

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Cumberland
<b>PPA</b>	Cumberland Council
<b>NAME</b>	Amendments to minimum lot size provisions for dual occupancy housing
<b>NUMBER</b>	PP_2018_CUMBE_002_00
<b>LEP TO BE AMENDED</b>	Auburn Local Environmental Plan 2010 and Holroyd Local Environmental Plan 2013
<b>ADDRESS</b>	All land zoned R2 Low Density Residential and R3 Medium Density Residential in the Cumberland local government area, excluding the land subject to Parramatta LEP 2011
<b>DESCRIPTION</b>	Multiple
<b>RECEIVED</b>	30 July 2018
<b>FILE NO.</b>	IRF18/4365
<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

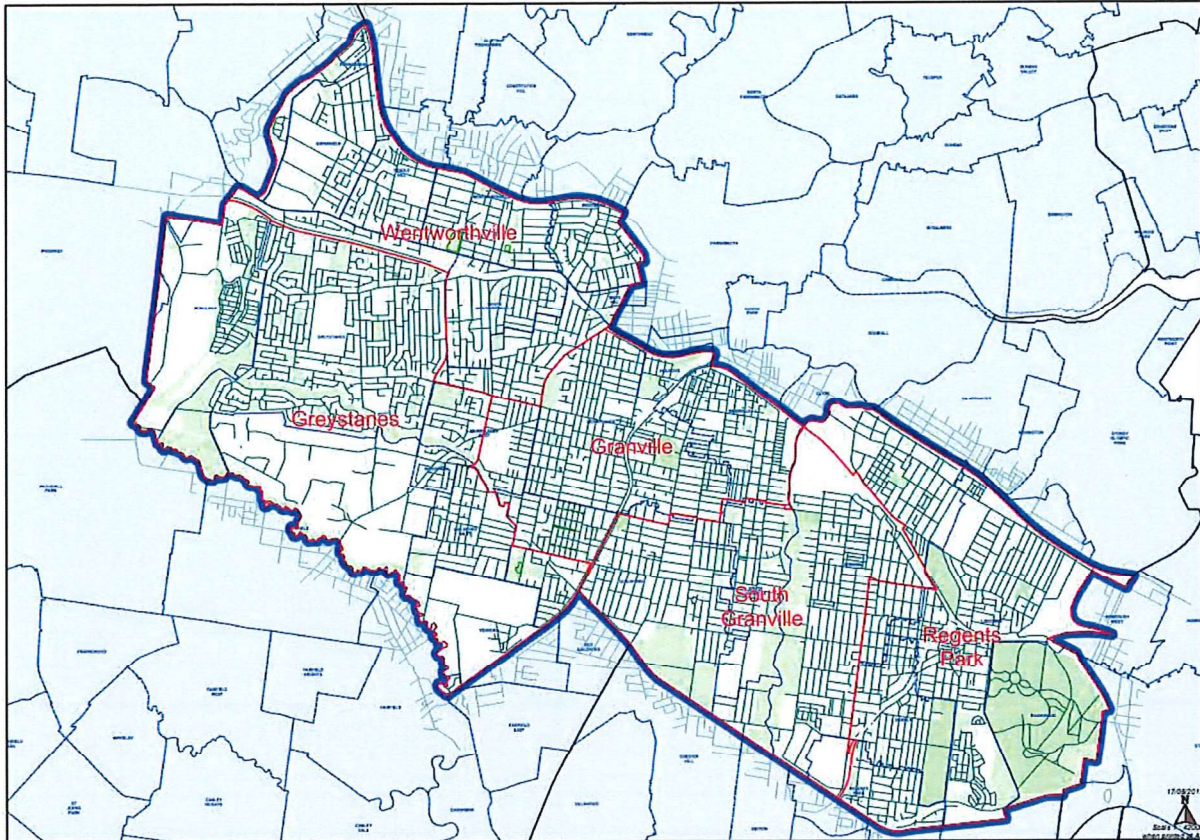
### Description of planning proposal

The planning proposal seeks to amend both the Auburn Local Environmental Plan (LEP) 2010 and the Holroyd LEP 2013 to introduce 600m<sup>2</sup> minimum lot area provisions for dual occupancy development in the R2 Low Density Residential and R3 Medium Density Residential zones of the Cumberland Local Government Area (LGA).

