

The purpose and objective of the proposal are considered clear and do not require amendment prior to community consultation.

### **Explanation of Provisions**

The proposal seeks to make the following amendments the SSLEP 2015:

- insert a clause to outline the minimum lot sizes to be met for the construction of dual occupancy development and multi dwelling housing in the R2 Low Density Residential zone;
- insert a clause to outline the minimum lot sizes to be met for the construction of a dual occupancy development in the E4 Environmental Living zone; and
- insert a savings provision into the proposed clause for development applications lodged prior to the gazettal of this planning proposal from meeting the minimum lot size requirements proposed.

The proposal has included proposed wording of this clause. It is recommended that this proposed wording is removed prior to community consultation and replaced with a plain English explanation of the intent of the clause.

### **Mapping**

The planning proposal does not require any amendments to the SSLEP 2015 maps.

## **NEED FOR THE PLANNING PROPOSAL**

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Council adopted a Housing Strategy as part of the preparation and implementation of Council's new local environmental plan SSLEP 2015. The strategy seeks to meet the community need for increased housing choice, whilst retaining the established development pattern of mostly low density housing in a landscaped setting.

Council states that in the two and a half years since the gazettal of the SSLEP 2015, Council has received 627 development applications for dual occupancies in the E4 and R2 zones (E4 = 72 applications, R2 = 555 applications). Council attributes this growth to increases in Floor Space Ratio (FSR) controls and the removal of the minimum lot size. Council also notes that it has received 138 development applications for multi-dwelling homes within the R2 Low Density Residential zone.

Council noted that these types development are occurring on small lots in typically low density neighbourhoods. Council acknowledged that while many of these applications are yet to be constructed, those applications that have been completed are subject to growing community concern due to the changes to the streetscape and character of many neighbourhoods in the Sutherland Shire.

Council indicates that introducing a minimum lot size is one way to better improve planning outcomes for dual occupancy and multi dwelling housing, as larger lot sizes generally allow for greater flexibility in design options. In addition, Council notes larger lots can better accommodate ancillary elements that add to building bulk that are not controlled by FSR provisions. Council considers that an amendment to the SSLEP 2015 to introduce minimum lot size requirements is the best means of achieving the proposals objectives and intended outcomes.

Council has reviewed thirteen Local Environmental Plans (LEPs) of other Sydney councils, to gauge where a clause requiring minimum lot sizes for certain types of development is used (see Table 1). Nine of these LEPs require a minimum lot size for dual occupancy developments, with only one of the LEPs having a minimum lot size less than 500m<sup>2</sup> (Randwick). Council has also identified two LEPs which contain minimum lot sizes for multi dwelling housings in R2 Low Density Residential zones (Table 2).

Bankstown's LEP specifies a minimum lot size of 1,200m<sup>2</sup> for multi-dwelling, however it also requires that sites have a minimum lot width of 20m. Hurstville LEP also permits multi dwelling development in the R2 Low Density Residential zone, however it is limited to a more suburban context (away from centres). The LEP has a minimum site area of 500m<sup>2</sup> per dwelling. Although not identified by Council, Ryde LEP also includes provisions for multi dwelling housing in its LEP. Ryde LEP specifies a minimum lot size of 900m<sup>2</sup> for multi-dwelling, however it also requires that sites have a road frontage of the lot is equal to or greater than 20 metres.

Council	Zone	Minimum site area for dual occ
Pittwater LEP2014	Where permissible	800 m <sup>2</sup>
Hurstville LEP2012	Zone R2 or R3: Mapped Area G	630 m <sup>2</sup>
	Zone R2 Mapped Area K (Oatley etc.)	1000 m <sup>2</sup>
Kogarah LEP2012	As mapped Detached: 2 road frontages	650 m <sup>2</sup> or 1000 m <sup>2</sup>
Fairfield LEP2013	As mapped	600 m <sup>2</sup> or 900 m <sup>2</sup> or 2Ha
Canterbury LEP2012	R2 and R3	600 m <sup>2</sup>
Bankstown LEP2015	Zone R2 Attached dual occ	500 m <sup>2</sup> , 15m lot width
	Zone R2 Detached dual occ	700 m <sup>2</sup> , 20m lot width
Blacktown LEP2015	Zone R2 Attached dual occ	500 m <sup>2</sup>
	Zone R2 Detached dual occ	600 m <sup>2</sup>
Burwood LEP2012	Zone R2 and R3 Attached dual occ	500 m <sup>2</sup>
	Zone R2 and R3 Detached dual occ	600 m <sup>2</sup>
Ryde LEP2014	Zone R2- Attached dual occ	580 m <sup>2</sup>
Randwick LEP2012	Zone R2	450 m <sup>2</sup>
Kuring-Gai LEP2015	No clause	
Hornsby LEP	No clause	
Warringah LEP2011	No clause	

