

# Planning Proposal

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To Amend Wollondilly Local Environmental Plan 2011

## Dual Occupancy Minimum Lot Size

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To amend Wollondilly Local Environmental Plan 2011 to include a minimum lot size for the construction of a Dual Occupancy on R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use zoned land.

**August 2019**

# Document Register

Version	Date	Details	Prepared By	File Location
1	31/07/2018	Prepared for Gateway Determination request	MR & CW	CM 10618 #57
2	27/092018	Amended as per Gateway Determination	BM	CM 10618 #70
3	13/11/2018	For Public Exhibition	BM	CM 10618 #104
4	23/08/2019	For Finalisation	SR	CM 106 #202
Current Version		4		

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# Introduction

This Planning Proposal details a proposed amendment to the *Wollondilly Local Environmental Plan 2011* (Wollondilly LEP) to provide stronger force to Council's existing minimum lot size requirements for the construction of dual occupancy developments by including them within the local environmental plan.

It seeks to do this by introducing minimum lot size requirements into Wollondilly Local Environmental Plan 2011 for the construction of a dual occupancy on land zoned R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use.

At present clause 4.1A of the Wollondilly LEP specifies the minimum lot size for dual occupancies in residential zones. However, it only applies to the subdivision of dual occupancy developments after they are constructed and not the minimum lot size for their initial construction. The Wollondilly Development Control Plan 2016 (WDCP 2016) establishes the minimum lot size for the construction of dual occupancy developments but these planning controls will be overruled by the introduction of the new Low Rise Medium Density Housing Code.

The Planning Proposal is required to minimise the impact associated with the introduction of the State Government's Low Rise Medium Density Housing Code in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). In the absence of a minimum lot size requirement in Council's Local Environmental Plan for the construction of a dual occupancy in the R2 and R3 zones in the Shire, the Code would enable dual occupancies to be undertaken as Complying Development on lots as small as 400 square metres.

The development standards in the Codes SEPP enable dual occupancy to be undertaken on a lot as small as 400 square metres, unless a larger minimum lot size for the construction of a dual occupancy is prescribed by an Environmental Planning Instrument (i.e. the relevant Council's Local Environmental Plan) that applies to the land. Council's Local Environmental Plan does not prescribe a minimum lot size for the construction of a dual occupancy (the relevant control is contained within Council's DCP) and therefore the minimum lot size of 400 square metres under the SEPP would apply.

Council's investigations have determined that allowing dual occupancy development to be undertaken on lots as small as 400 square metres would have an undesirable planning outcome for the area, particularly due to insufficient infrastructure in the area to support such code based approvals on small lots.

This planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* and the NSW Department of Planning & Environment's *A Guide to Preparing Planning Proposals* (2016).

No specialist studies were required to inform this proposal.

# Part 1 – Objectives or Intended Outcomes

The objective of this Planning Proposal amending the *Wollondilly Local Environmental Plan 2011* is to strengthen Council's minimum lot size requirements for the construction of dual occupancy development on land in certain residential and business land use zones across the Shire.

The Planning Proposal will also include a new savings transition clause to ensure the proposed amendments does not affect any undetermined development applications or appeal processes.

The Planning Proposal seeks to protect the character of Wollondilly's towns and villages.

## Part 2 – Explanation of Provisions

The proposed outcome will be achieved by including an additional clause in Part 4 of the Wollondilly LEP to introduce a development standard for the construction of a dual occupancy.

The proposed outcome will also include a new savings transition clause under Part 4 of the Wollondilly LEP to ensure that the introduction of a minimum lot size for dual occupancy developments does not affect any undetermined development applications or appeal processes.

The amended clause (under Part 4) will apply to land in a R2 Low Density Residential, R3 Medium Density Residential or B4 Mixed Use land use zone and will achieve the following:

- Retain the existing development standard that applies to the subdivision of an existing dual occupancy,
- Establish the following minimum and maximum lot requirements for the construction of a dual occupancy:
  - The minimum lot size for the construction of an attached dual occupancy is 800 square metres for land zoned R2 Low Density Residential, R3 Medium Density Residential or B4 Mixed Use.
  - The minimum lot size for the construction of a detached dual occupancy is 975 square metres for land zoned R2 Low Density Residential, R3 Medium Density Residential or B4 Mixed Use.
  - a maximum lot size for the construction of a dual occupancy is 1400 square metres for land zoned R2 Low Density Residential, R3 Medium Density Residential or B4 Mixed Use.

The minimum lot size requirements for dual occupancy (both attached and detached) as well as the maximum lot size are based on the current controls within the *Wollondilly Development Control Plan 2016*. In particular, it is noted that the maximum lot size requirement is intended to ensure land is subdivided efficiently by preventing dual occupancy development on a lot that could otherwise be subdivided.

Council's proposed drafting for the **Minimum lot size for construction of dual occupancies in certain residential and business zones** clause is outlined below and includes a savings provision. Please note this is subject to changes based on legal drafting and Parliamentary Counsel processes.

- (1) *This clause applies to land within Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone B4 Mixed Use.*
- (2) *Dual occupancy development shall only be permitted on lots which:*
  - (a) *in the case of an attached dual occupancy - have an area no less than 800 square metres and no greater than 1400 square metres, or*
  - (b) *in the case of a detached dual occupancy - have an area no less than 975 square metres and no greater than 1400 square metres*
- (3) *If a development application has been made before the commencement of this Clause in relation to land to which this clause applies and the application has not been finally determined before that commencement, the application must be determined as if this Clause had not commenced.*

# Part 3 – Justification

## Section A – Need for the planning proposal

### A 3.1 Is the planning proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report. The proposal is in response to the new Low Rise Medium Density Housing Code to form part of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) identifies certain types of development that can be undertaken as Complying Development on land across NSW. Complying Development under the Codes SEPP is able to be carried out via a fast tracked approval process provided that it meets a number of pre-determined development standards included in the SEPP.

In April 2018, the State Government announced that the Codes SEPP will be amended to include a Low Rise Medium Density Housing Code. The Medium Density Housing Code will allow Dual Occupancies, Manor Houses and Multi Dwelling (Terrace Housing) to be undertaken as Complying Development, provided that the development is permitted within the relevant zone under the Council's Local Environmental Plan.