Cumberland LGA incorporates part of the former Parramatta LGA (Woodville Ward) and as such, the provisions of Parramatta LEP 2011 currently apply to this land. A 600m<sup>2</sup> minimum lot size already applies to dual occupancies under Clause 6.11 of Parramatta LEP 2011.

### Site description

Cumberland LGA (**Figure 1**) includes the suburbs of Auburn, Berala, Chester Hill (part), Girraween, Granville (part), Greystanes, Guildford, Guildford West, Holroyd, Lidcombe (part), Mays Hill (part), Merrylands, Merrylands West, Pemulwuy, Pendle Hill (part), Regents Park (part), Rookwood, Smithfield (part), South Granville, South Wentworthville, Toongabbie (part), Wentworthville (part), Westmead (part), Woodpark and Yennora (part).



**Figure 1: Cumberland local government area ward map**

### **Existing planning controls**

#### Auburn LEP 2010

The Auburn LEP 2010 currently does not include minimum lot sizes for dual occupancies. The Auburn Development Control Plan (DCP) 2010 is relied upon to regulate a 450m<sup>2</sup> minimum lot size for attached dual occupancy development and 600m<sup>2</sup> for detached dual occupancies in the R2 and R3 zones.

#### Holroyd LEP 2013

The Holroyd LEP 2013 currently does not include minimum lot sizes for dual occupancies. The Holroyd DCP 2013 is relied upon to regulate a 500m<sup>2</sup> minimum lot size for both attached/detached dual occupancy development in the R2 zone and 450m<sup>2</sup> in the R3 zone.

#### Parramatta LEP 2011

Clause 6.11 of the Parramatta LEP 2011 specifies a 600m<sup>2</sup> minimum lot size for dual occupancies in the R2, R3 and R4 zones. As such, the planning proposal does not apply to this land as the equivalent controls are already established.

The minimum lot sizes for dual occupancies as stated in the applicable LEP and DCP are compared in Table 1 - below.



**Table 1: Comparison of minimum lot size controls for dual occupancies**

Planning Controls	Auburn LEP 2010	Auburn DCP 2010	Holroyd LEP 2013	Holroyd DCP 2013	Parramatta LEP 2011	Parramatta DCP 2011
Minimum Lot Size	Not specified	450m <sup>2</sup> (attached), 600m <sup>2</sup> (detached) in R2 and R3 zones	Not specified	500m <sup>2</sup> (attached or detached) in R2 and 450m <sup>2</sup> in R3	600m <sup>2</sup> (attached) in R2, R3 and R4 zones	600m <sup>2</sup>

### Summary of recommendation

The proposal is suitable to proceed as:

- it has the potential to deliver good urban design outcomes for dual occupancy housing in the R2 Low Density Residential and R3 Medium Density Residential zones;
- it has the potential to provide a consistent approach to applying minimum lot sizes for dual occupancies across the Cumberland LGA; and
- it has the potential to complement the provisions and best-practice principles of the recently released Low Rise Medium Density Housing Code.

However, it is considered that further information is required to demonstrate consistency with the above. It is recommended the planning proposal proceed subject to conditions.

## PROPOSAL

### Objectives or intended outcomes

As noted in the planning proposal (**Attachment A**), the objectives of the proposal are as follows:

- to ensure the lot size proposed for dual occupancy development facilitates good design that can accommodate an appropriate built form, driveways and sufficient landscaped areas;
- to retain the low density residential character of the R2 Low Density Residential zone;
- to identify the appropriate locations for growth and align projected growth with existing and proposed local roads, transport and social infrastructure;
- to minimise the adverse impacts of the Low Rise Medium Density Housing Code development under complying development; and
- to achieve a consistency of minimum lot size across LGA.

The details of the planning proposal are specific enough to clearly identify the intent of the proposal. However, no analysis has been submitted to prove or demonstrate that the Low Rise Medium Density Housing Code (Code) will have an adverse impact on the character of the R2 and R3 zones, therefore, the objective of the proposal referring to being excluded from state planning policy on the basis of “adverse impacts” is not supported. The objectives are to be amended to justify the planning proposal on the basis of demonstrated urban design outcomes and maintaining local character rather than mitigating the impacts of complying development.