Table 1 - Review of LEP's with Minimum lot sizes for Dual Occupancy

LEP	Zone	Controls
Bankstown LEP 2015	R2 Low Density Residential	mini. Lot size 1,200m <sup>2</sup> and mini. lot width 20m
Hurstville LEP 2012	R2 Low Density Residential	in permissible areas - mini. 500m <sup>2</sup> per dwelling
Ryde LEP 2014	R2 Low Density Residential	mini. Lot size 900m <sup>2</sup> and mini. road frontage 20m

Table 2 - LEPs with Multi dwelling controls

It is considered that the planning proposal is the best means to achieve the intended outcome of the planning proposal because the controls will:

- not remove the ability or permissibility of any form development
- not affect Councils ability to meet its local housing targets
- provide greater flexibility in design options; and
- lessen potential amenity impacts adjacent land owners.

## STRATEGIC ASSESSMENT

### State

#### Draft Greater Sydney Regional Plan

The draft Greater Sydney Region Plan, released 24 October 2017, outlines how Greater Sydney will manage growth and change and guide infrastructure delivery. It sets the vision and strategy for Greater Sydney, to be implemented at a local level through the District Plans. The draft Plan aims to foster jobs, services, cycling and walking paths and quality public spaces within easier reach of people's homes. The draft Plan has been prepared in conjunction with the NSW Government's Future Transport 2056 Strategy and informs Infrastructure NSW's State Infrastructure Strategy.

*Direction 4 - Housing the City and Direction 5 - A City of Great Places* are relevant to the proposal as they aim to balance the need for housing supply and choice with the need to

improve and protect the natural environment. The proposal aligns with these directions as it ensures that a range of housing types can be still achieved in a variety of locations across the LGA. The implementation of a minimum lot size will allow for more flexibility in design options, which will allow developments to better address the existing built form and protect the natural environment.

*Objective 10 Greater housing supply* aims to continue the supply of diverse housing types in locations well supported by existing or planned services. While the introduction of a minimum lot size will force some sites to amalgamate for construction, it does not remove the ability or permissibility of any form development, which would affect Councils ability to meet its local housing targets.

*Objective 12: Great places that bring people together* notes that Sydney's cities, centres and neighbourhoods each have a unique combination of people, potential, history, culture, arts, climate, built form and natural features creating places with distinctive identities and functions. The objective aims to create great places through the delivery of mechanisms that provide:

- Well-designed built-environment;
- Social infrastructure and opportunity; and
- Fine grain urban form.

The proposal is consistent with this objective as it seeks to maintain the existing streetscape character, whilst also improving the built form outcomes multi dwelling and dual occupancy developments.

The draft Plan acknowledges that Greater Sydney is diverse region with beautiful and iconic natural landscapes. The proposal helps to protect the scenic qualities of Sutherland Shire by requiring larger lot sizes for the construction of dual occupancies and multi dwelling housing in its environmental and low density residential zones. The larger lot sizes will allow for greater flexibility in the design and siting of dwellings on a site.

The proposal is considered to be consistent with the draft Plan, as it:

- does not affect the Council's ability to provide housing supply and diversity;
- does not remove the ability to construct or permissibility of any form development; and
- aims to improve the built environment.

## **Regional / District**

### Revised draft South District Plan

On 26 October 2017, a revised draft South District Plan was released by the Greater Sydney Commission. The revised draft Plan provides a framework for translating the draft Greater Sydney Regional Plan at a local level for the long term development of the South District. In doing this, the revised draft plans help to guide growth within the South district, while enhancing the District's liveability, productivity and sustainability into the future.

The proposal aligns with *Direction 4 - Housing the City* and *Direction 5 - A City of Great Places*, which aims to give people housing choice and design places for people. The proposal aligns with these directions as it seek to provide housing supply and choice in existing urban areas and whilst respecting the District's existing built form.