The Code includes a number of standards which development must achieve in order to be carried out as Complying Development. One of the standards contained in the Code prescribes a minimum area that the existing lot must meet in order to construct a dual occupancy as Complying Development under the Code. This standard states that *the area of the lot on which the dual occupancy is undertaken must not be less than whichever is the greater of the following:*

- (a) 400 square metres;
- (b) The minimum lot area specified for dual occupancies in the environmental planning instrument that applies to the land concerned.

*Wollondilly Local Environmental Plan 2011* currently does not contain any development standards that prescribe a minimum lot size/area required for the construction of a dual occupancy, therefore, the Code would enable a dual occupancy to be carried out as Complying Development on lots as small as 400 square metres in the Wollondilly Local Government Area.

Council's LEP includes a clause (under Part 4 Principal development standards) which prescribes a minimum size/area that a lot must achieve in order to subdivide an existing dual occupancy. This clause states that an existing dual occupancy may only be subdivided if the existing lot is no less than 800 square metres (in the case of an attached dual occupancy) or 975 square metres (in the case of a detached dual occupancy). However, this clause only relates to the subdivision of an existing dual occupancy and does not affect the construction of a new dual occupancy.

Council's Development Control Plan requires the area of a lot to achieve the following minimum sizes in order to construct a dual occupancy on residential zoned land:

- a) 800 square metres - in the case of an attached dual occupancy; or
- b) 975 square metres - in the case of a detached dual occupancy.

However, this requirement in Council's Development Control Plan will not carry any statutory weight once the Code commences. A Council's Development Control Plan is also not a consideration in the assessment of any application for a Complying Development Certificate under the Code. The lot sizes referenced above have existed in Council's Development Control Plan for some time. Historically, Council has imposed the minimum lot size required for the construction of a dual occupancy under the Development Control Plan, with only minor variations in some instances.

Council is of the view that enabling dual occupancy development to be undertaken on lots as small as 400 square metres would have a detrimental impact on the local area, particularly when allowed to be undertaken as Complying Development. It has been determined that if the Code were to allow dual occupancies to be constructed on lots as small as 400 square metres, an additional 2,368 dwellings could be constructed under the Code than would otherwise be allowed under Council's current planning controls. These additional dwellings would be enabled by the Code with no consideration given to the additional infrastructure requirements that would be generated from this growth. A qualitative analysis assessing the impacts on the proposal on housing diversity and supply is provided below:

### Impacts on Housing Diversity

The application of the new code would enable 7,388 lots to be capable of supporting a dual occupancy development in R2 zones (see appendix B), this is an increase of almost 50% based off current DCP controls. The introduction of minimum lot size controls within the LEP will limit the number of lots capable of supporting a Dual Occupancy to 5,020 lots. These figures are subject to change as current planning proposal are finalised and new residential land is introduced. Council's records show that the number of Dual Occupancy's approved over the last five (5) years is steadily increasing. In light of this only 74 dual occupancies have been approved in R2 and R3 zones between 2013 and 2017 despite the large number of lots within the LGA capable of supporting this type of development. Of particular note, thus far in 2018 23 Dual Occupancies have been approved in R2 zones, furthering the trend of increasing dual occupancy approvals throughout Wollondilly LGA. It is thus concluded that the inclusion of minimum lot size standards within the LEP, will not have a significant impact on the provision of diverse housing options within the LGA, and will continue in line current provision trends.

### Impacts on Housing Supply

Council's records show that a total of 74 Dual Occupancies have been approved within R2 Low Density Residential and R3 Medium Density zones between January 1 2013 and December 31 2017. Please see Appendix C for further detail. Over 90 percent (92%) of these dual occupancy developments were approved within R2 zones. As of September 26 2018, 23 dual occupancy developments have been approved in 2018, all within R2 zones, please see Appendix D.

As of March 2018, dwelling targets set by the GMS 2011 have been met or exceeded for the majority of locations within Wollondilly. The area of Picton, Tahmoor and Thirlmere has had the greatest number of Dual Occupancies within LGA, accounting for almost three quarters (72%) of the approvals over a five year period (2013-2017). As of June 2018, the area of Picton, Tahmoor and Thirlmere has exceeded the housing targets (to be met over 20-25 years) established within the Wollondilly GMS 2011 by 225 dwellings. By limiting the number of lots capable of supporting dual occupancies within a R2 zoning it will aid in aligning future growth with the Growth Management Strategy and ensure the character of towns and villages is maintained within the LGA. The proposed amendments are in line with current controls contained within the Wollondilly DCP 2016, as such is not expected to impact on housing supply within the LGA.

Council's concerns with enabling dual occupancy development to be undertaken on lots as small as 400 square metres and the additional dwellings that would be enabled by the Code when compared to Council's current planning are outlined below:

### Impact on established Character of the local area

For a long period of time, Council's planning controls have required that a dual occupancy may only be carried out in residential zones if that lot is no less than 800 square metres (in the case of an attached dual occupancy) or 975 square metres (in the case of a detached dual occupancy). This lot area requirement pre-dates Council's current Local Environmental Plan which commenced on 23 February, 2011.

Allowing a dual occupancy to be constructed on a lot as small as 400 square metres on a large portion of R2 and R3 zoned land across the Shire would impact on the established local area character of the towns and villages in the Shire. Such code based approvals would also be contrary to the principles in the Western City District Plan of creating great places and retaining the existing character of unique rural villages.

### Infrastructure deficiencies

There are a number of residential zoned areas in the Shire where existing infrastructure is poor and not capable of supporting additional medium density housing on a Code based approvals basis. Unlike an approval which is issued through the development application/consent process, Council has no ability to impose consent conditions on a Complying Development approval requiring infrastructure improvements such as kerb and gutter construction and other public infrastructure and civil works.

The uplift in the number of dwellings that would be enabled by the Code, combined with the inability of Council's to impose site specific and merit based infrastructure improvements as part of any consent conditions, would have implications for Council's Development Contributions Plan and Works Programs, as it would result in an increased



infrastructure burden in local areas and would mean that any infrastructure improvements required would need to be provided by Council rather than the developer undertaking the development.