### **Explanation of provisions**

The planning proposal proposed the following amendments:

Insert 4.1B under the Part 4 Principal development standards of the Auburn LEP 2010 and the Holroyd LEP 2013 by including the following item:

#### ***4.1B Minimum lot sizes and special provisions for dual occupancies***

*(1) The objective of this clause is to ensure that the lot size proposed for dual occupancy development facilitates good design that can accommodate an appropriate built form, driveways and sufficient landscaped areas, so as to provide a high quality of amenity for the future residents and to maintain the amenity and character of the surrounding residential area.*

*(2) Development consent may only be granted to development for the purpose of a dual occupancy (attached or detached) on a lot in Zone R2 Low Density Residential and Zone R3 Medium Density Residential if:*

*(a) an area of the lot is at least 600m<sup>2</sup>*

The explanation of provisions is required to be amended to remove the specific drafting outcome sought, as this will be determined by Parliamentary Counsel. The planning proposal is to be amended to clearly explain the intended outcome in plain English to enable legal drafting at a later date.

The explanation of provisions should clearly outline the intent of the provision, the land uses that the provision will apply to, if there is any proposed distinction between detached or attached dual occupancies and the minimum allotment size.

### **Mapping**

The proposal is supported by draft LGA-wide maps for Minimum Lot Sizes for Dual Occupancy Development. These maps are considered suitable for community consultation.

### **Background**

#### **Minimum lot sizes for dual occupancies in LEP**

The model clauses of the Standard Instrument resulted in the former Auburn and Holroyd areas of Cumberland not applying minimum lot sizes for dual occupancy housing and instead imposing specific development standards through their development control plans. However, the former Parramatta area imposes a minimum lot size for dual occupancies mandated through a local provision.

### Cumberland deferral of Low Rise Medium Density Housing Code

On 11 June 2018, Council sought a deferral from commencement of the Low Rise Medium Density Housing Code until Council has prepared a new local housing strategy and comprehensive LEP. A deferral was issued by the Department on 5 July 2018.

### **NEED FOR THE PLANNING PROPOSAL**

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Council notes in its planning proposal that including minimum lot provisions for dual occupancies will permit development outcomes consistent with the Auburn DCP 2010 and Holroyd DCP 2013 rather than the prescribed 400m<sup>2</sup> minimum lot size of the Low Rise Medium Density Housing Code (Code). According to Council the larger than envisaged dwelling yields of the Code will have unintended implications for roads, transport, social infrastructure and the local character.

On 5 July 2018, Cumberland LGA was deferred from the commencement of the Code. This deferral provides Council with the opportunity to review the application of the Code to its residential zones. Minimum residential lot sizes and provisions for dual occupancy housing are relevant to the application of the Code.

A proposal seeking to amend the LEP is the most effective way of providing certainty for Council and the local community. The planning proposal seeks to amend the Auburn LEP 2010 and Holroyd LEP 2013 to impose a minimum lot size of 600m<sup>2</sup> on R2 and R3 zoned land and no changes are proposed to land covered by the Parramatta LEP 2011 since a 600m<sup>2</sup> minimum lot size is already specified under clause 6.11 of that LEP.

The Department supports the proposal proceeding to Gateway determination as it will contribute to a consistent approach to setting minimum lot size for dual occupancies across the Cumberland LGA and improve certainty relating to minimum lot sizes. The issue of loss of development potential is further discussed below.

### **STRATEGIC ASSESSMENT**

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#### Greater Sydney Region Plan

The Greater Sydney Region Plan provides a 40-year vision for the Greater Sydney region. The following objectives are considered relevant for the proposal:

- Objective 10: Greater housing supply; and
- Objective 11: Housing is more diverse and affordable.

Council's planning proposal notes the proposed 600m<sup>2</sup> lot sizes will enable a consistent approach to dual occupancy development across the Cumberland LGA to ensure that sufficient areas are available for adequate landscaping, setbacks and a built form outcome compatible with local residential character.

It is considered that further evidence is required to demonstrate the proposed amendments will not adversely affect housing diversity. The requirement for 600m<sup>2</sup> lot sizes would increase the minimum lot size, currently embedded in the respective DCP's, for the former Auburn and Holroyd LGAs. Analysis is required to determine if this would adversely reduce the existing development potential for these areas where the provision of the smaller lot sizes are currently allowed. Recommended

conditions are discussed in more detail under Section 9.1 Ministerial Directions of this report.