Of particular relevance to the proposal are *Planning Priority S5 Providing housing supply, choice and affordability, with access to jobs and services* and *Planning Priority S6 Creating and renewing great places and local centres, and respecting the District's heritage*. These

priorities aim to provide a balanced approach to improving housing supply and choice within the district and improve the design of the built environment in the district.

Planning Priority S5 requires councils to prepare local or district housing strategies that address housing supply and help coordinate the planning and delivery of local and state infrastructure. These strategies will:

- create capacity for more housing in the right locations;
- support planning and delivery of priority growth areas and precincts as relevant to each local government area;
- support investigation of opportunities for alignment with investment in regional and district infrastructure; and
- support the role of centres.

As noted above, while the introduction of a minimum lot size will force some sites to amalgamate for construction, it does not remove the ability or permissibility of any form development, which would affect Councils ability to meet its local housing targets.

Planning Priority S6 aims to use place-based planning to support the role of centres and focus on connected neighbourhoods. This can be achieved by:

- prioritising a people-friendly public realm and open spaces as a central organising design principle;
- recognising and balancing the dual function of streets as places for people and movement;
- providing fine grain urban form, high amenity and walkability;
- integrating social infrastructure to support social connections and provide a community hub;
- encouraging contemporary interpretation of heritage where possible; and
- using a place-based and collaborative approach throughout planning, design, development and management.

The proposal is considered consistent with this priority as increasing the minimum lot size will greatly assist Council to provide the opportunity to improve the quality of new built forms of development in areas traditionally characterised by single dwelling houses.

The proposal is considered to be consistent with the revised draft South District Plan as it:

- recognises, respects and builds on the valued characteristics of individual neighbourhoods;
- does not impact upon Councils ability to deliver a local housing strategy;
- does not impact on Councils ability to provide housing supply and choice; and
- aims to improve the built form for new developments.

Although the proposal will have some implications for the supply of certain types of developments, the introduction of a minimum lot size does not remove the ability or permissibility of any form development within the R2 Low Density Residential zone and E4 Environmental Living zone.

## **Local**

### The Sutherland Shire Community Strategic Plan

The Sutherland Shire Community Strategic Plan provides the long term vision and a set of desired futures for the Sutherland Shire. The Community Strategic Plan establishes a framework for growth and development for the Sutherland Shire LGA and addresses the draft South Subregional Strategy and employment targets. The Strategy also provides the foundation for the development of the SSLEP 2015. The proposal notes that the following goals are supported by the subject planning proposal:

- 2. *Enhance and protect the beautiful and healthy natural environment of Sutherland Shire; and*
- 6. *Sustain Sutherland Shire as a liveable place where we can all continue to enjoy a high quality of life.*

The planning proposal states consistency with *Principle 3: We understand the need for ecologically sustainable development* because the proposal will management and maintain the natural features of the low density areas across the Shire

The Department agrees that the proposal is consistent with this community strategy as the proposal will help to facilitate the orderly development of land while respecting and protecting the natural environment.

## **Section 117(2) Ministerial Directions**

The planning proposal is consistent with all applicable S117 Directions except the following:

### 3.1 Residential Zones

This Direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs. It also seeks to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services. The Direction ensures that the impacts of residential development on the environment and resource lands are minimised.

The proposal states that although it seeks to introduce a minimum lot size for the development of dual occupancies and multi dwelling housing in the R2 and E4 zones, the proposal does not affect the permissibility of these developments in the zones. Council notes that in the R2 Low Density Residential zone, secondary dwellings are a permissible use with no minimum lot size for their construction and small lots where dual occupancy development is difficult may be more suitable to secondary dwelling construction. This type of development is permitted on all lots regardless of their size.

The proposal has included an assessment of the proposed controls against the Development Applications (DAs) it received since the adoption of SSLEP 2015 in June 2015 till October 2017.

As shown in the Table 4 below, 2,531 or 53% of the lots in E4 zone where dual occupancies are permissible, will be unable to construct a dual occupancy under the proposed controls. Council has indicated that the construction of a dual occupancy without subdivision is rare. Within the E4 zone, lots are mapped with a minimum lot size of either 550m<sup>2</sup> or 700m<sup>2</sup>. 4,236 lots within "Area A" that are zoned E4 Environmental Living are mapped with a 700m<sup>2</sup> minimum lot size for subdivision. Of these, 2,175 or 51% are currently too small to meet the requirements for subdivision post construction. Council indicates that those lots that do meet the minimum subdivision control may also be subject to further development constraints, such as foreshore building lines, heritage provisions, or



environmentally sensitive land clauses, and thus are less likely to be developed for dual occupancy purposes.