#### Limited sewer capacity of certain towns and villages in the Shire;

Sydney Water's reticulated sewer network has limited capacity to service additional growth in several of the towns and villages in Wollondilly. In particular, the towns of Oakdale, The Oaks and Bargo. Sewer capacity would not be a consideration under a Code based approvals process and the potential uptake of development under the new Code is likely to impact on the sewer capacity of existing towns and villages.

#### The absence of a reticulated sewer service in certain towns;

There are towns within the Wollondilly Local Government Area which do not have reticulated sewer services available (such as the town of Yanderra) and are required to rely upon on-site wastewater disposal systems for effluent disposal. The Code does not exclude a dual occupancy from being able to be undertaken as Complying Development under the Code on unsewered land. Council considers that a lot size of 400 square metres would be too small to accommodate a dual occupancy as it is unlikely that a suitable area for an on-site wastewater treatment system could be provided.

#### Potential impact on the dwelling Cap at the Bingara Gorge Urban Release Area at Wilton

The Bingara Gorge Estate at Wilton currently has a cap of 1,800 lots. Bingara Gorge is zoned predominantly R2 Low Density Residential with a mix of lot sizes. The Code also enables the subdivision of a dual occupancy onto individual titles to be undertaken as Complying Development once constructed.

The maximum lot yields within each precinct and the overall release area are included in Council's DCP. The DCP would not be a consideration for approvals issued under the Code and therefore without the checks and balances of the development application process there is a risk that the dwelling cap for the site would be exceeded. Enabling dual occupancies on lots as low as 400 square metres provides a potential uplift in the dwelling capacity of the release area which was not considered when previous master planning for the site took place and the dwelling cap for the site was established. The dwelling cap informs the provision of infrastructure for the area such a community facilities, roads, and waste-water management. Thus a possible increase in dwellings as result of The Code may lead to infrastructure deficiencies in the locality.

#### Summary

Although the addition of a clause in WLEP 2011 in the manner prescribed above would not prevent a dual occupancy being carried out under a Code based approval, it would ensure that a dual occupancy could only be undertaken as a Code based approval if the lot was 800 square metres (in the case of an attached dual occupancy) or 975 square metres (in the case of a detached dual occupancy). This would ensure that the minimum lot size where a dual occupancy could be carried out under the Code would align with Council's current planning controls, better retain the character of the area, and avoid a substantial uplift in dwellings from that currently allowed under Council's existing Planning controls.

The Code commenced in NSW on 6 July, 2018, however, the Code will not take effect in Wollondilly until 1 July, 2019. This is in response to a request made by Council to the Minister for Planning for a suspension from the commencement of the Code to enable the preparation of this Planning Proposal, and to also undertake other planning work (for example updates to Council's Contributions Plans) in order to minimise the impact of the commencement of the Code.

### **A 3.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The proposal involves an amendment to Wollondilly Council's Local Environmental Plan and therefore a Planning Proposal is the best means of achieving and objectives and outcomes of the amendment.

Wollondilly Council has been granted a moratorium for the commencement of the Code, that is the Code will not commence in the Wollondilly Local Government Area until 1 July, 2019. This moratorium is in response to a request made by Council to the Minister for Planning to enable Council to complete the Planning Proposal and also complete other work to minimise the impact of the Code in the local area.

## Section B – Relationship to strategic planning framework

### B 3.3 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

#### Western City District Plan

The proposal is consistent with the requirements of the Western City District Plan. The proposal is consistent with the principles within the District Plan of promoting greater places and the requirement under Planning Priority W6 to ensure that the character of local towns is retained.

#### Strategic Merit – responding to a change in circumstances that have not been recognised by existing planning controls.

The proposal is in response to the release of the Code, allowing dual occupancies on sites 400 square metres or greater unless a minimum lot size is applicable within another environmental planning instrument such as a Local Environmental Plan. The Wollondilly Local Environmental Plan 2011 does not currently contain provisions for minimum lots size for Dual Occupancies. This planning proposal seeks to instate a minimum lot size for dual occupancies to minimise the impact of the Code in the LGA.

### B 3.4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The two key local strategies are:

- Wollondilly Community Strategic Plan
- Wollondilly Growth Management Strategy 2011

#### Wollondilly Community Strategic Plan

The Wollondilly Community Strategic Plan 2033 (WCSP), adopted by Council on 17 June 2013, is the Council's highest level long term plan and sets out the long term strategic planning aspirations of the community for Wollondilly over a 20 year period up to 2033.

It is based on a vision of rural living for Wollondilly Shire and is focussed around five themes:

- Looking after the Community
- Accountable and Transparent Governance
- Caring for the Environment
- Building a strong local Economy
- Management and provision of Infrastructure

Each theme is supported by identified outcomes and strategies which express in broad terms what is to be achieved and how. These themes are, in part, delivered through a number of key supporting strategies, plans and policies which have been prepared by the Council, such as WLEP, 2011 and the Wollondilly Growth Management Strategy.

The following WCSP strategies are relevant to the Planning Proposal as described below.

#### **Strategy EN2 – Growth Management**

*Apply best practice environmental principles to the management of future growth.*

Comment: The Planning Proposal is necessary to manage growth in the area and ensure that dual occupancy dwellings are allowed only on appropriately sized lots in residential zones.

## **Strategy EC4 – Managing Development and Land Use**

*Manage and regulate land use and development in order to achieve a high quality built environment which contributes to economic well-being.*

Comment: The Planning Proposal would ensure that any dual occupancies undertaken under the Low Rise Medium Density Code are only able to be undertaken as Complying Development on lots that are of a size consistent with the minimum lot size provisions in Council's DCP, which would ensure that a quality built environment within the existing towns and villages is retained.

## **Strategy IN2 – Manage Road Network**

*Manage the road network to respond to community needs, growth in the Shire, improving road safety and improving transport choices.*

Comment: The Planning Proposal would limit the number of additional dwellings from the Low Rise Medium Density Code in response to infrastructure issues in the area.

## **Wollondilly Growth Management Strategy 2011**

The Growth Management Strategy (GMS) was adopted by Council on 21 February 2011. It contains Key Policy Directions and Assessment Guidelines for the evaluation of planning proposals and Council decisions on growth. The subject Planning Proposal is simply to correct a mapping error and does not impact on growth decisions.