#### Central City District Plan

The following planning priority of the Central City District Plan is relevant to the proposal:

- Planning Priority C5: Providing housing supply, choice and affordability, with access to jobs, services and public transport.

Council's planning proposal notes that Council is seeking to adopt the proposed 600m<sup>2</sup> lot size in preparation of Council's future Housing Strategy and Local Strategic Planning Statement, as part of the preparation of a new comprehensive Cumberland LEP.

As discussed previously, the planning proposal needs to provide further evidence to demonstrate the implications of the proposal, particularly in reducing the development potential currently afforded by the Auburn and Holroyd DCPs in permitting dual occupancy housing on lots as small as 450m<sup>2</sup> and 500m<sup>2</sup> respectively.

#### **Local**

#### Cumberland Community Strategic Plan

The following strategic goal and outcome from the Cumberland Community Strategic Plan is relevant to this proposal:

- Strategic Goal 5: A resilient built environment.
  - Outcome: Our planning decisions and controls ensure the community benefits from development.

As discussed previously, the planning proposal needs to provide further evidence to assess the potential impacts of the proposed provisions on housing diversity and consider the policy directions of the new Low Rise Medium Density Housing Code and implications of the revised minimum lot size on development potential.

#### Local Strategy

There is no relevant local strategy for the Cumberland LGA that has been endorsed by the Department.

#### **Section 9.1 Ministerial Directions**

The planning proposal is considered to be consistent with all section 9.1 Directions, except Direction 3.1 Residential Zones.

The objectives of this Direction are to encourage a variety of housing types, make efficient use of existing infrastructure and services, ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource land.

The planning proposal is inconsistent with this Direction as it may reduce dwelling potential by increasing the minimum lot size for dual occupancies by as much as 150m<sup>2</sup> above current controls in Council's DCPs. This may impact on the economic viability of dual occupancy housing.

To understand the impact on dwelling potential, a Gateway condition is included requiring Council to provide further information in relation to:

- the total number of lots in the former Auburn and Holroyd LGAs that are capable of accommodating dual occupancies under the 400m<sup>2</sup> minimum lot size control of the Low Rise Medium Density Housing Code;
- the total number of lots in the LGA that are capable of accommodating dual occupancies under Council's current 450m<sup>2</sup> (former Auburn), 500m<sup>2</sup> (former Holroyd) and 600m<sup>2</sup> (former Parramatta) controls;
- the total number of lots in the LGA that are capable of accommodating dual occupancies under the proposed 600m<sup>2</sup> lot controls; and
- a summary of the number of dual occupancy developments approved under Council's current 450m<sup>2</sup> (Auburn), 500m<sup>2</sup> (Holroyd) and 600 m<sup>2</sup> (Parramatta) controls in the past five years, the minimum development lot size and the number of dual occupancies produced.

It is considered suitable to allow the proposal to progress with the inconsistency with this Direction remaining unresolved. This will allow further consultation and quantitative analysis, which can then be considered prior to plan-making and will determine if the inconsistency with this Direction is of minor significance.

### **State environmental planning policies**

#### State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The new Low Rise Medium Density Housing Code of the Codes SEPP came into effect on 6 July 2018.

The Code aims to provide greater housing choice and facilitate faster housing approvals. It will allow one-storey and two-storey dual occupancies, manor houses and terraces to be carried out under a complying development approval.

In relation to the planning proposal, the Code allows for the development of dual occupancy housing where dual occupancies are currently permitted.

On 5 July 2018 Council was granted a deferral of the implementation of the Code until 1 July 2019.

A deferral from the commencement of the Code for Cumberland LGA provides Council with the opportunity to review how the Code will apply to residential zones in closer detail and amend the LEPs, if required.

A Gateway condition is recommended requiring Council to consider the consistency of the planning proposal with densities proposed under the Code by confirming the total potential number of lots that could be delivered under the Code, Council's current controls and the proposed controls.

## **SITE-SPECIFIC ASSESSMENT**

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### **Social**

The proposal aims to retain the existing character of the R2 Low Density Residential and R3 Medium Density Residential zone and ensure that development remains consistent with the existing level of access to social infrastructure.

### **Environmental**

The planning proposal is not anticipated to have any adverse impacts on critical habitats or threatened species.

In terms of built form outcomes, it is understood that Council has concerns with the redevelopment of traditional allotment sizes that had been intended for low density purposes.