Development applications					
Development Type	Zone	No. of Applications (June 2015 to October 2017)	Lot size	No. of Applications	%
Dual Occupancy	R2	555	Less than 600m <sup>2</sup>	119	21%
			Less than 590m <sup>2</sup>	100	18%
	E4	72	Less than 700m <sup>2</sup>	12	17%
			Less than 690m <sup>2</sup>	10	14%
Multi Dwelling housing	R2	138	Less than 1200m <sup>2</sup>	79	57%
	R2		Greater than 1200m <sup>2</sup>	59	43%
	R2	138	Less than 1000m <sup>2</sup>	33	23%
	R2		Greater than 1000m <sup>2</sup>	105	76%

Table 3 - Analysis of DAs received between Jun 2015 and Oct 2017

Dual Occupancies in E4 Environmental Living	
	Lots
Total Number of DP Lots in E4 in Area A (where Dual Occupancy is permitted):	4,761
Lot Size	
Less than 700m <sup>2</sup>	2,531 or 53% Total not able to construct dual occupancy under proposed changes
Equal to or greater than 700m <sup>2</sup>	2,230 or 47% Total able to construct dual occupancy under proposed changes

Table 4 - Lot sizes in the E4 zone compared to proposed minimum lot size

In an assessment of dual occupancy DAs received between June 2015 to October 2017, Council indicates that 12 of the 72 applications would have not met the proposed controls for minimum lot sizes within the E4 Environmental Living zone. Additionally, 10 of those applications were on lots less than 690m<sup>2</sup>, a size that could typically be sought via a clause 4.6 variation for applications that do not meet the minimum lot size by a small margin.

It is acknowledged that the adoption of this minimum lot size control in the E4 Environmental Living zone would have implications for the ability to carry out this type of development within the zone.



Dual Occupancies in R2 Low Density Residential	
	Lots
Total Number of DP Lots in R2 Low Density Residential	24,417
<b>Lot Size</b>	
Less than 600m <sup>2</sup>	<b>7,433 or 30.4%</b> Total not able to construct dual occupancy under proposed changes:
Equal to or greater than 600m <sup>2</sup>	<b>16,984 or 70%</b> Total able to construct dual occupancy under proposed changes:

Table 5 - Lot sizes in the R2 zone compared to proposed minimum lot size

Between June 2015 and October 2017, Council received 555 dual occupancy DAs for land within the R2 Low Density Residential zone. Of these applications, 119, or 21%, would have not met the proposed 600m<sup>2</sup> minimum lot size control sought by this proposal. When looking a minimum lot size of 590m<sup>2</sup>, 100 applications, or 18%, would have not met this proposed standard. As seen above, 7,433 or 30% of the total amount of lots zoned R2 Low Density residential within the Sutherland LGA would not be able to meet this control.

Multi-Dwelling Housing in R2 Low Density Residential	
	Lots
Total Number of DP Lots in R2 Low Density Residential	24,417
Less than 1,200m <sup>2</sup>	<b>24,034 or 98%</b> Total not able to construct multi-dwelling housing under proposed changes
Equal to or greater than 1200m <sup>2</sup>	<b>383 or 2%</b> Total able to construct multi-dwelling housing under proposed changes

Table 6 - Lot sizes in the R2 zone compared to proposed minimum lot size

Multi-Dwelling Housing in R2 Low Density Residential – 1,000m <sup>2</sup>	
	Lots
Total Number of DP Lots in R2 Low Density Residential	24,417
Less than 1,000m <sup>2</sup>	<b>23,406 or 95%</b> Total not able to construct multi-dwelling housing with 1,000m <sup>2</sup> lot size.
Equal to or greater than 1,000m <sup>2</sup>	<b>1,011 or 5%</b> Total able to construct multi-dwelling housing with 1,000m <sup>2</sup> lot size.