Notwithstanding this, all Planning Proposals within Wollondilly must be assessed against the key policy directions within the GMS. Appendix A sets out the GMS Key Policy Directions and Assessment Criteria as they relate to this proposal.

### **B 3.5 Is the planning proposal consistent with applicable state environmental planning policies?**

The Planning proposal is consistent with all of the relevant State Environmental Planning Policies.

### **B 3.6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

#### **Ministerial Direction 3.1 Residential Zones**

This Ministerial Direction requires that a planning proposal to which this direction applies must include provisions that encourage the provision of housing that will:

***(a) broaden the choice of building types and locations available in the housing market, and***

Comment: The proposal is consistent with this requirement.

***(b) make more efficient use of existing infrastructure and services, and***

Comment: The proposal will result in the inclusion of a clause in Council's LEP which prescribes a minimum lot size for the construction of a dual occupancy in residential zones. The clause will reflect the existing controls in Council's Development Control Plan. Without the LEP amendment the Low Rise Medium Density Code would enable dual occupancies to be constructed as Complying Development on a much lower lot size of 400 square metres which would in turn result in an increase of 2,368 dwellings than when compared to the minimum lot size to construct a dual occupancy in Council's Planning Controls (see Appendix B).

The increased number of dwellings that would result in many of the towns in the Shire could not rely on existing infrastructure and services as this is deficient in many areas of the Shire (particularly lack of kerb and gutter, drainage, street lighting and limited sewer servicing capacity). Several towns and villages in the Shire have inadequate infrastructure to cope with such increased growth and the application of the current lot sizes in Council's Planning Controls (which would be the result of this Planning Proposal) is considered more appropriate. The Planning Proposal is therefore consistent with this clause in the Ministerial Direction.

***(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and***

Comment: The introduction of a minimum lot size for dual occupancies would not see a reduction in the consumption of land for housing. However, the proposal would effectively be a continuation of Council's current Planning controls, and reflects the character and infrastructure constraints of the area.

***(d) be of good design.***

Comment: N/A

## **Section C – Environmental, social and economic impact**

**C 3.7. 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 proposal would not have any adverse impacts on threatened species, populations or ecological communities.

**C 3.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

There are unlikely to be any other environmental effects as a result of the Planning Proposal.

**C 3.9 Has the planning proposal adequately addressed any social and economic effects?**

No adverse economic or social impact is anticipated.

## **Section D – State and Commonwealth interests**

**D3.10. Is there adequate public infrastructure for the planning proposal?**

It is considered that there is adequate public infrastructure for the proposal. The proposal will include a development standard in the LEP prescribing lot size requirements for the construction of dual occupancies in residential zones. The standard will be the same as that which is currently in Council's DCP for the construction of dual occupancies and has been applied by Council for some period of time.

If the Planning Proposal is not completed then the Code will enable dual occupancies to be undertaken on lots as low as 400 square metres. If this is the case, the Code could enable up to 2,368 additional dwellings in the Shire and Council is of the view that there is not adequate public infrastructure for this uptake of additional dwellings via a Code based approval, particularly in terms of lack of kerb and gutter and drainage infrastructure in some areas and limited sewer capacity in some towns.

**D3.11 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation with Sydney Water is required as per the Gateway Determination issued 17 September 2018.

## Part 4 – Mapping

No amendments to any of the maps within WLEP 2011 are proposed as part of the Planning Proposal.

## Part 5 – Community Consultation

In accordance with the Department of Planning and Environment's *Guide to Preparing Planning Proposals* the Planning Proposal will be exhibited for a period of 28 days. The planning proposal was exhibited from 5 December 2018 through to 1 February 2019. The exhibition period was extended in recognition of the busy school holiday period and also reflects the statutory Christmas/New year exclusion period (under Schedule 1 of the EP&A Act).

Due to the large number of lots affected by the proposed changes notification to affected land owners and residents was undertaken in the following manner:

- The planning proposal documents were made available on the Council's website during the exhibition period;
- The Planning Proposal documents (physical copies) were made available at the Council Admin Building and the Library during the exhibition period;
- Notification was placed in the Bush Telegraph;
- Notification was placed in the Community Newsletter – distributed to all residents in Wollondilly via unaddressed post from 7 December 2018;
- Addressed letters were sent to landowners with a postal addresses outside of Wollondilly or with a PO Box (or similar). This was to ensure all affected landowners were notified, if not captured by the community newsletter.

A total of 14 submissions were received. A number of submissions raised concerns on the appropriateness of the proposed lots size requirements. A full assessment of the most appropriate lot size for the construction of a dual occupancy is outside of the scope of this planning proposal. The objective of the planning proposal is solidify the existing controls in the WDCP and give them legislative weight within the WLEP in order to mitigate some of the potential impacts of the new Medium Density Code.

Council is currently undertaking a LEP review. This process may identify a need to re-examine the minimum lot size provision across the Shire, or may identify certain areas that may be suitable for smaller lot sizes.

It is important to note that a number of submissions were received from Commercial entities who may have financial benefit from the Codes SEPP allowing dual occupancies to be constructed on lots down to 400 square metres.

Commercial groups in Wollondilly represent a key stakeholder group and the concerns raised were taken into account. Conflicting statements or misinterpretations of definitions (i.e. secondary dwellings versus dual occupancies) have resulted in some submissions being classified as neutral or other.

Please see the appendix E for the submission matrix and complete assessment of issues raised.

## Part 6 – Project Timeline

Project detail	Timeframe	Timeline
Anticipated date Local Plan-Making Authority will forward to PC and Department of Planning for finalisation	1 month	September 2019
Finalisation	1 month	October 2019

# Appendices

## **A. Assessment against Wollondilly GMS**

Table indicating compliance with relevant Key Policy Directions within Wollondilly Growth Management Strategy (GMS) 2011

## **B. Dwelling Number Comparisons**

Comparison of number of additional dual occupancy dwellings that could be constructed under the Low Rise Medium Density Housing Code compared to Council's current planning controls

## **C. Dual Occupancy Approvals 2013 - 2017**

Table indicating the number of Dual Occupancy approvals by zoning and locality between 1 January 2013 and 31 December 2017

## **D. Dual Occupancy Approvals 2018**

Table indicating the number of Dual Occupancy approvals by zoning and locality in 2018, as of 26 September 2018

## **E. Community Consultation submissions matrix and review of submissions received**

Matrix of submissions showing the issues highlighted and frequency with which they were raised, and an overview of the submissions



# Appendix A

## Assessment against Wollondilly GMS

Wollondilly Growth Management Strategy (GMS) was adopted by Council in February 2011 and sets directions for accommodating growth in the Shire for the next 25 years. All planning proposals which are submitted to/initiated by Council are required to be assessed against the Key Policy Directions within the GMS to determine whether they should or should not proceed.