The Department considers there is merit in affording a place-based approach to applying minimum lots sizes for dual occupancies based on local character.

### **Economic**

The planning proposal introduces planning controls that reduce the development potential for dual occupancies currently afforded on lots as small as 450m<sup>2</sup> in the former Auburn LGA and 500m<sup>2</sup> in the former Holroyd LGA. Further, the proposed amendment would eliminate the potential for dual occupancies on 400m<sup>2</sup> lots as mandated under the Low Rise Medium Density Housing Code.

It is recommended that landowners within the R2 and R3 zones of the former Auburn and Holroyd LGAs be informed about the proposal and its exhibition and given suitable time to make their own assessment on the matter.

The issues raised will need to be addressed prior to the planning proposal being exhibited, including reconsideration of Section 9.1 Direction 3.1 Residential Zones and the impacts of the Low Rise Medium Density Housing Code.

## **CONSULTATION**

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### **Community**

A Gateway condition is recommended requiring that Council write to all affected landowners about the exhibition of the proposal explaining details on how to make a submission, proposed amendments and how they may affect future development of residential land.

An exhibition period of 28 days is considered acceptable to allow all affected landowners to review the material, seek their own advice and make a submission to Council.

### **Agencies**

It is recommended that Cumberland Council consult with the City of Parramatta Council.

Consultation with other state agencies is not considered necessary. The proposal will not increase demands on infrastructure, nor does it have the potential to impact on the natural environment or heritage values.



## **TIME FRAME**

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The LEP is to be made by 1 July 2019.

## **LOCAL PLAN-MAKING AUTHORITY**

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Council has not requested to be the plan-making authority, and given the implications this planning proposal may have on state policy, delegation is not recommended to be authorised in this instance.

## **CONCLUSION**

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Subject to conditions of Gateway, the planning proposal has merit and is supported to proceed as it has the potential to:

- deliver good urban design outcomes for dual occupancy housing in the R2 Low Density Residential and R3 Medium Density Residential zones;
- provide a consistent approach to applying minimum lot sizes for dual occupancies across the Cumberland LGA if it responds appropriately to local character; and
- to complement the provisions and best-practice principles of the recently released Low Rise Medium Density Housing Code.

However, it is considered that further information is required to demonstrate consistency with the above.

## **RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Directions 3.1 Residential Zones is unresolved.

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 undertaking community consultation, Council is required to:
  - (a) amend the objectives to justify the planning proposal on the basis of demonstrated urban design outcomes and maintaining local character rather than mitigating the impacts of complying development;
  - (b) update the explanation of provisions to remove the suggested legal drafting and include a plain English explanation that clearly outlines the intent of the planning proposal;
  - (c) complete further analysis of current lot sizes in the R2 Low Density Residential and R3 Medium Density Residential zone to demonstrate that the proposed minimum lot size is appropriate. This should include confirming the total number of lots within the LGA that are capable of accommodating dual occupancies under:
    - i. a 400m<sup>2</sup> minimum lot size scenario under the Low Rise Medium Density Housing Code;
    - ii. Council's current controls; and
    - iii. the proposed 600m<sup>2</sup> lot controls.

- (d) include a summary of the number of dual occupancy developments approved under Council's current 450m<sup>2</sup> (Auburn), 500m<sup>2</sup> (Holroyd) and 600m<sup>2</sup> (Parramatta) controls in the past five years, the minimum development lot size and the number of dual occupancies produced;
  - (e) explain whether the proposal is supported by a housing strategy that has been developed in consultation with the community; and
  - (f) include a new saving transition clause to ensure that the proposed amendments do not affect any development applications or appeal processes.
2. The revised planning proposal is required to be referred to the Department for review and approval prior to exhibition.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
- (a) the planning proposal must be made publicly available for a minimum of 28 days;
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016);
  - (c) Council is to write to all affected landowners providing notice of the proposal and public exhibition; and
  - (d) Council is to write to the City of Parramatta Council advising of the planning proposal.
3. No consultation is required with public authorities/organisation under section 3.34(2)(d) of the Act.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The LEP is to be completed by 1 July 2019.



**Christine Gough**  
Team Leader, Sydney Region West

3/9/2018



**Ann-Maree Carruthers**  
Director Regions, Sydney Region  
West  
Planning Services

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Contact Officer: Sebastian Tauni  
Senior Planning Officer, Sydney Region West  
Phone: 8217 2018