Table 7 - Lot sizes in the R2 zone compared to proposed minimum lot size

Between June 2015 and October 2017, Council received 138 multi dwelling housing DAs for land within the R2 Low Density Residential zone. Of these applications, 79 applications, or 57%, would not meet the proposed minimum lot size control of 1,200m<sup>2</sup>. Council has also conducted a sensitivity analysis of these applications if the minimum lot size was 1,000m<sup>2</sup>. Of the 138 applications received, 33, or 23%, would not meet this minimum lot size. When comparing these controls to all land zoned R2 Low Density Residential zone across the LGA, a 1,000m<sup>2</sup> lot size would limit approximately 95% of the lots from constructing a multi-dwelling development without any form of amalgamation and with a 1,200m<sup>2</sup> minimum lot size, 98% of lots.

Council indicates that the introduction of the lot size requirement for construction of dual occupancies and multi dwelling development is intended to eliminate the overdevelopment of small sites, which in turn will reduce the adverse amenity impacts on the streetscape and adjoining properties. A 1,000m<sup>2</sup> or 1,200m<sup>2</sup> lot size for multi dwelling housing will allow smaller lots to amalgamate to create a large lot where improved development outcomes can be achieved. Council has expressed the view that across the Sutherland Shire, where smaller lots cannot adequately accommodate multi-dwelling development, developers are already choosing to amalgamate sites in order to achieve compliance with Council's planning controls. Council also indicates that sites are already being advertised for sale with adjoining lots as amalgamated sites for multi dwelling developments, despite the current SSLEP 2015 requiring no minimum lot size for their construction.

<b>Total Number of Lots R3 Medium Density Residential</b>	<b>Total Number of Lots R4 High Density Residential</b>
1,966 lots	1,546 lots

Table 8 - Total amount of Lots within R3 and R4 zones

Under the SSLEP 2015, multi dwelling housing is a permissible use within R3 Medium Density Residential and R4 High Density Residential zone. As shown in Table 8, Sutherland Shire LGA currently has 3512 lots (R3 1,966 lots and R4 1,546 lots) across both zones that could be potentially redeveloped for use as a multi dwelling. The R3 and R4 zones provide large areas for multi dwelling housing to be constructed allowing for the diversity of housing required under the District Plan to be achieved.

In relation to the subdivision of these developments post construction, for dual occupancy development, clause 4.1 (3C) allows for the subdivision of a dual occupancy on any sized lot post construct. Should a minimum lot size be introduced for the and construction of a dual occupancy multi dwelling housing, there would be no changes to the subdivision requirements post construction.

The objectives of this Direction are to encourage a variety and choice of housing types to meet existing and future housing needs whilst balancing the impact of residential development on the environment. The objectives of this proposal are to improve built form outcomes by providing greater flexibility in design options and lessen the impacts on neighbours. The proposal does not remove the ability to construct or permissibility of any form development.

Consultation with the community and various state government agencies will be undertaken, which might have implications for the desired controls proposed within the proposal. Given that there the final proposed minimum lot sizes could be amended post exhibition following stakeholder feedback, it is considered that the proposal's consistency will remain unresolved until a final lot size figure is confirmed. It is considered that the proposal can demonstrate consistency with this Direction prior to its finalisation.

#### 4.4 Planning for Bushfire Protection

The objectives of this direction are to protect life, property and the environment from bush fire hazards, and to encourage sound management of bush fire prone areas. As there R2 Low Density Residential and E4 Environmental Living lots adjacent to and in close proximity to land mapped as bushfire prone land, this Direction applies.

The proposal is consistent with the intent of the Direction as it introduces controls that avoid placing inappropriate development near hazardous areas. However, consistency with this

Direction remains unresolved, as consultation with the Commissioner of the NSW Rural Fire Service prior to community consultation has not been undertaken.

It is recommended that consultation with NSW Rural Fire Service is undertaken prior to community consultation, which is consistent with the requirements of the Direction.

### **State Environmental Planning Policies**

The planning proposal is consistent with all applicable State Environmental Planning Policies.

### SEPP Exempt and Complying Development Codes

The Department of Planning and Environmental is currently in the process of finalising an amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) which will introduce a new 'Medium Density Housing Code' (MDHC) into the Codes SEPP.

The MDHC proposes to:

- provide an efficient mode of delivery for low rise medium density housing;
- remove existing obstacles to delivering this form of housing; and
- provide a variety of housing choice across NSW in areas that are zoned for medium density housing.

The MDHC will allow dual occupancies, manor houses and multi dwelling housing to be carried out as complying development where they are a permissible use under council's local environmental plan (LEP). The proposed MDHC also proposes to contain other development standards, including minimum setbacks, including primary road, side and rear setbacks, and minimum landscaped area requirements, to promote good design outcomes for medium density housing.