The following table sets out the planning proposal's compliance with relevant Key Policy Directions within the GMS:

Key Policy Direction		Comment
<b>General Policies</b>		
<b>P1</b>	All land use proposals need to be consistent with the key Policy Directions and Assessment Criteria contained within the GMS in order to be supported by Council.	The Planning Proposal is consistent with the key policy directions and assessment criteria within the GMS.
<b>P2</b>	All land use proposals need to be compatible with the concept and vision of 'Rural Living' (defined in Chapter 2 of the GMS).	The Planning Proposal is consistent with the concept of rural living.
<b>P3</b>	All Council decisions on land use proposals shall consider the outcomes of community engagement.	Community engagement will be carried out following the issue of a Gateway Determination for the Planning Proposal and the outcomes of this consultation will inform the final outcome of the proposal.
<b>P4</b>	The personal financial circumstances of landowners are not relevant planning considerations for Council in making decisions on land use proposals.	The personal financial circumstances of individual landowners have not been given consideration through the preliminary assessment of this Planning Proposal.
<b>P5</b>	Council is committed to the principle of appropriate growth for each of our towns and villages. Each of our settlements has differing characteristics and differing capacities to accommodate different levels and types of growth (due to locational attributes, infrastructure limitations, geophysical constraints, market forces etc.)	<p>The Planning Proposal would enable appropriate growth in each of the villages in the Shire. If the Planning Proposal were not to proceed, the Medium Density Housing Code would enable dual occupancy development to be undertaken on lots as small as 400 square metres which would result in an inappropriate level of growth for many of the towns and villages in the Shire. The figures in Appendix B show the increase in the number of dwellings in various towns in the Shire that could result from the Code compared to Council's current Planning controls.</p> <p>This increase could occur in several areas of the Shire where infrastructure is deficient, including a lack of kerb and gutter, poor drainage infrastructure inadequate street lighting etc. The Code would also enable dual occupancy dwellings to be constructed in these areas as Complying Development would remove any ability of Council to impose any infrastructure upgrade requirements as a condition on any development consent.</p>
<b>Housing Policies</b>		
<b>P6</b>	Council will plan for adequate housing to accommodate the Shire's natural growth forecast.	<p>The Planning Proposal would ensure that the current lot size controls for a dual occupancy in the residential zones contained in Council's DCP are provided within the LEP. These would reflect Council's existing controls and therefore is not expected to impact on any of Council's growth forecast for the area.</p> <p>If the LEP is not amended to include this as a development standard then the Low Rise Medium Density Code would potentially enable up</p>

Key Policy Direction	Comment
	to 2,368 additional dwellings within the residential zones in the Shire by enabling dual occupancies to be undertaken on lots as small as 400 square metres. This increase in dwelling numbers has not been factored into any of Council's current growth forecasts and would lead to an undesirable level of growth in the area.
<b>P8</b> Council will support the delivery of a mix of housing types to assist housing diversity and affordability so that Wollondilly can better accommodate the housing needs of its different community members and household types.	The Planning Proposal would enable a mix and diversity of housing in the Shire.
<b>P9</b> Dwelling densities, where possible and environmentally acceptable, should be higher in proximity to centres and lower on the edges of towns (on the "rural fringe").	The Planning Proposal would be consistent with this direction and would prevent inappropriate densities within the towns and villages in the Shire being enabled by the Low Rise Medium Density Housing Code.
<b>P10</b> Council will focus on the majority of new housing being located within or immediately adjacent to its existing towns and villages.	N/A
<b>Macarthur South Policies</b>	
<b>P11</b> Council does not support major urban release within the Macarthur South area at this stage.	N/A.
<b>P12</b> Council considers that in order to achieve sound long-term orderly planning for the eventual development of Macarthur South an overall master plan is required.	N/A.
<b>P13</b> Council will not support further significant new housing releases in Macarthur South beyond those which have already been approved. Small scale residential development in and adjacent to the existing towns and villages within Macarthur South will be considered on its merits.	N/A.
<b>P14</b> Council will consider proposals for employment land developments in Macarthur South provided they: <ul style="list-style-type: none"> <li>▪ Are environmentally acceptable;</li> <li>▪ Can provide significant local and/or subregional employment benefits;</li> <li>▪ Do not potentially compromise the future orderly master planning of the Macarthur South area;</li> <li>▪ Provide for the timely delivery of necessary infrastructure;</li> <li>▪ Are especially suited to the particular attributes of the Macarthur South area AND can be demonstrated as being unsuitable or unable to be located in alternative locations closer to established urban areas;</li> <li>▪ Do not depend on the approval of any substantial new housing development proposal in order to proceed (Employment land proposals which necessitate some limited ancillary or incidental housing may be considered on their merits).</li> </ul>	N/A.