Council has raised concern that the draft legislation would facilitate dual occupancy, terrace houses and manor houses with greater bulk and density than currently permitted by SSLEP 2015 and without the need for a developmental application. They note that the increased FSR combined with reduced setbacks and landscaping standards in the MDHC will result in an overall reduction in landscaping and an increase in building bulk and scale when compared to what is currently being achieved under SSLEP 2015. Council notes that these changes will exacerbate the issues they are currently facing, such as amenity impacts on neighbours and reduced opportunities to retain or plant trees.

Complying development is not intended to override a council's strategic planning, but work with the controls developed through strategic planning to efficiently deliver simple housing forms. To construct a dual occupancy as complying development, the dual occupancy must either meet the minimum lot size requirement specified in the relevant environmental planning instrument (EPI), or, if no size is specified in the EPI, then the prescribed minimum lot size under the Code is 400m<sup>2</sup>. As noted above, the MDHC also contains other development standards which applications must meet to be considered as a complying development.

As outlined in the Explanation of Intended Effects (EIE) for the MDHC, development must demonstrate the following for it to be considered appropriate for approval through the complying development pathway:

- be deliverable through a simple set of pre-defined measurable development standards;
- result in predictable outcomes with predictable impacts; and
- have minimal scope for impact on adjoining properties.

The EIE also notes that the development proposed as complying development is intended to be of a similar scale as a dwelling house that can be currently carried out as complying development under the General Housing Code in the Code SEPP.

It is considered that the proposal will have implications for the ability to carry out low rise medium density housing in Sutherland Shire, as the imposition of larger minimum lot sizes will mean less homes are eligible to utilise the Code. However, the proposal is considered consistent with the intended effects of the proposed Code SEPP amendments as the proposal intends to improve built form outcomes by providing greater flexibility in design options and lessening impacts on neighbours.

## **SITE SPECIFIC ASSESSMENT**

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### **Social**

The proposal is unlikely to create any adverse social impacts. There will be a small proportion of parcels of land that will not be able to be redeveloped for dual occupancies as a result of the proposal and multi dwelling housing will generally require amalgamation of two parcels. However, the benefits of implementing the minimum lot size, the improved built form outcomes, are considered to outweigh the negatives of allowing these forms of developments on small lots across the Sutherland Shire.

### **Environmental**

The proposed changes are administrative in nature and unlikely to result in any environmental effects. Any development resulting from this planning proposal would be subject to a separate assessment where the environmental impacts of the proposed development would be given consideration.

### **Economic**

The proposal is unlikely to create any adverse economic impacts. Whilst there will be a small proportion of parcels of land that will not be able to be redeveloped for dual occupancies and multi dwelling housing, the changes do not remove the permissibility of any form development.

## **CONSULTATION**

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### **Community**

An community consultation period of 28 days is recommended by Council. This recommendation is supported given the nature of the proposal.

### **Agencies**

Consultation with the NSW Rural Fire Service is required to demonstrate consistency with Section 117 Direction 4.4 Planning for Bushfire Protection.

## **TIMEFRAME**

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Council has recommended a project timeline of 7 months for completion. Given the nature of the planning proposal and taking into account the holiday shutdown periods over Christmas and the New Year, a project timeline of 9 months is considered appropriate. The project timeline included in the planning proposal should be updated to reflect this new timeline.

## DELEGATION

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Council has sought delegation to carry out the Minister's plan-making functions under section 59 of the Environmental Planning and Assessment Act 1979 (the EP&A Act). Delegation is considered appropriate as the matter is of local significance.

## CONCLUSION

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The proposal is supported to proceed, as the proposal:

- will have a minimal environmental, social and economic impact;
- does not affect the Council's ability to provide housing supply and diversity;
- does not remove the ability to construct or permissibility of any form development; and
- aims to improve the built environment.

## RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. note that the consistency with Section 117 Directions 3.1 Residential Zones and 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal is to be updated to:
  - (a) include the outcomes of consultation with NSW Rural Fire Service, to satisfy S117 Direction 4.4 Planning of Bushfire Protection;
  - (b) include an explanation of the intended effect, rather than a specific clause to introduce Clause 4.1BB Minimum lot sizes and special provisions for certain dwellings; and
  - (c) update the project timeline.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with NSW Rural Fire Service
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan

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