Key Policy Direction	Comment
<b>Employment Policies</b>	
<b>P15</b> Council will plan for new employment lands and other employment generating initiatives in order to deliver positive local and regional employment outcomes.	N/A
<b>P16</b> Council will plan for different types of employment lands to be in different locations in recognition of the need to create employment opportunities in different sectors of the economy in appropriate areas.	N/A
<b>Integrating Growth and Infrastructure</b>	
<b>P17</b> Council will not support residential and employment lands growth unless increased infrastructure and servicing demands can be clearly demonstrated as being able to be delivered in a timely manner without imposing unsustainable burdens on Council or the Shire's existing and future community.	<p>The proposal would not allow any increased residential or employment lands in the Shire.</p> <p>The Planning Proposal would ensure that the new Low Rise Medium Density Code would not enable dual occupancy dwellings to be undertaken on lots as low as 400 square metres and would need to meet the current lot size standards in Council's planning controls.</p> <p>Appendix B shows the potential uplift in dwellings from the Code when compared to Council's existing Planning controls by enabling dual occupancies on 400 square metre lots. There is inadequate infrastructure in many of the towns and villages to support such growth. As the Code would enable the increased dwellings as Complying Development, the increased infrastructure required as part of this growth would not be delivered as part of the future developments.</p> <p>It has also not been demonstrated that the increased number of dwellings that could be enabled by the Code could be adequately serviced as several of the Shires towns have limited sewer servicing capacity.</p>
<b>P18</b> Council will encourage sustainable growth which supports our existing towns and villages, and makes the provision of services and infrastructure more efficient and viable – this means a greater emphasis on concentrating new housing in and around our existing population centres.	Without the proposal, the Code would enable dual occupancies to be carried out on lots as small as 400 square metres.
<b>P19</b> Dispersed population growth will be discouraged in favour of growth in, or adjacent to, existing population centres.	N/A
<b>P20</b> The focus for population growth will be in two key growth centres, being the Picton/Thirlmere/Tahmoor Area (PTT) area and the Bargo Area. Appropriate smaller growth opportunities are identified for other towns.	N/A
<b>Rural and Resource Lands</b>	
<b>P21</b> Council acknowledges and seeks to protect the special economic, environmental and cultural values of the Shire's lands which comprise waterways, drinking water catchments, biodiversity, mineral resources, agricultural lands, aboriginal heritage and European rural landscapes.	The Planning Proposal which would enable the current controls within Council's Development Control Plan which prescribes a minimum lot size for dual occupancies to be replicated in the LEP and continue to apply to the area. This would enable the character of the Shire's towns and villages to be retained.
<b>P22</b> Council does not support incremental growth involving increased dwelling entitlements and/or	N/A

Key Policy Direction	Comment
<p>rural lands fragmentation in dispersed rural areas. Council is however committed to maintaining where possible practicable, existing dwelling and subdivision entitlements in rural areas.</p>	

## Appendix B

### Dwelling Number Comparisons

The table below provides a Comparison of number of additional dual occupancy dwellings that could be constructed under the Low Rise Medium Density Housing Code compared to Council's current planning controls:

Town/Village	Number of lots (greater than 400sqm) eligible for Complying Development under the new Low Rise Medium Density Housing Code	Number of lots (greater than 800sqm) eligible for Complying Development under the Low Rise Medium Density Housing Code	Additional Dwellings enabled by the Code
Appin	769	439	330
Bargo	630	601	29
Buxton	457	132	325
Camden Park	589	197	392
Douglas park	115	114	1
Mount Hunter	58	57	1
Picton	774	528	246
Silverdale	500	481	19
Tahmoor	1,156	886	270
The Oaks	369	342	27
Thirlmere	581	497	84
Warragamba	486	58	428
Wilton	712	506	206
Yanderra	192	182	10
<b>Total</b>	<b>7,388</b>	<b>5,020</b>	<b>2,368</b>

Under the current planning controls (being Council's LEP and DCP), a Dual Occupancy development can be carried out on a lot greater than 800 square metres with consent. Column 2 shows there are 5020 lots zoned R2 where Dual Occupancy development can be carried out with a development application and now, as Complying Development.

An estimated 7,388 lots would now be eligible to undertake a dual occupancy development under the New Code as Complying Development. The lower minimum lot size of 400 square metres under this Code means that an additional 2,368 additional lots could be carried out.

Across Wollondilly Shire LGA only 60.3 hectares of land is zoned R3 Medium Density Residential but excludes land within heritage conservation areas, and land identified as a Special Area under the Water NSW Act. Due the higher dwelling yields permissible through manor houses or terraces in comparison to Dual Occupancies an exact dwelling uplift as a result of dual occupancies alone enabled by the Code is hard to establish. No dwelling uplift data is currently available based on this scenario. It is thus considered that as a result of the relatively limited R3 land available and the higher dwelling yield development options permissible - the majority of the dwelling uplift as a result of dual occupancies will occur within the R2 Low Density Residential zones.

## Appendix C

### Dual Occupancy Approvals by locality and zoning 2013 – 2017

The table below shows the number of Dual Occupancies application approved between 1 January 2013 and 31 December 2017, based on locality and zoning:

Town/Village	Number of Dual Occupancies applications approved between 01/01/2013 and 31/12/2017 in R2 zones	Number of Dual Occupancies applications approved between 01/01/2013 and 31/12/2017 in R3 zones	Total
Appin	10	0	10
Bargo	3	0	3
Buxton	0	0	0
Camden Park	0	0	0
Douglas Park	1	0	1
Mount Hunter	0	0	0
Picton	3	1	4
Silverdale	1	0	1
Tahmoor	37	3	40
The Oaks	1	1	2
Thirlmere	9	1	10
Warragamba	0	0	0
Wilton	3	0	3
Yanderra	0	0	0
<b>Total</b>	<b>68</b>	<b>6</b>	<b>74</b>

The table highlights that the majority of dual occupancy developments within the LGA are occurring within R2 Low Density zones, and that the Tahmoor area has contributed the greatest number of additional dual occupancy approvals within the five (5) year time frame.

### Dual Occupancy Approvals by Year

The table below shows the number of dual occupancies approved in the last five (5) years based on determination date:

Year	Number of Dual Occupancies approved in R2 and R3 Zones
2013	6
2014	19
2015	15
2016	15
2017	19
<b>Total</b>	<b>74</b>

The table shows a generally increasing number of dual occupancies approvals within a five (5) year time frame.

## Appendix D

### Dual Occupancy Approvals 2018

The table below shows the number of Dual Occupancies approved in 2018 as of 26 September 2018, based on locality and zoning:

Town/Village	Number of Dual Occupancies applications approved in 2018 (as of 26/09/2018) within R2 zones	Number of Dual Occupancies applications approved in 2018 (as of 26/09/2018) within R3 zones
Appin	2	0
Bargo	1	0
Buxton	0	0
Camden Park	0	0
Douglas Park	0	0
Mount Hunter	0	0
Picton	4	0
Silverdale	1	0
Tahmoor	9	0
The Oaks	2	0
Thirlmere	4	0
Warragamba	0	0
Wilton	0	0
Yanderra	0	0
<b>Total</b>	<b>23</b>	<b>0</b>

The table reflects similar trends to the five (5) years previous as shown in Appendix E. All dual occupancies approved in 2018 thus far have occurred within a R2 Low Density Residential zoning. As with the previous five (5) years, Tahmoor have had the greatest number of dual occupancies approved in comparison to other localities within the LGA. The total number of Dual Occupancies approved thus far is greater than the average number per year in the previous five (5) years.

# Appendix E

## Community consultation submissions matrix and review of submissions received

Matrix of submissions showing the issues highlighted and frequency with which they were raised, and an overview of the submissions



Submission No.		Does the submission support the Planning Proposal?	Raised Issue																		
			Inappropriate minimum lot sizes	Inaccurate development estimates	Housing Diversity	Development Contributions	Location of Development	Infrastructure – waste water / storm water	Infrastructure – kerb and guttering	Infrastructure – roads/Traffic/Parking	Infrastructure – public transport	Infrastructure – pedestrian and bike	development controls – design	Population density	Impact on house prices	Affordable housing	Local Character / Rural Living	Full effects of the proposed changes unknown	Current and Future needs of the community	Inconsistent with state legislation	Merit based assessment under Codes SEPP
1.	No	•	•	•	•	•	•														
2.	Yes	•						•				•	•								
3.	No	•										•									
4.	No	•												•							
5.	Yes	•										•	•	•		•					
6.	No	•																			
7.	Yes	•						•								•					
8.	Neutral	•						•				•									
9.	No														•		•	•	•	•	
10.	No														•		•	•	•		
11.	No																•	•	•		
12.	No														•		•	•	•		
13.	No														•		•	•	•		
14.	Other	•					•	•	•	•	•	•				•					•
		9	1	1	1	1	2	1	4	1	1	4	3	2	4	3	5	5	4	1	1

## Table summarising submissions

Issued Raised	Comment
<b>Inappropriate lot size</b>	
<ul style="list-style-type: none"> <li>• Minimum lot size should be lowered to 700sqm</li> <li>• Minimum lot size should 500 square metres</li> <li>• No consideration of the appropriateness of the proposed 800sqm and 975sqm lot sizes</li> <li>• The proposed lot sizes are very high in the context of the Greater Sydney Area.</li> <li>• A “middle ground” in the lot size should be established</li> <li>• Small lots would leave very minimal backyards</li> <li>• Upper limit will not allow appropriate lots (e.g. 1500 sqm) to be construct a dual occupancy.</li> <li>• There should be a universal minimum of 975 square metres</li> <li>• 800 and 975 square metres is overly restrictive and outdated</li> <li>• Lot sizes are not in line with ‘Rural Living’</li> </ul>	<p>The purpose of this planning proposal is to reaffirm Council’s current lot size requirements for the construction of dual occupancy developments by including the current controls contained with the Wollondilly Development Control Plan 2016 within the Wollondilly Local Environmental Plan 2011.</p> <p>The re-evaluation of the appropriate lot size is outside the scope of this planning proposal, however, it has long been held that applying a minimum lot size of this nature for dual occupancy developments would assist in retaining the low density housing character of the r2 zone across the Shire.</p> <p>Council is currently undertaking a review of the Local Environmental Plan and developing Local Strategic Planning Statements for each of the Shire towns and villages. This process may identify locations within the Shire that may be suitable for smaller minimum lot sizes for the construction of a dual occupancy development.</p> <p>In regard to aligning with wider trends in the Greater Sydney Area or the neighbouring Local Government Areas of Camden and Campbelltown – the context of the built form, infrastructure constraints and local character must be taken into account and in many instances differs from neighbouring LGAs</p>
<b>Inaccurate development estimates</b>	
<ul style="list-style-type: none"> <li>• The calculated additional dwellings enabled by the Code is not substantiated, nor feasibility</li> </ul>	<p>For consistency in assumptions and to enable appropriate comparison. The additional dwelling calculated was based on the assumption of maximum development potential of 400sqm lots versus lots that could currently be developed for the purposes of a dual occupancy using Council’s existing DCP controls (i.e. lots greater than 800 square metres). Explicit clarification of this point has been included in the Council report and will be included in the planning proposal document forwarded to the Department, if supported by Council.</p> <p>It is acknowledged that other factors will reduce this number.</p>
<b>Housing diversity</b>	
<ul style="list-style-type: none"> <li>• Low number of medium density housing throughout Wollondilly</li> <li>• Inconsistent with Ministerial Direction to broaden housing choices</li> </ul>	<p>An assessment of the proposal against the potential impacts on housing diversity has been undertaken in the body of this report.</p>

<ul style="list-style-type: none"> <li>Current housing stock does not currently cater for all demographics in the Shire</li> </ul>	
<b>Development contributions</b>	
<ul style="list-style-type: none"> <li>Higher level of development would increase development contributions to help fund the infrastructure deficiencies.</li> </ul>	<p>It is recognised that higher levels of development would result in an increased receipt of development contributions.</p> <p>The Contributions Plan is designed to provide local infrastructure and services in line with growth. Therefore the additional dwellings and the subsequent contributions would align with the resultant increase in population. The contribution plan aligns with Councils Works Program for each period. It is not designed to address infrastructure deficiencies but support growth.</p> <p>Council Contribution plan outlines what and where the contributions are to be directed. This is divided by Precinct and designated to categories such as open space, roads, services and plan administration.</p> <p>The Contributions Plan does provide funds to increase sewer services in the Shire, this is the role of Sydney Water.</p>
<b>Location of development</b>	
<ul style="list-style-type: none"> <li>Restricting dual occupancies will increase pressure to rezone agricultural land within Wollondilly.</li> <li>Could help renew some areas, increase population and more activity</li> </ul>	<p>The proposal is consistent with Ministerial Direction 3.1 Residential Zones – see the body of the report for a full assessment.</p> <p>Intensification of urban development in our existing towns and villages through dual occupancy style developments will be able to continue (where permissible and subject to a development application). The new Code will also allow dual occupancies to be completed as complying development (subject to Wollondilly's minimum lot size requirement) on appropriately sized lots.</p>
<b>Infrastructure – stormwater and waste water</b>	
<ul style="list-style-type: none"> <li>Lack of reticulated sewer is not directly related to the minimum lot size</li> <li>Setting a large minimum allotment size to prevent dual occupancies on unsewered land would not work</li> <li>Council should seek a land based exclusion from the Code.</li> </ul>	<p>A larger lot size provides greater scope for onsite waste water disposal in accordance with s68 of the Local Government Act 1997 and the relevant Health policies. Council is not seeking to prevent to the construction of dual occupancies on unsewered sites but, if permissible, seek to ensure sufficient consideration is given to the on-site requirements for waste-water management.</p> <p>The Code currently requires an s68 certificate to be lodged and determined by Council for an approved on site waste water management system prior to the issuing of a Compliance Certificate. Further land based exclusion are not expected to be supported by the State Government.</p>
<b>Infrastructure – kerb and guttering</b>	
<ul style="list-style-type: none"> <li>Lack of kerb and guttering is not directly linked to the minimum lot size for dual occupancies</li> </ul>	<p>The implications of a minimum lot size of 400 square metres must be considered in a holistic manner. Kerb and guttering is important infrastructure in terms of amenity and drainage. Assurance must be made that infrastructure is available to support future growth.</p>

<ul style="list-style-type: none"> <li>Council should seek a land based exclusion in the code for land without kerb and guttering</li> </ul>	The report will recommend that Council write to the Department of Planning & Environment requesting that kerb and guttering is provided (through a standard condition) with the construction or subdivision of the Dual Occupancy. Council has previously noted this concern in a submission to the Department of Planning & Environment in March 2016.
<b>Infrastructure – roads / traffic / parking</b>	
<ul style="list-style-type: none"> <li>Dual occupancy on small lots would increase pressure on roads</li> <li>Dual occupancy on small lots would impact on on-street parking</li> <li>Poor conditions of roads currently</li> </ul>	The proposed lot size inclusions currently exist within the WDCP. The proposal is effectively a continuation of Councils current planning controls, and reflects the character and infrastructure constraints of the area.
<b>Infrastructure – public transport</b>	
<ul style="list-style-type: none"> <li>Limited public transport to support growth in population</li> </ul>	The proposed lot size inclusions currently exist within the WDCP. The proposal is effectively a continuation of Councils current planning controls, and reflects the character and infrastructure constraints of the area. If the Planning Proposal is not completed, the commencement of the Medium Density housing code would enable dual occupancies on lots as small as 400 square metres, which in many cases will be in areas that do not contain adequate public transport.
<b>Infrastructure – pedestrian and bike</b>	
<ul style="list-style-type: none"> <li>Limited pedestrian walkways, crossings etc</li> <li>More bike paths and connection needed</li> </ul>	Council has the ability to condition the construction of footpaths with dual occupancy if there is an existing network to connect to. It is recognised that if no network is currently in existence, footpaths would not be appropriate to condition as it would result in an unconnected network, and ad-hoc development. Under the Code footpaths would not be mandated in reference to the Dual Occupancy or any resultant subdivision.
<b>Development controls – design</b>	
<ul style="list-style-type: none"> <li>Design guides needed to make dual occupancies respond to context and scale</li> </ul>	Design controls are outside of the scope of this planning proposal. Any changes to the current design controls would need to occur through an amendment to the Development Control Plan
<b>Impact on house prices</b>	
<ul style="list-style-type: none"> <li>Upper limit will devalue some properties as development potential is decreased</li> </ul>	The proposed lot size inclusions currently exist within the WDCP. The proposal is effectively a continuation of Councils current planning controls, and reflects the character and infrastructure constraints of the area.
<b>Affordable housing</b>	
<ul style="list-style-type: none"> <li>Smaller lot size will encourage affordable housing</li> <li>Proposal will hinder the delivery of affordable housing</li> </ul>	<p>The delivery of affordable housing is outside the scope of this current proposal. The proposed lot size inclusions currently exist within the WDCP. The proposal is effectively a continuation of Councils current planning controls, and reflects the character and infrastructure constraints of the area.</p> <p>A Local Housing Strategy (including an Affordable Housing Study) will be undertaken as part of the LEP review project, this will consider this matter and any necessary action.</p>
<b>Local Character / rural living</b>	
<ul style="list-style-type: none"> <li>Higher density housing will impact 'rural living'</li> </ul>	The proposed lot size inclusions currently exist within the WDCP. The proposal is effectively a continuation of Councils current planning controls, and reflects the character and infrastructure constraints of the area. Dual occupancy developments are not considered high density.

<b>Full effects of the proposed changes unknown</b>	
<ul style="list-style-type: none"> <li>Proposal fails to advise people of the full effects of the proposed changes and their potential entitlements under the new Code</li> </ul>	Due to the diversity in lots across the Shire it would not be possible to fully advise the effects of this proposal on each lot due to the various site constraints that exist. The proposal will not change the permissibility of dual occupancies in regard to the land use table and is applying the existing controls contained in the WDCP into the WLEP.
<b>Current and Future needs of the community</b>	
<ul style="list-style-type: none"> <li>Does not cater for current or future need of the community in a growing area.</li> </ul>	The proposal is effectively a continuation of Council's current planning controls, and reflects the character and infrastructure constraints of the area. As such, the proposal is not expected to result in the stagnation of development across the Shire.
<b>Inconsistent with state legislation</b>	
<ul style="list-style-type: none"> <li>Proposal is inconsistent with State Planning directions</li> </ul>	An assessment against the relevant Ministerial Directions (9.1 directions) is contained within the body of this report.
<b>Merit based assessment under Codes SEPP</b>	
<ul style="list-style-type: none"> <li>Suggest Council may keep the DCP with the minimum lot size requirement and allow applicant to apply for development under the Code, and use a merit based assessment</li> </ul>	<p>Development applications lodged with Council are subject to a merit based assessment under 4.15 of the EP&amp;A Act. The WLEP and WDCP apply in this case, and compliance with the relevant standards and controls.</p> <p>When an approval is sought under the Codes SEPP there is no merit based assessment, the proposal must comply with all controls listed under the Code to get a Complying Development Certificate.</p> <p>Each approval pathway is separate to the other.</p> <p>If there is no clause included in WLEP 2011, then the SEPP will enable dual occupancies to be undertaken on lots as small as 400 square metres which would not be in character with the area. The DCP would not have the legal weight to prescribe a larger minimum lot size whereby dual occupancies could be undertaken as Complying Development.</p>